

Cash App's lax verification process led to regulatory fines, shareholder says | Secondary Sources | National

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(January 22, 2025) - The parent company of digital wallet Cash App deceived investors about the security of its customer verification process, which was so flawed that it had to pay a \$175 million fine to financial regulators, according to a federal court complaint.

Gonsalves v. Block Inc. et al., No. 25-cv-642, *complaint filed* (N.D. Cal. Jan. 17, 2025).

Block Inc. shareholder Corinne Gonsalves' complaint, filed Jan. 17 in the U.S. District Court for the Northern District of California, says the fintech company experienced significant growth partly because it ignored regulatory compliance obligations.

In addition to Block, the complaint names as defendants CEO and Chairman Jack Dorsey and Chief Financial Officer and former Chief Operating Officer Amrita Ahuja.

From Feb. 26, 2020, to Feb. 23, 2023, Block reported in its quarterly and annual filings with the Securities and Exchange Commission and in shareholder letters that it has experienced continuous growth both in its revenue and profits, the complaint says.

Dorsey and Ahuja also detailed Block's compliance program and customer vetting processes in the company's SEC filings, the suit says.

A compliance conundrum?

According to the complaint, now-defunct investment research firm Hindenburg Research published a report March 23, 2023, accusing Block of inflating user metrics, enabling fraud and fostering criminal activity through lax compliance on its digital wallet platform, Cash App.

On the same day, Block's Class A stock fell nearly 15%, closing at \$61.88, the complaint says.

Hours after the release of the Hindenburg report, Block issued a press statement calling the report misleading and announced plans to work with the SEC and pursue legal action against Hindenburg, the suit says.

According to the complaint, Block disclosed in August 2023 that the SEC and the Department of Justice were investigating the allegations in the Hindenburg report, despite Block's earlier claims that the SEC should probe Hindenburg. Following the news, Block's stock dropped nearly 14% from \$73.55 to \$63.52 per share, the complaint says.

Costly shortcuts

Block's stock faced further pressure in 2024 due to ongoing investigations and negative reports, according to the complaint. On Feb. 16, 2024, following an NBC News report about federal investigations into Cash App's inadequate due diligence, Block's share price dropped more than 5%, the complaint says.

In May, after another NBC News report about federal prosecutors investigating Block's widespread compliance lapses, the company's share price fell by more than 8%, the suit says.

In Block's quarterly SEC filing Aug. 1, the company disclosed that it had received a follow-up inquiry from the SEC about alleged compliance issues outlined in the Hindenburg report, according to the suit.

On Jan. 15, a coalition of 48 state regulatory agencies announced an \$80 million fine against Block for violations of the Bank Secrecy Act and anti-money laundering laws, the suit notes. The company must also address compliance deficiencies and submit a progress report within nine months.

The next day, the Consumer Financial Protection Bureau ordered Block to pay up to \$120 million in consumer refunds and \$55 million in penalties, citing weak security protocols on Cash App that exposed users to fraud and Block's failure to address the issue or provide effective customer service.

The defendants violated Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C.A. § 78j(b), and SEC Rule 10b-5, 17 C.F.R. § 240.10b-5, by deceiving investors, the complaint says.

Dorsey and Ahuja are also liable as control persons under Section 20(a) of the Exchange Act, 15 U.S.C.A. § 78t(a), the suit says.

Gonsalves seeks class-action certification, damages, legal fees and other appropriate relief.

Shawn A. Williams, Michael A. Troncoso and Brian E. Cochran of Robbins Geller Rudman & Dowd LLP and Frank J. Johnson of Johnson Fistel LLP represent Gonsalves.

By Russel Loreto

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Oracle's NetSuite Purchase Win Secured by Top Delaware Court (2)

By Jennifer Kay

- Pension fund appealed over interview memos, NetSuite plans
- High court found that Ellison 'did not actually control Oracle'

Oracle Corp.'s 2016 acquisition of NetSuite Inc. was safeguarded Tuesday, with the Delaware Supreme Court upholding a trial judge's decision finding the deal had been negotiated at arm's length by a "fully empowered special committee."

The pension fund that challenged the deal failed to prove that Oracle founder Larry Ellison withheld material information from the committee, according to the high court's 42-page opinion.

"Furthermore, Ellison did not actually control Oracle," Chief Justice Collins J. Seitz wrote in the opinion for the court's full five-member panel. "He had no ability unilaterally to bring about drastic changes without management and board approval, which, as the Court of Chancery found, 'did not appear cowed or overawed' by Ellison."

The Delaware Chancery Court upheld the NetSuite acquisition in May 2023, following a 10-day trial held the previous year. The pension fund that had challenged the deal appealed to the high court to review its lack of access to the special committee's interview memos, whether Ellison is a controller of Oracle, and the Chancery Court's analysis of Ellison's post-merger plan for operating NetSuite.

"We note with skepticism the argument that Ellison should have made his post-closing views known," Seitz said. If Ellison had done so, the pension fund "likely would have quickly pivoted and claimed that he breached his fiduciary duty by improperly exerting his influence," he said.

The decision, which caps eight years of litigation, vindicates Ellison and Oracle CEO Safra Catz, their attorneys said in an emailed statement. It "underscores for clients and practitioners that adherence" to Delaware's standards for reviewing and completing conflicted fiduciary transactions achieves the best results for stockholders and "will pay significant dividends in any subsequent litigation challenging the deal," said Blair Connelly of Latham & Watkins LLP.

"NetSuite was one of the best acquisitions Oracle ever made," said Peter Wald, also of Latham & Watkins.

The Firemen's Retirement System of St. Louis is represented by Friedlander & Gorris, Robbins LLP, and Robbins Geller. The board committee is represented by Potter Anderson & Corroon and Kramer Levin Naftalis & Frankel. Ellison and Catz are also represented by Young Conaway Stargatt & Taylor.

The case is In re Oracle Corp. Derivative Litig., Del., No. 139,2024, opinion 1/21/25 .

(Updates with additional comment from Ellison's attorneys in sixth and seventh paragraphs.)

To contact the reporter on this story: Jennifer Kay in Philadelphia at jkay@bloombergindustry.com

To contact the editor responsible for this story: Alex Clearfield at aclearfield@bloombergindustry.com

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Class Action

Jan. 22, 2025, 8:37 AM PST

Yacht Broker Groups Win Bid to Toss Price-Fixing Conspiracy Suit

By Katie Arcieri

- Judge grants brokers' motion to dismiss without prejudice
- Yacht groups accused of adopting rules to inflate broker fees

The International Yacht Brokers Association Inc. and other yacht brokerage groups have for now escaped claims they colluded to inflate boat fee commissions, after a federal judge granted their motion to dismiss.

Judge K. Michael Moore of the US District Court for the Southern District of Florida in a Tuesday order said the lead plaintiff didn't plausibly allege direct evidence of an agreement or conspiracy in violation of Section 1 of the Sherman Act.

Moore granted the motion to dismiss without prejudice, meaning the plaintiff can refile the complaint.

The ruling comes less than a year after several yacht brokers associations, including the California Yacht Brokers Association and Yacht Brokers Association of America, were sued over allegedly imposing contract terms that require sellers of used yachts to pay inflated commissions to buyers' brokers.

The proposed class action mirrors similar allegations brought against real estate brokerages and the National Association of Realtors, which were hit with a \$1.8 billion verdict in 2023 for an alleged conspiracy to inflate broker commissions. Most large vessels in the US are sold on a multiple listing service, similar to residential real estate.

Yacht seller plaintiff Ya Mon Expeditions LLC alleged that a conspiracy may be inferred from defendants' participation in trade associations and other professional groups, but Moore said it's been "well-settled" that participation in trade organizations provides no indication of conspiracy.

"Accordingly, this Court cannot infer an illegal agreement from Defendants' mere participation in trade associations that contain similar, non-binding recommendations regarding brokers' commission fees," Moore said.

Moore gave Ya Mon 21 days to file a second amended complaint.

The plaintiff is represented by Podhurst Orseck PA and Robbins Geller Rudman & Dowd LLP. The yacht associations are represented by firms including Sperling Kenny Nachwalter LLC, Wiley Rein LLP, and Latham & Watkins LLP.

The case is Ya Mon Expeditions, LLC v. Int'l Yacht Brokers Ass'n, S.D. Fla., No. 1:24-cv-20805, 1/21/25.

To contact the reporter on this story: Katie Arcieri in Washington at karcieri@bloombergindustry.com

Florida Judge Tosses Antitrust Case Over Yacht Broker Commissions

 [law.com/dailybusinessreview/2025/01/21/florida-judge-tosses-antitrust-case-over-yacht-broker-commissions](https://www.law.com/dailybusinessreview/2025/01/21/florida-judge-tosses-antitrust-case-over-yacht-broker-commissions)

Amanda Bronstad

What You Need to Know

- The yacht lawsuits followed a landmark \$418 million settlement last year with the National Association of Realtors that forced changes to the multiple listing services compensation rule, which mandated a uniform offer to brokers.
- The lawsuits allege that yacht brokers, along with the industry associations, and other entities, colluded for commissions of 10% on sales.
- K&L Gates partner Christina Paul, in Miami, filed the dismissal motion on behalf of the defendants.

A Florida judge dismissed consolidated antitrust class actions accusing yacht brokers of illegally fixing commission rates, despite similarities to a \$418 million settlement involving the residential real estate industry.

U.S. District Judge K. Michael Moore, of the Southern District of Florida, tossed out the claims brought by yacht sellers who listed vessels on a member listing service. In a Tuesday ruling, Moore concluded that, despite similarities to antitrust litigation against the National Association of Realtors, the plaintiffs' complaint had not "plausibly alleged direct evidence of an agreement or conspiracy" but "merely alleges that some defendants have personal and professional connections to various yacht broker associations" with no binding industry practices.

U.S. District Judge Kevin Michael
Moore.

He also disagreed that the defendant brokers had refused to deal with unrepresented yacht buyers as part of an antitrust conspiracy.

"In considering the allegations set forth in the complaint, the court cannot conclude that defendants' actions amounted to anything more than their unilateral and reasonable decision to conduct business with licensed professionals, rather than individuals who may be unexperienced or unfamiliar with the process of selling a used yacht," he wrote.

The landmark settlement last year with the National Association of Realtors followed a separate \$1.8 billion jury award in 2023 and forced changes to the multiple listing services compensation rule, which mandated a uniform offer to brokers.

Co-lead class counsel Mark Dearman, of Robbins Geller Rudman & Dowd in Boca Raton, Florida, who filed the opposition to the dismissal motion on behalf of used yacht sellers, did not respond to a request for comment.

K&L Gates partner Christina Paul, in Miami, who filed the dismissal motion on behalf of the defendants, did not respond. Neither did Sean Burstyn of Burstyn Law. The defendants include the International Yacht Brokers Association Inc., Yacht Broker's Association of America Inc. and more than a dozen individual yacht brokers, whose counsel also included Latham & Watkins.

'Square Peg In a Round Hole'

The lawsuits allege that the brokers, along with the industry associations, and other entities, colluded for commissions of 10% on yacht sales.

"Plaintiffs' complaint is the proverbial attempt to fit a square peg in a round hole," Paul wrote in the dismissal motion. "Throughout the complaint, plaintiffs strain to analogize the yacht industry to the real estate industry, seeking to piggyback off lawsuits against the National Association of Realtors and real estate brokers that alleged conspiracies to inflate real estate commission rates."

But the cases aren't the same, the motion says.

"No dominant yacht broker-trade association can set rules for all yacht brokers, and no single platform is essential to competition," she wrote.

Plaintiffs, opposing dismissal, insisted it was no different than the realtor case.

"If anything, the effects of defendants' anticompetitive conduct are far worse, and defendants' ability to control this market is far more extensive," Dearman wrote. "With far fewer yacht brokers than real estate brokers, defendants' conspiracy is far easier to implement and enforce."

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US yacht brokers defeat antitrust lawsuit over commission fees

 [reuters.com/legal/litigation/us-yacht-brokers-defeat-antitrust-lawsuit-over-commission-fees-2025-01-21](https://www.reuters.com/legal/litigation/us-yacht-brokers-defeat-antitrust-lawsuit-over-commission-fees-2025-01-21)

Mike Scarcella



REUTERS/Ricardo Arduengo Purchase Licensing Rights  , opens new tab

Jan 21 (Reuters) - A federal judge in Florida has dismissed a proposed class action lawsuit accusing the world's largest yacht brokers' association and others of bilking boat sellers by charging inflated sales commissions.

Miami-based U.S. District Judge K. Michael Moore ruled on Tuesday  , opens new tab that the plaintiffs failed to show a group of boating brokerages, yacht broker associations and a yacht listing service conspired to fix broker commissions.

Moore also said it was not unreasonable for yacht brokerages to want to do business only with sellers who have an agent representing them.

The case, filed by a group of yacht sellers, alleged that International Yacht Brokers Association and others, including Boat Trader, Yacht World and Boats.com operator Boats Group LLC, violated antitrust law by coercing sellers to pay a commission of 10% of a vessel's sale price that is split between the agents for both sides in a sale.

The International Yacht Brokers Association, Boats Group and attorneys for plaintiff Ya Mon Expeditions did not immediately respond to requests for comment.

Moore's ruling applied to three cases that were consolidated in his court.

The lawsuits, first filed in February 2024, drew parallels to the listing services through which most homes are sold in the United States. Home sellers typically pay a commission that covers the services of their agent and a broker for the buyer.

A wave of lawsuits has rocked the home real estate industry, leading to more than a billion dollars in settlements between home sellers and major U.S. real estate brokerages. The yacht industry defendants in seeking dismissal of the boat sellers' lawsuits said the plaintiffs were seeking to "piggyback" off lawsuits against home brokers and the trade group National Association of Realtors.

The yacht defendants told the court that unlike the real estate litigation, "no dominant yacht-broker trade association can set rules for all yacht brokers, and no single platform is essential to competition."

The case is Ya Mon Expeditions LLC v. International Yacht Broker's Association Inc, U.S. District Court, Southern District of Florida, No. 1:24-cv-20805.

For plaintiff Ya Mon Expeditions: Ricardo Martinez-Cid and Lea Bucciero of Podhurst Orseck; and Kevin Neal and William King of Gallagher & Kennedy

For Boats Group: Lawrence Buterman of Latham & Watkins

For International Yacht Brokers Association: Jeffrey Foreman of Kenny Nachwalter

Read more:

Yacht sales agents hit with US class action over commission fees

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Reporting by Mike Scarcella

Recent Trends in Securities Class Action Litigation: 2024 Full-Year Review

 [nera.com/insights/publications/2025/recent-trends-in-securities-class-action-litigation--2024-full-y.html](https://www.nera.com/insights/publications/2025/recent-trends-in-securities-class-action-litigation--2024-full-y.html)

NERA has released “Recent Trends in Securities Class Action Litigation: 2024 Full-Year Review,” the latest edition of its annual report. The report continues our analysis of filing, dismissal, and settlement trends and presents new analyses related to current topics.

Director Edward Flores and Associate Director Svetlana Starykh, the report’s authors, utilize NERA’s proprietary database of federal securities class actions, which spans more than three decades.

Highlights from the 2024 report include:

- There were 229 new federal securities class action suits filed in 2024, matching the total number of filings seen in 2023.
- Filings against companies in the technology and healthcare sectors combined accounted for more than half of all filings, and the Second and Ninth Circuits accounted for 61% of filings.
- Of the 229 cases filed, 41% had an allegation related to missed earnings guidance while only 8% had an allegation related to merger-integration issues.
- AI- and COVID-related claims increased in 2024. AI-related claims more than doubled relative to 2023, with 13 suits filed in 2024. Nineteen cases with COVID-related claims were filed, a 46% increase from 2023.
- Crypto- and SPAC-related filings continue to decline, with only eight and nine suits filed in each category, respectively.
- After a six-year decline, resolutions increased by 17% with 217 cases resolved, consisting of 124 dismissals and 93 settlements. The increase was mostly driven by an increase in the number of dismissed cases with Rule 10b-5, Section 11, and/or Section 12 claims.
- Aggregate settlements totaled \$3.8 billion in 2024, with the top 10 settlements accounting for approximately 60% of this amount.
- The median Investor Losses were \$1.76 billion, the highest recorded value over the past 10 years.
- Aggregate plaintiffs’ attorneys’ fees and expenses totaled \$1.06 billion, nearly \$90 million more than the \$974 million from 2023.

NERA has reported on trends in securities class actions for over three decades and is an industry leader in advising clients in the economics of securities, finance, and commerce.

Meta ex-COO Sandberg sanctioned in investor lawsuit for deleting emails

[reuters.com/legal/meta-ex-coo-sandberg-sanctioned-investor-lawsuit-deleting-emails-2025-01-22](https://www.reuters.com/legal/meta-ex-coo-sandberg-sanctioned-investor-lawsuit-deleting-emails-2025-01-22/)

Tom Hals



Sheryl Sandberg, COO of Facebook and current chair of the Global Internet Forum to Counter Terrorism (GIFCT), holds a news conference on the sidelines during the 2019 United Nations Climate Action Summit at U.N. headquarters in New York City, New York, U.S., September 23, 2019. REUTERS/Yana Paskova/File Photo Purchase Licensing Rights [↗](#), opens new tab

WILMINGTON, Delaware, Jan 21 (Reuters) - Meta Platforms' (META.O) [↗](#), opens new tab former chief operating officer, Sheryl Sandberg, was sanctioned by a judge on Tuesday for deleting emails related to litigation over Facebook's Cambridge Analytica privacy scandal, despite being told to preserve the messages.

The judge, Vice Chancellor Travis Laster, of Delaware Chancery Court, said evidence showed Sandberg used a personal account under a pseudonym and erased messages that were likely relevant to the shareholder lawsuit.

The sanction will make it harder for Sandberg to tell her side of the story and avoid liability at the eight-day, non-jury trial scheduled for April. The judge also ordered her to pay the expenses related to the sanctions motion incurred by the shareholders, which include California's huge teachers' retirement system known as CalSTRS.

"Because Sandberg selectively deleted items from her Gmail account, it is likely that the most sensitive and probative exchanges are gone," Laster wrote in his opinion published on Tuesday.

Meta and an attorney for Sandberg did not immediately respond to a request for comment.

Sandberg had argued she was forthcoming about the personal account and rarely used it for business and when she did, others were copied on the messages so the information was preserved.

Laster imposed a higher standard of "clear and convincing evidence," rather than "preponderance" of evidence, for Sandberg's affirmative defenses, which are her arguments and evidence for why she should not be held liable.

The case was brought in 2018, when it emerged that Facebook allowed data from millions of users to be accessed by Cambridge Analytica, a political consulting firm that worked for Donald Trump's successful campaign for U.S. president in 2016.

Shareholders sued the company's directors and officers for allegedly harming investors by continually violating a 2012 consent order with the Federal Trade Commission to protect users' data.

Shareholders also allege the company's board bargained to pay a larger fine of \$5 billion to the FTC in 2019 so that founder Mark Zuckerberg would not have personal accountability. Zuckerberg is expected to be deposed for a second time before the start of the trial, according to court records.

In 2023, Laster refused to dismiss the lawsuit, which he said was a "case involving alleged wrongdoing on a truly colossal scale."

Shareholders also asked Laster to sanction Jeffrey Zients, who was former President Joe Biden's chief of staff and who also used and deleted personal emails when he was on Meta's board. The judge said that Zients' messages were less pertinent because he joined the Meta board in 2018, after the Cambridge Analytica scandal, and was not a company officer.

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Reporting by Tom Hals in Wilmington, Delaware; Editing by Leslie Adler

Elon Musk's Tesla Pay Case Stokes Chatter Between Lawyers and Clients

 [law.com/delbizcourt/2025/01/22/elon-musks-tesla-pay-case-stokes-chatter-between-lawyers-and-clients](https://www.law.com/delbizcourt/2025/01/22/elon-musks-tesla-pay-case-stokes-chatter-between-lawyers-and-clients)

Ellen Bardash

Delaware Supreme Court Building. Courtesy photo

Analysis

Musk continues to fight the Delaware Court of Chancery's decision to overturn his compensation plan at Tesla, appealing two decisions from the court to the Delaware Supreme Court last week. Since December, there's been growing concern among investors about how the Delaware courts weigh issues around shareholder democracy.

January 22, 2025 at 02:24 PM

🕒 7 minute read

By Ellen Bardash

Litigation reporter



*We hope you enjoy this excerpt from *Litigation Daily*, the exclusive source for sharp commentary on mega court battles, winning strategies and the issues that obsess elite litigators. Law.com subscribers can sign up for *The AmLaw Litigation Daily* newsletter [here](#). Anyone else can [click here to subscribe](#).*

I left for a week-long vacation in the summer of 2022, not knowing I was in my final days before a disproportionately large part of my beat would be taken over by a certain chronically online billionaire.

Two days into that vacation, the social media company formerly known as Twitter sued Elon Musk. Maybe someday there will again be a year in which Musk is not at the center of a major case pending in the Delaware courts, but 2025 is not that year.

Musk continues to fight the Delaware Court of Chancery's decision to overturn his compensation plan at Tesla, appealing two decisions from the court to the Delaware Supreme Court last week. Since December, there's been growing concern among investors about how the Delaware courts weigh issues around shareholder democracy.

Here's a simplified version of what's gone down. In 2018, Tesla, through its board and shareholders, approved a 10-year pay package for Elon Musk that was valued in the neighborhood of \$56 billion. Besides its sheer scope, what made that compensation

agreement so out of the ordinary was that it was entirely stock-based, with payouts dependent on Tesla meeting 12 benchmarks. Musk gets no base salary or bonuses, so the idea was that if Tesla didn't meet a benchmark, he wouldn't get the shares tied to that benchmark, or any other form of payment.

Also in 2018, Tesla shareholder Richard Tornetta filed his lawsuit in the Court of Chancery challenging the compensation plan. Tornetta, asking the court to rescind the plan in its entirety, claimed the process under which Musk's plan was approved didn't stand up under the standards of Delaware, where Tesla was incorporated at the time, largely because Musk was too involved in the process and had a part in pushing it through.

A week-long trial took place in November 2022. Since the Court of Chancery doesn't have juries, Chancellor Kathaleen St. J. McCormick was the sole party responsible for deciding the case. McCormick held post-trial argument in February 2023, then requested supplemental briefing.

In January 2024, McCormick issued a 200-page post-trial opinion finding the process was flawed and Musk's plan should be rescinded. Tornetta's attorneys asked to be compensated with 29.4 million of the 267 million shares of Tesla stock the rescission returned to shareholders.

Last summer, Tesla's stockholders again voted in favor of the compensation plan, and attorneys for Musk and the company returned to the court, asking McCormick to change her decision based on the shareholders' ratification. In August, McCormick heard arguments on both that and the fee request.

On Dec. 2, McCormick released another opinion, declining to alter her earlier decision and awarding plaintiff's counsel \$345 million. Musk and Tesla have appealed both the January and December decisions to the Delaware Supreme Court.

At this point, we don't know much about how the appeal might play out. Because there are so many facets to the Chancery decisions, there are a lot of angles the appellants could choose to focus on, and it won't be clear which they're taking until a brief is filed next month, much less what the appellees and the Supreme Court will hone in on. Litigators I've spoken to have varying theories, all of which raise broader questions about corporate law. But to cut this down by about 10,000 words, I'll save discussion on those for when we know which of those theories are more than theoretical.

But here's something we do know. Since the December decision came out, attorneys have been detecting some level of worry from shareholders of Delaware corporations about the power they have.

When I spoke to **Rick Horvath** at **Dechert** for a story I wrote last week on Delaware litigation issues to watch out for in 2025, he mentioned he's had clients who have expressed uncertainty in that area, and the Supreme Court now has a chance to send a message to the market about whether shareholders or courts get a final say on board-backed corporate transactions.

"There absolutely is hesitation and caution that's warranted when you're dealing with clients on these significant open questions of Delaware law," he said. "The reaction I'm getting is this goes to something even deeper and more foundational: like, do the stockholders actually own the business and does their vote matter?"

That echoes what I've heard repeatedly over the past month: litigators and corporate attorneys generally aren't declaring the Chancery decision is an upheaval of shareholder democracy as we've known it, but the balance of power between the court and shareholders is something that's at least on their clients' radar.

Part of that might be due to how much attention this case has gotten in general. It's fairly uncommon for the Chancery cases involving household names like Elon Musk to be the ones that establish precedent. It's significantly more uncommon for a case to involve a household name and cutting-edge issues of Delaware law while also getting attention from the general public. This is one of those rare cases, so it stands to reason any decision in it might be more likely to be talked about as well.

However, although McCormick's latter opinion does say the Tesla shareholders' vote for ratification wasn't fully informed due to a misleading proxy statement, there was more to her reasoning than simply a court overriding shareholders' say for the sake of it. McCormick wrote that shareholder ratification is an affirmative defense, and a defendant can't use it as a way to overturn a post-trial ruling if they're only bringing it up for the first time after trial and after that ruling has been made.

I'll give a further disclaimer to all of the above: most court watchers don't want to give too much weight to this concern right now. Most say it's not worth overhyping the appeal before the Delaware Supreme Court rules and that the facts of this case make it a one-off that likely won't be replicated at other corporations. **Francis Pileggi**, managing partner of **Lewis Brisbois Bisgaard & Smith's** Delaware office, recently told me in an email that "the facts and procedural posture in the *Tornetta* case were both nuanced and atypical," which sums up a lot of attorneys' feelings about this case generally, as well as where it stands at this moment.

As I've written every few months or so for roughly the past year, I don't know of anyone who thinks this particular point of contention is the corporate law straw that will break the Delaware franchise camel's back, or that we are realistically nearing the end of shareholder

democracy and ultimately Delaware's downfall. It's an issue that was raised in one case that's pretty out there on all fronts, and it's an interesting discussion point. Nothing's locked in until the appeal is over. Nobody is claiming Delaware judges can now overrule shareholder votes whenever they feel like it. Well, arguably someone is, but you get what I'm saying.

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Trending

Litigation Surge - Consumer Protection | Colgate-Palmolive

Colgate-Palmolive, a maker of home and personal care products, was hit with a cluster of consumer class actions last week. At least three federal lawsuits were filed in California and Illinois over children's toothpaste and mouthwash products; according to the complaints, Colgate uses flavors, bright colors and cartoon images to market toothpaste and mouthwash to young children despite health professionals' warnings about children overingesting fluoride. Similar class actions were filed last week against Perrigo, Procter & Gamble and Sanofi subsidiary Chattem. Who's bringing the heat? The Colgate suits were launched by Siri & Glimstad.

[Read More](#)

New Suit - Patent

Amazon Web Services was hit with a patent infringement lawsuit on Jan. 22 in Texas Western District Court. The court case was brought by Rabicoff Law on behalf of BillSure, which asserts a patent related to tracking network bandwidth. Counsel have not yet appeared for the defendant. The case is 7:25-cv-00023, Billsure LLC v. Amazon Web Services, Inc.

Judge Orders SoCal Edison to Preserve Evidence Relating to Los Angeles Wildfires

 [law.com/therecorder/2025/01/21/judge-orders-socal-edison-to-preserve-evidence-relating-to-los-angeles-wildfires](https://www.law.com/therecorder/2025/01/21/judge-orders-socal-edison-to-preserve-evidence-relating-to-los-angeles-wildfires)

Amanda Bronstad

What You Need to Know

- Lawsuits allege evidence could show Edison's negligence sparked the Eaton fire, which destroyed more than 7,000 structures and killed 17 people in Altadena.
- The order granted a motion brought by Edelson to prevent Edison from destroying evidence as it cleans up debris and returns power to existing homes.
- Hueston Hennigan has represented PacifiCorp in lawsuits brought over Oregon wildfires in 2020 and Hawaii in the litigation over the 2023 wildfires in Maui.

A Los Angeles judge ordered Southern California Edison to preserve evidence as the utility has brought in Hueston Hennigan, a California defense firm with expertise in wildfire defense, to deal with a growing number of lawsuits brought over this month's Eaton fire in Southern California.

Hueston Hennigan partners Douglas Dixon, in Newport Beach, and Brittani Jackson, in Los Angeles, appeared at a Tuesday hearing after which a judge ordered SoCal Edison and its parent company, Edison International, to preserve specific evidence that plaintiffs lawyers claim could show the utility's negligence sparked the Eaton fire, which destroyed more than 7,000 structures and killed 17 people in Altadena, an unincorporated Los Angeles County region north of Pasadena. The order granted a motion brought by Edelson, which filed a lawsuit on Jan. 13, to prevent Edison from destroying evidence as it cleans up debris and returns power to existing homes.

"These cases can be won and lost in the first 30 days," Edelson partner Ali Moghaddas said in a statement. "Our immediate action and the court's swift order helps ensure that, when these cases go to trial, we'll be able to give the full picture to the jury."

Dixon represents Pacific Power and its parent company, PacifiCorp, in lawsuits brought over a series of wildfires that ravaged Oregon in 2020. Hueston Hennigan also was counsel to Hawaii in the litigation over the 2023 wildfires on the island of Maui.

The firm also previously represented Edison in the lawsuits over Southern California wildfires in 2017 and 2018 that also caused subsequent mudslides in Montecito.

Dixon and Jackson did not respond to a request for comment.

“We agree with the court’s temporary ruling, and SCE has appropriately preserved all equipment and information that fire investigators currently deem relevant,” Edison spokesperson Kathleen Dunleavy told Law.com. “And we are also preserving items that we don’t currently think are relevant out of an abundance of caution.”

‘A Mountain of Evidence’

About 20 lawsuits have been filed against Edison over the Eaton fire, including one wrongful-death action brought by Ben Crump. The suits allege Edison’s failure to clear vegetation and de-energize transmission towers caused the wildfire, which ignited on Jan. 7 amid damaging Santa Ana winds, destroying homes, businesses and schools. Several other wildfires burned through other areas of Los Angeles, including one in the Pacific Palisades.

Edelson and Crump are joined by dozens of other plaintiffs firms that have filed suits against Edison. Others include Baron & Budd, Morgan & Morgan, and Engstrom, Lipscomb & Lack.

Edelson’s motion sought evidence such as equipment, communications, photos and videos. Attorneys insisted in the motion that Edison planned to destroy evidence, not unlike Hueston Hennigan did for PacifiCorp soon after the Oregon wildfires.

Ali Moghaddas of Edelson. Courtesy
photo

“Though the court in that case ultimately sanctioned Hueston Hennigan’s client for its discovery misconduct and issued a spoliation instruction at trial, it appears Hueston Hennigan has advised its new client—SCE—to pursue the same strategy here,” the litigators alleged in the motion.

“There is already a mountain of evidence indicating that electrical equipment owned and operated by defendants Edison International and Southern California Edison are responsible for causing the fire,” the motion says. “The damage to plaintiff and other Altadena residents has been catastrophic, and it is critical both that power be restored urgently *and* that fire victims do not forever lose the evidence to evaluate and prosecute their cases.”

In letters attached to the motion, Edison attorney Michael Behrens, of counsel at Hueston Hennigan in Newport Beach, called the discovery demands “overbroad and unduly burdensome,” particularly given they would cover the entire nine miles of Altadena. Edison said it already was preserving electrical infrastructure near the origin of the fire at least a mile outside of Altadena.

“Here, you have not offered any support for your broad claim that all of SCE’s electrical facilities in Altadena may have been related to the origins of the Eaton fire,” Behrens wrote in a Jan. 14 letter to Moghaddas. “Nor are we aware of any such support.”

Los Angeles Superior Court Judge Ashfaq Chowdhury, after hearing arguments on Tuesday at a courthouse in Glendale, ordered Edison to produce certain data related to distribution circuits in Altadena and Eaton Canyon and preserve specific equipment.

He set a further hearing for Jan. 27.

Note: Bronstad is an Edison customer impacted by the Eaton fire.

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Microsoft's LinkedIn sued for disclosing customer information to train AI models

 [reuters.com/legal/microsofts-linkedin-sued-disclosing-customer-information-train-ai-models-2025-01-22](https://www.reuters.com/legal/microsofts-linkedin-sued-disclosing-customer-information-train-ai-models-2025-01-22)

Jonathan Stempel

By Jonathan Stempel

January 22, 2025 8:29 AM PST Updated 2 hours ago

The LinkedIn app logo is displayed on a mobile phone in this illustration picture taken October 19, 2021. REUTERS/Florence Lo/Illustration Purchase Licensing Rights , opens new tab

Jan 22 (Reuters) - Microsoft's (MSFT.O) , opens new tab LinkedIn has been sued by Premium customers who said the business-focused social media platform disclosed their private messages to third parties without permission to train generative artificial intelligence models.

According to a proposed class action filed on Tuesday night on behalf of millions of LinkedIn Premium customers, LinkedIn quietly introduced a privacy setting last August that let users enable or disable the sharing of their personal data.

Customers said LinkedIn then discreetly updated its privacy policy on Sept. 18, 2024 to say data could be used to train AI models, and in a "Frequently Asked Questions" hyperlink said opting out "does not affect training that has already taken place."

This attempt to "cover its tracks" suggests LinkedIn was "fully aware" it violated customers' privacy, and its promise to use personal data only to support and improve its platform, to minimize public scrutiny and legal fallout, the complaint said.

The lawsuit was filed in the San Jose, California, federal court on behalf of LinkedIn Premium customers who sent or received InMail messages, and whose private information was disclosed to third parties for AI training before Sept. 18.

It seeks unspecified damages for breach of contract and violations of California's unfair competition law, and \$1,000 per person for violations of the federal Stored Communications Act

Microsoft did not immediately respond on Wednesday to requests for comment. A lawyer for the plaintiffs had no immediate additional comment.

The lawsuit was filed several hours after U.S. President Donald Trump announced a joint venture among Microsoft-based OpenAI, Oracle (ORCL.N) , opens new tab and SoftBank (9984.T) , opens new tab, with a potential \$500 billion of investment, to build AI infrastructure in the United States.

The case is De La Torre v LinkedIn Corp, U.S. District Court, Northern District of California, No. 25-00709.

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Reporting by Jonathan Stempel in New York; Editing by Richard Chang

Class Action

Jan. 21, 2025, 1:41 PM PST; Updated: Jan. 21, 2025, 3:32 PM PST

Richmond University Medical Center Sued Over Data Breach (1)

By [Christopher Brown](#)

- **COURT:** E.D.N.Y.
- **TRACK DOCKET:** [No. 1:25-cv-00357](#) (Bloomberg Law subscription)

New York City-based Richmond University Medical Center negligently failed to protect the personal information of more than 674,000 people that was exposed in a 2023 data breach, a proposed federal class action filed Tuesday said.

Lead plaintiffs Edward Quinn and Monique Leslie alleged that Richmond breached its duties under common law, contract law, industry standards, the Health Insurance Portability and Accountability Act, and the Federal Trade Commission Act to implement reasonable and adequate data security measures and provide timely notice of the breach.

Richmond discovered the breach in May 2023, but waited more than a year and a half to notify those affected by the incident, according to a complaint filed in the US District Court for the Eastern District of New York.

Richmond declined to comment. The hospital has offered one year of credit-monitoring and identity-theft services to those affected, the complaint said.

Information exposed in the breach included names, dates of birth, addresses, health-insurance plan information, payment-card information, Social Security numbers, medical-record numbers, health-plan beneficiary numbers, treatment information, diagnosis information, and other medical information, the complaint said.

Victims have suffered invasion of privacy, increased risk of fraud and identity theft, lost time responding to the breach, out-of-pocket costs for mitigation measures, reduced value of their personal information, and emotional distress, it said.

The plaintiffs seek to represent a nationwide class and a New York subclass of people whose information was compromised in the breach.

The complaint brings claims of negligence, negligence per se, breach of fiduciary duty, breach of contract, breach of implied contract, unjust enrichment, invasion of privacy, declaratory judgment, and violations of New York's consumer law for deceptive acts and practices.

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

Migliaccio & Rathod LLP and Chimicles Schwartz Kriner & Donaldson-Smith LLP represent the plaintiffs and the proposed class.

The case is *Quinn v. Richmond Univ. Med. Ctr.*, E.D.N.Y., No. 1:25-cv-00357, complaint filed 1/21/25 .

(Revises paragraph 4 to indicate Richmond declined to comment.)

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

To contact the editors responsible for this story: Brian Flood at bflood@bloombergindustry.com; Adam Ramirez at aramirez@bloombergindustry.com

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EXCLUSIVE

INVESTING

Pension Funds Want Private Equity to Open Up About Fees and Returns

New proposed guidelines reflect longstanding frustration with funds' levels of transparency

By [Matt Wirz](#) [Follow](#)

Jan. 22, 2025 5:30 am ET



The California Public Employees' Retirement System headquarters in Sacramento, in 2017. PHOTO: MAX WHITTAKER/REUTERS

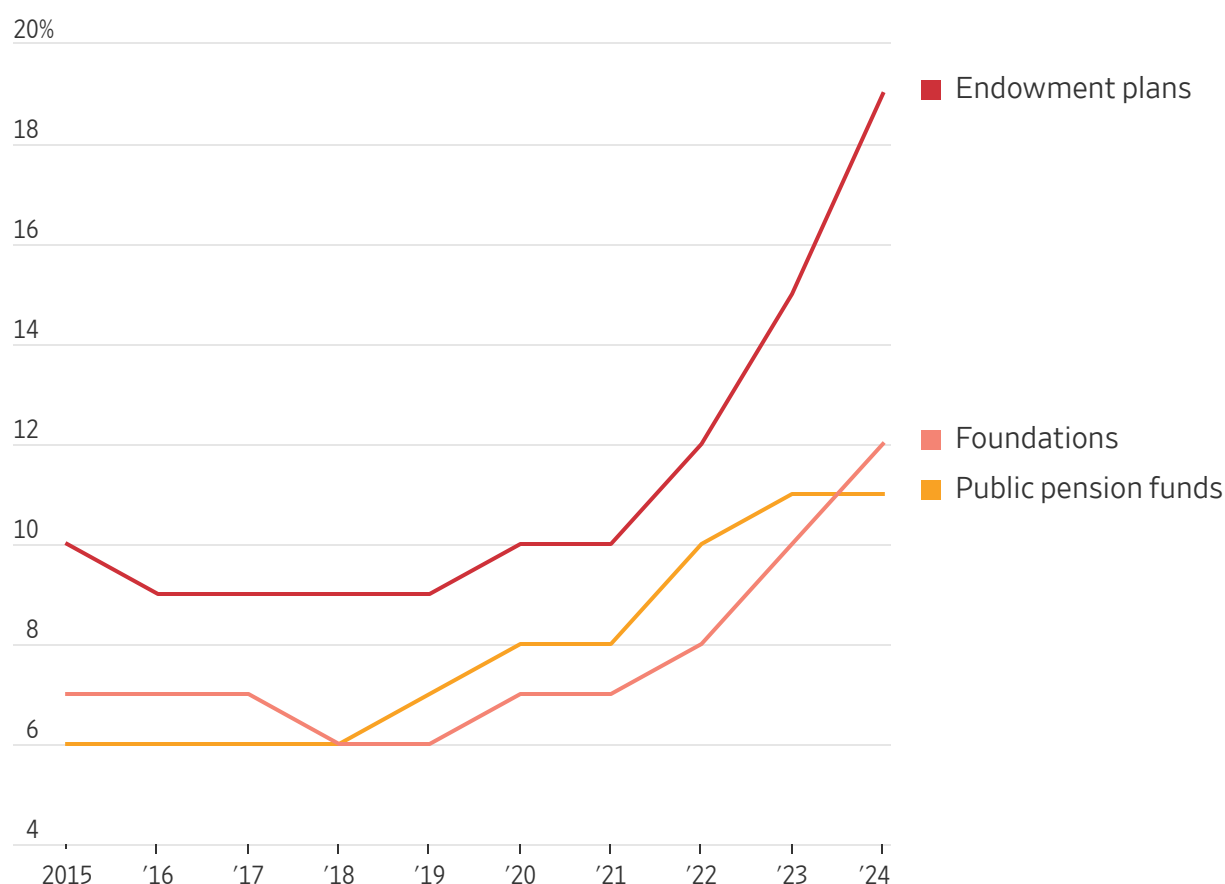
A group of U.S. pensions and other institutions is pushing private-equity firms to share more information on their fees and investment returns, in a bid to address simmering frustration with the industry's disclosures.

The Institutional Limited Partners Association, a trade group that counts the retirement plans of public workers in California and Wisconsin as members, proposed this week new guidelines to standardize financial reporting by private-equity firms, people familiar with the matter said.

Public pension plans, university endowments and charitable foundations have about doubled their investments in private-equity funds since 2018, according to Preqin, a company that collects data on private funds. These institutions are among alternative investment firms' biggest and most-loyal clients. North American private-equity funds now manage some \$4 trillion in assets.

Pensions have turned to private equity to plug cash shortfalls for years, tolerating weaker reporting on their investments compared with public funds because most private funds generated higher returns. Now investors want more transparency.

Portion of investments in private equity



Source: Preqin

Private investment firms tend to vary how much they disclose to clients based on how much they invest. The smaller the check, the less information. Many small and midsize pensions are left out of the loop, and even the big ones struggle to accurately compare performance of fund managers.

“I’m a big believer that sunshine is the best disinfectant,” said Scott Ramsower, head of private-equity funds at the Teachers Retirement System of Texas, which

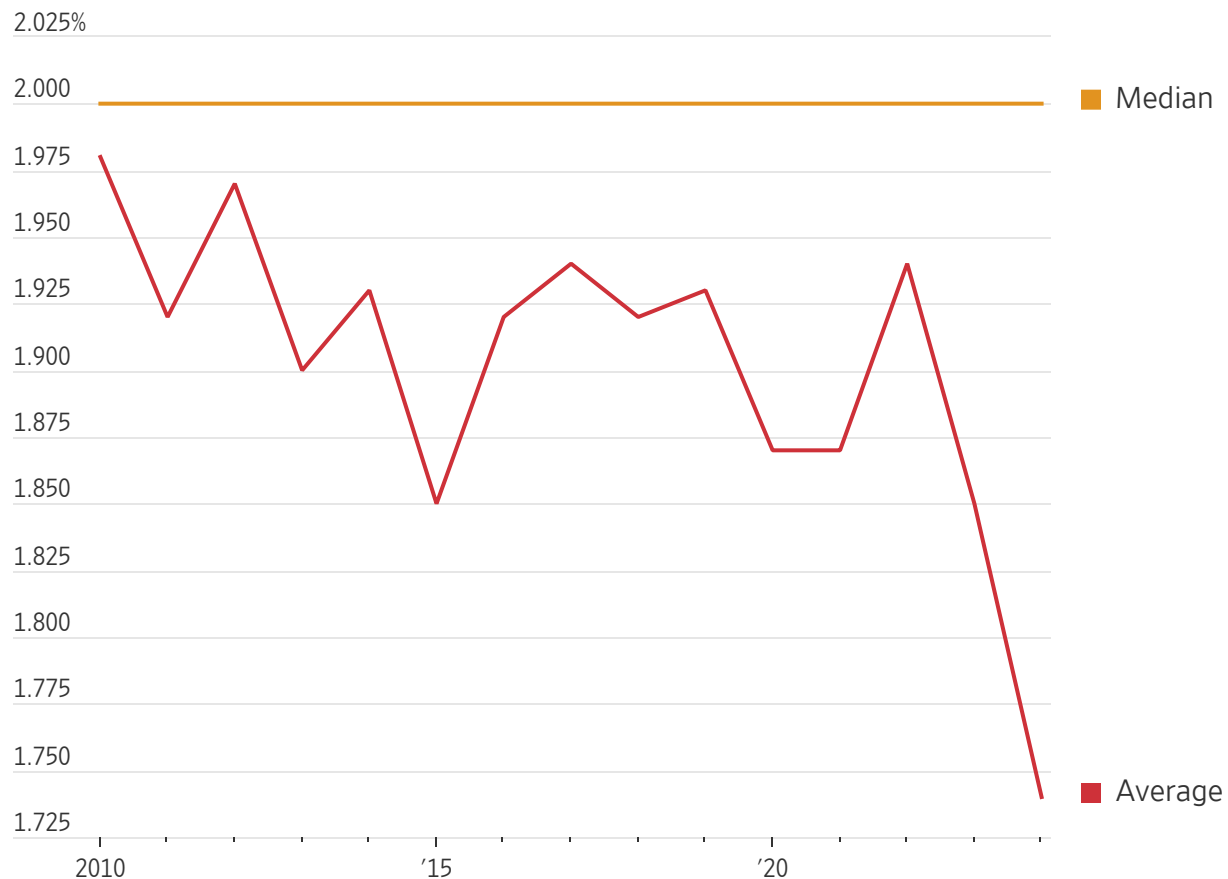
manages \$200 billion of savings for its members. “We can then have much more detailed conversations with our [private-equity] partners and hopefully be putting pressure on them to really be thoughtful.”

Texas Teachers, the California Public Employees’ Retirement System and the State of Wisconsin Investment Board are members of the initiative’s steering committee. Representing the buyout industry on the committee are Vista Equity Partners, Cerberus Capital Management and Searchlight Capital Partners.

Some private-equity firms support the initiative, though its adoption still faces an uphill battle, people familiar with the matter said. More investors want to get into top private-equity funds than there is room for them, giving private-equity firms greater leverage at the negotiating table.

Private-equity assets managed for all types of investors have about tripled over the past decade, but the fees collected by these firms have risen sixfold, according to Preqin.

Private-equity management fees



Source: Preqin

“Private-equity firms work every day to ensure investors have the information they need to make the best investment decisions for retirees across America,” said Drew Mahoney, chief executive of the American Investment Council, a trade group for private-equity firms.

Fee growth has outstripped the overall market’s expansion in part because fund managers employed financial engineering to boost their reported returns, the investors in private-equity funds said. An increasing number of managers borrow cash using so-called subscription lines and net-asset-value loans to lift short-term performance and the fees they charge.

Such stopgaps have grown common because rising interest rates make it harder for funds to make payouts the old-fashioned way: selling the companies they buy and returning cash to their investors. So, it is harder to distinguish managers who are best at buying and selling companies from those that employ more financial legerdemain.

Large pensions such as Texas Teachers can get the information to make apples-to-apples comparisons, but the process is time consuming and cumbersome, they say. They must negotiate disclosure terms with each manager, and each one delivers the data differently.

Most small investors in the funds don’t even get that much, said David Parrish, a lawyer at DLA Piper, which represents about 300 private-equity fund investors. The lack of information makes it harder to distinguish which managers are the top performers.

Smaller pension funds already are at a disadvantage in that private-equity firms charge them more than their large counterparts. The average management fee that private-equity funds charge declined sharply last year as large customers negotiated discounts, but the median fee that most small investors pay remained unchanged at 2%, according to data from Preqin.

ILPA proposed a standardized fee and performance template in 2016; while some managers have adopted it, about half of the market hasn’t. The Securities and Exchange Commission attempted to force standardized reporting through a new rule, but fund managers fought off the initiative in a court battle last year.

The new proposal is the latest attempt to level the playing field.

“There’s no justification for the [private-equity] community to tell someone ‘I only give that information to my large investors,’” Parrish said.

Write to Matt Wirz at matthieu.wirz@wsj.com

Videos

Senior Associates' Billing Rates See The Biggest Jump

 [law.com/americanlawyer/2025/01/22/senior-associates-billing-rates-see-the-biggest-jump](https://www.law.com/americanlawyer/2025/01/22/senior-associates-billing-rates-see-the-biggest-jump)

Andrew Maloney

It's not just law firm partners whose billing rates have shot up lately. Associates, and specifically experienced associates, saw the biggest increases in billed rates between 2023 and 2024, according to a new report.

The report, which looked at millions of entries on law firm invoices submitted and approved for payment, showed that the top third quartile of associates had billing rates jump from \$735 to \$795 year to year (more than 8.1%), according to the ELM Solutions 2024 Real Rate Report from Wolters Kluwer.

"You're getting some associate rates cresting to over \$1,000 an hour, as much as some junior partners, said Jennifer McIver, director of legal operations and industry insights for Wolters Kluwer ELM Solutions and one of the authors of the report. "Those more senior associates — that's where you saw the biggest level of change."

She said that's consistent with other patterns in the industry, with firms not only increasing rates but leaning more heavily on their leverage models to draw profit.

The Real Rate Report data generates figures from corporations' and law firms' e-billing and time management software, showing the actual rates charged by law firms on invoices submitted and approved for payment.

While rates for top associates increased more than 8%, the average going rate for all associates increased from \$579 an hour to \$597 an hour between 2023 and 2024, according to the ELM Solutions 2024 Real Rate Report from Wolters Kluwer. The median going rate for that group also increased from \$504 an hour to \$523 an hour.

Those are increases of 3.1% and 3.7%, respectively. Meanwhile, the average going rate for partners increased from \$792 to \$803 an hour (about 1.4%) while the median went up from \$677 to \$680 (0.4%).

On balance, the associate segment has been winnowed down over the last decade-plus, with firms now putting a higher and higher premium on experienced associates in money-making practices. At the same time, firms are also favoring more senior lawyers for more work. While firms themselves are still being aggressive with their rate calculus, the increased reliance on more experienced lawyers is also a variable in the rate calculus. Concurrent with all of that, paralegal rates have also gone down, McIver noted, from \$263 to \$258 an hour on average.

“Because you’re probably shifting that work, and it’s a sign of the times with artificial intelligence. That work may be becoming more automated,” she said. “And of course, we saw a dramatic decrease in time recorded for first and second-year associates. But again, I think a lot of organizations are not paying for those first and second-year associates.”

Rate Nuances

Even as rates overall continued to increase, there are some nuances. About 28.6% of timekeepers in the Wolters Kluwer data did not change their rates from 2023 to 2024, Mclver noted.

At the same time, on the distribution of rate changes across the dataset, about 17.8% of them were increases of 10% or more.

“A lot of firms agreed to freeze rates a couple years during COVID,” Mclver said. “But we came out of it, and now everyone is playing catch-up.”

The rate report figures were consistent with industry surveys released late last year that showed Am Law 50 firms raising rates at the highest clip.

Mclver noted that the top 50 segment saw an average rate increase of about 7.1% from mid-2023 through the middle of last year, when the billing data figures were collected. The second-highest increase, she said, was in the smallest part of the Am Law 200: firms ranked 151-200, where the average rate increase was around 5.7%. For firms in the Second 50, and those ranked 101-150, the average rate increase was about 3.6%.

Mclver also noted that average partner rates in the four primary markets of New York, Washington, D.C., Chicago and San Jose (Silicon Valley) were all more than \$1,000 an hour.

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ISS Defends DC Court Ruling That Stripped Proxy Firm Curbs

By Andrew Ramonas

- Judge found rules from Trump's first SEC invalid in 2024
- DC Circuit reviewing manufacturers group's appeal of decision

Institutional Shareholder Services Inc. has called on the DC Circuit to reject a business group's efforts to save 2020 SEC rules increasing restrictions on firms advising shareholders on voting at companies' annual meetings.

The Securities and Exchange Commission's rules should be scrapped because they improperly place proxy advisory firms under rules for activist investors and company managers looking to sway shareholder votes, ISS said in a brief filed Tuesday with the US Court of Appeals for the District of Columbia Circuit.

The National Association of Manufacturers asked the DC Circuit to reverse a 2024 lower court decision finding the regulations invalid. The ISS filing was the proxy advisory firm's first formal response in court to the group's request.

"The fact that the adviser's recommendations might influence the voting decision does not convert that recommendation into a solicitation of votes in support of one side or the other," ISS said in its brief.

A National Association of Manufacturers spokesperson didn't immediately respond to a request for comment.

The trade group and the SEC had appealed the ruling by Judge Amit P. Mehta of the US District Court for the District of Columbia. But the agency under President Joe Biden later abandoned its challenge, leaving the manufacturers to defend the rules on their own. Biden's SEC separately fought to stop related Trump proxy firm restrictions in other litigation, with mixed results.

The 2020 rules issued during President Donald Trump's first administration included anti-fraud and public filing requirements made in response to longstanding concerns from the business community about ISS and Glass, Lewis & Co. The firms, which dominate the proxy advice industry, improperly tilt votes on issues such as board director elections and environmental, social, and governance proposals, companies have said. ISS and Glass Lewis have denied the claims.

The ISS filing came after the National Association of Manufacturers told the DC Circuit in November that the rules were “modest reporting requirements designed to increase transparency and promote the free flow of information.” The group received support from the US Chamber of Commerce, former Republican-appointed SEC commissioners, and others.

Trump’s new SEC is unlikely to defend the rules in court, after the agency left the litigation during the Biden administration. But Paul Atkins, Trump’s pick to lead the SEC, has been critical of proxy advisory firms and will have the opportunity to adopt new rules to restrain them, if he’s installed as chair.

The National Association of Manufacturers has until Feb. 11 to respond to ISS in court.

The case is Institutional Shareholder Services, Inc. v. SEC , D.C. Cir., No. 24-5105, appellee brief filed 1/21/25 .

To contact the reporter on this story: Andrew Ramonas in Washington at aramonas@bloomberglaw.com

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

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Corporate America Should Regain Control of Shareholder Proposals

- *Professor says divisive shareholder proposals aren't useful*
- *Delaware law provides tools to manage activism*

The upcoming proxy season in corporate America is likely to be dominated by another barrage of politically divisive shareholder proposals.

In recent years, left-leaning organizations have targeted companies with environmental, social, and governance proposals focused on progressive priorities such as climate change; LGBTQ rights; diversity, equity, and inclusion; and gun safety. Meanwhile, right-leaning groups have submitted competing proposals urging a focus on corporate profits rather than ESG initiatives.

America's public companies are caught in the crossfire. Corporate leaders complain these divisive proposals are costly distractions that consume valuable board time, invite unwanted media attention, and drive up legal fees. Average investors seem to agree. The vast majority of both ESG and anti-ESG proposals fail to garner majority shareholder support, and with each proxy season those already low levels of support are further eroding.

But the lack of shareholder support hasn't stopped activists from peppering companies with proposals in record numbers. During the first half of 2024, activists submitted 858 proposals to S&P 1500 companies, up 17% from the same period in 2021.

Rather than addressing corporate governance or shareholder value, most of these proposals concern contentious environmental, social, or political issues. For example, in 2024 Amazon's shareholders faced 14 separate proposals, addressing topics spanning climate change, plastic waste, labor rights, and viewpoint discrimination, many of them repeats from the previous year, when the company's shareholders were asked to vote on 18 proposals. During this two-year period, Amazon's shareholders rejected all 32 proposals.

The recent surge in shareholder proposals is no accident. Ahead of the 2022 proxy season, the SEC reinterpreted its longstanding proxy rules, rescinding earlier guidance that allowed companies to exclude proposals that lacked a “sufficient nexus” to their business. Under the Biden-era policy, shareholder proposals concerning any topic that has “broad societal impact” are permitted. Consequently, a single shareholder, owning as little as \$2,000 of shares in a company, may now force a corporate referendum on whatever hot-button issue they wish to spotlight. The result: Corporate democracy has come to increasingly resemble our national democracy—ideological, fractious, and divisive.

While the Trump administration may reverse this policy, corporate leaders need not wait for help from Washington. Public companies already possess the tools to reassert control over shareholder proposals. Under Delaware law, which governs two-thirds of the Fortune 500, a company’s charter and bylaws are a binding contract between a company and its shareholders.

This legal framework affords companies substantial flexibility to regulate shareholder rights, including the right to make or vote upon proposals. A carefully crafted bylaw provision could impose higher shareholder ownership thresholds to make a proposal, limit repetitive or irrelevant proposals, or simply restore earlier SEC guidance barring proposals that lack a clear connection to the company’s business.

Importantly, such measures would be fully consistent with federal law. The Securities and Exchange Commission’s proxy rules enable a shareholder to make a proposal for inclusion in a company’s proxy materials, but only if the shareholder’s proposal is proper under the laws of the state in which the company is incorporated. If a shareholder’s right to make a proposal is validly restricted under Delaware law, then the SEC defers to state law on the issue.

By adopting bylaw provisions limiting shareholder proposals, companies can avoid being dragged into contentious political debates and refocus the annual proxy season on the governance priorities that matter most to shareholders. The ability to adjudicate disputes about the propriety of any proposals before the sophisticated and politically insulated Delaware courts, rather than through the SEC’s unpredictable no-action process, only adds to the appeal.

Some US corporate leaders might worry that restricting shareholder proposals through private ordering could stifle shareholder engagement or invite political backlash. But the data tell a different story. While activists on both sides flood corporate proxies with partisan proposals, investors have shown little appetite for them.

Average shareholder support for environmental, social, and political proposals peaked in 2021 at 33% and has since dwindled to just 16% in 2024. During the most recent proxy season, only three such proposals—out of over 300 voted on—received majority shareholder support. Notably, support is even weaker among retail investors, who vote against such proposals at much higher rates than their institutional counterparts. Shareholders of all kinds are fatigued, not energized, by the rising volume of these partisan initiatives.

Shareholder democracy was never meant to mirror our national politics. The recent flood of activist-driven proposals has needlessly dragged corporate America into too many contentious partisan issues. Rather than hope for help from Washington, corporate boards can reassert control over shareholder proposals.

This article does not necessarily reflect the opinion of Bloomberg Industry Group, Inc., the publisher of Bloomberg Law and Bloomberg Tax, or its owners.

Author Information

Mohsen Manesh is professor at the University of Oregon School of Law.

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To contact the editors responsible for this story: Jessie Kokrda Kamens at jkamens@bloomberglaw.com; Jada Chin at jchin@bloombergindustry.com

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Opinion **Investor activism**

Corporate America discovers that activists can judge-shop too

As conservatives find judicial allies, companies should expect more challenges

BROOKE MASTERS



A customer walks by a Target store in San Francisco during 'Pride Month'. A judge ordered the retailer to face shareholder claims that it failed to warn them of risks associated with DEI © Justin Sullivan/Getty Images

Brooke Masters YESTERDAY



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The success of conservative legal challenges to the way US companies do business has become something of a repeat surprise these days. Corporate America should stop being so nonplussed.

In December, US district judge Reed O'Connor rejected Boeing's effort to settle the probe into twin crashes of its Max jets. The Texas-based judge objected to the use of diversity, equity and inclusion considerations in selecting a monitor to oversee compliance with the plea deal.

That same month in Florida, federal judge John Badalamenti ordered retailer Target to face shareholder claims that it failed to warn them of risks associated with DEI and environmental, social and governance initiatives. The lawsuit focuses on the 2023 backlash sparked by a “Pride” marketing campaign involving gay and transgender-friendly merchandise.

Then in January, O’Connor ruled that American Airlines failed workers by including BlackRock index funds in its pension scheme because the \$11.5tn asset manager has said that climate risk affects company profits. The airline “turned a blind eye to BlackRock’s ESG activism”, O’Connor wrote. BlackRock, which was not a party to the lawsuit, insists that its “only agenda is maximising returns”.

In the highly-polarised society that the US has become, politically-tinged lawsuits are common, with both liberals and conservatives seeking to punish companies for taking positions on hot button issues such as gay rights and climate change. This will if anything increase as the Trump administration takes controversial stances of its own.

Lululemon shareholders recently sued the athletic wear company alleging it failed to live up to its diversity promises. And New York City recently went after ExxonMobil, BP and Shell, claiming they had misled its residents about their commitments to sustainability.

“It’s a culture war in a very specific way. There is political cachet in showing that your preferred policies are profitable . . . because if it is profitable, it is popular,” says Tulane University law professor Ann Lipton. “I don’t think companies are prepared.”

What distinguishes the Target, American Airlines and Boeing plaintiffs from the run of the mill is that they have convinced judges to agree with them.

Up to now, most jurists tended to give companies and pension funds the benefit of the doubt on lawsuits about DEI and sustainability policies. The Delaware courts, for example, rejected a 2023 effort by Disney shareholders to get hold of company records about its fight with Florida over that state’s “don’t say gay” law. And the New York courts were unsympathetic to a challenge to New York City pension funds’ divestment from fossil fuel companies.

But O'Connor and Badalamenti took a different view, one that some lawyers find disturbing. "A judge that buys the false premise of conservative politicians that considering climate risk is about social policy and not about financial results is simply ignoring the evidence," says Rob Skinner, securities litigation partner at Ropes & Gray. "Such a one-sided view . . . is a very concerning trend if other judges follow suit."

It is not clear that these rulings will stand. When another federal judge in Texas called into question the entire US procedure for approving medicines as part of a 2023 anti-abortion ruling, the Supreme Court intervened. The justices also heard a case this week about limits on the practice of seeking out friendly judges for favourable decisions.

But unless the high court completely cracks down on such "[forum-shopping](#)", doing business in the US is set to become much more complicated. Now that activists have found judicial allies, corporates should expect more challenges to daily activities. The American Airlines pensions suit is likely to inspire imitators because so many companies use BlackRock's low-fee index funds, while Target is in settlement talks which could embolden more lawsuits when marketing campaigns go awry.

Judge-shopping has precedents. Business groups have been only too happy to seek out conservative judges to challenge Biden administration regulations they disliked, including O'Connor and the Fifth Circuit which hears appeals from Texas. Between the two, they have upheld challenges to the Securities and Exchange Commission's efforts to tighten rules for the Treasury market and for private fund managers, and tossed out the Nasdaq stock market's attempt to impose diversity requirements on listed companies.

Now conservative activists are turning the tables, and Trump is likely to appoint more judges who will give them a sympathetic ear. American business has only itself to blame.

brooke.masters@ft.com

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Trump Memecoin-ETF Filing Lands Days After Token's Wild Debut

By Vildana Hajric

- Debut of Trump namesake token sparks speculative frenzy
- Crypto ETF filers 'push the envelope' in hope of friendly SEC

First the Trump memecoin, now the ETF.

Just days after Donald Trump sparked a speculative and controversial crypto frenzy — by launching namesake digital tokens in the run-up to his presidential inauguration — an upstart ETF firm is pitching an exchange-traded fund that will go all-in on the branded Trump coin.

On Tuesday, REX Financial and Osprey Funds filed with the US Securities and Exchange Commission for a product trading the memecoin. Bearing the 'TRUMP' ticker, it was unveiled Friday to industry fanfare, while raising big questions around conflicts of interest for the president and his family, who stand to benefit from its trading.

The filing also states REX-Osprey's intent to launch a slew of other crypto-centric funds, focused on everything from Bitcoin and Ether, to smaller tokens like Dogecoin and Bonk.

It's the latest gambit from Wall Street issuers, who are betting America's "first crypto president" will kick-start a new permissive regulatory era for the digital-asset community.

"Issuers are looking to push the envelope with this new SEC administration and see how far they can go," said Bloomberg Intelligence ETF analyst **James Seyffart**. "Like we've seen with single-stock ETFs and other newer products in recent years, if ETF issuers are given an inch or a small hole, they'll probably try to take a mile."

Read more: What Are Memecoins and Why Did Trump Launch One?: QuickTake

The launch of the Trump token rattled the crypto market last week after it attracted billions of dollars of trading volume in a short span of time. The president touted it on his social-media accounts, drawing questions around conflicts of interest. The market value for the Trump token then dwindled on Sunday after his wife Melania Trump also debuted her own coin.

A crowd of issuers are prepping for a shift in the regulatory pendulum by filing for ETFs based on Solana, XRP and other crypto tokens. ProShares on Friday registered paperwork for a Solana ETF, and CoinShares said it was looking to debut a Digital Asset ETF. Overall, there are more than 30 new filings for digital-asset-based ETFs, according to a tally from Bloomberg Intelligence.

Still, some ETF experts urge caution. A more crypto-friendly administration doesn't mean that the floodgates will be opened for all manner of digital-asset-based funds just yet, said Bloomberg Intelligence's Seyffart.

"These are the first filings we've seen for memecoin ETFs in the US. The TRUMP ETF would hold an asset that was only created a few days ago, while BONK and DOGE are two of the most popular memecoin assets in the world before this weekend," he said. "I'm not sure that even a libertarian-minded and Republican-controlled SEC will want to approve these products. But time will tell."

--With assistance from **Isabelle Lee** and **Emily Graffeo**.

To contact the reporter on this story:

Vildana Hajric in New York at vhajric1@bloomberg.net

To contact the editors responsible for this story:

Sid Verma at sverma100@bloomberg.net

Beth Williams

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Cryptocurrencies**Crypto executives fear investor backlash over Trump memecoins**

Industry trying to rebuild its reputation frets over potential conflicts of interest and investor losses



Much of the trading activity in the 200mn Trump coins available has been centred not in the US but on little known Asian-based exchanges © Kevin Lamarque/Reuters

Nikou Asgari in London, **Arjun Neil Alim** in Hong Kong and **Stephen Morris** in Davos YESTERDAY



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The memecoins launched by President Donald Trump and his wife days before his inauguration are damaging the industry's reputation and risk a backlash from investors, crypto executives have warned.

\$TRUMP was launched by the president on Friday evening in the US and was followed on Sunday by **\$MELANIA**. The total nominal value of both tokens initially surged over the weekend, with the president's reaching \$14.5bn and Melania's hitting nearly \$3bn.

But they have since lost more than half of their value, leading to accusations of conflicts of interest and concerns that thousands of retail investors were sucked in to trading tokens even more volatile than bitcoin.

“Call me old-fashioned but I think presidents should focus on running the country,” said Nic Carter, founding partner at crypto venture capital firm Castle Island Ventures and a Trump supporter.

“Not to mention the obvious [conflict of interest] given the fact that Trump can set crypto policy,” he added.

One big Silicon Valley investor at the World Economic Forum in Davos called Tesla boss Elon Musk and Trump “the new Crassus and Caesar” — referring to the Roman political figures who formed an alliance to further their own interests.

“We are seeing real ‘End of Empire’ stuff in the US,” the person added, pointing to the creation of billions of dollars in wealth overnight. “Human nature never changes.”

Much of the trading activity in the 200mn Trump coins available has been centred not in the US but on little known Asian-based exchanges such as BiKing, Gate.io and Megabit, according to data from CoinMarketCap.

Memecoins have no cash flow, business model or practical use underpinning their valuations. Their value is derived from their popularity, which is often as fleeting as the memes they represent.

“The Trump Memes are intended to function as an expression of support for, and engagement with, the ideals and beliefs embodied by the symbol ‘\$TRUMP’,” the coin’s website states.

Trump's memecoin plunges in value in just one day

\$TRUMP (\$)



Source: CoinMarketCap

FINANCIAL TIMES

The Trumps' coin launches come after the president lent his enthusiastic support for crypto during his election campaign. He promised a more industry-friendly regime for companies, after executives faced a regulatory crackdown under the Biden administration.

But many in the [crypto](#) industry are concerned that the launches threaten to further damage the reputation of a sector trying to rebuild trust after a series of high-profile frauds and collapses.

Some lawmakers, meanwhile, worry that retail traders could lose large sums of money.

“This memecoin represents the worst of crypto,” said Maxine Waters, Democratic congresswoman and member of the US House Financial Services Committee.

“Trump has created a way to circumvent national security and anti-corruption laws, allowing interested parties to anonymously transfer money to him and his inner circle.”

“His economic interest is for sale,” said Oskar Åslund, chief strategy officer at AKJ, a crypto hedge fund brokerage. “There are no checks and balances here.”

Gettrumpmemes.com did not respond to a request for comment.

“I believe it hurts the industry,” Anthony Scaramucci, founder of SkyBridge Capital and former White House communications director, said during a panel in Davos on Tuesday. “I think it’s going to slow down some people in the regulatory process,” added Scaramucci, whose firm runs a digital assets fund.

The world’s most popular memecoins are tokens that refer to viral internet moments and characters — such as Dogecoin, representing a Shibu Inu dog; Pepe, representing a comic green frog; and Fartcoin.

About 80 per cent of Trump’s tokens are held by CIC Digital, a company affiliated with the Trump Organization, and a CIC co-owned business called Fight Fight Fight LLC, according to the token’s website — a reference to the attempt to assassinate Trump last summer. The companies will also receive a share of trading revenues related to the Trump token.

The tokens held by insiders will start to be unlocked for sale over the next three to 12 months.

Following Trump’s lead, Lorenzo Sewell, a Detroit pastor who spoke during the president’s inauguration, announced the launch of his own memecoin later that day.

“I need you to do me a favour and go and get that coin in order for us to accomplish the vision that God has called us to do on earth,” he said in a video online.

While Trump’s promises of crypto-friendly regulations were roundly welcomed by the industry, executives doubt the president’s enthusiasm for memecoins will benefit them in the long run.

“The immediate effect has been draining liquidity and attention away from legitimate projects working on real use cases that the industry desperately needs to prove to the world in 2025,” said Serge-Raymond Nzabandora, corporate development and finance manager at Yield Guild Games, a blockchain company.

“[Memecoins] ultimately will cost retail investors given its zero sum nature. It is unfortunately ironic as this is what [former Securities and Exchange Commission chair] Gary Gensler was trying to avoid,” he added.

Trump has vowed to “end persecution” of the crypto industry and has nominated crypto advocate Paul Atkins to run the regulator, leading many to think that scrutiny of Trump’s own coins is unlikely.

In an apparent attempt to stave off potential lawsuits, terms listed on the Trump memecoin website state that users “agree that you will not bring, join or participate in any class action lawsuit as to any claim, dispute or controversy that you may have”.

Haliey Welch, who created a memecoin called “Hawk Tuah” based on a viral internet moment, was sued late last year after investors lost money in her token. Last month, she said the lawsuit was ongoing and she was “fully co-operating” with lawyers.

“There’s no protection for retail investors in this,” Åslund added. “He’s kind of above the law which is obviously also a scary thing.”

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It's Being Called the Biggest Grift by a President in U.S. History: Trump and First Lady Launch their Own Crypto Coins

 wallstreetonparade.com/2025/01/its-being-called-the-biggest-grift-by-a-president-in-u-s-history-trump-and-first-lady-launch-their-own-crypto-coins

By Pam Martens and Russ Martens: January 22, 2025 ~

The crypto billionaires who played a major role in putting Donald Trump in the White House and defeating the reelection of honest Senators who had sat on the Senate Banking Committee, were celebrating their big wins at the Crypto Ball last Friday night at the gilded Mellon Auditorium just down the street from the White House, when they were blindsided by a Tweet from President-elect Donald Trump.

The Tweet delivered the bombshell news that Trump – *two days away from being sworn in as President of the United States* — had just launched his own crypto coin:

“My NEW Official Trump Meme is HERE! It’s time to celebrate everything we stand for: WINNING! Join my very special Trump Community. GET YOUR \$TRUMP NOW. Go to <http://gettrumpmemes.com> — Have Fun!”

Numerous attendees at the Ball thought this was such over-the-top grift, even for Trump, that his X (Twitter) account must have been hacked. Their anger was all the more intensified by Sunday, when the incoming First Lady, Melania Trump, joined the grift with her own crypto coin, called – what else – Melania.

Both coins have a price chart that looks like a typical pump and dump scheme. (See TRUMP coin chart [here](#) and MELANIA chart [here](#).)

The website for the TRUMP coin indicates that 80 percent of the coins will be initially held by the Trump Organization and its affiliates. Under the coin’s “Terms & Conditions,” buyers of the coin must “agree that you will not bring, join or participate in any class action lawsuit as to any claim, dispute or controversy that you may have against any of the Covered Parties” and, in capital letters, it reads: “FOR PURPOSES OF ANY COURT PROCEEDINGS, YOU AGREE THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE, AND NOT A JURY, AND YOU HEREBY WAIVE ANY RIGHT TO A TRIAL BEFORE A JURY.”

The glow of the Seventh Amendment to the United States Constitution, which guarantees the right to a jury trial for every American for claims exceeding \$20, has apparently dimmed for Donald Trump after a 12-person jury unanimously convicted him of 34 felony counts in May of last year.

Three of the key charges against King George III that the founders of America placed in the Declaration of Independence were these:

“He has refused his Assent to Laws, the most wholesome and necessary for the public good...

“He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries...

“For depriving us in many cases, of the benefits of Trial by Jury...”

In an interview on CNN with Anderson Cooper, Senator Elizabeth Warren (D-MA), a former Harvard Law professor, was asked if this is a conflict of interest since the Trump administration will play a central role in how crypto is regulated. Warren responded with this:

“Of course it is. But look: we used to talk about transparency, how we want transparency in government on the notion that if it was out in public, there was sunshine on it, then our elected officials would behave appropriately... This is transparent corruption. This is right out there for everybody to see. You want to influence Donald Trump? Help make him richer. You want to influence Melania Trump to influence Donald Trump? Make her richer. You no longer have to sign up at the Trump Hotel. You just actually come in and make a purchase right on line. That is a corruption that runs so deep and runs to the heart of not just Donald Trump but the entire administration.”

It was not that long ago that Donald Trump was a big crypto critic. On July 11, 2019, Trump had Tweeted that he was “not a fan” of crypto; that it was “based on thin air,” and that it could “facilitate unlawful behavior.”



Trump's attitude changed dramatically last July after he delivered a speech at the 2024 Bitcoin Conference in Nashville, Tennessee. Throughout the speech, Trump pushed the idea that the United States "cannot let China dominate" in the race to innovate with cryptocurrencies like Bitcoin. In reality, a Chinese government ban on transactions of crypto in China dates back to 2021.

At 46 minutes and 10 seconds (46:10) on this CSPAN video of the Trump speech at the Bitcoin Conference you can hear Trump say this to the audience:

"America will become the world's undisputed bitcoin mining powerhouse. You'll be a bitcoin mining powerhouse. You will not have to move your family to China. We will not be moving to China. As we implement these reforms, Bitcoin and crypto will grow our economy, cement American financial dominance and strengthen our entire country, long into the future...."

That was the message that the crypto billionaires were expecting Trump to consistently deliver during his presidency; not to climb on a crypto grift bandwagon himself and undermine their agenda in the eyes of the public.

Both the TRUMP AND MELANIA crypto coins are known as "Meme Coins." Meme coins are the bottom of the barrel of the crypto world, with one trading on the Coinbase exchange with the name FARTCOIN.

For what scientists and other experts have told Congress about crypto and blockchain, see our report: **Despite More than 1600 Tech Scientists Signing a Letter Calling Crypto a Sham, Trump Names a Crypto Cheerleader for SEC Chair**

Securities Law

Jan. 21, 2025, 9:00 PM PST

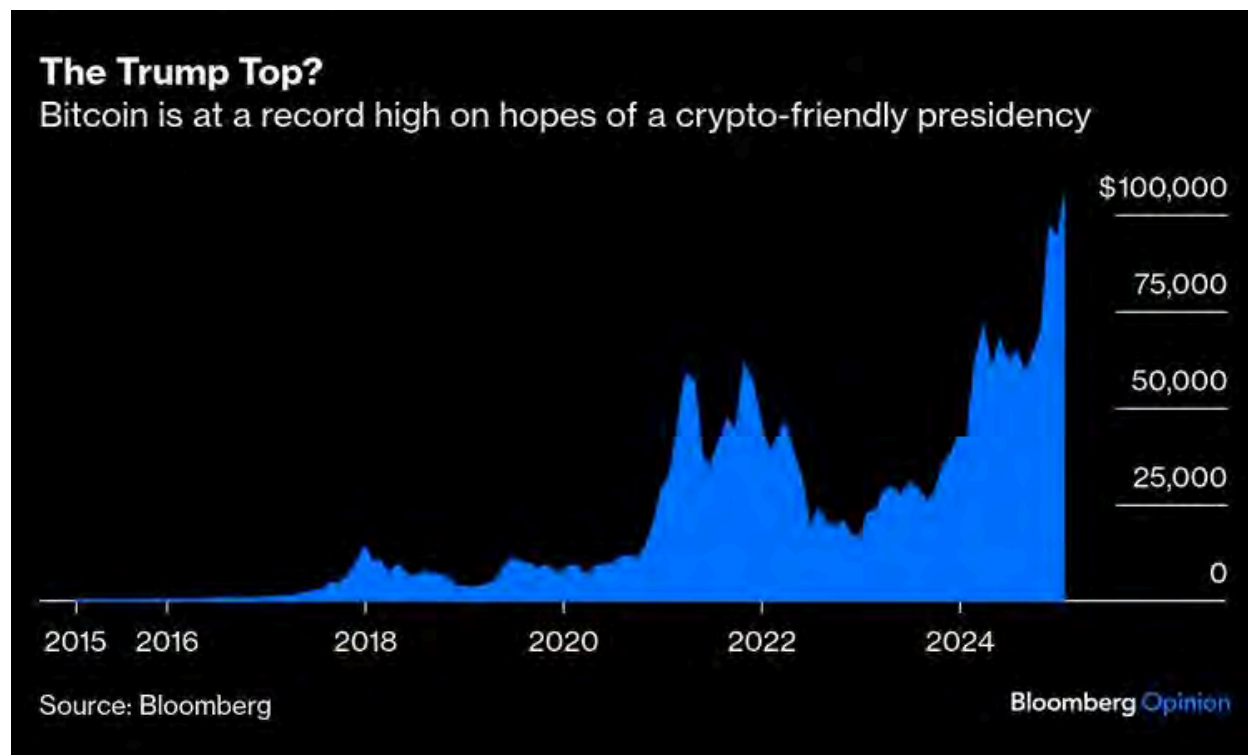
Trump Meme Coins Are a Disaster in Waiting: Lionel Laurent

By Lionel Laurent

Opinion

As a European who doesn't own Bitcoin, I enjoy a bit of schadenfreude when the cryptocurrency industry is [really upset](#) about something. And the latest bout of outrage is a doozy: The virtual-currency elites who saw Donald Trump as a crypto savior are now upset over his recent multi-billion-dollar Trump-branded meme coin sale. Investor Ari Paul called it "fleecing people for billions"; former Trump associate Anthony Scaramucci said it was dictator-level "corruption"; ex-Coinbase Global Inc. executive Balaji Srinivasan called it a "lottery" with no wealth creation.

Of course, they're right to take a dim view of the Trump meme coin's blend of naked cash-grab, MAGA cultism and pump-and-dump tokenomics. Here is a man convicted [of fraud](#) whose idea of an eleventh-hour announcement before being sworn in as the world's most powerful person was to promote the flogging of 20% of a token with no intrinsic value, minting billions out of thin air and leaving the remaining 80% sat on by insiders. Melania's subsequent token launch – which coincided with a slide in her husband's coin – doesn't look much better. If stomach-churning price swings no longer scare us, the conflict of interest and cynicism should. What's to stop foreign powers tapping into this gift to reduce the risk of tariffs?



Yet perhaps the crypto world's pivot against Trump speaks to deeper anxiety about the [sustainability](#) of the broader digital-asset rally, which has seen Bitcoin's price gain more than 160% in one year amid wider institutional backing from the likes of BlackRock Inc. and the promise of friendlier regulation. Below the surface, the speculative fervor for meme coins has been building for a while, with squirrel-themed token PNUT hitting a market cap of \$1 billion last year and Hawk Tuah girl launching a coin of her own (with disastrous results.) Trump's latest squeeze of the crypto lemon could be the moment the entire market looks as frothy as it did in 2017 when cash poured into risky Initial Coin Offerings or in 2022 when non-fungible tokens fetched millions. Bitcoin may aspire to be digital gold, but the last crash saw it tank 67% in a year.

It's also rather convenient for crypto elites to suddenly display concern for the average punter when the Trump campaign showed little interest in prioritizing financial stability or consumer protection. Was the president's repeat [sale of](#) NFTs not enough of a clue? Or his support for the government HODLing Bitcoin, which would put taxpayers on the hook for an asset that's existed for less time than Pokemon cards? Or indeed the promise of friendlier regulation just as the courts [rake through](#) the debris of 2022's \$40 billion Terra crash? Trump's stance has always suggested greater convergence between traditional finance and crypto, volatility be damned. Considering the inter-connectedness of crypto markets and the impact of leverage on asset prices that can melt down as well as up, this means more systemic risk – and bigger potential crises.

Whatever one's view of the value of cryptocurrencies – and even hardened crypto-skeptics have to admit Bitcoiners remain in the black despite the lack of everyday use cases – something about this moment feels like a story that won't end well. On top of the threat posed by Trump's personal conflicts and the fact that his own supporters may be being bilked, the ultimate risk is of a monetary system so awash with bad money that it drives out the good. "A president and an administration that push these reckless ideas can also decide, equally recklessly, that they want to interfere with the (Federal Reserve's) responsible stewardship," says University of California at Berkeley economist Barry Eichengreen. "Were they to do so, that would constitute a real risk to the dollar's international role." Let's hope someone hides the meme coin match-box soon.

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To contact the author of this story:

Lionel Laurent at l laurent2@bloomberg.net

To contact the editor responsible for this story:

James Hertling at j hertling@bloomberg.net

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MARKETS & FINANCE | CURRENCIES

Crypto Thought Trump Would Bring It Legitimacy. Then He Launched a Meme Coin.

Industry players worry the success of the president's meme coin will undermine the credibility they have worked hard to cultivate

By [Vicky Ge Huang](#) [Follow](#) and [Caitlin Ostroff](#) [Follow](#)

Updated Jan. 21, 2025 2:51 pm ET



Trump was used in a promotion at a bitcoin conference last year in Nashville, Tenn. PHOTO: LIAM KENNEDY/BLOOMBERG NEWS

The crypto industry eagerly awaited Donald Trump's return to the White House. Now, it's reeling after the president and first lady launched a pair of meme coins.

Dubbed \$TRUMP and \$MELANIA, the tokens have no economic purpose—their value is largely based on the popularity of internet memes. The market cap of the president's coin has soared to \$8.4 billion since Friday night's launch, while the first lady's token is worth about \$800 million, according to CoinMarketCap.

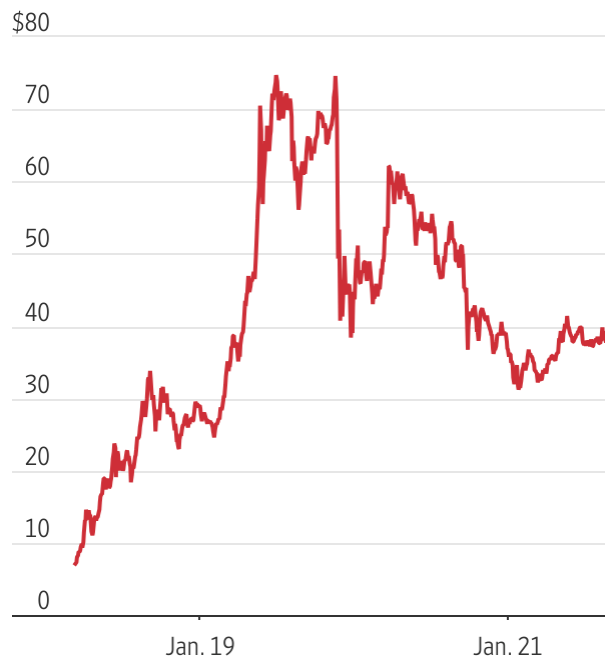
By selling coins known for their speculative nature and extreme volatility, the president has undermined the credibility that the industry has worked hard to build in recent years, some crypto executives and investors say.

They also point to the brazen conflict of interest: Trump benefits directly from the sale of the tokens while setting the policy that affects how markets are valued and regulated.

Even the most ardent Trump supporters reached a breaking point when the \$MELANIA token launched less than 48 hours after the rollout of her husband's coin.

Ryan Selkis, the former chief executive of crypto research firm Messari and a vocal supporter of Trump, urged the president to fire the adviser who recommended going forward with the launch of the second coin.

Dollar value of Donald Trump's meme coin



Note: Times are Coordinated Universal Time.
Source: CoinMarketCap

“1. They don’t know what they’re doing. 2. They cost you a lot of \$ and goodwill. 3. They don’t have your interests in mind,” said Selkis in a social-media post shortly after the \$MELANIA token launch.

The \$TRUMP token lost almost half its value after first lady Melania Trump’s coin was unveiled. Traders say demand for the tokens overlapped—\$TRUMP token holders had to unload some of their holdings to buy her meme coin. Prices have since regained some ground, but the market value of the \$TRUMP coin

peaked Sunday at almost \$15 billion.

Some crypto enthusiasts questioned if the coins were a scam and if Trump’s social-media accounts where they were promoted had been hacked. The mechanisms of the tokens reminded some of a rug pull, crypto parlance for a

project that is launched and quickly abandoned, leaving investors with steep losses.

One point of criticism: 80% of the \$TRUMP token's supply is owned by Fight Fight and CIC Digital, an affiliate of the Trump Organization, according to the website associated with the token. The terms and conditions of both \$TRUMP and \$MELANIA bar buyers from joining class-action lawsuits against the project and indemnify the project against any claims.

Trump or any other coin issuer benefits twice when meme coins are sold to the public. They get the proceeds of coin sales and they have an ownership stake whose value rises when the price of the coin increases. They can then sell more coins to gain further profits.

Trump and first lady Melania Trump on Monday at an inaugural ball. PHOTO: JULIA DEMAREE
NIKHINSON/ASSOCIATED PRESS

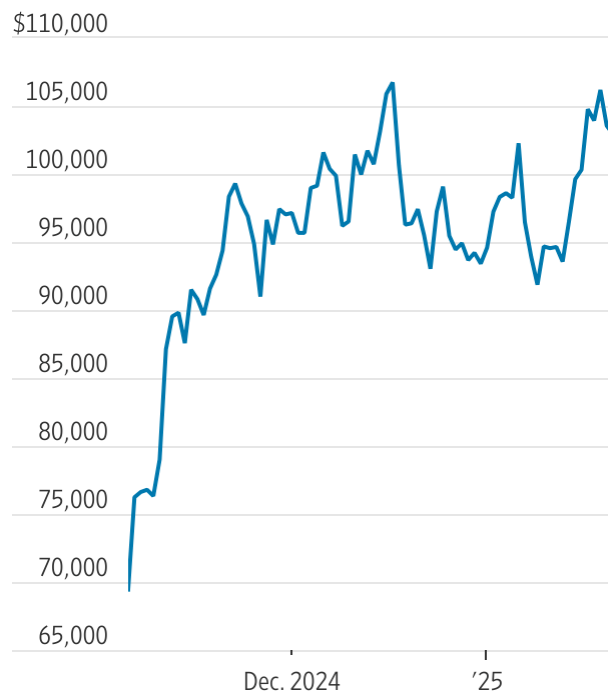
Spokespeople for the Trump Organization and the websites associated with the tokens didn't respond to requests for comment.

After the stunning collapse of the FTX exchange in 2022, the crypto industry made big inroads in rebuilding its brand and reputation. It emerged as one of the biggest spenders of the election cycle by donating \$170 million to a trio of super PACs to elect friendly lawmakers.

Bitcoin went mainstream and soared past \$100,000 thanks to the roaring launch of the first U.S. spot bitcoin exchange-traded funds offered by big Wall Street asset managers such as BlackRock and Fidelity Investments. Trump became the

industry's biggest cheerleader and promised to deliver legislation that would treat digital assets differently than stocks and bonds.

Bitcoin price since Election Day



Source: CoinDesk

The tokens aren't the Trump family's first foray into crypto. Last year the president helped launch a decentralized finance project with his sons Donald Trump Jr. and Eric Trump known as World Liberty Financial.

Yet the decision to launch the cryptocurrencies caught the crypto community off guard. A crowd of crypto executives and Silicon Valley tycoons who gathered Friday night at an event dubbed the Crypto Ball didn't learn of the launch until they checked their phones late in the evening. Trump unveiled the coin on

social media at 9 p.m. ET.

In launching the tokens, Trump has waded into a longstanding divide in the world of crypto: staid technology enthusiasts who see crypto as a means of financial inclusion and innovation versus speculative investors who see it as a means to monetize brands, memes and ideas.

"I think people will think meme coins are the foundation of the crypto industry," said billionaire entrepreneur and crypto investor Mark Cuban. "It's not. There are real applications that add value."

Cuban, who was vocal in his support of Kamala Harris during the presidential election, said Trump's token launch looks like "a highly manipulated offering."

The backlash over the Trump meme coins reached beyond the crypto industry. Michael Gayed, a portfolio manager and market analyst who publishes the Lead-Lag Report, posted criticism of the coin on X that drew support within the crypto community.

“There’s a general level of disgust,” said Gayed. “I do believe this puts into question some of Trump’s credibility when we have a president-elect enrich himself just before inauguration and make a mockery of an entire ecosystem.”

Sen. Elizabeth Warren (D., Mass.) criticized the launch of the meme coins on CNN.

“This is transparent corruption,” she said. “You want to influence Donald Trump? Help make him richer. You want to influence Melania Trump to influence Donald Trump? Make her richer. You no longer have to sign up at the Trump Hotel. You just actually come in and make a purchase right online. That is a corruption that runs so deep and runs to the heart of not just Donald Trump, but the entire administration.”

Some crypto investors said the fervor around the Trump family meme coins is a sign of frothy market conditions and an indication that crypto prices may have peaked. Bitcoin prices set a new high above \$109,000 early Monday, just hours before Trump’s inauguration, and have soared about 50% since his election.

“To me, it’s a glaringly obvious top signal,” said Quinn Thompson, founder of crypto hedge fund Lekker Capital. “Everyone’s extremely exuberant with high animal spirits.”

Thompson, who has been a vocal supporter of Trump, said he doesn’t think launching meme coins is where Trump and his family should be focusing their time when the industry still requires friendlier laws.

Others online celebrated the meme coins as a quick way to make money.

“After four years of Bidenomics, young people have concluded they’re not going to buy Apple stock. If they want their shot, it’s going to be through crypto,” said Trevor Traina, former U.S. ambassador to Austria in Trump’s first administration and a crypto entrepreneur.

“I think Trump was the first to recognize that for this next generation, this is an opportunity they want that has been denied to them,” he added.

Write to Vicky Ge Huang at vicky.huang@wsj.com and Caitlin Ostroff at caitlin.ostroff@wsj.com

Securities Law

Jan. 22, 2025, 6:32 AM PST; Updated: Jan. 22, 2025, 7:56 AM PST

Coinbase Asks Appeals Court to Say Crypto Trade Unlike Stock (1)

By Gillian R. Brassil

- Coinbase seeks Second Circuit review in interlocutory appeal
- Platform says crypto assets not securities for SEC regulation

Coinbase Inc. asked the Second Circuit to say that digital token trades on its platform aren't transactions governed under federal securities law.

"There is no more pressing issue in securities law today than the scope of the Securities and Exchange Commission's authority to regulate secondary trades of digital assets," Coinbase said in its petition docketed in the US Court of Appeals for the Second Circuit. The appeals court could "clear away the cloud that currently hangs over the cryptocurrency market," it said.

A Second Circuit decision finding that token trades aren't securities transactions would speed the end of the SEC's case against Coinbase, and loosen US crypto regulation following agency actions during the Biden administration. The Trump administration has indicated it'll give crypto companies more regulatory leeway.

The case gives the appeals court a chance to weigh how it should apply the "*Howey* test" to crypto transactions. The US Supreme Court established the test in a 1946 opinion as a roadmap for determining whether a transaction is an investment contract.

Trades on Coinbase's platform—the largest US crypto exchange—don't constitute investment contracts, said the company's brief. Rather trades are asset sales, it said. The parties are anonymous, make no promise other than the digital asset's sale, and don't have an obligation to one another beyond that. Coinbase said.

The US District Court for the Southern District of New York granted Coinbase's request to seek an immediate appeal earlier this month in an SEC enforcement suit. The *Howey* question is "a difficult issue of first impression for the Second Circuit," US District Judge Katherine Polk Failla said in allowing the interlocutory appeal.

The US Chamber of Commerce and nonprofit Blockchain Association have filed amicus briefs in favor of the Second Circuit taking up the case. Federal courts have been divided over whether crypto trades are investment contracts, with the Chamber of Commerce saying in its brief that "the absence of certainty will continue to produce deleterious effects."

The SEC sued Coinbase in 2023, alleging the trading platform violated federal law by selling crypto as an unregistered securities exchange, broker, and clearing agency. Coinbase argued its crypto trades weren't investment contracts and thus their regulation didn't fall under the SEC's purview. Failla previously said certain transactions involving tokens qualified as investment contracts, allowing the SEC case against Coinbase to move forward.

"Decades of appellate precedent confirms that an 'investment contract' requires something contractual," Coinbase's chief legal officer, Paul Grewal, wrote on X Jan. 17. "The Circuit can provide some urgently needed guidance on this foundational question of law," Grewal said.

Trump's SEC has launched a "crypto task force" to build a "clear regulatory framework" for such assets. A week before Trump took office, the US Court of Appeals for the Third Circuit ordered the SEC to explain why it denied Coinbase's request for rules specific to the crypto industry, saying the agency provided insufficient justification for its decision.

Sullivan & Cromwell LLP and Wachtell, Lipton, Rosen & Katz represent Coinbase in its Second Circuit bid.

The SEC didn't respond to an email seeking comment.

The case is Coinbase, Inc. v. SEC , 2d Cir., No. 25-145, brief docketed 1/21/25 .

(Updates with Coinbase's response to an email seeking comment in the ninth paragraph.)

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

To contact the editors responsible for this story: Carmen Castro-Pagán at ccastro-pagan@bloomberglaw.com; Brian Flood at bflood@bloombergindustry.com; Keith Perine at kperine@bloomberglaw.com

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Securities Law

Jan. 22, 2025, 1:57 AM PST

Norway Fines Danske for 'Grave' Case of Bond Market Manipulation

By Christian Wienberg

- Norway registered abnormal movements in 2023 bond issuance
- Danish lender works to restore image after laundering scandal

Danske Bank A/S, which is trying to move on from one of Europe's largest money laundering scandals, was fined in Norway for manipulation in the country's sovereign bond market.

The Norwegian Financial Supervisory Authority handed Denmark's largest lender a fine of 50 million Norwegian kroner (\$4.4 million), Danske said in a [statement](#) on Wednesday. The Copenhagen-based bank said it acknowledged it didn't act properly in connection with a 2023 bond issuance.

Norges Bank, the central bank in Norway that manages government debt, "takes a grave view of the incident" and said in a statement that "trust between market participants is fundamental."

Regulators found that Danske Bank had driven up the Norwegian swap rate, which was used to price the government bond, to an abnormal or artificial level, meaning the state had to pay a higher interest rate. "Trades were made as part of a deliberate strategy in a situation in which the bank profited from a high effective interest rate," according to Norges Bank.

Danske said it had noticed a potential breach back in 2023 and alerted authorities after conducting an internal investigation.

"The severity of the matter meant that we had to make changes to the organization," Danske Bank Head of Markets **Carolina Crevatin Martin** said.

Danske is working to restore its image after a laundering scandal, which involved €200 billion (\$210 billion) worth of high-risk transactions flowing through its Estonian branch. Danske has replaced its top management and lost thousands of customers in the aftermath of the scandal, and in 2022 paid \$2 billion to US authorities to end a probe into the case.

[Read more: Danske Bank Fined \\$2 Billion After Guilty Fraud Plea](#)

--With assistance from **Stephen Treloar**.

To contact the reporter on this story:

Christian Wienberg in Copenhagen at cwienberg@bloomberg.net

To contact the editors responsible for this story:

Anton Wilen at awilen@bloomberg.net

[Securities Law](#)

Jan. 22, 2025, 4:36 AM PST

NYSE President Martin Says More Companies Are Pursuing US IPOs

By Damian Shepherd

The market for US initial public offerings is opening up following the election, according to New York Stock Exchange President **Lynn Martin**.

"The activity is real," Martin said in a Bloomberg TV interview from Davos, Switzerland on Wednesday. "Deals are now getting on the road, they're making plans to IPO either in the coming days and weeks or in quarters or second half of the year."

Read more: [Trump's Tariffs Are Whiplash Warning for Corporate America](#)



WATCH: NYSE President Lynn Martin says the IPO market has opened up.

Source: Bloomberg

President Donald Trump's plans to cut taxes and deregulate have been welcomed by many executives, although his threats to impose [tariffs](#) on major trading partners are dampening some enthusiasm.

Martin described a recent meeting with Trump as "amazing," saying it "really put a fine point on his focus on highlighting the US economy" and its strength.

"It feels as though the pro-growth agenda is going to be something that is front and center, not just for him but for his entire cabinet," she said, in reference to Trump. "Once you remove that uncertainty around the election, now is the time to go."

Still, Martin pointed to headwinds related to geopolitical tensions, tariffs and inflation as some potential market entrants wait to see more deal flow before moving ahead.

NYSE, which is owned by Intercontinental Exchange Inc., is among the largest stock exchanges in the US. Beyond the exchange business, the company offers data, analytics, software and other investor services.

Private Equity Has a Plan If IPOs, Sales Don't Work: More Debt

By Claire Ruckin, Abhinav Ramnarayan and Jeannine Amodeo

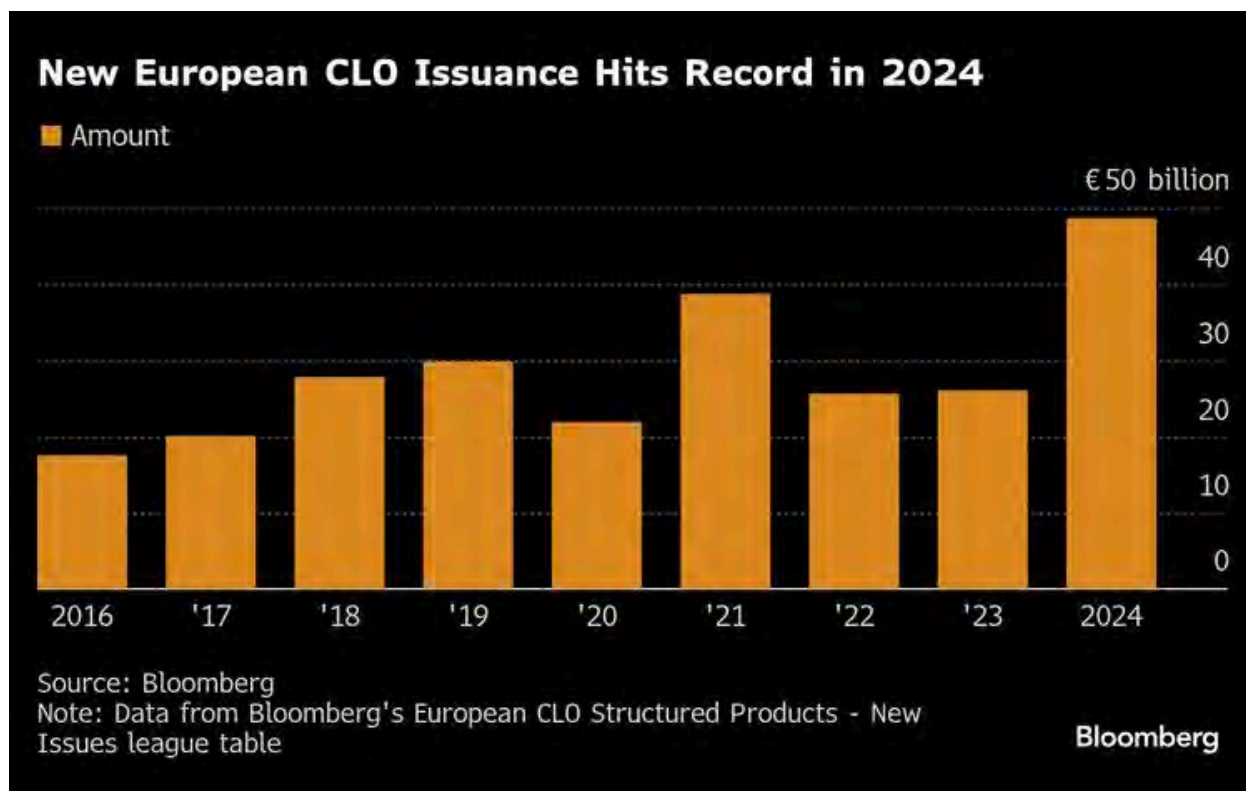
- 'Triple track' options open to PE for portfolio companies
- Dividend recaps enabled by strong credit market, CLO revival

Booming credit markets are throwing private equity firms a lifeline as they strive to return cash to investors: Instead of relying on the IPO market, they can pile portfolio companies with more debt and give themselves a payout.

Dividend recapitalizations, where a firm borrows money for a payout to its owners, are an increasingly popular alternative to the usual dual-track options of listing or selling portfolio companies, according to multiple bankers. The strategy has been used in recent deals such as Clarios International Inc.'s debt sale, and red-hot demand for corporate bonds and loans means more are likely to follow, bankers said.

"If they are keen to retain the investment, they can extract money by releveraging the structure and do some exceptional dividends," said **Alexis Foret**, a high yield portfolio manager at Edmond de Rothschild Asset Management, referring to PE firms. "Markets allow for that at the moment."

A strong credit market is facilitating the use of dividend recaps as a third option, as investors seek to put cash to work amid huge inflows into debt funds. Last year saw the most US dividend recaps since 2021, according to data compiled by Bloomberg. A stellar year for issuance of collateralized loan obligations has also helped, because the vehicles are the biggest buyer of leveraged loans in the market.



PE firms have welcomed the advent of 'triple-track' processes. They've been under pressure after years of high interest rates disrupted their traditional model of buying companies using debt and exiting them at a profit through listings or sales. With this backdrop, more are likely to attempt dividend recaps in order to placate investors who want their cash back.

"Pressure on the sponsor community to return capital is expected to persist in the near-term," said **Cade Thompson**, partner and global co-head of KKR & Co.'s debt capital markets unit. "Sponsors will seek other avenues to monetize."

Some have already used this route: Car battery maker Clarios recently raised debt to fund a \$4.5 billion dividend for PE owners including Brookfield Asset Management Ltd. and Caisse de Depot et Placement du Quebec. That recap — one of the largest on record — came after the company shelved plans for an IPO.

And last year, UK vehicle glass repair company Belron International Ltd. sold bonds and loans to fund a €4.3 billion (\$4.5 billion) dividend payout, along with some of the company's own cash.

The Clarios deal suggested that credit investors valued the battery maker more highly than the equity market. The company is a well-known debt issuer and is seen as a stable, cash-generating business with very little capital expenditure and a predictable source of income. The loan was increased during syndication by \$1 billion and the pricing tightened amid high demand.

IPO Pipeline

Olivier Monnoyeur, a high yield portfolio manager at BNP Paribas Asset Management, expects to see more dividend recaps in 2025, and said he would be open to investing.

"We will look at these situations selectively," he said. "More than the debt metrics, it's the cash flow metrics that are key for us. If the cash flow looks attractive, we are open to investing."

The number of dividend recaps to come will depend upon the success of IPO and sale processes. A number of listings are in the works in the US and Europe, and bankers are more hopeful for both listings and M&A in 2025 after years of muted activity. Buyout firms have been cleaning up the balance sheets of some portfolio companies in preparation for public offerings, and exiting through the IPO or sale route gives them fresh cash for their next investments.

But equity capital markets are still fragile, especially going into a potentially volatile year of tariff news under US President Donald Trump. If PE firms aren't able to get the valuations they want in public offerings or sales, or if equity market conditions sour, they may look at dividend recaps.

Cirsa Enterprises, a casino operator owned by Blackstone Inc., and HBX Group, a travel technology firm backed by Cinven and the Canada Pension Plan Investment Board, are among European firms preparing listings for this year, Bloomberg has previously reported.

The two Spanish companies are potential candidates for exploring dividend recaps in the event that the IPOs don't work out, according to bankers, who declined to be identified because the information is private. In fact, debt investors in HBX — a popular company with loans that are performing well — may favor a dividend over a listing, in a bid to increase the company's tradeable debt, some of the bankers said. A listing would see the debt refinanced at lower rates.

Still, no such plans for either company are currently in place, they added.

Cirsa did not respond to a request for comment. Blackstone, HBX, Cinven and CPPIB declined to comment.

To be sure, dividend recaps aren't something that's open to all companies. Only those with strong businesses and cashflows are likely to find interest in the broadly syndicated market for loans and bonds used for the purpose of a dividend.

Still, for the right candidates, they provide a solution for PE firms who need to find a way to release funds.

"You have to give me a story and you have to tell me where the cash flows are coming from," said **Catherine Braganza**, a senior credit analyst at Insight Investments. "But if you're the right company, we will absolutely be happy to fund a dividend recap."

(Updates with data point about dividend recaps in fourth paragraph, and quote from KKR's Thompson in seventh paragraph)

B. Riley Suspends Preferred Payouts Ahead of Bond Redemption (1)

By Ethan M Steinberg

- Dividends costing \$2 million a quarter will still accrue
- Amid losses, the firm has put a priority on paying down debt

B. Riley Financial Inc. suspended dividends on a pair of its preferred shares, holding off on cash payments to some investors while it prepares to pay off another set of notes coming due next month.

The deferral affects B. Riley's 6.875% Series A and 7.375% Series B preferred stock, according to a statement Monday. Dividends on those preferreds cost the company \$2 million in the second quarter last year, a recent filing shows. The unpaid dividends will continue accruing until they're paid in full.

Meanwhile, the company plans to redeem its 6.375% notes maturing Feb. 28 on schedule. About \$145 million were outstanding at the end of June.

Read More: B. Riley's Money Machine Ensnared Retail Investors \$25 at a Time

Chairman **Bryant Riley** has put a priority on paying down debt as his firm seeks to recover from a string of losses and writedowns on soured investments. The biggest was the November bankruptcy of Franchise Group, a collection of retail brands that was among B. Riley's biggest holdings. A bankruptcy judge has said Franchise Group's equity appears to be worthless.

"The preferred dividend was not suspended to preserve cash," according to a representative for B. Riley, who declined to elaborate on the reasons.

Common shares of B. Riley, which briefly traded above \$40 in April 2024, fell more than 5% to \$4.745 in New York. Dividends on those shares were suspended in August.

Overdue Numbers

B. Riley has repeatedly missed deadlines for filing financial results, with third-quarter results still overdue, and its shares risked being delisted by Nasdaq. The firm has said it expects to avoid that outcome. Last year, bankers began demanding more oversight of B. Riley's finances, including regular updates on liquidity and cutbacks on borrowing.

An update released Jan. 14 — the first look investors have had into the company's official financials in more than six months — said the company had \$257 million in cash on hand at the end of 2024, including funds to pay off the notes due next month. A regulatory filing showed there was enough liquidity to suffice for at least the next 12 months.

The filing for the period ended June 30 also showed B. Riley suffered a second-quarter loss of more than \$435 million, as revenue shrank to \$148 million from \$406 million a year earlier.

The company and Riley have been responding to subpoenas from the US Securities and Exchange Commission on topics ranging from its dealings with Franchise Group, transactions in an unrelated public company's securities and a personal loan to Riley secured by his pledge of common stock, according to the midyear filing.

Riley and his firm are cooperating with the investigation, and no charges have been lodged against them.

(Updates with dividend total in second paragraph and outstanding debt in third paragraph.)

To contact the reporter on this story:

Ethan M Steinberg in New York at esteinberg24@bloomberg.net

To contact the editors responsible for this story:

Dan Wilchins at dwilchins@bloomberg.net

Rick Green

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Trump AG Pick Bondi's Brother Steers 'MrBeast' TikTok Bid (2)

By Tatyana Monnay

- Brad Bondi is securities litigator and partner at Paul Hastings
- Investor group seeks all-cash TikTok buy after US ban paused

YouTube personality “MrBeast” Jimmy Donaldson and a group of investors tapped Brad Bondi, the brother of President Donald Trump’s pick to run the Justice Department, for legal advice on their bid to buy TikTok.

The group, which is led by tech entrepreneur Jesse Tinsley, said Sunday that it made an all-cash offer to buy the popular social media app whose future in the US is in limbo. Bondi, whose sister Pam Bondi was nominated by Trump for attorney general, helms a team of lawyers from Paul Hastings representing the group in the bid.

Trump on Monday signed an executive order blocking a US ban on TikTok. The move, shortly after Trump was sworn in for a second term, paused a Biden administration effort to force Chinese owner ByteDance Ltd. to sell TikTok in the US over national security concerns.



Brad Bondi is a high-stakes litigator with ties to Trump. He was part of a team that represented a blank-check company last year as it combined with Trump Media & Technology Group Corp., which operates Trump's Truth Social media platform. He also advised Elon Musk's Tesla, Inc. in matters before the Securities and Exchange Commission.

Pam Bondi declined to share her views on the TikTok ban during a Jan. 15 Senate confirmation hearing. The former Florida attorney general is a lobbyist with Ballard Partners—headed by senior Trump fundraiser Brian Ballard—and has worked for Trump-aligned think tank America First Policy Institute. She received nearly \$3 million in Trump Media stock after it went public through the SPAC merger last year, according to a financial disclosure.

Trump turned to Pam Bondi to run the Justice Department after his first choice, former Florida Rep. Matt Gaetz, bowed out in response to bipartisan criticism.

Trump on Sunday said he would seek a joint venture under which new, US-based owners would buy 50% of the company. Two days later, the president said he's open to Musk or Oracle Corp. Chairman Larry Ellison purchasing TikTok in such a deal.

The Tinsley investor group said it provides a solution to the issues raised in the hotly contested debate over the TikTok ban, which the Supreme Court upheld in a ruling last week.

"TikTok has become far more than just an app – it's a cultural phenomenon that shapes how Americans connect, create, and build livelihoods," Tinsley said in a statement. "Our offer represents a win-win solution that preserves this vital platform, while addressing legitimate national security concerns. We're prepared to move quickly and have assembled a team with deep experience in technology, content moderation, and platform governance."

A spokesperson for Donaldson clarified his role in the bid. "Jimmy doesn't have an exclusive agreement with any potential bidders," the spokesperson said.

The Paul Hastings team also includes partners Brandon Bortner, Steve Camahort, Ronald Anguas, and counsel Gil Savir. The firm is among the 30 largest in the US, reporting more than \$1.8 billion in gross revenue and nearly \$5.4 million in profits per equity partner in 2023.

(Adds info on Musk and Ellison as possible buyers in seventh paragraph and statement from MrBeast spokesperson in tenth paragraph.)

To contact the reporter on this story: Tatyana Monnay at tmonnay@bloombergindustry.com

To contact the editor responsible for this story: Chris Opfer at copfer@bloombergindustry.com

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Block Hit With Shareholder Suit Over Cash App AML Protocols

By **Lauren Berg**

Law360 (January 21, 2025, 8:08 PM EST) -- Jack Dorsey's fintech company Block Inc. touted its anti-money laundering protocols designed to prevent criminals from using Cash App and Square for illicit purposes, but in reality, the company's lack of even basic protocols created a "haven for criminal and illicit activities," a California federal lawsuit alleges.

In U.S. Securities and Exchange Commission filings and other public statements, Block represented that it had implemented an AML program that was designed to prevent its payment platforms from being used to facilitate money laundering, terrorist financing and other illegal activity, but that wasn't actually true, according to the **proposed class action** brought by Corinne Gonsalves on Friday.

"In truth, and as defendants knew or recklessly disregarded, Block failed to implement even basic due diligence and know your customer (KYC) protocols, effectively creating a haven for criminal and illicit activities on its Square and Cash App platforms," the suit states, adding that criminals used the products for money laundering, sex trafficking, contract killings and other illegal activities.

"Block failed to report thousands of suspicious transactions to regulatory authorities, permitted customers subject to sanctions alerts to complete transactions before the alerts were resolved, and failed to screen customer biographies against sanctions key word lists, among numerous other compliance shortfalls," it states.

The company's failure to address and prevent these issues has led to multiple whistleblower complaints, as well as investigations and fines by regulators, according to the complaint.

As a result, the market value of Block Class A stock plummeted 77% to a low of less than \$66 per share at the end of the class period in April from its class period peak of more than \$289 per share, causing shareholders significant financial losses, the complaint states.

According to the suit, Block's growth from February 2020 to April 2024 was propelled by the company's intentional disregard for regulatory compliance obligations and its "Wild West" approach to monitoring and preventing illegal transactions.

Following years of SEC filings and shareholder letters reporting massive revenue growth at Block and touting the company's effective AML program, in March 2023, analyst firm Hindenburg Research published a "damaging exposé" detailing the company's "lax approach to compliance issues," according to the complaint.

"The Hindenburg Report concluded that the 'magic' of Block's success had not been business innovation or its purported desire to serve legitimate unbanked communities, 'but rather the company's willingness to facilitate fraud against consumers and the government, avoid regulation, dress up predatory loans and fees as revolutionary technology, and mislead investors with inflated metrics,'" the complaint states.

"The Hindenburg Report highlighted Block's 'Wild West' approach to compliance and efforts to effectively court criminal activity, making it 'easy for bad actors to mass-create accounts for identity fraud and other scams, then extract stolen funds quickly,'" it states.

When this news came out, the price of Block's shares plummeted, according to the suit.

Block immediately published statements denying the report's allegations, but an August 2023 SEC filing revealed that the SEC and the U.S. Department of Justice were investigating the claims, the suit states. That news led to another drop in Block's stock value, according to the complaint.

Then in February 2024, NBC News reported that federal regulators were looking into whistleblower allegations that Cash App didn't perform due diligence on its users, opening the door to money laundering, terrorist financing and other illicit uses of the platform, the suit states.

Once again, Block's stock price dropped, but the price remained artificially inflated because the company continued to make misrepresentations about its business practices, according to the complaint.

Finally, NBC News on May 1 reported that federal prosecutors were investigating a former Block employee's allegations that the company engaged in yearslong compliance lapses at Square and Cash App, according to the suit.

On that news, Block's stock price fell from \$73 per share at market close on April 30, 2024, to \$66.84 per share at close on May 1, 2024, the suit states.

Gonsalves, a shareholder who suffered economic losses when Block's alleged misrepresentations and other fraudulent conduct were revealed, wants to represent a nationwide class of all people who bought Block Class A stock between Feb. 26, 2020, and April 30, 2024, according to the complaint.

The suit claims violations of the Exchange Act and seeks compensatory damages, litigation costs and attorney fees, among other relief.

Representatives for Gonsalves and Block did not immediately respond to requests for comment Tuesday.

The securities class action comes after Block last week was ordered by the Consumer Financial Protection Bureau **to pay up to \$175 million** for alleged anti-fraud, customer service and dispute resolution failures tied to Cash App, the peer-to-peer mobile payment app.

The agency said Block left Cash App users exposed to fraud by employing weak security protocols and ineffective customer support options for getting help. The company also conducted "woefully inadequate" investigations into disputed transfers, often just telling users to file a chargeback with their bank that the company could then reject, the CFPB said.

California-based Block, which former Twitter chief Jack Dorsey co-founded and heads, has agreed to resolve the CFPB's claims with a consent order that requires the fintech to pay a \$55 million fine and provide up to \$120 million in refunds to affected consumers.

The consent order, which does not include any admission of wrongdoing, also requires Block to maintain a live, 24-hour customer help center; comply with certain fraud investigation and refund practices; and implement "reasonably designed" anti-fraud measures on Cash App.

The enforcement action came a day after state banking regulators announced an **\$80 million settlement** with Block. That deal resolves alleged anti-money laundering compliance failures involving Cash App, whereas the CFPB's case addresses alleged consumer protection violations.

Block has also faced separate scrutiny from the SEC and the Justice Department after a 2023 short seller report accused it of inflated metrics and facilitating illicit activity. Block has called the report "inaccurate" and "designed to deceive and confuse investors."

Gonsalves is represented by Shawn A. Williams, Michael A. Troncoso and Brian E. Cochran of Robbins Geller Rudman & Dowd LLP and Frank J. Johnson of Johnson Fistel LLP.

Counsel information for the defendants was not immediately available.

The case is Corinne Gonsalves v. Block Inc. et al., case number 3:25-cv-00642, in the U.S. District

Court for the Northern District of California.

--Additional reporting by Jon Hill and Rachel Scharf. Editing by Jay Jackson Jr.

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Court Tosses Yacht Sale Broker Fee Antitrust Case, For Now

By **Matthew Perlman**

Law360 (January 21, 2025, 8:04 PM EST) -- A Florida federal court dismissed a case on Tuesday from boat sellers alleging they paid inflated broker fees when selling used vessels through yacht listing services, but will allow the sellers to file an amended complaint.

U.S. District Judge K. Michael Moore **issued an order** dismissing the proposed **class action** without prejudice after finding a lack of evidence showing there was an agreement or conspiracy among brokers, trade groups and listing services to charge inflated fees.

The judge said the sellers had not provided any direct evidence of an agreement; they only alleged that brokers have personal and professional connections with the trade groups and made "conclusory allegations" about the trade group rules, he said.

"While plaintiff correctly states that 'adoption of a binding association rule designed to prevent competition is direct evidence of concerted action,' the complaint does not allege that a binding association rule exists," Judge Moore said. "Moreover, the complaint does not focus its allegations to a sole entity or governing institution but alleges that the entire yacht industry is engaged in illegal, anticompetitive conduct."

The boat sellers contended that several of the yacht broker associations have similar rules covering fees for yacht sales that result in sellers typically paying a 10% fee that gets split between the seller's broker and any broker working for a buyer.

The order said the complaint points to general practices and industry "norms" to show there was a conspiracy, but that antitrust law allows trade groups to make nonbinding recommendations about business practices.

The sellers argued the rules are similar to those being challenged in the **real estate industry** where the National Association of Realtors and a number of larger brokerages have agreed to around \$1 billion in settlements with home sellers that claim they paid inflated fees due to broker commission rules.

Those claims survived a **dismissal bid** in Illinois federal court, but the yacht brokers argued the cases differ because there was only one centralized trade association for the real estate industry that governed every listing service with the same set of rules. There are multiple yacht broker trade groups named in the case, along with several listing services, only one of which is owned by brokers.

Judge Moore said in Tuesday's order that the yacht broker case needs to be tossed because it relies on "industry standards and non-binding suggestions" instead of actual rules promulgated by a centralized trade group.

The suit also alleges the brokers conspired to "refuse to deal" with sellers who are not represented by a licensed broker, since the listing services refuse to accept boats that are being sold directly by owners.

But the judge said the case does not allege any individual, or group of individuals, have been targeted, but rather alleges the brokers refused to deal with a "class of individuals, specifically unrepresented used yacht sellers."

"The court cannot conclude that defendants' actions amounted to anything more than their unilateral and reasonable decision to conduct business with licensed professionals, rather than individuals who may be unexperienced or unfamiliar with the process of selling a used yacht," Judge Moore said.

The order said the court did not need to address arguments made by the California Brokers Association in a separate motion to dismiss, since dismissal was already granted based on arguments made in a joint motion from the other defendants.

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

The plaintiffs are represented by Paul J. Geller, Mark J. Dearman, Stuart A. Davidson and Lindsey H. Taylor of Robbins Geller Rudman & Dowd LLP, Lea P. Bucciero, Ricardo M. Martinez-Cid and Matthew Weinshall of Podhurst Orseck PA, Kevin D. Neal, William F. King and Kenneth N. Ralston of Gallagher & Kennedy PA, Hunter J. Shkolnik, Salvatore C. Badala, Rebeca Martínez and Nestor D. Galarza of Napoli Shkolnik PLLC, Lee Albert and Brian D. Brooks of Glancy Prongay & Murray LLP, and Michael J. Boni, Joshua D. Snyder, John E. Sindoni and Benjamin J. Eichel of Boni Zack & Snyder LLC.

Galati Yacht Sales LLC, MarineMax Inc., MarineMax East Inc., Fraser Yachts Florida Inc., Fraser Yachts California Corp. and Northrop & Johnson Yacht Ships LLC are represented by K&L Gates LLP.

United Yacht Sales LLC is represented by Crary Buchanan PA.

Allied Marine Inc. is represented by Haug Partners LLP.

Yatco LLC is represented by Mrachek Fitzgerald Rose Konopka Thomas & Weiss PA.

HMY Yacht Sales Inc. is represented by A. Thomas Connick PA and Morgan Lewis & Bockius LLP.

Boats Group LLC is represented by Burstyn Law PLLC and Latham & Watkins LLP.

OneWater Marine Inc. is represented by Jones Day.

Denison Yachts International LLC and California Yacht Brokers Association Inc. are represented by C.M. Brainard & Associates and Bayramoglu Law Offices LLC.

International Yacht Brokers Association Inc. is represented by Kenny Nachwalter PA.

Yacht Brokers Association of America Inc. is represented by Carlton Fields.

Northwest Yacht Brokers Association is represented by Holland & Knight LLP.

The case is Ya Mon Expeditions LLC et al. v. International Yacht Brokers Association Inc. et al., case number 1:24-cv-20805, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by David Minsky and Lauren Berg. Editing by Lakshna Mehta.



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Del. Justices Seal Oracle's Win In \$9.3B NetSuite Merger Suit

By **Katryna Perera**

Law360 (January 21, 2025, 10:02 PM EST) -- The Delaware Supreme Court on Tuesday affirmed the Chancery Court's toss last year of a challenge to Oracle Corp.'s \$9.3 billion acquisition of NetSuite Corp. in 2016, saying the Chancery did not err in finding that the transaction was untainted from influence by Oracle's management or its founder and top shareholder.

The Delaware Supreme Court issued an **opinion** affirming Vice Chancellor Sam Glasscock III's conclusion that Oracle founder and top shareholder Larry Ellison was not a controller of the business or the transaction that touched off the seven-year, still-unfinished legal battle.

Vice Chancellor Glasscock in 2022 found that Ellison did not coerce Oracle to buy NetSuite and later denied a plaintiffs attorney's request for a \$5 million "mootness" fee bid based in part on the litigation's beneficial role in a decision to add two independent directors to Oracle's board. His rulings came after a 10-day, two-part, COVID-19-disrupted trial over the dispute.

On **appeal**, the suing investors raised several objections. First, the investors argued Vice Chancellor Glasscock erred in not allowing the plaintiffs to conduct discovery into the process of a special litigation committee, or SLC, that Oracle formed to review the plaintiffs' derivative claims.

The justices said Tuesday that while it is true that the Court of Chancery often allows limited discovery into an SLC's litigation, the current action is different because the Chancery Court was not deciding whether or not it should grant the SLC's motion to terminate the litigation.

In the current action, the SLC decided to return the litigation to the plaintiffs following its investigation, and the investors do not challenge "the independence, good faith, and reasonableness of the SLC's investigation nor whether the SLC should have allowed the plaintiffs to assume control of the litigation."

Therefore, the justices said the plaintiffs did not need discovery to evaluate the SLC's decision.

The justices added that allowing for the discovery of all documents involved in an SLC investigation could "chill candor and access and limit the effectiveness of special litigation committees going forward."

The investors also challenged on appeal the SLC's decision to withhold information based on work product protection, arguing that the SLC waived any non-opinion work product protection when it "allegedly shared interview memoranda or referred to their contents in mediation submissions."

According to the opinion, part of the SLC's investigation explored whether a settlement with the defendants was feasible through non-binding mediation.

However, the justices said Tuesday that there is nothing in the record to suggest that interview memoranda were disclosed during the mediation, and even if the SLC did rely on interview summary content during the sessions, there was still a "strong expectancy of privacy" during the proceedings.

"Waiver occurs only when privileged information is disclosed outside the confidential proceedings. According to the record, that was not the case here," the opinion stated. "Holding otherwise would deter mediating parties from engaging in frank exchanges to resolve a dispute."

The second objection investors raised on appeal was that the Chancery Court incorrectly applied the business judgment review to the transaction since Ellison was a controlling stockholder. The business judgment review protects a corporation's board of directors from liability, and a court will uphold a board or director's decisions if it finds they acted in good faith and in the corporation's best interests.

The justices said Tuesday that the court was correct to apply this rule because it correctly found that although Ellison held a substantial amount of Oracle stock and was its co-founder, he did not have general control over the corporation or the transaction, and therefore the board was acting in good faith when it approved the deal with NetSuite.

Finally, the justices rejected the investors' argument that Ellison failed to disclose material information about his future NetSuite integration plans to the SLC.

"[Investors] argue that, as a co-founder and controlling stockholder, Ellison possessed unique insight into both companies and formulated post-closing operating plans that should have been disclosed to the special committee," the opinion stated. "Had Ellison disclosed these important insights, the plaintiffs contend, the Special Committee would have paid closer to \$74.58 per share for NetSuite, significantly lower than the \$109 per share Oracle ended up paying."

But the justices noted that, as the Chancery Court found, Ellison did not actually control Oracle, and he could not implement "drastic changes" without management or board approval, which the Chancery Court found "did not appear cowed or overawed" by Ellison. Therefore, whatever post-closing plans Ellison had were immaterial, the justices said.

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

The investors are represented by Joel Friedlander, Jeffrey M. Gorris and David Hahn of Friedlander & Gorris PA, Christopher H. Lyons, Tayler D. Bolton, Randall J. Baron and David A. Knotts of Robbins Geller Rudman & Dowd LLP and Gregory Del Gaizo of Robbins LLP.

Ellison and Oracle CEO Safra A. Catz are represented by Elena C. Norman, Richard J. Thomas and Alberto E. Chávez of Young Conaway Stargatt & Taylor LLP and Peter A. Wald, Blair Connelly, Melissa Arbus Sherry, Christopher S. Turner and Blake E. Stafford of Latham & Watkins LLP.

The case is In re: Oracle Corp. Derivative Litigation, case number 2017-0337, in the Supreme Court of the State of Delaware.

—Additional reporting by Jeff Montgomery. Editing by Dave Trumbore.



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Last Sackler Family Members Join Purdue Draft Deal

By **Emlyn Cameron**

Law360 (January 21, 2025, 6:46 PM EST) -- The final holdouts among two branches of Sackler family members are ready to join a settlement in the bankruptcy of OxyContin maker Purdue Pharma LP, a business owned by the family, according to a report from the co-mediators handling negotiations.

The co-mediators, former bankruptcy judge Shelley C. Chapman and Eric D. Green, **told** a New York bankruptcy court that all the groups of Sackler family members under the broad umbrellas of "Sackler A Side" and "Sackler B Side" are now on board for the settlement being refined in the company's over five-year-old bankruptcy case. One of eight groups of family members within Sackler Side A had not previously joined the settlement, according to the report filed Monday.

Earlier this month, Purdue said in a court filing **it had inked** a 50-page term sheet and 75-page draft master settlement agreement that could resolve its case after its last plan was tossed out. The disclosure came in a request for more time to mediate a settlement with creditors and some members of the Sackler family, who own the company but did not themselves file for bankruptcy.

The U.S. Supreme Court in June invalidated Purdue's previous bankruptcy settlement, which called for some Sackler family members to **receive** liability waivers in exchange for providing \$6 billion to help pay creditors, including opioid victims and states, which are ready to launch scores of lawsuits if mediation fails.

In their report filed Monday, the co-mediators said settlement negotiations have established proposed agreements with a number of other groups, but settlement implementation is still being talked out with others, including a Tribal Leadership Committee. The term sheet and master settlement agreement have continued to be ironed out and while more must be done to finalize documented agreements, the negotiations have lead to "material additional progress," the report said.

The case is In re: Purdue Pharma LP, case number 7:19-bk-23649, in the U.S. Bankruptcy Court for the Southern District of New York.

--Additional reporting by Hilary Russ. Editing by Kelly Duncan.

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Ex-Meta COO Sanctioned For Deleting Cambridge Emails

By **Hailey Konnath**

Law360 (January 21, 2025, 11:58 PM EST) -- A Delaware Court of Chancery judge on Tuesday sanctioned Meta Platforms Inc.'s former Chief Operating Officer Sheryl Sandberg in consolidated litigation over the Facebook Cambridge Analytica data scandal, finding that she likely selectively deleted emails that related to the litigation.

Vice Chancellor Travis Laster agreed with investors that Sandberg knew she had a legal duty to preserve emails and other information that could be relevant to the litigation but chose not to do so. Her lawyers also had an obligation to address this issue earlier in the case, as well as an obligation to provide answers when the stockholders' attorneys started asking questions, the vice chancellor said. They didn't, he said.

He also said it can be inferred that Sandberg was picking and choosing what emails to delete rather than using an auto-delete function.

Notably, Vice Chancellor Laster rejected Sandberg's argument that no relevant information was lost because she didn't use her personal email account to conduct company business. But the defendants already admitted she did use her personal email in that way, and the contents of the dozens of emails that were in fact preserved show that she did, the vice chancellor said.

"Because Sandberg selectively deleted items from her Gmail account, it is likely that the most sensitive and probative exchanges are gone," he said. "The record provides a sufficient basis to conclude that Sandberg failed to preserve [electronically stored information] that would have been relevant to this action. The loss of that [electronically stored information] constitutes prejudice."

However, the vice chancellor refused to sanction Jeffrey Zients, a former director and special committee member for Meta. While Zients likewise failed to preserve his emails, he has demonstrated that the lost information wasn't likely to be relevant to the litigation or unique, according to the order.

For one, Zients was an outside director — not a member of the C-suite, like Sandberg, the vice chancellor said. On top of that, Zients joined the board after the Cambridge Analytica scandal, Vice Chancellor Laster said.

"He did not participate in those events in real time," he said. "Emails relating to those topics would have been in the nature of after-the-fact reviews or efforts to avoid similar problems in the future."

In **the litigation**, shareholders claim that Meta's top brass violated their fiduciary duties by not establishing a comprehensive privacy program as required under a 2012 consent decree from the Federal Trade Commission.

Meta, which operated as Facebook at the time, entered into the agreement with the FTC after it and other regulators sued over its privacy practices. Rather than complying with the order, investors allege that Meta continued to collect granular data of its users and their friends, sharing that information with other companies in exchange for advertising dollars.

Investors said there were a number of red flags, but Facebook's board of directors didn't do anything to correct the violations. Then came the Cambridge Analytica scandal, in which an app developer was

able to gather data from millions of Facebook users without their knowledge or consent.

In their **sanctions bid**, the shareholders said both Sandberg and Zients "knowingly and permanently" destroyed electronically stored information that purportedly included key evidence in the shareholder litigation, even though the executives received a litigation hold in 2018 that required them to preserve all relevant electronic documents "wherever it exists."

They said the pair used personal email accounts to communicate about potentially relevant matters, and Sandberg had a practice of regularly deleting emails from her Gmail account that were over 30 days old. Zients' email account automatically deleted emails after six months, per the motion.

Vice Chancellor Laster noted Tuesday that 57 emails sent to or from Sandberg's email account and 415 sent to or from Zients' account were indeed recovered. But otherwise, the information from their personal accounts is lost, according to the decision.

"It cannot be recovered from their accounts, and it cannot be obtained from other sources," Vice Chancellor Laster said.

He added that Sandberg "is a highly sophisticated individual who served as the company's chief operating officer and as a director during the events in question."

"She knew what was required, and she could have consulted with the company counsel if she had any doubts," he said.

But Sandberg didn't take any reasonable steps to identify likely sources of relevant electronically stored information, nor did her attorneys "provide transparency when plaintiffs' counsel raised the issue," per the decision. They were asked about the information in November 2023, and no one identified Sandberg's Gmail account until six months later, the vice chancellor said.

"It should not have taken that long to respond," Vice Chancellor Laster said. "And the response counsel gave was confounding."

They didn't state when Sandberg's practice of regularly deleting emails started or ended, and they didn't explain whether she used an auto-delete feature or deleted emails selectively, he said.

"The defendants also failed to respond forthrightly to follow-up inquiries that sought to pin down answers," Vice Chancellor Laster said.

This "failure to give a straight answer" supports an inference that Sandberg wasn't using an auto-delete function, he said. The practice of picking and choosing what emails to delete "violated her obligation to produce documents," he said.

As for Zients, he also failed to take reasonable steps to collect and preserve electronically stored information, the vice chancellor said. However, he did so by failing to disable the auto-delete function on his email account, Vice Chancellor Laster said.

He added that the shareholders have sufficiently demonstrated that they were prejudiced by Sandberg's and Zients' actions.

"Both Sandberg and Zients regularly used their personal email accounts to communicate about company business and compliance issues," he said. "Both Sandberg and Zients deleted or allowed communications to be deleted after receiving legal holds and reminders. The plaintiffs now lack access to that evidence."

The vice chancellor said Zients put himself at risk of sanctions, but the shareholders "have not made a showing sufficient to support a conclusion that Zients lost responsive [electronically stored information]."

As for the timing of his decision, the vice chancellor said that the sanctions motion "rests on undisputed facts regarding the failure to preserve [electronically stored information]." Ultimately, his decision on the sanctions affects how the parties will prepare for trial and present their evidence, he

said. Thus, now is the time to make that call.

Vice Chancellor Laster said Sandberg will now "only be able to prevail on any issue where she bears the burden of proof if she can carry her burden by clear and convincing evidence." She also must cover the attorney costs for the shareholders that are associated with their sanctions motion.

A spokesperson for Sandberg told Law360 on Tuesday that "all work emails were preserved on Facebook's servers."

"The plaintiffs' claims have no merit," he said.

Counsel for Zients did not immediately respond to requests for comment Tuesday.

Meta and counsel for the stockholders didn't immediately respond to requests for comment late Tuesday.

In their complaint, the shareholders target alleged shortcomings and violations that led to Meta's record **\$5 billion** Federal Trade Commission penalty in 2019. The board underwent changes in 2020 and 2021.

Specifically, the suit alleges breaches of fiduciary duty and, against some of those named, insider trading. It includes allegations that Meta CEO Mark Zuckerberg, Sandberg and six other board members knew as early as 2015 that U.K. political consulting firm Cambridge Analytica was misappropriating personal data from Facebook users without their consent.

During **oral arguments in December**, an attorney for the stockholders said Sandberg routinely used personal Gmail for an undetermined number of communications regarding Facebook despite company policy. Zients likewise used personal email, and both deleted electronically stored information that purportedly included key evidence in the shareholder litigation, according to Maxwell R. Huffman of Scott + Scott Attorneys at Law LLP.

"There's no dispute that they can't get them. Instead, what they try to do is weaponize our evidence of prejudice to say nothing was actually lost," Huffman said at the time.

Meanwhile, Berton W. Ashman Jr. of Potter Anderson & Corroon LLP, counsel to Sandberg and the company's directors, told the vice chancellor that "the record simply does not allow" assumptions regarding alleged losses.

"There's no intent here to destroy relevant or responsive information and no expectation that any unique information would be lost," Ashman said, noting that searches had failed to find linkages between Sandberg and others relevant to the case.

By April 2018, Facebook revealed that information from up to 87 million users may have been improperly shared with the political consulting firm hired by Donald Trump's 2016 presidential campaign.

The stockholders are represented by Kevin H. Davenport, Samuel L. Closic, John G. Day, Stacey A. Greenspan, David C. Skoranski and Kirsten M. Valania of Prickett Jones & Elliott PA, Frederic S. Fox, Hae Sung Nam, Donnie Hall and Aaron Schwartz of Kaplan Fox & Kilsheimer LLP, Maxwell R. Huffman, Geoffrey M. Johnson, Justin O. Reliford, Donald A. Broggi and Jing-Li Yu of Scott + Scott Attorneys at Law LLP, Catherine Pratsinakos and Thaddeus J. Weaver of Dilworth Paxson LLP, Frank R. Schirripa, Daniel B. Rehns, Kurt M. Hunciker and Kathryn A. Hettler of Hach Rose Schirripa & Cheverie LLP, Thomas J. McKenna and Gregory M. Egleston of Gaineys McKenna & Egleston, Peter B. Andrews, Craig J. Springer, David M. Sborz and Jacob D. Jeifa of Andrews & Springer LLC, Brian J. Robbins, Stephen J. Oddo and Gregory E. Del Gaizo of Robbins LLP, Joseph J. Tabacco Jr. and Daniel E. Barenbaum of Berman Tabacco and Joseph W. Cotchett, Mark Molumphy, Tyson Redenbarger and Gia Jung of Cotchett Pitre & McCarthy LLP.

Mark Zuckerberg, Sheryl K. Sandberg, Konstantinos Papamiltiadis, Jeffrey D. Zients, Peggy Alford, Kenneth I. Chenault, Peter A. Thiel, Susan D. Desmond-Hellmann, Reed Hastings, Marc L. Andreessen and Erskine B. Bowles are represented by Kevin R. Shannon, Berton W. Ashman Jr.,

Callan R. Jackson and Justin T. Hymes of Potter Anderson & Corroon LLP and William Savitt, Ryan McLeod, Anitha Reddy, Stephen D. Levandoski, Iliria Camaj and Tobias Kuehne of Wachtell Lipton Rosen & Katz.

Meta is represented by David E. Ross, R. Garrett Rice, Elizabeth M. Taylor, A. Gage Whirley and Benjamin M. Whitney of Ross Aronstam & Moritz LLP and Brian M. Lutz of Gibson Dunn & Crutcher LLP.

The case is In re: Facebook Inc. Derivative Litigation, case number 2018-0307, in the Court of Chancery of the State of Delaware.

--Additional reporting by Jeff Montgomery, Dorothy Atkins, Al Barbarino and Leslie A. Pappas. Editing by Michael Watanabe.

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Medical Cannabis REIT Misled Investors, Suit Claims

By **Isaac Monterose**

Law360 (January 21, 2025, 5:05 PM EST) -- A medical cannabis-focused real estate investment trust lied to its shareholders about the profitability of its leasing operations and declining rents, a new suit has alleged in Maryland federal court.

In the complaint filed Jan. 17, named plaintiff Alain Giraudon and a proposed class claimed that Innovative Industrial Properties Inc. failed to tell its shareholders that its rents and property management fees for specific leases were declining and that its leasing operations weren't as profitable as the REIT had led them to believe.

According to the proposed class, the REIT uses funds from its operation to determine how well it's doing financially, which involves adding up property depreciation, property sales losses and property amortization with its earnings and then subtracting from that total any gains received from property sales and interest income.

In November 2024, the REIT posted third-quarter financial results that showed it fell short of several financial targets, including its projections for operational funds, which also marked a decline from the prior quarter, according to the suit.

The REIT's stock price dropped 10.51% to \$110.07 per share following the release of its third-quarter earnings, the complaint said.

Additionally, Innovative Industrial Properties previously stated in a 2023 fourth-quarter earnings call that one of its tenants, PharmaCann Inc., received \$16 million in construction funding and that it had "tremendous" value as an asset, but the REIT sung a different tune in December, according to the proposed class.

Innovative Industrial Properties stated that month that PharmaCann defaulted on six of its 11 leases for the REIT's properties, the complaint alleged. The rent that PharmaCann paid counted as 17% of the REIT's "total rental revenues for the three and nine months ended Sept. 30, 2024," the suit said.

"December rent — including base rent, property management fees, and estimated tax and insurance payments — totaled \$4.2 million for these six properties," the proposed class claimed. "Further, IIPR stated that it applied security deposits held by IIPR pursuant to these leases for the payment in full of the defaulted rent, in addition to late penalties and interest."

Despite PharmaCann paying rent for the five other leases, the REIT stated that PharmaCann still defaulted on those agreements due to the leases having cross-default provisions, the proposed class alleged.

The news of the lease defaults caused Innovative Industrial Properties' share price to decline to \$73.66 per share, which is a 22.73% drop, the suit said.

According to Giraudon, the proposed class consists of "hundreds or thousands" of shareholders who bought or acquired shares of Innovative Industrial Properties between Feb. 27, 2024, and Dec. 19, 2024.

Innovative Industrial Properties previously faced a proposed shareholder class action in New Jersey federal court alleging that the REIT failed to thoroughly look into a tenant who was accused of fraud. In September, the presiding court **permanently dismissed** that suit.

Class counsel and Innovative Industrial Properties didn't immediately respond to requests for comment on Tuesday.

The proposed class is represented by Daniel S. Sommers and S. Douglas Bunch of Cohen Milstein Sellers & Toll PLLC, Jeremy A. Lieberman and J. Alexander Hood II of Pomerantz LLP, and Peretz Bronstein of Bronstein Gewirtz & Grossman LLC.

Counsel for Innovative Industrial Properties wasn't immediately available Tuesday.

The case is Giraudon v. Innovative Industrial Properties Inc. et al., case number 1:25-cv-00182, in the U.S. District Court for the District of Maryland.

--Editing by Melissa Treolo.

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Coinbase Asks 2nd Circ. To Settle Crypto Securities Question

By **Sarah Jarvis**

Law360 (January 21, 2025, 8:46 PM EST) -- Coinbase has urged the Second Circuit to settle how securities laws apply to its crypto transactions, saying "there is no more pressing issue in securities law today" than determining the U.S. Securities and Exchange Commission's ability to regulate digital assets.

In a Friday **petition** stemming from the SEC's ongoing enforcement suit against it, Coinbase argued that trades on its platform constitute asset sales, rather than securities transactions. Sellers are matched with buyers via a "blind bid-ask system" in which the parties are anonymous to each other and have no obligation past the point of sale, and buyers don't have rights against the asset's issuer, the company said.

"Hearing this appeal will allow the court to clear away the cloud that currently hangs over the cryptocurrency market," Coinbase argued. "Simply put, the trades on Coinbase's platform do not trigger the federal securities laws."

Coinbase argued the matter satisfies the requirements for an interlocutory appeal because it involves a controlling question of law, there is substantial ground for a difference of opinion, and resolving the matter would advance the litigation and provide clarity to market participants and regulators.

"By any measure, the question of whether the commission has jurisdiction over an innovative, multi-trillion-dollar industry merits this court's attention," Coinbase argued. "The court should therefore accept review of this case, which presents the single best opportunity to decide the fundamental legal question of how to treat the secondary trading of digital assets."

In Friday posts on X, formerly Twitter, Coinbase Chief Legal Officer Paul Grewal said that after "years of uncertainty, we finally have the chance to put this question to bed once and for all."

"This lingering question has hamstrung our industry for years, limiting potential technological innovations and services that can create a fairer economic system for everyone," Grewal wrote. "Clarity can move us forward so that we can foster innovation and growth while also focusing on protecting consumers."

A spokesperson for the SEC declined to comment beyond the agency's public filings, and outside counsel for Coinbase didn't immediately respond to a request for comment.

Earlier this month, U.S. District Judge Katherine Polk Failla **granted** Coinbase's request for an immediate review of a March 28 order that greenlit the bulk of the SEC's claims that the platform operated as an unregistered securities exchange, broker and clearing agency, since the SEC had adequately shown that certain transactions on Coinbase's platform qualified as investment contracts.

Judge Failla agreed that the decision is ripe for review by the Second Circuit, but also called out the limits of certain arguments presented by the crypto exchange.

The March order in New York federal court denied Coinbase an early win in the enforcement case after it sought to cut through the regulator's June 2023 suit with arguments that the transactions on its platform don't satisfy the U.S. Supreme Court test for investment contracts. The so-called **Howey** test describes investment contracts as an investment of money in a common enterprise made with

the expectation of profits to be realized through another's efforts.

While Judge Failla found many of the transactions did meet Howey's characteristics in the March decision, her Jan. 7 order granting the appeal request said there remains conflicting authority on how Howey applies to crypto assets. The application of Howey to digital assets also "raises a difficult issue of first impression for the Second Circuit," said the order.

But Judge Failla made clear that the prongs of Howey remain set in stone. Although Coinbase and other companies have argued that investment contracts require a contractual undertaking or some obligation from the issuer, Judge Failla said this is not a requirement of Howey.

"Coinbase's narrower, textualist interpretation of 'investment contract,' though a neat preview of an argument it is sure to make to the circuit, distracts from the true issue about which there is substantial ground for difference of opinion," the judge said. "Insofar as Coinbase seeks certification of the order for interlocutory appeal to address this issue, the court agrees with the SEC that it cannot."

The Jan. 7 order stayed the district court proceedings until the Second Circuit resolves the interlocutory appeal.

Coinbase is represented by William Savitt, Kevin S. Schwartz and Sarah K. Eddy of Wachtell Lipton Rosen & Katz and Jeffrey B. Wall, Morgan L. Ratner and Steven R. Peikin of Sullivan & Cromwell LLP.

Counsel for the SEC wasn't immediately available Tuesday.

The case is Securities and Exchange Commission v. Coinbase Inc. et al., case number 25-145, in the U.S. Court of Appeals for the Second Circuit.

--Additional reporting by Aislinn Keely. Editing by Michael Watanabe.

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4 Plaintiffs' Firms Is Too Many, Chrysler Says In EV Class Suit

By Jonathan Capriel

Law360 (January 21, 2025, 8:04 PM EST) -- Fiat Chrysler slammed an "extremely excessive" bid asking a Michigan federal court to appoint four law firms as plaintiffs' counsel in a suit accusing the automaker of selling electric vehicles with defective batteries, telling the court there was no way that many firms could be efficient.

For the most part, FCA US LLC said it wouldn't oppose "the appointment of one lead counsel," but the drivers' request for four is "unworkable, unnecessary, and inefficient," the automaker said in its Friday opposition **filing**. The company suspects that the request has more to do with squeezing out any rival firms who might try to get in on the proposed class action.

"Quite plainly, the motion's clear focus is preemptively eliminating competition with other firms (and each other) if, in the future, any other firm would also seek a leadership role (or try to expand its current role)," FCA said. "Entirely absent from the motion is any mention, let alone an explanation of how all these firms would (or even could) efficiently and economically manage the litigation or why the putative class needs all four firms and their respective cadre of lawyers all acting as 'co-lead counsel.'"

Drivers filed suit against FCA in March 2024 accusing it of selling plug-in hybrid electric vehicles with a dangerously defective battery system. The most recent complaint, filed in November, claims that there have been instances where vehicles caught fire while they were plugged in and charging. The suit points to vehicle models Jeep Wrangler 4xe and Jeep Grand Cherokee 4xe in the years 2020 to 2024. The suit said Fiat Chrysler was aware of the fire risk but sold the vehicles anyway, marketing them as safe while failing to disclose the danger in the battery system.

Earlier this month, the drivers filed a motion asking the court to grant interim approval of four co-lead counsel firms, including the Miller Law Firm PC, Lieff Cabraser Heimann & Bernstein LLP, Lockridge Grindal Nauen PLLP and Slack Davis Sanger LLP. The motion said they have done substantial research on the drivers' claims.

But FCA blasted the arguments made in the drivers' motion as "self-serving." The drivers' bid said all the plaintiffs' attorneys agree that it is in the "best interest" of their clients that these four firms be made lead counsel, but the motion dances around the fact that "all" counsel is just the current five firms on the case, "four of which are the very same ones looking for the co-lead counsel appointment."

"Such self-serving arguments mean nothing, of course," FCA said. "It is like saying defense counsel in this case 'all agree' that FCA US is well represented by its defense counsel."

The automaker said it is too early to pick lead counsel, since there is right now a pending unaddressed motion to toss the whole case into arbitration. But, additionally, it's just too complicated, FCA said.

"Splitting up interim co-lead counsel between four different firms will undoubtedly result in multiple counsel engaging in overlapping tasks, reviewing the same things, and spending unnecessary time on coordination," the automaker said. "Not only that, but the proposed multi-firm structure creates the question of who FCA US is to turn to, negotiate with, and trust when commitments or obligations are at issue. Plaintiffs make no pledge to be bound by the representations of any lawyer or even one

firm."

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

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

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

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

--Additional reporting by Carolyn Muyskens. Editing by Rich Mills.

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Firm Slams Beasley Allen's Bid To Nix Suit Over Talc Team-Up

By **Rose Krebs**

Law360 (January 21, 2025, 4:18 PM EST) -- Smith Law Firm PLLC is urging a Mississippi federal court to reject Beasley Allen Law Firm's bid to dismiss or transfer a defamation and breach of contract lawsuit over their joint venture agreement for talc litigation against Johnson & Johnson, saying the case shouldn't be thrown out in favor of Beasley Allen's Alabama suit.

In a **filing** Monday, Smith Law asserted that the facts of the cases and laws at issue are different, and thus its Mississippi suit should be allowed to proceed.

"The distinctions between the Smith Firm's claims and Beasley's Alabama claims do not support dismissal or transfer," it said. "The motion to dismiss or transfer should be denied."

In a late December filing, Beasley Allen argued the case should be tossed or transferred to Alabama, where it earlier filed its complaint against Smith Law.

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

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

Beasley Allen argued in its motion to dismiss or transfer that the defamation suit contains "compulsory counterclaims to Beasley Allen's claims already asserted against Smith Law" that duplicate the Alabama action. Therefore, it said, the claims must either be thrown out or consolidated with the Alabama suit.

But on Monday, Smith Law asserted that the facts of the cases are not the same, the laws at issue are different, and "the evidence will differ dramatically between the two cases."

"Beasley's claims arise out of the contract and focus on the Smith Firm," the filing said. "The Smith Firm's claims focus on Beasley's defamation. This court has held that counterclaims are not compulsory when each case focuses on the conduct of a different party."

Smith Law argued the two cases have "distinct facts" and that "the law in each case is not merely different but stands in stark contrast."

The firms have been cooperating on the massive tainted talc litigation against Johnson & Johnson under a joint venture agreement since 2013 and together represent roughly 11,000 plaintiffs in the case. Both have been instrumental in driving the sprawling litigation forward over the years. The **proposed settlement** has driven a wedge between them, however.

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

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

abandoning its obligations under the agreement to share certain expenses and fees in the talc litigation.

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

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

Beasley Allen also said it did not bring its Alabama claims in an effort to deprive Smith Law of its choice of venue. If the Mississippi court does not throw out the suit, Beasley Allen said, it should be transferred to Alabama in accordance with the first-to-file rule.

But Smith Law argued Monday that "the cases at issue — each of which involves different claims, different core issues, different facts, different damages, and different evidence — do not satisfy the Fifth Circuit's definition of 'substantial overlap.'"

Smith Law accused Beasley Allen of suing in "bad faith" as a way "to gain control of negotiations and to leverage the Smith Firm into relinquishing a portion of its attorney fees."

"Beasley has brought its claims in its forum of choice," the filing said. "The Smith Firm has the same right."

In an emailed statement to Law360 on Tuesday, Andy Birchfield of Beasley Allen asserted that Smith Law "is being used by J&J as a pawn in its misguided effort to pursue a third bad faith bankruptcy."

"What's important is that this bankruptcy — like the first two failed attempts — is abusive and unfair to ovarian cancer claimants," he said. "It would be shocking if, as Smith claims, J&J has taken the position that it will not go forward with its effort to resolve its talc liability on a global basis in bankruptcy if Beasley Allen maintains its lawsuit challenging Smith's actions. Has J&J truly made that promise to Smith? That's an important question that we intend to get answered."

Counsel for Smith Law did not immediately respond Tuesday to requests for comment.

In September, a J&J talc unit **filed for Chapter 11** protection in Texas bankruptcy court, marking the third time the company has tried to deal with liability from alleged asbestos-contaminated talc through a bankruptcy filing.

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

Smith Law is represented by Thomas G. Bufkin and Joel J. Averitt of Carroll Bufkin PLLC.

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

--Additional reporting by Rick Archer, Emily Sawicki, Ryan Boysen and James Boyle. Editing by Adam LoBelia.



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SoCal Edison Must Hand Over Data In Eaton Fire Suit

By **Rachel Scharf**

Law360 (January 21, 2025, 9:32 PM EST) -- A Los Angeles County judge ordered Southern California Edison Co. on Tuesday to produce data from its distribution circuits in the Altadena, California, neighborhood to a victim of the Eaton Fire, the first step in litigation over this month's deadly and destructive blaze.

Los Angeles Superior Court Judge Ashfaq G. Chowdhury **ordered** expedited discovery against the utility, whose power line equipment is alleged in a **slew of recent lawsuits** to have sparked the devastating fire on the border of Eaton Canyon and Altadena, California, on Jan. 7. Southern California Edison has maintained that the fire's cause remains unknown, but it is fully cooperating with investigators from the Los Angeles County Fire Department and the California Department of Forestry and Fire Prevention.

Tuesday's order requires Southern California Edison to produce data from all its circuits in Altadena and Eaton Canyon to Evangelina Iglesias, an Altadena resident whose house was among thousands destroyed in the Eaton Fire.

"SCE to produce by January 24, 2025, data from the four distribution circuits closest to the preliminary origin area in Eaton Canyon," Judge Chowdhury said. "SCE to produce all [other] data related to item 1 above as soon as it becomes reasonably available."

Iglesias had also sought an order requiring the utility to preserve all its equipment throughout Altadena as power restoration work gets underway. But the judge declined to go that far, instead ordering only that Southern California Edison preserve evidence in a 1-square-mile zone of eastern Altadena closest to the Eaton Fire's origin.

A spokesperson for the utility told Law360 on Tuesday that it agrees with Judge Chowdhury's temporary ruling.

"SCE has appropriately preserved all equipment that fire investigators currently deem relevant," the spokesperson noted.

Ali Moghaddas of Edelson PC, who represents Iglesias, said in a statement that the decision is a key step as the litigation begins.

"The lesson we've learned in litigating against utilities in wildfire cases across the country is that immediate action can be critical to preserving evidence," Moghaddas said. "We're pleased the court took decisive action to prevent SCE from going down an all too familiar path."

The parties are due back in court Jan. 27.

Southern California Edison is already facing more than two dozen lawsuits over the Eaton Fire, which as of Tuesday had killed 17 people and destroyed nearly 10,000 structures. The utility said it plans to have the cases consolidated.

Litigation is also brewing over the Palisades Fire, which began during the same heavy winds Jan. 7 and wiped out swaths of the Pacific Palisades community. **Residents recently sued** the Los Angeles Department of Water and Power for allowing a nearby reservoir to sit empty.

Iglesias is represented by Ali Moghaddas, Todd Logan, Lauren Blazing, Max Hantel and Brandt Silver-

Korn of Edelson PC.

SCE is represented in-house by Belynda B. Reck, Patricia A. Cirucci, Laura A. Meyerson and Brian Cardoza, and John C. Hueston, Douglas J. Dixon and Michael A. Behrens of Hueston Hennigan LLP.

The case is Evangeline Iglesias v. Southern California Edison Co. et al., case number 25NNCV00200, in the Superior Court of the State of California, County of Los Angeles.

--Editing by Kristen Becker.

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Stanley Tumbler Lead Contamination Suit Gets Shelved

By **Y. Peter Kang**

Law360 (January 21, 2025, 9:54 PM EST) -- A Washington federal judge has tossed a proposed class action against the maker of the popular "Stanley" tumbler for selling it without disclosing that it contained lead, saying the claims failed due to overly vague allegations of harm, but allowed the consumers to revise their lawsuit.

U.S. District Judge Tana Lin granted Pacific Market International's motion to dismiss a consolidated putative class action accusing it of failing to disclose to consumers that lead was used to vacuum seal the base of the popular Stanley cup bought by residents of Nevada, New York, California and Washington state. The consumers say they never would have bought the cups between 2021 and 2023 had they known they could be exposed to lead.

The judge found that the consumers' claims lodged under the states' various consumer protection statutes, such as the Washington Consumer Protection Act and the California Consumers Legal Remedies Act, failed because they didn't demonstrate sufficient harm from the amount of lead contained in the Stanley cups.

Since the consumers did not explain exactly how the specific amount of lead used in the cups could harm a person, the company's alleged failure to disclose that fact doesn't hold water, the judge said.

"Without sufficient allegations to show that the lead in the Stanley cups could pose actual harm to consumers, 'the apparent need for disclosure is a moot proposition,'" the judge said in her 31-page **ruling**.

Judge Lin said statements made by health experts in news articles cited in the complaint regarding the lead in Stanley tumblers were vague and speculative and couldn't support a WCPA claim.

"The allegations regarding individuals who provided comments to the press are thin, unsupported, and speculative," the judge said. "Upon a closer look, they amount to much less than plaintiffs make them out to be."

While many experts warned about the dangers of lead, many then added that there was very little chance the base of the tumblers would become dislodged, and they downplayed the risk to consumers.

"Without additional factual support that demonstrates a specific and plausible risk of harm from the lead in Stanley cups, the mere presence of lead could not be material to a reasonable consumer," the order states. "Allowing these allegations to survive a motion to dismiss would green-light all kinds of lawsuits based merely on the presence of a material that, in some unspecified amount, could be harmful."

However, the judge gave the consumers a chance to file a revised suit within 45 days, according to the order.

An attorney for PMI declined to comment Tuesday. Counsel for the plaintiffs did not immediately respond to a request for comment.

The case started out in February as a **putative class action** in California that was later consolidated

in Washington federal court with other, similar suits.

Seattle-based PMI is accused of hiding from consumers that lead is used during manufacturing Stanley tumblers in order to bolster profits. In February, the company conceded that lead is used to seal the vacuum installation at the base, according to the California complaint.

The consumers are represented by Tousley Brain Stephens PLLC, Rushing McCarl LLP, Breskin Johnson & Townsend PLLC, Whatley Kallas LLP, Doyle APC, Gustafson Gluek PLLC, Lockridge Grindal Nauen PLLP, and George Feldman McDonald PLLC.

PMI is represented by Pallavi Mehta Wahi, Ashley E.M. Gammell and Tyler K. Lichter of K&L Gates, and James F. Speyer, E. Alex Beroukhim and Elie Salamon of Arnold & Porter Kaye Scholer LLP.

The case is In re: Pacific Market International, LLC, Stanley Tumbler Litigation, case number 2:24-cv-00191, in the U.S. District Court for the Western District of Washington.

--Additional reporting by Gina Kim. Editing by Adam LoBelia.

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