

News from Bloomberg Terminal

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Virtu's Viola Sued by Pension Fund for Manipulating Buybacks

● **COURT:** Del. Ch.

● **TRACK DOCKET:** No. 2025-0058

By Mike Leonard

(Bloomberg Law) --

Virtu Financial Inc.'s billionaire founder, Vinnie Viola, manipulated its byzantine capital structure to engineer a \$1.1 billion buyback scheme that steered value to himself and other insiders, according to a lawsuit unsealed Monday.

A pension fund is suing Viola and other leaders of the financial services giant, saying they've extracted more than \$400 million from the company's coffers by paying for the stock repurchase program with funds belonging to public investors. "The conflict was disguised within Virtu's complex and opaque corporate structure," but "Viola and the board are aware of the extensive harm they have inflicted on Virtu's Class A stockholders," the filing says.

Viola—a onetime nominee for Donald Trump's first cabinet who owns the NHL's Florida Panthers—has a net worth of \$5.9 billion, according to the Bloomberg Billionaires Index. The court complaint also targets other current and former members of Virtu's C-suite and board of directors, including Viola's son Michael, its chairman. Vinnie Viola serves as executive chairman.

Virtu didn't immediately respond to a request for comment Monday.

The suit is part of a wave of cases in Delaware's Chancery Court taking aim at transactions involving "Up-C" corporations, or publicly traded partnerships—pass-through entities that act as publicly traded parent companies for firms in which founders and early investors own direct stakes. The insiders also hold voting-only shares in the public shell company that are pegged to the economic value of their equity in the private subsidiary.

Other companies that have confronted litigation over their Up-C structures recently include Apollo Global Management Inc., Atlas Energy Solutions Inc., BGC Partners Inc., Carlyle Group Inc., Foundation Building Materials Inc., Funko Inc., GoDaddy Inc., and KKR & Co.

According to the new lawsuit, the Virtu operating subsidiary has for years paid out dividends on a proportionate basis to both the insider units and its public parent company. But rather than distribute the cash to its own shareholders, the holding company—Virtu Financial Inc.—has let Viola and the other corporate leaders double-dip by devoting those funds to buybacks and distributing the proceeds “in a way that diverted wealth disproportionately to themselves,” the suit says.

“These repurchases not only allowed Viola and his partners to extract over \$400 million,” but “also allowed Viola to increase his control over Virtu,” according to the 85-page court complaint, which was originally filed under seal Jan. 16.

The case is assigned to Vice Chancellor J. Travis Laster, who previously let the lawsuits involving Apollo, Foundation Building Materials, and GoDaddy advance toward trial. Other Delaware judges have let the Carlyle and Funko cases move forward.

The same pension fund previously sued Virtu for documents under a law giving investors broad access to corporate records if they have credible but preliminary suspicions of self-dealing. The fund, the Iron Workers Local No. 55 pension fund, is represented by Friedlander & Gorris PA, Robbins Geller Rudman & Dowd LLP, and Shobe & Shobe LLP.

The case is *Iron Workers Local No. 55 Pension Fund v. Viola*, Del. Ch., No. 2025-0028, complaint unsealed 1/27/25.

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Court tosses Advance Auto Parts suit alleging misrepresented financial results | Secondary Sources | National

 today.westlaw.com/Document/lbd6b02badd8511efb00efc3f62d0b31f/View/FullText.html

(January 28, 2025) - Advance Auto Parts Inc. and two executives have persuaded a North Carolina federal judge to dismiss a shareholder securities lawsuit asserting that the company misrepresented its financial results, which led to a more than 50% share price drop.

Suarez v. Advance Auto Parts Inc. et al., No. 23-cv-563, 2025 WL 283690 (E.D.N.C. Jan. 23, 2025).

City of Southfield General Employees' Retirement System failed to show scienter, or facts giving rise to a strong inference that Advance and the two executives acted with intentional or reckless deception, U.S. District Court Judge James C. Dever of the Eastern District of North Carolina said Jan. 23.

Accounting errors

In November 2022, Advance CEO Thomas R. Greco announced during an earnings call that the company was planning to implement strategic price initiatives to rehabilitate its low margins, according to the shareholder complaint.

Advance reported strong earnings three months later for 2022's fourth quarter and projected operating income margins of 7.8% to 8.2% for 2023, the complaint said.

On May 31, 2023, Advance disclosed that for the 16 weeks before April 22 of that year, the company's expenses included an out-of-period charge of about \$17 million related to costs incurred but not expensed during that period, according to Judge Dever's order.

Advance's stock price declined to \$68.03 the next day, a more than 39% drop from the closing price of \$112.20 on May 30, the order said.

After Advance disclosed Nov. 15, 2023, that it had identified additional errors affecting costs, its share price dropped almost 5% from the previous day to close at \$55.67, according to the order.

The company disclosed further accounting errors Nov. 17 and Nov. 21, leading to stock price declines on those days of almost 6% and 4%, respectively, the order said.

Meanwhile, an Advance shareholder filed a federal securities class-action lawsuit against the company, Greco, and Chief Financial Officer Jeffrey Shepherd on Oct. 9, 2023. The following February, the court appointed Southfield lead plaintiff of the lawsuit.

The defendants moved to dismiss the case in June 2024.

Scienter lacking

Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C.A. § 78j(b), prohibits the use of "any manipulative or deceptive device" in violation of SEC rules and in connection with the sale of a security, Judge Dever explained.

Furthermore, SEC Rule 10b-5, 17 C.F.R. § 240.10b-5, forbids making an "untrue statement of a material fact" in connection with the sale of a security, he added.

To establish Section 10(b) and Rule 10b-5 liability sufficient to survive a dismissal motion, Southfield must plausibly allege six elements, including scienter, which requires showing a "strong inference that the defendant[s] acted with intentional or reckless deception" with respect to the allegations against them, the judge said.

Southfield contends that Greco and Shepherd were highly motivated to commit the securities fraud because it enabled them to receive additional incentive payouts, the judge said.

However, Southfield does not allege that the defendants created or concealed the company's accounting errors, and the defendants publicly corrected and disclosed the errors after discovering them, he said.

Thus, "context and common sense suggest that [the] defendants based their public announcements on internal accounting data that they later determined to be erroneous," the judge concluded, dismissing the case without prejudice.

Ashely M. Price of Robbins Geller Rudman & Dowd LLP represented Southfield, and Clifton L. Brinson of Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan LLP represented Advance.

By Douglas Mentos

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ESSA Pharma Misled Investors Over Cancer Treatment, Lawsuit Says

By Mallory Culhane

- **COURT:** E.D. Wis.
- **TRACK DOCKET:** [No. 1:25-cv-00124](#) (Bloomberg Law subscription)

ESSA Pharma Inc. and its top executives are facing a proposed class action alleging they deceived shareholders about the prospects of its prostate cancer treatments.

The company, CEO David Parkinson, and CFO David Wood “provided a narrative of ongoing success” of ESSA’s cancer treatment study while failing to disclose the true efficacy of the treatment, a complaint filed Jan. 24 in the US District Court for the Eastern District of Wisconsin alleges.

Todd Van Groll, an ESSA shareholder, is seeking to represent a class of investors who acquired ESSA stock between Dec. 12, 2023, and Oct. 31, 2024.

The pharmaceutical company was evaluating the drug masofaniten’s efficacy to treat prostate cancer on its own and in combination with another drug used to treat prostate cancer, enzalutamide, in a two-part study. ESSA has only two other product candidates apart from masofaniten, which are both still in early development stages, the complaint said.

In ESSA’s quarterly earnings reports and statements to investors, the company said it continued to see “deep and durable reductions” in patients’ prostate-specific antigen response in the study, indicating that patients were responding to the treatments, according to the complaint.

But after the market closed on Oct. 31, ESSA issued a press release announcing it was terminating the second phase of its masofaniten-enzalutamide study and all other studies involving masofaniten. The release also said that a review of the study’s data indicated there was “no clear efficacy benefit” to using the drug combination as opposed to only enzalutamide. ESSA’s stock price fell roughly 73% the following day, the complaint said.

ESSA allegedly failed to disclose that there was no clear benefit of combining masofaniten with enzalutamide to treat prostate cancer or that the study would therefore not meet the company's goal of patients reaching at least a 90% decline in prostate-specific antigens. Van Groll asserts that ESSA and its executives made false and misleading statements about the prospects of masofaniten, "which much, if not all, of the Company's future success hinged" on.

Van Groll asserts violations of the Exchange Act and is seeking damages caused by the alleged unlawful conduct.

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

Judge Byron B. Conway is assigned the case.

Pomerantz LLP represents the proposed class.

The case is Van Groll v. ESSA Pharma Inc. , E.D. Wis., No. 1:25-cv-00124, complaint filed 1/24/25 .

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[Securities Law News](#)

Jan. 27, 2025, 7:18 AM PST; Updated: Jan. 27, 2025, 8:58 AM PST

Novo Nordisk Hit With Suit for Underwhelming CagriSema Trial (1)

By Ufonobong Umanah

- **COURT:** D.N.J.
- **TRACK DOCKET:** [No. 2:25-cv-00713](#) (Bloomberg Law subscription)

A Novo Nordisk A/S investor says the pharmaceutical company's failure to disclose how it tested experimental obesity shot CagriSema caused economic damage after patients lost less weight using the drug than previously predicted.

The Danish company and two executives allegedly expressed confidence CagriSema would cause 25% weight loss on average, but failed to disclose patients could modify their dosing during the trial. Novo would blame this flexibility for diminishing the average weight patients lost in the trial, which later caused its shares to fall, according to the complaint in the US District Court for the District of New Jersey.

Novo said on Dec. 20 that in the trial, CagriSema helped patients lose 22.7% of their weight, but less than 60% of participants stayed on the highest possible dose, according to the complaint. The drug's failure to achieve 25% weight loss caused a stock price decline "of about 17.83% in the span of just a single day," the complaint says.

The investor wants to represent a class of Novo common stock holders who acquired their shares between November 2022 and December 2024. Novo had more than 4 billion outstanding common stock shares in September 2024, which could be held by "thousands, if not millions, of individuals," the complaint says.

The complaint, filed Jan. 24, asserts two claims under Sections 10(b) and 20(a) of the Exchange Act, and seeks damages and attorneys' fees.

"These claims are without merit," Novo said in a statement. It plans "to vigorously defend against them" in court.

Judge Robert Kirsch is assigned the case.

Levi & Korsinsky LLP represents the investor.

The case is Moon v. Novo Nordisk A/S , D.N.J., No. 2:25-cv-00713, complaint 1/24/25 .

(Updates with Novo Nordisk statement in sixth paragraph.)

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Musk's Last Dance in Delaware Court Consolidated by Chief Judge

By Mike Leonard

- Cases involve AI, insider trading claims, Twitter acquisition
- Lawsuits filed by investors just before Tesla moved to Texas

Elon Musk will face coordinated litigation—rather than a flurry of separate lawsuits by Tesla Inc. shareholders—over his alleged insider trades, Twitter Inc. acquisition, and artificial intelligence side projects.

A Delaware judge Monday combined multiple suits filed against Musk and other Tesla board members last spring, in the days and weeks before the world's richest person moved its most valuable automaker to Texas. Musk, now serving as a government cost-cutting czar in Donald Trump's second presidential administration, has a net worth of \$428 billion, according to the Bloomberg Billionaires Index.

Musk shifted Tesla's corporate home in June, five months after the chief judge of Delaware's Chancery Court struck down his \$56 billion CEO pay package. The judge in December stood by her initial ruling—defying nearly a year of social media attacks from the tech titan—and handed \$345 million to the shareholder attorneys who led the litigation. The compensation case is now finally headed for appeal after a six-year drama in the elite business court.

The lawsuits filed against Musk on Tesla's way out the door—between late May and mid-June—represent a final effort to hold Musk accountable in Delaware for his alleged wrongdoing at Tesla's helm.

They involve claims that the billionaire stole corporate opportunities when he bought the former Twitter and started a new business, xAI, after failing to engineer a merger between Tesla and OpenAI Inc., the artificial intelligence pioneer he's now suing. The suits also say Musk sold billions worth of Tesla stock based on inside information while manipulating the market.

The litigation is assigned to the same judge as the pay case, Chancellor Kathaleen St. J. McCormick, who said in a brief order that she'll fully consolidate two suits filed by pension funds. Those dockets will be "initially coordinated" with a third, partly overlapping case brought by an individual Tesla stockholder, the judge said.

A fourth investor lawsuit—involving claims that Musk's illicit drug use has threatened Tesla's business, including by influencing his erratic behavior online—will remain separate, according to Monday's order. McCormick is also presiding over that dispute.

The cases involve shareholder derivative claims, which are technically brought on a corporation's behalf against its leaders. Damages in derivative cases are typically paid into a company's coffers by its officers, directors, controlling stockholders, or insurers.

The Employees Retirement System of Rhode Island is represented by Prickett, Jones & Elliott PA and Lief Cabraser Heimann & Bernstein LLP. The Cleveland Bakers and Teamsters Pension Fund is represented by Grant & Eisenhofer PA, Saxena White PA, and the Schall Law Firm. The individual investor, Michael Perry, is represented by deLeeuw Law LLC, Squitieri & Fearon LLP, and Moore Law PLLC.

Musk is represented by Quinn Emanuel Urquhart & Sullivan LLP. The other board members are represented by Ross Aronstam & Moritz LLP and Freshfields Bruckhaus Deringer US LLP. Tesla is represented by DLA Piper LLP (US), Sullivan & Cromwell LLP, and Richards, Layton & Finger PA.

The case is *In re Tesla Inc. Deriv. Litig.*, Del. Ch., No. 2024-0631, 1/27/25.

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Class Action

Jan. 28, 2025, 9:45 AM PST

iRobot Gets Investor Suit Over Failed Amazon Deal Thrown Out

By [Martina Barash](#)

- **Antitrust regulators' qualms led to demise of merger**
- **Suit failed to show false statements, intent, court says**

iRobot Corp. investors can't proceed with securities fraud claims against the Roomba vacuum maker over statements about its proposed merger into Amazon.com Inc. before that deal faltered, a federal court ruled.

The investors didn't show false statements or the necessary level of intent, Judge William G. Young said Monday for the US District Court for the District of Massachusetts. Young dismissed the would-be class action with finality.

Antitrust concerns by regulators in the US and the European Union led the companies to abandon the acquisition in January 2024, part of a trend affecting M&A deals last year.

iRobot didn't disclose that the proposed sale was unlikely to win approval from US and European antitrust regulators, given Amazon's already significant position in the market for robot vacuum cleaners, according to the complaint, originally filed in the District of New Jersey.

iRobot's stock-price woes allegedly began in June 2023, when news outlets reported that the European Commission was planning to launch a full-scale investigation into the merger. A series of additional disclosures led to further stock drops before Amazon and iRobot dropped the deal, the investors said.

The second version of the iRobot investors' complaint failed to show that the company and its executives misrepresented Amazon's cooperation with regulators, the status of the merger, and the risks of the regulatory approval process, Young said.

"Anemic" confidential witness accounts, allegations of executives' access to information, asserted financial motives, and other factors fall short of showing intent, or scienter, he said. "Weighing the competing theories here, the more compelling inference drawn from the facts alleged is that iRobot provided consistent updates of the Amazon/iRobot merger that ultimately failed as a result of regulatory resistance," he said.

"Alleging securities fraud is serious business, and the pleading process ought not be used as a trial balloon, with repeated bites at the apple ensuing at the motion to dismiss stage," Young said.

The lead investor cobbled together "a few vague news articles and four confidential witnesses, most of whom had sparse and facially incomplete information," the judge said.

A separate derivative suit over the same issues is pending before Young.

Pomerantz LLP was lead counsel for the investors. Skadden, Arps, Slate, Meagher & Flom LLP represented iRobot.

The case is Premca Extra Income Fund LP v. iRobot Corp. , 2025 BL 24797, D. Mass., No. 24-11158, 1/27/25 .

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Jan. 27, 2025, 12:00 PM PST; Updated: Jan. 27, 2025, 3:05 PM PST

Pilgrim's Pride to Pay Nearly \$42 Million to End Stock Suit (1)

By Martina Barash

Pilgrim's Pride Corp. has agreed to a \$41.5 million settlement with investors over claims that the poultry company's strong performance was attributable to illegal price-fixing, according to a federal court filing.

The proposed settlement is fair and merits preliminary approval, the investors told the US District Court for the District of Colorado Jan. 24.

- A series of news reports on price manipulation in the chicken industry took a toll on the company's stock price, the investors alleged
- The US Court of Appeals for the Tenth Circuit reinstated the case in 2023 after Judge R. Brooke Jackson dismissed it
- Pilgrim's Pride recently won final approval of a \$100 million class settlement with chicken farmers over a contentious wage suppression dispute also tied to cartel allegations

Kahn Swick & Foti LLC is lead counsel for the investors. Weil Gotshal & Manges LLP and Womble Bond Dickinson represent Pilgrim's Pride. Moore & Van Allen PLLC represents individual defendant William Lovette.

The case is In re Pilgrim's Pride Corp. Sec. Litig. , D. Colo., No. 1:16-cv-02611, motion 1/24/25 .

(Adds context in fourth and fifth paragraphs.)

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Chemical Maker Stock Plan Sale Lawsuit Moves Forward in Indiana

By Jacklyn Wille

- Stock plan purchase price was reduced after deal closed
- That doesn't bar claims based on initial deal, judge said

Former shareholders of SaverSystems must face a lawsuit saying workers were forced to overpay for stock in the specialty chemical manufacturer through an employee stock ownership plan transaction.

A 2023 agreement to reduce the purchase price by more than \$6 million doesn't eradicate claims that the original 2020 deal was unfair, Judge Matthew P. Brookman said in a Jan. 24 order. There's "no doubt" the parties intended to reduce the price through the 2023 agreement, but there's no factual indication the plaintiffs "intended to settle any ERISA cause of action springing from the original agreement," said Brookman, who sits in the US District Court for the Southern District of Indiana.

Brookman also forced the selling shareholders of SaverSystems, which is formally known as Meredith's Inc., to face claims that they knowingly participated in transactions prohibited by the Employee Retirement Income Security Act. The shareholders were aware that potential buyers had made offers that valued the company below the price reflected in the 2020 ESOP transaction, he said.

The lawsuit, filed by SaverSystems against the company's selling shareholders and the trustee of its ESOP, challenges a 2020 transaction in which the plan paid more than \$25 million for total ownership of all the company's outstanding stock. Subsequent agreements reduced the purchase price to about \$19 million, but the lawsuit says workers were nevertheless overcharged by more than \$7 million.

The selling shareholders sought to dismiss certain claims raised against them, saying the original purchase agreement included a clause placing limits on the type of relief that could be sought in court. Brookman, who allowed all claims to advance against all defendants, said it's not clear that the agreement includes the limiting language suggested by the defendants.

Taft Stettinius & Hollister LLP represents SaverSystems. Tucker Ellis LLP represents the selling shareholders. Lynch, Cox, Gilman & Goodman PSC represents the ESOP trustee.

The case is Meredith's Inc. v. Miller , S.D. Ind., No. 1:23-cv-01877, 1/24/25 .

Gerdau Ameristeel 401(k) Fee Complaint Lacks Details to Advance

By Jacklyn Wille

- Courts within 11th Cir. have unique ERISA exhaustion approach
- ERISA complaint must include allegations about internal claim

A complaint that says Gerdau Ameristeel US Inc. mismanaged its retirement plan must be dismissed because it doesn't demonstrate the internal review procedures were exhausted, a federal judge ruled, citing a requirement unique to her circuit.

The plaintiff said the exhaustion was documented in prior court filings and thus "incorporated by reference" into his amended complaint. But these details aren't included in the amended complaint itself, which is necessary for pleading a viable claim under the Employee Retirement Income Security Act, Judge Virginia M. Hernandez Covington of the US District Court for the Middle District of Florida said in a Jan. 25 order.

Workers seeking denied benefits from an ERISA plan typically must show they've exhausted their internal remedies before filing suit. But unlike other federal appeals courts, US Court of Appeals for the Eleventh Circuit—which has jurisdiction over federal courts in Alabama, Florida, and Georgia—also extends this exhaustion requirement to claims asserting statutory violations of ERISA, like the fiduciary breach claims Grant Molla brings against Gerdau.

Molla has two weeks to file an amended complaint fixing these deficiencies in order to keep the case alive, Covington said.

Unique Approach

The lawsuit says Gerdau mismanages its \$655 million 401(k) plan by overpaying for administrative services and allowing its plan recordkeeper to earn unfettered interest from plan assets. The plan's annual recordkeeping fees ballooned to more than \$150 per person for services that are worth less than \$20 per person, according to Molla.

Covington paused the case shortly after it was filed to give Molla a chance to exhaust the plan's internal remedies, and she reopened it a year later after the process was complete. In a 2024 order, she said the parties' "mutual agreement" that Molla had exhausted his internal remedies doesn't excuse him from pleading this fact in this complaint.

According to Covington, Molla's latest complaint includes the statement that he "has exhausted his administrative remedies." But this "conclusory statement" doesn't allow the court to determine that the exhaustion requirement has been met, the judge said.

Wenzel Fenton Cabassa PA and Morgan & Morgan PA represent Molla. Hill Ward Henderson represents Gerdau.

The case is *Molla v. Gerdau Ameristeel, US, Inc.*, 2025 BL 23697, M.D. Fla., No. 8:22-cv-02094, 1/25/25 .

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Feds, lawyers and insurers among critics of J&J's massive talc settlement

 setexasrecord.com/stories/669251259-feds-lawyers-and-insurers-among-critics-of-j-j-s-massive-talc-settlement

January 27, 2025

Asbestos

HOUSTON - Some insurers and personal injury lawyers have found themselves in a rare position - allied in court.

Objections to a multibillion-dollar settlement that would resolve ovarian cancer claims against Johnson & Johnson are being filed in Houston federal court, where a bankruptcy judge next month will hold a hearing on whether to approve the agreement.

Votes from actual claimants who say the Baby Powder they used contained asbestos will be key. Court records show 83% of more than 93,000 affected claimants support the plan, though some lawyers will be arguing voting defects inflated that number.

J&J is trying to pin all of its ovarian cancer liabilities on a spinoff called Red River in bankruptcy court with a \$9 billion trust, rather than fighting tens of thousands of claims in state courts around the country.

Last week came the time to file objections. The U.S. Department of Health and Human Services is one critic, worried about whether it will be repaid for health care services administered to claimants.

And several insurance companies doing business with J&J are hoping to make their voices heard. Allstate notes New Jersey litigation between J&J and its insurers over state law insurance coverage issues.

J&J says there it has rights to coverage under 12 policies issued by Northbrook Insurance, an Allstate subsidiary.

"The plan, if confirmed, would presumably impose the costs and payments under the plan to Allstate, despite the fact that those costs and payments would not be covered under the Allstate policies," attorneys for the company wrote.

"Allstate has a contractual right to participate in the defense and/or settlement of claims. That right is also grounded in principles of equity and public policy."

And, like J&J, Allstate says there is no evidence Baby Powder is causing these cancers. On that, plaintiffs lawyers disagree.

But a coalition of firms who want to be able to take their cases to court rather than submit claim forms to a bankruptcy trust, for now, has the same goal as the insurers: Blocking the plan.

The Coalition of Counsel for Justice for Talc Claimants filed 89 pages of gripes on Jan. 24, finding fault with nearly every aspect of the plan. It says the bankruptcy system can't be used like this, nonconsensual releases are not permissible and all claimants are treated equally no matter what type of cancer they allege.

A 75% approval rate is needed. Data shows that has been met, but the firm Beasley Allen, which has been vocal against the plan, says 11,000 votes were switched to yes unfairly. It, Golomb Legal of Philadelphia and Levin, Sedran & Berman of Philadelphia make up the coalition and believe they can do better for their clients in court.

"(D) depriving the talc claimants of the value of their claims would be a violation of due process, because their rights to fair, equitable and reasonable distribution of the debtor's assets would be denied," the coalition's lawyers wrote.

"(A) plan/trust which does not permit creditors to 'opt out' and return to the tort system for their jury trials may cause an unconstitutional impairment of the claimants' due process and jury trial rights.'

To avoid facing cases and trials around the country, J&J has sought to create spin-off companies that will absorb these liabilities and pay claimants through the bankruptcy system instead of various civil courts.

After two rejected attempts, J&J moved to Texas to try with a new company called Red River Talc. Critics complain it is unfair for J&J to move only a portion of its corporate assets into Red River and that the entirety of its worth should be up for grabs.

Baby Powder litigation exploded when Mark Lanier scored a \$4 billion-plus verdict in St. Louis, later reduced to \$2.1 billion and affirmed by the U.S. Supreme Court. It created a frenzy for clients that led to massive attorney advertising spending.

J&J has contended there was no asbestos in its talc, though plaintiffs have found highly paid experts willing to say otherwise. Trials become battles-of-the-experts, leading to split verdicts. One jury in Pittsburgh was so confused by the process it tried to hit J&J with \$22 million in punitive damages despite finding it wasn't liable for the plaintiff's illness.

ORGANIZATIONS IN THIS STORY

US health agencies sound warning on J&J talc bankruptcy

[reuters.com/legal/government/us-health-agencies-sound-warning-jj-talc-bankruptcy-2025-01-27](https://www.reuters.com/legal/government/us-health-agencies-sound-warning-jj-talc-bankruptcy-2025-01-27)

Dietrich Knauth

A bottle of Johnson & Johnson baby powder is seen in a photo illustration taken in New York, February 24, 2016. REUTERS/Mike Segar/Illustration Purchase Licensing Rights , opens new tab

- J&J is attempting to resolve tens of thousands of cancer lawsuits through a subsidiary's bankruptcy
- Health agencies say the proposal blocks them from seeking reimbursement for healthcare costs
- A different government agency has argued the bankruptcy should be dismissed outright

Jan 27 (Reuters) - Two U.S. federal health agencies have objected to Johnson & Johnson's \$10 billion proposed settlement of tens of thousands of ovarian cancer lawsuits, saying that resolving those cases in bankruptcy could impair the government's reimbursement rights.

The U.S. Departments of Veterans Affairs and Health & Human Services said in a Friday court filing that federal health programs, including Medicare and Medicaid, have the right to seek reimbursement from companies that caused injuries and insurers that could be responsible for paying for treatment.

The agencies' filing did not say how much federal health programs might be owed for providing medical coverage to patients who allege that J&J's baby powder or other talc products contained asbestos and caused them to develop ovarian cancer.

J&J's bankruptcy proposal is inconsistent in how it describes federal agencies' rights, sometimes saying they are "unimpaired" while emphasizing in other places that all of its talc-related liabilities would be extinguished through the bankruptcy of its subsidiary, Red River Talc, according to the two agencies.

"If the Plan does not affect the rights or interests of the United States or otherwise bind the United States, the Plan must make that clear," the agencies wrote.

J&J, which has denied allegations that its baby powder or other talc products contained asbestos and caused cancer, declined to comment on the agencies' objection on Monday.

The two agencies weighed in on the bankruptcy for the first time after Republican Donald Trump took office as President on Jan. 20, following earlier challenges by the federal government to the plan that were pursued by the U.S. Department of Justice's bankruptcy watchdog during Democratic former President Joe Biden's administration.

HHS and the VA said that their objection was meant to address the government's regulatory powers and reimbursement rights, not the "other ways in which the Plan is unlawful," which were covered by the DOJ's Office of the U.S. Trustee.

The U.S. Trustee, attorneys representing cancer victims and insurers also filed objections on Friday, which was a court deadline for opposing the company's bankruptcy plan. Cancer victims who oppose the bankruptcy said they should be allowed to resume their lawsuits instead of being forced to settle on J&J's terms.

J&J placed Red River Talc into bankruptcy on Sept. 20, 2024, after courts rejected two previous efforts to resolve the talc litigation through a subsidiary's bankruptcy. J&J is trying again in a different bankruptcy court, and it says that the third effort can succeed where the others faltered because it now has votes showing a broad level of support for its settlement proposal.

J&J faces more than 58,000 talc lawsuits in a consolidated federal court proceeding in New Jersey. The company's proposed bankruptcy settlement would end those lawsuits and prevent any similar lawsuits from being filed in the future.

J&J said its proposed settlement is supported by more than 80% of the people who have filed talc lawsuits, and that settling the lawsuits in bankruptcy is faster and more equitable than continuing to fight the lawsuits one at a time.

J&J will defend its bankruptcy plan in a multi-day February court hearing in Houston, Texas, where U.S. Bankruptcy Judge Christopher Lopez will consider competing demands to approve or reject the talc settlement.

The case is In Re: Red River Talc LLC, U.S. Bankruptcy Court for the Southern District of Texas, No. 24-90505

For Red River Talc: Greg Gordon of Jones Day

Read more:

J&J unit files for bankruptcy to advance \$10 billion talc settlement

The battle over J&J's bankruptcy plan to end talc lawsuits

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Reporting by Dietrich Knauth in New York

US judge in Facebook data privacy case rejects class action bid

 [reuters.com/legal/litigation/us-judge-facebook-data-privacy-case-rejects-class-action-bid-2025-01-27](https://www.reuters.com/legal/litigation/us-judge-facebook-data-privacy-case-rejects-class-action-bid-2025-01-27)

Mike Scarcella

By Mike Scarcella

January 28, 2025 8:09 AM PST Updated an hour ago

Printed Facebook logos are seen in this illustration taken February 15, 2022.

REUTERS/Dado Ruvic/Illustration Purchase Licensing Rights , opens new tab

Jan 27 (Reuters) - A federal judge in California has refused to allow millions of Facebook users to band together as a class in a lawsuit accusing the social media company of duping them about its privacy safeguards in order to maintain market dominance.

San Francisco-based U.S. District Judge James Donato on Friday rejected , opens new tab key evidence that the plaintiffs presented to justify certifying the case as a class action against Facebook parent Meta Platforms (META.O) , opens new tab.

The judge ruled that the consumers could not rely on an expert's findings that Meta would have paid its users \$5 a month for their personal data in a competitive market. The expert estimated nationwide damages of more than \$52 billion.

Meta had called , opens new tab the expert's analysis "junk science" and had urged Donato to bar the plaintiffs from using it. The company has denied any wrongdoing. In a statement, Meta welcomed Donato's ruling and said the company "faces fierce competition for the time and attention of people and businesses."

The consumers' lawyers did not immediately respond to a request for comment.

Granting class action status can place extra pressure on a corporate defendant to settle, especially in cases where a company faces claims of billions of dollars.

Donato is presiding over a consolidated lawsuit that was first filed in 2020.

The consumers told the court , opens new tab that Facebook users trusted the company's "abundant (and false) assertions that Facebook respects their privacy and gives users full control over what data it collects and who uses their data and how."

The consumer plaintiffs had asked Donato to certify a class of Facebook users between 2016 and 2020.

Meta in a court filing said the named plaintiffs in the lawsuit “found personalized value” and enjoyment in using Facebook, and did not base their decision to use the platform on alleged misstatements about its privacy protections.

The case is Maximilian Klein et al v. Meta Platforms, U.S. District Court, Northern District of California, No. 3:20-cv-08570-JD.

For plaintiffs: Shana Scarlett of Hagens Berman Sobol Shapiro and Kevin Teruya of Quinn Emanuel Urquhart & Sullivan

For Meta: Sonal Mehta, David Gringer and Ari Holtzblatt of Wilmer Cutler Pickering Hale and Dorr

Read more:

Meta names ex-Trump Justice Dept. lawyer to lead litigation strategy

Meta must face shuttered photo app’s antitrust lawsuit, US appeals court rules

Meta faces April trial in FTC case seeking to unwind Instagram merger

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Reporting by Mike Scarcella

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Ozempic Defendants Seek to Shave 'Tacked On' Claims From MDL Complaint

 [law.com/nationallawjournal/2025/01/27/ozempic-defendants-seek-to-shave-tacked-on-claims-from-mdl-complaint](https://www.law.com/nationallawjournal/2025/01/27/ozempic-defendants-seek-to-shave-tacked-on-claims-from-mdl-complaint)

Aleeza Furman

What You Need to Know

- Novo Nordisk and Eli Lilly have filed a motion to dismiss in the MDL over Ozempic and similar drugs.
- The defendants are asking the court to throw out 12 of the plaintiffs' 17 claims.
- The defendants are not yet challenging the plaintiffs' failure-to-warn claims.

Defendants in the multidistrict litigation over weight-loss drugs like Ozempic are asking the court to throw out plaintiffs' claims that the defendants deceived consumers and doctors about the safety of the medications.

In a memorandum accompanying a Jan. 24 motion to dismiss, drug makers Novo Nordisk and Eli Lilly contended that the majority of the plaintiffs' allegations were "extraneous to the core issues in the litigation, inadequately pleaded or plainly foreclosed."

Novo Nordisk and Eli Lilly's motion took aim at most of the counts asserted in the plaintiffs' master long-form complaint, however the defendants are saving their challenge to certain claims for later.

Plaintiffs in the MDL generally allege that drugs like Novo Nordisk's Ozempic and Eli Lilly's Mounjaro—called glucagon-like peptide-1 receptor agonists, or GLP-1 RAs—can cause stomach paralysis, intestinal obstruction and other gastrointestinal injuries.

The plaintiffs asserted 17 causes of action in their master complaint, beginning with two counts of failure to warn.

The defendants contended that those failure-to-warn claims are the main focus of the litigation but are not a target of their motion to dismiss. Right now, their sights are set on a dozen other claims they characterized as "tacked onto" the plaintiffs' master complaint.

Those 12 additional claims included counts of fraud and misrepresentation, breach of warranty, design defect and negligence. Many centered on allegations that Novo Nordisk and Eli Lilly's marketing materials misled consumers and their physicians about the safety and efficacy of the drugs.

However, the defendants argued that the plaintiffs' allegations were too vague to support their claims.

"Plaintiffs claim that Novo and Lilly deceived them or their physicians based on a compilation of unactionable marketing statements and irrelevant claims relating to advertising with prescribing physicians," the defendants asserted in their 51-page memorandum. "Plaintiffs fail to translate these broad allegations into viable causes of action for fraud or breach of warranty," they contended.

The defendants asked the court to dismiss the 12 claims, as well as the plaintiffs demand for medical monitoring damages.

Attorneys serving as plaintiffs co-lead counsel asserted in a joint statement that the defendants' motion should be denied.

"Novo Nordisk and Eli Lilly misrepresented the severe health risks of GLP-1 medications to doctors and patients despite receiving evidence from both clinical research and patient reports that these drugs can cause life-altering gastrointestinal conditions," co-leads Paul Pennock of Morgan & Morgan, Parvin Aminolroaya of Seeger Weiss, Jonathan Orent of Motley Rice, and Sarah Ruane of Wagstaff & Cartmell alleged. "We look forward to responding to the defendants' motion and demonstrating why their arguments lack merit and ultimately, obtaining justice for our clients."

Spokespeople for Novo Nordisk—represented by DLA Piper—and Eli Lilly—represented by Welsh & Recker and Kirkland & Ellis—did not immediately respond to requests for comment.

The defendants wrote in their memo that they intend to address the plaintiffs' failure-to-warn claims in later motions dealing with cross-cutting issues of preemption, adequacy of the warnings, and general causation.

According to the latest case-count report from the Judicial Panel of Multidistrict Litigation, there are more than 1,330 cases pending in the GLP-1 RAs MDL, which is coordinated before U.S. District Judge Karen Marston of the Eastern District of Pennsylvania. Plaintiffs attorneys have said they expect the litigation to grow to at least 10,000 lawsuits.

Read the Defendants' Memorandum:

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Nevada Supreme Court rejects Uber bid to cap lawyer fees

[reuters.com/legal/government/nevada-supreme-court-rejects-uber-bid-cap-lawyer-fees-2025-01-27](https://www.reuters.com/legal/government/nevada-supreme-court-rejects-uber-bid-cap-lawyer-fees-2025-01-27)

David Thomas

The Logo of taxi company Uber is seen on the roof of a private hire taxi in Liverpool, Britain, April 15, 2019. REUTERS/Phil Noble/File photo Purchase Licensing Rights [↗](#), opens new tab

Jan 27 (Reuters) - Nevada's highest court on Monday rejected efforts by ride-hailing giant Uber Technologies (UBER.N) [↗](#), opens new tab to cap the contingency fees lawyers can earn in civil lawsuits to 20% of the amount their clients' recover.

The Nevada Supreme Court unanimously ruled [↗](#), opens new tab that a proposed statewide ballot initiative from Uber and Nevadans for Fair Recovery contained language that was "misleading and confusing."

It was unclear, for instance, whether contingency fees for lawyers working on medical malpractice cases or on behalf of the state of Nevada would also be capped, the court said.

Opponents of Uber's proposed initiative, including a group of Uber riders who allege they were sexually assaulted by their drivers, praised the high court's ruling.

"We're thrilled that the Nevada Supreme Court has unanimously rejected Uber's cynical scheme to sidestep accountability for the countless sexual assault cases and other harms it has enabled under its watch," Deepak Gupta of Gupta Wessler, who represented the initiative's opponents, said in a statement.

"Today's verdict is not the end of our efforts," Nevadans for Fair Recovery said in a statement. "We plan to pursue an aggressive campaign to educate voters about how billboard attorneys have rigged the system to put their interests over Nevadans."

A spokesperson for Uber did not immediately respond to a request for comment. Uber has denied wrongdoing in sexual assault and harassment litigation and said it has taken steps to safeguard passengers.

The ballot initiative would have amended Nevada law, and would have gone into effect in 2027. Had the Nevada Supreme Court signed off on the proposed language, it would have gone to the state legislature for a vote.

Opponents sued to block the ballot initiative last year, asserting that it was misleading because it does not inform prospective petition signers of potential effects of the fee cap, like making it harder for plaintiffs to find lawyers to handle their cases. But a Nevada district rejected those arguments in May, finding them "too speculative and hypothetical."

Nevada's proposed fee cap would have been the most restrictive in the country, opponents said. Oklahoma and Michigan impose fee caps in all civil cases but the limits are 50% and 33%, respectively. Several other states cap contingency fees in medical malpractice cases, but the lowest limit is New York's 30% cap.

The case is *Uber Sexual Assault Survivors for Legal Accountability, v. Uber Technologies Inc.*, Nevada Supreme Court, No. 88813

For Uber Sexual Assault Survivors for Legal Accountability and Nevada Justice Association:
Deepak Gupta of Gupta Wessler

For Uber Technologies and Nevadans for Fair Recovery: Daniel Bravo of Bravo Schrager

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Reporting by David Thomas

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Thomson Reuters

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Class Action

Jan. 28, 2025, 10:11 AM PST

Amazon Can't Block State Biometric Suit After Federal Court Win

By Christopher Brown

- Enjoining state suit improper after dismissal on standing
- Final decision in federal court needed for preclusion to apply

Plaintiffs whose biometric privacy claims against Amazon Web Services LLC were dismissed from federal court can bring similar claims against the company in Illinois state court, a federal judge ruled.

Amazon's attempt to block the state-court lawsuit failed because the company wasn't able to show that the issues decided by the US District Court for the District of Delaware were the same as those presented in the Illinois state court suit, Judge Stephanos Bibas, sitting by designation from the US Court of Appeals for the Third Circuit, said Monday.

The company also failed to show that the parties to the lawsuits were the same, or that equitable considerations favored enjoining the state lawsuit, Bibas said for the District of Delaware.

Christine McGoveran and several other plaintiffs alleged in their second amended complaint that Amazon violated the Illinois Biometric Information Privacy Act by collecting consumers' voice data without their knowledge or consent when they called John Hancock, a Massachusetts-based financial services company that was an Amazon client.

They brought claims under BIPA's informed-consent, illegal-use, public-notice, and illegal-disclosure provisions. Bibas dismissed the illegal-disclosure claim in an October 2024 ruling, and the remaining claims in a separate ruling two weeks later.

Amazon then filed a motion to enjoin a state-court suit filed by three of the plaintiffs from the federal lawsuit—McGoveran, Amelia Rodriguez, and Joseph Valentine—bringing claims against Amazon under three of the statute's provisions.

The company argued that the claims should be enjoined because Bibas had already ruled on them, but Bibas said the dismissals weren't enough to overcome the presumption against enjoining a state court.

For preclusion to apply under the Anti-Injunction Act, the federal court must have rendered a final judgment on the issues being presented in state court, he said.

Because Bibas dismissed the claims for lack of Article III standing rather than on the merits, that condition wasn't met, he said.

Amazon's suggestion that an injunction was proper because the plaintiffs lied to the state court and engaged in forum shopping also failed, Bibas said.

The company is free to press that argument in state court, which is as “well qualified as a federal court to protect a litigant by the doctrines of res judicata and collateral estoppel,” he said.

Schlichter Bogard LLC and Jacobs & Crumplar PA represent the plaintiffs. Morgan Lewis & Bockius LLP represents Amazon.

The case is McGoveran v. Amazon Web Servs. LLC , D. Del., No. 1:20-cv-01399, 1/27/25 .

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Bill Would Allow Californians to Sue Big Oil for Climate-Linked Wildfires, Floods

[law.com/nationallawjournal/2025/01/27/bill-would-allow-californians-to-sue-big-oil-for-climate-linked-wildfires-floods](https://www.law.com/nationallawjournal/2025/01/27/bill-would-allow-californians-to-sue-big-oil-for-climate-linked-wildfires-floods)

Cheryl Miller

California legislation introduced Monday would give victims of natural disasters a private right of action to sue oil and gas companies for related climate change damages, a legal avenue that the bill's author said is needed following the devastating Los Angeles fires.

SB 222 by Sen. Scott Wiener, D-San Francisco, would also create a direct cause of action for insurers to recover their coverage payouts from fossil fuel producers. Additionally, the bill calls on the administrators of California's insurance-of-last-resort program, the FAIR plan, to sue Big Oil for claims payments submitted by customers if an expert determines the benefits of such litigation would outweigh the costs.

Oil and gas companies have "endless resources," Wiener said at a Capitol press conference Monday.

"Profits continue to just spiral and spiral into the stratosphere, and then we are left holding the bag in terms of paying for these disasters," he added. "SB 222 will ensure that the fossil fuel industry is part of the solution."

The legislation, if successful, would appear to be the first nationally giving individuals and insurers a pathway to link oil companies to damages caused by severe fires, floods and windstorms.

In a statement, Catherine Reheis-Boyd, president and CEO of the Western States Petroleum Association, called the bill an attempt to "scapegoat our industry" for political gain.

"We need real solutions to help victims in the wake of this tragedy, not theatrics," Reheis-Boyd said.

Wiener's office had not made the bill's language public by Monday afternoon. But a bill supporter who reviewed a draft said the measure would give standing to sue to any Californian who suffers more than \$10,000 in losses in a weather event that can be tied to climate change.

Although an individual may pursue such a claim now, "we need the state to say that there is a proximate cause. Otherwise you're just in the weeds," said Jamie Court, president of Consumer Watchdog.

States—including California—cities, counties, land trusts and tribes have sued fossil fuel-producing companies for environmental impacts in the United States, according to a litigation database compiled by Columbia Law School's Sabin Center for Climate Change Law. Citizens of Peru and Indonesia have sued, too, in foreign forums.

But no such suits appear to have been filed by individuals seeking recovery for personal damages in the United States, said Michael Burger, executive director of the Sabin Center.

"There's a lot in this [legislation] that would be a first," he said.

Recently, the Montana Supreme Court ruled in favor of 16 children who sued the state for violating their constitutional right to a "clean and healthful environment" by not curbing greenhouse gas emissions.

"In the context of standing, we've had courts affirm that climate science is sufficient to establish a causal relationship" between fossil fuels and environmental impacts, Burger said, "but not in the context of damages."

Wiener said his bill will face stiff headwinds in the Legislature. Oil companies and their trade groups are frequently among the top spenders on lobbying state lawmakers.

"We're ready for the fight, and I look forward to the conversation ahead," Wiener said.

The Consumer Attorneys of California is supporting the bill, although the plaintiffs bar group is not a sponsor. Rex Frazier, president of the Personal Insurance Federation of California, said he had not seen the bill yet and had no immediate comment.

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California faces wave of climate litigation over emission rules

DJ [dailyjournal.com/articles/383049-california-faces-wave-of-climate-litigation-over-emission-rules](https://www.dailyjournal.com/articles/383049-california-faces-wave-of-climate-litigation-over-emission-rules)

Environmental & Energy

Jan. 27, 2025

California's withdrawal of a contested emissions waiver for clean truck rules highlights a strategic retreat to navigate ongoing legal challenges. Experts anticipate a surge in climate litigation, with the state's zero-emission vehicle mandates and other clean air regulations at the center of political and legal disputes.



California is going to fight "a huge mess of litigation" over greenhouse gas emissions, according to one attorney involved -- even after the state withdrew one of its most-challenged waiver requests just before President Donald Trump took office.

The day after Trump's inauguration, the California Department of Justice conceded in a court filing the state failed to obtain a federal waiver for new rules for long haul trucks before President Joe Biden left office. Meanwhile, one of the lead attorneys who challenged the Advanced Clean Fleet rules left his job on Friday, possibly to take a job in the Trump administration.

The California Air Resources Board withdrew its waiver requests on portions of these rules on Jan. 13, including one relating to "high priority fleets." These would have codified rules requiring all new freight trucks operating in the state be EVs, specifically applying these to companies with 50 or more trucks or \$50 million in annual revenue. It also applied to locomotives and short-run ferry services.

"They kind of had to," David Pettit, senior attorney in the Climate Law Institute at the Center for Biological Diversity.

Pettit said the states capitulation on the trucking rules was not just designed to focus on the "mess" of other cases over emissions waivers. It was also designed to preserve the state's ability to seek a similar waiver in the future under a friendlier future administration and avoid

an outright rejection of the request.

The U.S. Environmental Protection Agency closed its file on the truck rules waiver on Jan. 14, earning praise from Nebraska Attorney General Mike Hilgers.

"California does not have the legal authority to force the rest of the country to transition to electric trucks," Hilgers said in a news release.

This argument appears to have helped sway the agency, Pettit said. He added he heard people within the EPA had concerns about the major questions doctrine and the argument California was trying to set rules that would affect the entire country.

Being turned down for a waiver does not completely stop a state from seeking a similar waiver in the future. But in this instance, Pettit said, President Joe Biden's administration had already sat on the request for months and indicated they were not likely to approve it.

"If we get a Democratic administration and it gets granted, then there's the inevitable litigation," Pettit said. "One thing the petitioners in that litigation would say is, 'Four years ago a Democratic administration denied this waiver. Nothing has changed, so you should look with skepticism on what this administration is doing because the last Democratic administration turned it down.'"

On Wednesday, U.S. District Court Judge Troy L. Nunley signed a stipulation between the parties. *Specialty Equipment Market Association & Performance Racing, Inc. v. California Air Resources Board*, 2:24-cv-02771-TLN-AC (E.D. Cal., filed Oct. 8, 2024).

"CARB had requested that the United States Environmental Protection Agency (EPA) waive Clean Air Act preemption for parts of ACF but has since withdrawn that request," the stipulation stated. "The parties are discussing the implications of the withdrawn waiver request for this litigation and believe it would be more efficient to continue those conversations than to proceed immediately with Defendants' responses to the Complaint and possible briefing on one or more motions to dismiss."

Pettit said he was skeptical busy courts would want to continue to litigate the trucking rules when there is no present conflict. But several other waivers remain. On Dec. 18, the EPA granted a waiver for the state's Advanced Clean Cars II rule, which would require all passenger cars sold in the state to have zero emissions by 2035. It also granted a waiver for the Heavy-Duty Omnibus regulation, setting rules for testing exhaust from large vehicles.

Joel D. Eagle, a partner in the environmental and automotive practices of Thompson Hine LLP in Cleveland, noted the California Air Resources Board also withdrew three other waiver requests, relating to locomotives, ships, and portable refrigeration units. But the clean truck

rules were by far the most important. He added that this is why they faced four legal challenges, even before the onslaught of litigation likely to be filed by the Trump administration.

"Even if the EPA granted the preemption waiver, there was a possibility that the lawsuits would proceed and a negative ruling was something that they may not have wanted," Eagle said.

Eagle added that the biggest battle is likely to be over the current version of California's Clean Car rules. Trump revoked the prior version during his first term, but Biden reinstated that waiver.

"There's a very real possibility and a growing concern that the new Trump administration will do what the first Trump administration did," he said.

On Friday, California Attorney General Rob Bonta led a coalition of 15 states filing an amicus curiae brief in the 6th Circuit Court of Appeals in support of the National Highway Traffic Safety Association fuel-economy standards for passenger cars, light trucks and heavy-duty trucks. *In re: National Highway Traffic Safety Association*, 24-7001 (6th Cir., filed July 18, 2024).

"Republican-led states and oil industry groups are not only challenging these federal fuel-economy standards but also using their lawsuit to attack California's unrelated zero-emission vehicle (ZEV) standards," Bonta's office said in a news release. "The amicus brief explains why that attack on state-law emission standards -- designed to reduce smog-forming and planet-warming air pollution -- has no place in a challenge to federal-law fuel efficiency standards."

On Thursday, Nebraska Solicitor General Eric J. Hamilton filed a motion to withdraw as an attorney in another multistate challenge to California's clean truck rules. He wrote that he "will depart the Office of the Nebraska Attorney General on January 24, 2025." *State of Nebraska v. Cliff*, 2:24-cv-01364-TLN-CKD (E.D. Cal., filed May 13, 2024).

During the first Trump administration, Hamilton was associate counsel to the president in the Office of White House Counsel. In that role, he played a minor role in Trump's efforts to delay certification of the 2020 presidential election. Nine days after that election, Hamilton was the recipient of a federal General Services Administration memorandum on the agency's "post elect activities" that was released through a Freedom of Information Act request but entirely redacted.

The Nebraska Attorney General's office did not respond to an email asking if Hamilton was joining the Trump administration. As solicitor general, Hamilton argued major cases over minimum wage standards for federal contractors and cases on abortion, transgender

procedures for minors and voting rights for felons before the Nebraska Supreme Court.

#383049

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Trump's hiring freeze leaves thousands of law students out in the cold

[reuters.com/legal/government/trumps-hiring-freeze-leaves-thousands-law-students-out-cold-2025-01-27](https://www.reuters.com/legal/government/trumps-hiring-freeze-leaves-thousands-law-students-out-cold-2025-01-27)

Karen Sloan

Graduates from the Uniformed Services University of the Health Sciences (USUHS) sit at the Lincoln Memorial looking toward the Washington Monument in Washington, D.C., U.S., May 14, 2021. REUTERS/Andrew Kelly/File photo Purchase Licensing Rights , opens new tab

Jan 27 (Reuters) - A widespread federal government hiring freeze imposed by President Donald Trump last week has upended the job market for a wide swath of law students interested in government careers.

The U.S. Department of Justice and other federal agencies revoked permanent job offers to dozens of third-year law students hired through their prestigious and competitive honors programs in recent days and agencies have canceled summer internship programs, eliminating opportunities for hundreds more. Federal agencies have also pulled out of law student recruiting events and removed legal job postings from their websites.

The move has disrupted career plans for law students with permanent jobs lined up in federal agencies and those hoping to land summer internships to bolster their resume. More than 2,000 jobs and summer internships are canceled or on hold.

"This basically means no federal government opportunities are going to be available, unless they reverse course, which seems unlikely," said Carl Tobias, a professor at the University of Richmond School of Law, which has at least three students whose job or internship offers at federal employers have been revoked in recent days. "It's broader than just the DOJ."

Trump's 90-day hiring freeze among executive branch-agencies does not impact judicial clerkships with federal judges, which are funded separately and typically employ about 1,200 recent law grads annually.

The White House did not immediately respond to a request for comment on Monday about the hiring freeze and its impact on federal agency lawyers.

Many of the federal agencies slated to participate in a virtual networking and recruiting program jointly sponsored by Georgetown and George Washington University's law schools pulled out in the days and hours before the Jan. 24 event, said Suzanne Hard, associate dean for professional development and career strategy at George Washington Law. More than a dozen of the school's students had federal job or summer internships canceled, she said.

Hard said the Justice Department, the Internal Revenue Service, the U.S. Department of Housing and Urban Development, the Consumer Financial Protection Bureau, and the Environmental Protection Agency are among the federal agencies that canceled their planned participation in Friday's recruiting event.

The full impact of the federal hiring freeze on law students is still coming into focus. The Justice Department—the single largest employer of law students and law graduates within the federal government—has rescinded permanent job offers to third-year law students set to join the agency through its honors program, as have other federal agencies with smaller honors programs including the IRS.

A total of 252 law grads landed honors program positions in 2023, according to the National Association for Law Placement, suggesting that more than 200 current third-year law students have likely lost their accepted job offers. Another 702 recent law grads took non-honors program positions within the federal government that year.

The hiring freeze also impacts hundreds of summer internship positions. The Justice Department has rescinded offers to law students accepted into its paid summer internship program, according to career services officers at several law schools, and canceled its volunteer legal internship program—which typically places about 1,800 law students in summer jobs throughout Justice Department divisions and in U.S. Attorneys' Offices.

Monday, the Justice Department's web page for volunteer law student summer internships did not list any available opportunities. A Justice Department spokesperson did not respond to a request for comment on the status of the agency's internship programs.

The cancellation of the summer internships, which often pave the way to full-time government work or clerkships with federal judges, is a "real concern," said Lois Casaleggi, associate dean of career services at the University of Chicago Law School.

"Federal agencies are losing their pipeline of students who want those opportunities, and the students are losing an opportunity to gain experience," she said.

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Reporting by Karen Sloan

Karen Sloan
Thomson Reuters

Karen Sloan reports on law firms, law schools, and the business of law. Reach her at karen.sloan@thomsonreuters.com

[Securities Law](#)

Jan. 28, 2025, 9:57AM PST

Trump Administration Sued by Nonprofits Over US Grants Halt (1)

By Zoe Tillman

-
- **Coalition of groups asks federal court to block OMB action**
 - **Memo calls for pause of disbursement of financial assistance**

The Trump administration is facing a lawsuit over a new plan to pause a wide range of payments of federal grants, loans and assistance, a move that could affect the flow of billions of dollars across the country.

A coalition of nonprofits filed a case in federal court in Washington on Tuesday seeking to immediately block the US Office of Management and Budget from carrying out the directives issued on Monday by President Donald Trump's acting budget director.

The challengers argue the [memo](#) not only fails to cite legal authority for the move, but also targets recipients of federal money based on their viewpoints in violation of the US Constitution. The freeze is set to take effect later on Tuesday, so the nonprofits, represented by Democracy Forward Foundation, are asking a judge to swiftly consider a temporary restraining order.

Enacting the freeze will "have a devastating impact on hundreds of thousands of grant recipients" who depend on grant money "to fulfill their missions, pay their employees, pay their rent – and, indeed, improve the day-to-day lives of the many people they work so hard to serve," according to the complaint.

An OMB spokesperson did not immediately respond to a request for comment.

The memo was written by Trump's acting budget director Matthew Vaeth and was reported by media outlets Monday.

It requires agencies to "temporarily pause all activities related to obligation or disbursement of all federal financial assistance, and other relevant agency activities that may be implicated by the executive orders, including, but not limited to, financial assistance for foreign aid, nongovernmental organizations, DEI, woke gender ideology, and the green new deal."

It won't apply to federal assistance payments that are "received directly by individuals," such as Medicare or Social Security benefits.

The memo directs agencies to give reports by Feb. 10 to the budget office on programs and projects that receive federal money affected by the pause. The nonprofits argue that even a short halt in the flow of money “could deprive people and communities of their life-saving services,” including medical and mental health care, food assistance and support for people escaping domestic violence.

More legal challenges are expected. Earlier on Monday, Connecticut’s Democratic Attorney General William Tong released a statement saying that he and his blue-state colleagues “are preparing imminent legal action to protect our states.”

(Updates with more from lawsuit.)

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Elizabeth Wasserman, Steve Stroth

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LinkedIn Suit Says Millions of Profiles Scraped by Singapore Firm's Fake Accounts

 [law.com/therecorder/2025/01/27/linkedin-suit-says-millions-of-profiles-scraped-by-singapore-firms-fake-accounts](https://www.law.com/therecorder/2025/01/27/linkedin-suit-says-millions-of-profiles-scraped-by-singapore-firms-fake-accounts)

Michelle Morgante

What You Need to Know

- LinkedIn is seeking a permanent injunction to block Nubela and Proxycurl from its site.
- Products sold by the defendants are based on data scraped from LinkedIn, the suit says.
- LinkedIn alleges breach of contract, fraud and violation of its registered marks.

Details from millions of profiles on LinkedIn have been scraped by a Singapore company that creates fake accounts to access non-public information faster than the networking site can remove them, according to a new lawsuit filed in San Francisco.

The complaint filed Friday in the U.S. District Court for the Northern District of California alleges Nubela, its Wyoming-based subsidiary Proxycurl and company executives Steven Goh and Bach Le have operated a “vast network of continuously-created fake accounts” to scrape member data from LinkedIn, “registering hundreds if not thousands of new accounts per day.”

The complaint was surfaced by [Law.com Radar](#).

The fake accounts, which allow the defendants to access information behind LinkedIn's password wall, erode the trust users have in the site and undermine the privacy of its members and the control they have over their information, the suit said.

“Defendants then sell the data that they scrape,” it said. “Proxycurl sells over two dozen fields of LinkedIn member data, including members’ names, locations, industries, work experience, education, languages, awards, membership, and certifications. In their efforts to exploit LinkedIn member data for profit, Defendants have scraped millions of members’ profiles.”

The data scraped by the defendants “can end up in any number of databases,” including those used by scammers.

The suit, filed by LinkedIn attorney Nicholas Fram of Munger, Tolles & Olson, seeks a permanent injunction to restrain the defendants from accessing LinkedIn's website or systems, extracting its data or using the company's registered marks. It alleges breach of

contract; fraud and deceit; breach of the Computer Fraud and Abuse Act; dilution by tarnishment; fraudulent business practices and misappropriation.

Messages sent to Nubela and Proxycurl were not immediately answered. Counsel for the defense has yet to appear.

LinkedIn, in response to a request for comment, referred The Recorder to [a post](#) by Sarah Wight, who leads the litigation, competition and enforcement legal teams at LinkedIn.

The defendants' actions, Wight said, "directly violate our User Agreement, and when necessary, we take legal actions as part of our commitment to preserve the integrity of our platform and keep control of member data where it belongs—in members' hands. We are always working to advance our legal and technical anti-abuse efforts, and we'll continue to update you on our work to keep members safe."

The case was assigned to Magistrate Judge Peter Kang.

U.S. Magistrate Judge Peter Kang.
Courtesy photo

LinkedIn alleges that marketing materials used by the defendants "brag that they can 'scrape 1 million LinkedIn profiles in a day.'" It also pointed to a [Proxycurl site](#) that, as of Monday, boasted of a database containing "494,319,326" LinkedIn profiles. It also said the defendants have published materials containing LinkedIn's registered logos, perpetuating the false perception of a relationship among the companies and tarnishing the company's registered marks.

LinkedIn, based in Sunnyvale, California, and owned by Microsoft, said the global network has more than one billion members in more than 200 countries and territories.

Members are able to customize their profile settings to control how much of their information, if any, can be seen by the public or by registered LinkedIn users.

LinkedIn said it has invested considerable time and effort to remove fake accounts but alleges the defendants use automated tools to create thousands of dummy email addresses through shell domains, which they use to create fake accounts "likely in an automated way, evading LinkedIn's technical defenses in the process."

The fake accounts allegedly use false names and stock images as profile photos and can each scrape dozens of LinkedIn profiles before they are detected and restricted.

"It does not appear that defendants' fake accounts appeal for reinstatement after LinkedIn restricts them, underscoring that they do not belong to real people," it said.

The defendants, according to the complaint, use the scraped data to support three products: Proxycurl APIs that scrape LinkedIn data and feed their LinkDB product; LinkDB, a database advertised as containing hundreds of millions of scraped LinkedIn profiles; and Sapiengraph, which provides a web app, a Google sheet plugin that imports scraped LinkedIn data and a Chrome web-browser extension that offers a scraping-powered “Job Change Monitor.”

The complaint pointed to [Proxycurl's website](#) to note the defendants “openly acknowledge that data scraping can cause substantial harm to website owners ‘because scrapers are infringing on copyrights and trademarks, or because they slow down the servers, negatively impacting their revenue streams.’”

This action was surfaced by Law.com Radar, which delivers artificial intelligence-enhanced case summaries and daily case reports from more than 2,200 state and federal courts. [Click here](#) to get started and be among the first to act on opportunities in your region, practice area or client sector.

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January 24, 2025

Key Updates for Annual Reports on Form 10-K for Public Companies

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Mehrnaz Jalali and Seth Popick and Rana Ozer

(l-r) Merhnaz Jalali, Rana Ozer and Seth Popick of Cozen O'Connor. Courtesy photos

Expert Opinion

The annual reporting season for calendar year-end companies is in full swing and public companies should consider several new requirements and developments in preparing their annual reports on Form 10-K for fiscal year 2024.

January 28, 2025 at 01:00 PM

The annual reporting season for calendar year-end companies is in full swing and public companies should consider several new requirements and developments in preparing their annual reports on Form 10-K for fiscal year 2024, which are summarized below.

New Insider Trading Policy Disclosures

Beginning with the Form 10-K for fiscal year 2024, companies must comply with new insider trading policy disclosure requirements under Item 408(b) of Regulation S-K. Specifically, companies must disclose, using Inline XBRL, whether they have adopted insider trading policies and procedures governing the purchase, sale, and/or other dispositions of the company's securities by directors, officers, employees, or the company itself, that are reasonably designed to promote compliance with insider trading laws and listing standards. If adopted, companies must provide a description of such trading policies and procedures. If no such policies are adopted, companies must explain why. The insider trading policy disclosure under Item 408(b) must be included in the Form 10-K (or incorporated by reference to the proxy statement) and in the proxy statement. In addition, for the first time, insider trading policies and procedures must also be filed as an exhibit to the Form 10-K.

New Option Grants Disclosures

Beginning with the Form 10-K for fiscal year 2024, companies must comply with new disclosure requirements relating to grants of options or option-like awards made close in time to a company's release of material nonpublic information (MNPI) under Item 402(x) of Regulation S-K. Companies must disclose, using Inline XBRL:

(1) Their policies and practices regarding the timing of options or option-like awards, including: how the board determines when to grant such awards; whether the board takes MNPI into account when determining the timing; and the terms of an award and whether the company has timed the disclosure of MNPI for the purpose of affecting the value of executive compensation.

(2) Only if during the last fiscal year, options or option-like awards were awarded to named executive officers within the window starting four business days before the filing of a periodic report on Form 10-Q or Form 10-K or the filing or furnishing of a Form 8-K that discloses MNPI and ending one business day after the filing or furnishing of such report, in tabular format, the following with respect to each such grant:

- The name of the named executive officer.
- The grant date of the award.
- The number of securities underlying the award.
- The per-share exercise price of the award.
- The grant date fair value of the award.
- The percentage change in the closing market price of the underlying securities between the trading day ending immediately prior to and the trading day beginning immediately following the disclosure of MNPI.

While the new rules only apply to options or option-like awards, based on early filings, some companies who do not grant these types of awards, in addition to stating that options or option-like awards are not granted, are also electing to provide expanded disclosure around their equity grant policies in general.

Cybersecurity Disclosures

Starting with the Form 10-K for the 2023 fiscal year, companies began including disclosures in their Form 10-K in response to new Item 106 of Regulation S-K which requires companies to provide comprehensive disclosures in their annual reports regarding their cybersecurity risk management, strategy, and governance. The Securities and Exchange Commission (SEC) issued comment letters in 2024 that emphasize companies should carefully consider the disclosure requirements of the rule. Beginning with the Form 10-K for the 2024 fiscal year, the cybersecurity disclosure should also be tagged in Inline XBRL.

Artificial Intelligence (AI) Disclosures

As covered in detail in our October 2024 article in this publication, given the SEC's focus on AI disclosures, companies should consider materiality of AI in their business and appropriate disclosures in their Form 10-K around AI. Disclosure areas to consider are the business,

management's discussion and analysis and risk factor sections.

Legal Proceedings Disclosure

Under Item 103 of Regulation S-K, companies must disclose material pending or active legal proceedings the company or its subsidiaries is a party or of which any of their property is the subject, in their periodic reports, excluding routine litigation. Disclosures should include details such as the court or agency the proceedings are pending, the date instituted, principal parties, a description of the factual basis alleged to underlie the proceedings, and the relief sought. Companies commonly also include risk factors addressing potential adverse effects of such proceedings, future litigation or other proceedings.

A 2022 class action against a company in the U.S. District Court of Massachusetts highlights risks of inadequate disclosures in periodic reports. The lawsuit alleged that the company failed to report a \$2 billion judgment for trade secret misappropriation (the Virginia Action) and falsely reassured its investors by describing the claims as "without merit" in its Form 10-K. The court denied the company's motion to dismiss in 2023, finding that its reassurances were misleading. Although the Virginia Action's judgment was overturned in 2024, the securities fraud litigation serves as a warning against using boilerplate language to downplay legal risks, especially when adverse outcomes are possible.

Management's Discussion and Analysis (MD&A) Enhancements

The MD&A section is intended provide material information for assessing a company's financial condition and operational results. It focuses on material events and uncertainties known to management that may affect current or future operations.

In 2024, the SEC staff emphasized the following in its comment letters:

- Results of Operations: Companies must specify and quantify the impact of each positive or negative factor that had a material effect on their results of operations.
- Key Performance Indicators (KPIs): In presenting KPIs, companies must specify and quantify the impact of each positive or negative factor that had a material impact on their results of operations, as well as consider the use of KPIs in earnings materials relative to the presentation in the MD&A.
- Liquidity and Capital Resources: Enhanced explanations of cash flow drivers, trends, and uncertainties related to meeting future cash requirements are needed.
- Critical Accounting Estimates: Disclosures must be robust, providing analysis beyond duplicating financial statement footnotes.

- **Known Trends or Uncertainties:** Companies must address macroeconomic factors like inflation, interest rates, and supply chain issues, explaining their impacts and companies' responses to those impacts.

In light of these comments, companies should continue to assess their MD&A disclosure to ensure that they are supplementing investors' understanding of the company's results of operations, liquidity and capital resources, as well as management's view of known trends or uncertainties as the macroeconomic environment and the company's environment evolve.

Non-GAAP Disclosures

The SEC continues to focus on non-GAAP disclosures and issued comment letters in 2024. For example, the comments have addressed:

- Adjustments to non-GAAP measures that remove or exclude cash operating expenses that the SEC views as "normal" or "recurring" in the operation of a company's business, and in the SEC's view, presented a misleading measure;
- Non-GAAP adjustments related to frequent restructuring and acquisition-related costs, where the SEC's comments have asked companies to detail the facts and circumstances supporting an adjustment for what could be a recurring cost and to explain and quantify the components of these adjustments;
- Presenting a full non-GAAP income statement as a form of reconciliation because such presentation gives the non-GAAP information undue prominence; and
- Whether certain KPIs are in fact non-GAAP measures and to request that companies present the most directly comparable GAAP financial measure with equal or greater prominence relative to the non-GAAP measure.

Companies should consider their use of non-GAAP measures in their Form 10-K or earnings materials in light of these comment letters.

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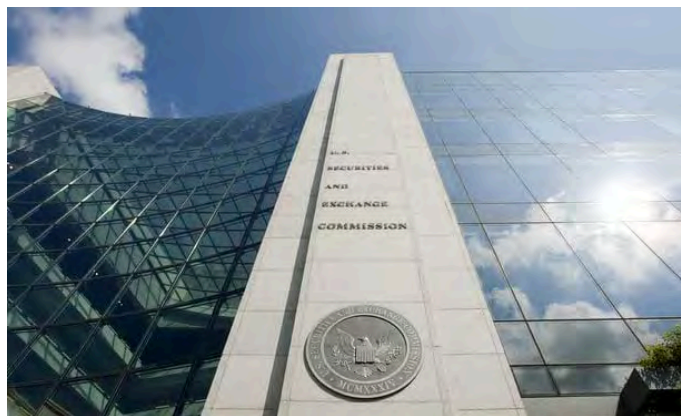
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December 27, 2024

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By Terry Weiss and Alek Smolij

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Securities Law

Jan. 28, 2025, 9:43 AM PST

Matt Levine's Money Stuff: DeepSeek Disruption Has Its Upside

By Matt Levine
Opinion

DeepSeek

The nice thing about building an artificial intelligence model out of a quantitative hedge fund is that there are interesting ways to monetize it. A standalone AI company will probably think of ideas like “sell subscriptions to an AI chatbot” or “sell access to an application programming interface,” but with a hedge fund you can be more creative. A naïve approach might be: “We will ask our AI chatbot what stocks to buy, and buy them,” but that is probably wrong. For one thing, your chatbot is probably bad at picking stocks. Also your hedge fund probably has its own AI stock-picking models that are better. Also, if you do release your AI model to the public – if you open-source it! – then everyone else can use it to pick stocks too, so this doesn’t give you any real advantage.

There is, however, a much funnier approach. The approach is:

1. Build a good AI model that can compete with the leading large language models built by tech giants, but cheaply, with fewer and less sophisticated chips and less electricity.
- 2. *Sell short* the stocks of the tech giants with expensive AI models, and the big chipmakers, and electric utilities and everyone else who is exposed to the “AI is a gusher of capital spending” trade.
- 3. *Then* announce your cheap good open-source model.
- 4. Wipe out [almost \\$1 trillion](#) of equity market value, and take some of that for yourself.

I have no reason to think that [quant fund manager](#) and DeepSeek founder Liang Wenfeng actually did that, or even thought about it, but, man, wouldn’t it be cool if he did? “DeepSeek and what happened yesterday: Probably the largest positive [total factor productivity] shock in the history of the world,” tweeted Olivier Blanchard, but that showed up mostly in a *drop* in the value of incumbent, now-less-productive-seeming AI-related companies. How do you capture that? By shorting the incumbents, maybe.

We talk about this idea from [time](#) to [time](#). (I first learned of it from Joe Weisenthal, and several readers emailed me this week to remind me of it.) “Disruptors can profit not by selling their product more cheaply than incumbents, but by *giving it away* after shorting the stock of incumbents,” something like that. You don’t see it a lot in practice, in part because people seem to find it icky and in part because they just don’t *think* of it. There is some psychological incongruity between trying to build world-changing products and trying to find short trades. Most founders of disruptive consumer technology startups are not hedge fund managers! But Liang is. It just seems like a missed opportunity if he doesn’t own a pile of Nvidia puts.

Elsewhere in DeepSeek:

Byrne Hobart argues that “there is an ‘AI factor’” that big investors have not hedged: “People who were long AI stocks were making a directional bet on the entire cluster, ... and while that did produce some factor exposure—long large-cap momentum, short value, overweight US, etc., it does *not* appear to have been hedged by picking and choosing among AI plays.” One thesis for sophisticated hedge funds is “you can get exposure to the broad market, or to particular sectors, or to particular style factors, very cheaply; we are in the business of charging you a lot for uncorrelated alpha.” But the distinction between “uncorrelated alpha” and “commoditized exposure to sectors” is somewhat backward-looking; a hedge fund that was neutral to the tech sector by being long every AI bet and short enterprise software companies was arguably *really* giving investors commoditized – and expensive and risky – exposure to the AI sector.

- From the Wall Street Journal: “DeepSeek Is Upending Wall Street’s Big AI Power Trade” and “DeepSeek Undercuts Belief That Chip-Hungry U.S. Players Will Win AI Race.” And at Bloomberg: “DeepSeek Challenges Everyone’s Assumptions About [AI Costs](#),” “Chevron Plans to [Build Gas Plants](#) to Power AI Data Centers” (oops!) and “DeepSeek Scrambles the [AI and Emissions](#) Equation.” Obviously there is *upside* to lower demand for power plants for AI, too.
- [Bloomberg](#) and the Journal have profiles of Liang, telling the story of how DeepSeek grew out of Zhejiang High-Flyer Asset Management, his quant hedge fund. “Significantly, DeepSeek open sourced its R1, allowing researchers and developers to freely use, modify and commercialize the model,” writes Bloomberg, and “Liang stands out among Chinese entrepreneurs because of that non-commercial goal.” And his stake in High-Flyer, is apparently worth \$71 million, absolute pocket change for an AI founder. The Journal notes that “Liang wrote the introduction to the Chinese version of ‘The Man Who Solved the Market,’ a book about [Renaissance Technologies founder James] Simons and his team. ‘Whenever I encounter difficulties at work, I recall Simons’s words: “There must be a way to model prices,”’ Liang wrote.”
- And from the Journal: “‘It is difficult to know exactly how to make money on AI,’ said Mike Ogborne, founder of Ogborne Capital Management, a hedge-fund firm in San Francisco that oversees a position in Nvidia. ‘This could be the first day of a lot more pain.’” “It is difficult to know exactly how to make money in AI” does seem like an essential aspect of the AI trade; we have talked about [OpenAI’s claim](#) that “it may be difficult to know what role money will play in a post-[artificial general intelligence] world,” and also about a [venture capital bet](#) that the way to make money on AI is by buying up homeowners’ association management companies. But the actual answer turns out to be “build a cheap AI model and short Nvidia.”

Unrealized Bitcoin tax

People sometimes float the idea of a tax on unrealized capital gains. Under current US law, if you founded a company and it has become very successful and you own a lot of its stock, there’s really no reason for you to pay taxes. You don’t have to take a salary, and the company doesn’t have to pay dividends (it can just reinvest profits in its business), so you don’t pay taxes on any cash flows from the company. You also don’t have to sell any stock, so you don’t pay any capital gains taxes.

How do you buy groceries? Well, classically, a bank will lend you a bunch of money secured by your stock, at a fairly low interest rate (because the loan is pretty safe), and you use that money to buy groceries and houses and yachts and things. The loan is not a taxable event. You never really have to pay it back: You just borrow more to fund your lifestyle (and to pay the interest on the loan), and if your company keeps succeeding, the loan compounds at a lower rate than your stock. You keep this up for the rest of your life, and then when you die your heirs can sell some of your stock to pay back the loan. And *they* don't pay any tax on the stock sale, because they get a "basis step-up." This strategy is sometimes called " [buy, borrow, die](#) ."

This is all pretty stylized, but it's a thing that people worry about. And so there are occasional calls to tax unrealized capital gains, so that, if you have \$1 billion worth of stock at the beginning of the year, and it goes up to \$1.1 billion at the end of the year, you have \$100 million of "income" and have to pay taxes on it. This is not, again, how current US tax law works, and if you were to implement something like this then you'd need to answer all sorts of practical questions (how do you know if non-traded stock has increased in value?), and it's very controversial and seems vanishingly unlikely to happen anytime soon.

Weirdly, though, the US sort of accidentally implemented something like it for *corporate* tax. In the US, corporations have to pay a tax of 21% of their net income. But over the years companies have figured out various ways to pay less tax.

The generic way to pay less tax is to *have less income*, but that's bad. (This is the [First Law of Tax](#) .) You want to find some situation where (1) you have a high income in real life but (2) you have a low income *for tax purposes*. For corporate purposes, the first point – "a high income in real life" – largely reduces to "a high income under US generally accepted accounting principles," in part because GAAP tries to capture economic reality and in part because, if you are a company, your shareholders tend to care about the GAAP net income that you report in your financial statements.

And so you want to find some situation where *tax accounting* (how much income you have to report to the Internal Revenue Service) differs from *GAAP accounting* (how much income you have to report to your shareholders). Specifically a situation where your GAAP net income is high and your tax net income is low. I will not describe these situations – ask your accountant! – but I assert that many of them exist and that finding them is a lucrative business.

So much so that, in 2022, as part of the Inflation Reduction Act, Congress passed a "corporate alternative minimum tax" (CAMT) requiring large US corporations to pay a tax of at least 15% of their GAAP net income. (Actually 15% of their "adjusted financial statement income" (AFSI), meaning GAAP income after some specific tax adjustments.) The idea is that, if your accounting income is much higher than your taxable income, something is wrong, and the government would like to recapture some of the difference.

One odd result of this is that the US Financial Accounting Standards Board, a not-quite-governmental agency that sets the rules of US GAAP, now effectively makes tax rules too :

Under CAMT, the standards adopted by FASB now have the force of federal law. Previously, the effect of FASB's GAAP standards was limited to reporting requirements in the accounting context. ... Now, however, under the IRA's CAMT regime, FASB standards have material tax consequences and can trigger civil and criminal penalties under the tax laws.

Should a corporation account for *unrealized capital gains* as net income, for accounting purposes? Well, sometimes, maybe. Not *all* the time: If you buy a widget-making machine for your widget factory, and you think the value of that machine has gone up, you probably don't mark the machine up on your balance sheet (and have an increase in net income), because financial accounting is generally conservative about things like this.

But if you buy a bunch of publicly traded stock, and the stock goes up, should you treat that increase as income in your financial statements? The US GAAP answer used to be mostly "no," but now it is mostly "yes." In 2016, FASB issued a new accounting standard requiring companies to account for equity investments with a "readily determinable fair value" at their fair value, and to recognize changes in that fair value in earnings. And so if a *company* owns \$1 billion of publicly traded stock – not *its* stock, mind you, but *other* companies' stocks – at the beginning of the year, and the stock goes up 10% during the year and is worth \$1.1 billion at the end, then that increases the company's net income by \$100 million for the year.

This probably doesn't affect that many companies, because most companies do not own a lot of other companies' stock. But some do, most notably Berkshire Hathaway Inc. And in fact Warren Buffett has been famously mad about this rule for years, saying in 2018 that it "will severely distort Berkshire's net income figures and very often mislead commentators and investors."

When he said that in 2018, it was just an accounting rule, but when the CAMT passed in 2022, it could have become a tax rule. With the CAMT, corporations have to pay taxes of at least 15% of their *accounting* income, which could mean billions of dollars of taxes for Berkshire. Here's a 2022 article estimating the cost:

Researchers applied the Inflation Reduction Act's new 15% corporate minimum tax onto 2021 company earnings and found that the burden would only be felt by about 78 companies, with Berkshire Hathaway and Amazon paying up the most. ... Berkshire led the estimated payout with \$8.33 billion, and Amazon follows behind with \$2.77 billion owed based on its 2021 earnings.

But, no, because in fact the CAMT specifically excludes unrealized increases in stock prices. The IRS explains:

Section 56A(c)(2)(C) provides, in part, that a taxpayer's AFSI with respect to a corporation that is not a member of the taxpayer's tax consolidated group only takes into account dividends received from that corporation ... and other amounts that are includible in gross income or deductible as a loss under chapter 1 ... with respect to that corporation.

The financial accounting consequences of an investment in a domestic corporation differ considerably from the Federal income tax consequences of such an investment. Under the [Tax] Code, a shareholder generally has income or deductions upon the occurrence of a realization event with respect to the shareholder's stock (typically, a distribution from the corporation or an exchange of the stock). The Code specifies the shareholder's tax consequences when such an event occurs, including capital gain or loss, dividend income, a dividends received deduction, or some other result.

In contrast, financial statement income often includes gain or loss with respect to stock even if there has been no realization event for Federal income tax purposes. For example, financial statement income may include unrealized appreciation or depreciation in stock prices, a proportionate share of the corporation's income or loss, or loss from impairment.

That is: "We know that, under GAAP, a corporation's net income includes unrealized stock gains, but under tax law it does not. And even for the corporate alternative minimum tax, we're going to stick to the tax rules." (Berkshire Hathaway says: "We do not expect to incur a CAMT liability in 2024.")

You could imagine Congress and the IRS making a different choice. You could imagine saying "yes, we understand that tax law doesn't count unrealized stock gains as income, but financial accounting does, and the whole point of the CAMT was to tax companies on their accounting income, so we're doing it, pay up, Berkshire."

But they didn't make that choice, and that seems pretty understandable too. This is not some tax dodge, some fancy trick of accounting that allows Berkshire to shield income from the tax authorities while reporting it to shareholders. (Berkshire doesn't even want to report this income to shareholders!) This is a straightforward set of policy choices: The tax code doesn't tax unrealized stock gains, but GAAP does count them as income. And so the rules say that you can ignore *this* bit of GAAP for calculating the corporate alternative minimum tax.

What about Bitcoin? It's actually a similar story. If you buy a bunch of Bitcoin, and the price of Bitcoin goes up, should you treat that increase as income in your financial statements? The GAAP answer used to be ... "no" is not quite right; the GAAP answer used to be "good lord, no, Bitcoin? Gross!" But now it is "yes." From a December 2023 FASB pronouncement:

Under current GAAP, unless otherwise provided in industry-specific GAAP, crypto assets ... are accounted for as indefinite-lived intangible assets. Those assets are tested for impairment annually and more frequently if events or circumstances indicate that it is more likely than not that an asset is impaired. If the carrying amount of the asset exceeds its fair value, an entity is required to recognize an impairment loss and reduce the carrying amount of the asset to its fair value. Subsequent increases in the carrying amount of the asset and reversal of an impairment loss are prohibited.

The amendments in this Update require that an entity measure crypto assets at fair value in the statement of financial position each reporting period and recognize changes from remeasurement in net income.

That is, under pre-2023 GAAP, if you bought Bitcoin, it went on your financial statements at your cost. If Bitcoin went down, you had a loss on your income statement. If Bitcoin went up, you did not have a gain on your income statement. (Until you sold.) Companies that owned Bitcoin complained about this, because it did not seem to reflect economic reality, and eventually FASB agreed and changed the rule. [I wrote at the time](#) :

If you have invented a new sort of magic bean, from first principles an accountant's assumptions will be:

1. The beans are probably worth what you paid for them.

- 2. If you say that the beans' value went up since you bought them, you're probably lying.
- 3. If you say that the beans' value went down since you bought them, you're probably right.

And so you get this method of accounting for crypto.

This is a very appropriate reaction to a new thing, so you see why crypto got this accounting. But by now there is a big liquid market for Bitcoin, at least, and if you say that the value of your Bitcoins went up, and you point to their trading prices on a bunch of big crypto exchanges, at this point your accountants will believe you.

But what about tax? Does this mean that, if a company buys Bitcoin and Bitcoin goes up, it has to pay taxes on its unrealized gains? Those gains count as GAAP net income now, so the CAMT applies to them. Similar gains in stock holdings don't get taxed, because there's a specific exclusion in the CAMT saying "no not stocks," but there is no similar rule for Bitcoin. This is kind of alarming for companies that own Bitcoin, and just as "companies that own stocks" means mostly Berkshire Hathaway, so "companies that own Bitcoin" means mostly MicroStrategy Inc.

At the Wall Street Journal on Friday, Jonathan Weil reported:

After years of raising money through stock and debt offerings to buy bitcoin, MicroStrategy owns a stash worth about \$47 billion, which includes \$18 billion of unrealized gains. In an unusual twist, it could have to pay federal income taxes on those paper gains—even if it never sold a single bitcoin. The tax bill could total billions of dollars starting next year, according to a new disclosure this month by MicroStrategy that has received little attention. ...

MicroStrategy has been pressing its case with the IRS, and it could be reasonable to expect the government will bend its way, given the Trump administration's outward affection for the crypto industry. The IRS is still in the process of drafting rules to implement the new corporate alternative minimum tax.

Robert Willens, a longtime tax analyst who has been tracking MicroStrategy's IRS issues, said he expects the IRS would decide in MicroStrategy's favor and exclude unrealized gains on cryptocurrencies under its proposed rules, but he noted there is no guarantee it would do so. "If the Biden group was still in place, they probably wouldn't get the exemption," he said. He added that "it would be easy to slot crypto assets into the same exemption that stocks are going to enjoy, because there's no real difference in the accounting."

That seems right? Here is MicroStrategy's letter to the IRS making its case, which is essentially "come on this is the same as stocks." Which is a compelling argument on its own merits, but also it is hard to imagine the Trump IRS wanting to tax corporations' unrealized gains on crypto. I personally imagine the Trump IRS *loving* corporations, and unrealized gains, and certainly crypto.

Also last week, Donald Trump put out an executive order on "Strengthening American Leadership in Digital Financial Technology," that is, promoting crypto. There will be a working group on crypto regulation and promotion, and "the Working Group shall evaluate the potential creation and maintenance of a national digital asset stockpile and propose criteria for establishing such a stockpile, potentially derived from cryptocurrencies lawfully seized by the Federal Government through its law enforcement efforts." There is a ban on central bank digital currencies: "Except to the extent required by law, agencies are hereby prohibited from undertaking any action to establish, issue, or promote CBDCs within the jurisdiction of the United States or abroad." There is a general policy of "protecting and promoting the ability of individual citizens and private-sector entities alike to access and use for lawful purposes open public blockchain networks without persecution." There is an obvious vibe shift toward maximum crypto.

But a lot of what will actually matter is stuff like this, technical tax and accounting fixes to make crypto less disfavored. (Or like the US Securities and Exchange Commission's decision last week to get rid of Staff Accounting Bulletin No. 121, which had made it hard for traditional financial firms to custody crypto assets.) If you think it is good for companies to hold their cash in crypto instead of in traditional financial assets, the pressing thing to do is to make the tax and accounting for crypto match the tax and accounting for traditional assets.

X debt

How would you analyze the credit of X, the social media company formerly known as Twitter Inc.? The banks that loaned Elon Musk about \$13 billion to buy Twitter in 2022 are finally selling the debt to investors, and what do those investors see in it?

The simplest analysis is: X has some cash flows, and presumably some projections of future cash flows. They're not *great* – "Our user growth is stagnant, revenue is unimpressive, and we're barely breaking even," Musk reportedly told employees this month – but one could be optimistic. Probably the business of selling ads against a right-wing social media site is better than it was a month ago; "brand safety" is less of a concern than it was. Perhaps there are other cash flows coming. "Another milestone for the Everything App: @Visa is our first partner for the @XMoney Account, which will debut later this year," X Chief Executive Officer Linda Yaccarino tweeted this morning; maybe that's a real thing. Still this all feels a bit speculative; right now, "barely breaking even" is not all that exciting for lenders.

Another possibility: Elon Musk, who owns most of X's equity, is really really really rich, and seems to enjoy owning X. Maybe "enjoy" isn't quite the word, but he seems to get a lot of economic and psychic utility out of it: X is where he goes to troll and do politics, and controlling it seems to be important to him. If X's business deteriorated, to the point that it couldn't pay the interest on its debt, Musk surely *could* cover the interest payments. And he *might* cover those payments, if the alternative was losing control of his favorite platform.

But this analysis seems risky. For one thing, Musk could lose interest in owning X. (He [has before](#) !) But also, to believe this analysis, you have to think that "losing control of his favorite platform" is a credible alternative. "If X doesn't pay its debts," you have to think, "we, its lenders, will take it away from Musk and own and run it ourselves." This strikes me as kind of a bold thing to think! If Musk's lenders foreclose on X, Musk will say really mean things about them – on X, or maybe on Truth Social? – and possibly turn the US government against them. Certainly he will turn his *fans* against them. What will that do to X's cash flows? I [once wrote](#) : "If I were the Morgan Stanley banker in charge of launching a legal fight against Elon Musk where the prize is *owning Twitter*, I would quit? ... If the banks *do* manage to foreclose on Twitter, what will be left?"

So if X runs into trouble and can't pay its debts, the lenders might go to Musk and say "hey why don't you cover this X debt," and he might say "no I'd rather not," and they might say "if you don't we will take X, your favorite toy, away from you," and he might say "lol no you won't," and they might say "ugh you're right we won't," and then where will they be?

So if you are thinking about buying the X debt, it would help if there was something else there (1) that Musk is less likely to lose interest in and (2) whose value is not so purely tied to Elon Musk fandom. Bloomberg's [Sridhar Natarajan and Carmen Arroyo report](#) :

A group of banks led by Morgan Stanley is preparing to sell as much as \$3 billion of senior secured debt backing Musk's 2022 buyout of the company. The valuation of X, formerly known as Twitter, is being boosted by a previously undisclosed stake of about \$6 billion in xAI Corp., Musk's AI startup, according to people with knowledge of the matter.

Potential investors are being told they would have a claim on X's interest in the entity, the people said, asking not to be identified discussing confidential information. The size of that stake is based on the latest fundraising that put a roughly \$50 billion valuation on xAI.

xAI is Musk's artificial intelligence startup that [sort of grew out of X](#) , and whose equity is apparently partly owned by X. If you foreclose on X, you might get mostly a smoldering crater, but you also get that xAI stock. Maybe that's something. It was nicer a week ago, but it's still something now. In any case, investors [seem to be interested](#) in the debt.

Things happen

German Watchdog Floats [Scrapping Green Metric](#) Loathed by Banks. HSBC to [Shutter Some Investment Banking Units](#) in Europe, US. Citigroup loses head of private banking unit. Mediobanca Board Rejects [Monte Paschi Bid](#) as 'Destructive'. Billionaire Beal's Bank Scored Record Year After [Tapping the Fed](#). DEI Pay Incentives Come Under Pressure After Two-Year Surge. Astronomers just deleted an asteroid because it turned out to be Elon Musk's Tesla Roadster.

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- 1. A fun everything-is-securities-fraud extension of this hypothetical is: What if you do all of this but it turns out that your AI model is not as good, or not as cheap, as you said it was? But you still made money on the puts?
- 2. Jeff Bezos? It's not like the founding of Amazon immediately cratered, you know, Walmart stock. Also this vaguely rhymes with something I once [wrote about Adam Neumann](#): "This sort of thing—getting rich by being smarter than your counterparties, making markets more efficient by being on the right side of bets—is a classic path to wealth creation in the financial business. Tech, traditionally, has a different ethos, one of getting rich by changing the world. But sometimes there are crossovers, and anyway maybe WeWork was never really a tech company."
- 3. The *company* will pay taxes, and arguably that costs you money, though there are debates about the incidence of corporate tax. But the point is that your personal tax return says you have \$0 of income.
- 4. It's not totally clear that it's better than paying taxes, because it does incur interest expense (even if you capitalize the interest). But if the stock grows much faster than the interest rate, you'd probably rather keep the stock and pay interest than sell some stock and pay taxes.
- 5. I am quoting from the Jan. 3, 2025, IRS comment letter from Coinbase Inc. and MicroStrategy Inc., which is generally a good background explanation of the issues here.
- 6. I should point out that, from here on out, everything that I say about tax and accounting for "corporations" is meant to exclude various sorts of *financial* firms (funds, investment banks, etc.), which often have different rules and more mark-to-market taxation and accounting.

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Jan. 27, 2025, 11:30 AM PST

Matt Levine's Money Stuff: Hedge Fund AI Is Cheap AI

By Matt Levine

Opinion

DeepSeek

The big news today is that DeepSeek blew up the stock market:

Chinese artificial intelligence startup DeepSeek's latest AI model sparked a \$1 trillion rout in US and European technology stocks, as investors questioned bloated valuations for some of America's biggest companies.

DeepSeek's latest AI model rose to the top of the Apple's appstore charts over the weekend, presenting a visible challenge to costlier models like OpenAI and raising questions over the hundreds of billions in planned spending on the technology by the likes of Microsoft Corp., Meta Platforms Inc. and Alphabet Inc.

DeepSeek's model is open-source and apparently cheap, and it would honestly be pretty amazing if artificial general intelligence came in that package. (No thanks to OpenAI's former nonprofit work building artificial general intelligence for the benefit of humanity!) The ideal case for AI would be something like "everyone has a magic lamp in their pocket with a genie that can grant unlimited wishes; the lamp is cheap and each wish is free." That case would be extremely good for human flourishing (maybe?), but terrible for stock market valuations. What do you need Nvidia chips for, if the genie is free? What do you need your 401(k) for, if the genie is free? Sort of a good news, bad news situation.

Anyway here are more informed takes from Ben Thompson, from sell-side analysts collected at FT Alphaville, and from my Bloomberg colleagues Parmy Olson, Jonathan Levin and Joe Weisenthal.

One thing about DeepSeek is that it was built by a quantitative hedge fund. DeepSeek founder Liang Wenfeng built AI models to pick stocks, and as sort of a byproduct he pivoted to building a good general AI model. Weisenthal writes:

I'm really not a fan of all the 'just so' stories that people are telling about how capitalism and markets work in China and the US. The public narrative is that DeepSeek was created as a side project of a Chinese quant firm. And the allure of this story is that the Chinese system doesn't reward financialization as much, so the creators had to build something substantive. Maybe that story is even true, but I think people should be on guard for narratives that are too satisfying.

See I actually think of DeepSeek as a victory for financialization? The way I would tell this story is that the modern world has created conditions in which it is incredibly lucrative to get very good at statistical inference. It turns out that there is a sort of general skill like "program a computer to take a huge pile of analogous data and predict the most likely next _____," where the blank can be filled in with "word in the sentence" or "pixel in the image" or "stock that will go up." And people and companies with this general skill can move between various applications, using similar techniques to pick words or images or stock picks.

Eventually a lot of them specialize, but the general background condition of "a lot of people want to learn statistical techniques to get rich" creates a deep pool of talent for all of the applications. If you ask some 18-year-old Stanford student today why she wants to study machine learning, she will probably talk about large language models, because that's where the money is, but if you asked a similar student a similar question 10 years ago, she might have talked about quant investing, because that's where the money was. And so now there are lots of 28-year-olds who have worked in machine learning for a decade. When we first discussed DeepSeek, last June, I wrote:

An important story in the development of modern finance was "if you are good at building computers that can process natural language, you can pivot to building computers that can pick which stocks will go up, and get much richer." This is essentially the story of Renaissance Technologies, whose central innovation was to hire computational linguists, because there was not much money in building computers that could talk and lots of money in building computers that could pick stocks.

But that is an old story, and now everyone has a computer that can pick stocks, while there is infinity money in building a computer that can talk. So now the people who got good at building computers that can pick stocks are pivoting to processing natural language.

Not everything is like this! A lot of things are — modern AI has many uses — but nobody learns the essential skills to build fusion reactors or perform brain surgery at a hedge fund. It is perhaps a fortunate coincidence that maybe the highest-profile generally useful technology these days *is* the sort of thing that you can learn at a hedge fund.

But maybe not. Maybe that's just path dependency. Perhaps someone would have built, like, a Star Trek replicator by now — an even better genie! — if the smartest technically inclined people had spent the last 30 years going into, uh, particle physics or whatever that is. But instead the draw was hedge funds and the output was large language models.

VC AI rollup

What if you take seriously the free-magic-genie model of AI? Or some slightly less extreme form of it, something like “in one year, all of the work that is now done by ____ will be done by AI,” filling in the blank with various currently expensive professions. (Lawyers, investment bankers, accountants, investment managers, financial newsletter writers.) What *is* the investment case for that? Maybe you should buy AI model companies or cloud computing companies or electric utilities, but those ideas reflect the “expensive magic genie” model, where the rise of AI will lead to demand for AI inputs. If AI is cheap, that case is less clear.

With a sufficiently general-purpose technology it's not clear whether the value will mostly accrue to the builders of that technology or to its users. But surely it is at least plausible that AI will mostly make its *users* richer, so the way to bet on AI is mostly to bet on regular, non-AI companies that don't use it yet but eventually will. So here's a venture capital bet on accounting firms:

The prospect of artificial intelligence automating administrative tasks is attracting venture capitalists to ho-hum professions such as accounting, customer-service centers and property management. Tech entrepreneurs have raised hundreds of millions of dollars to retrofit these businesses with AI tools and drive up their profitability.

The playbook also involves startups adapting one of Wall Street's favorite practices: the roll-up. Private-equity firms refined the model of merging businesses in sectors such as car washes and heating and air conditioning outfits and using greater scale to cut costs. Much of the capital these new startups raise is similarly going to fund buyouts of businesses, which are “rolled up” into one operation. ...

Among the flushest new players bringing AI to quiet professions is Long Lake Management Holdings, a startup founded 13 months ago. Since then, Long Lake has raised \$600 million plus from investors and acquired around a dozen companies that collectively employ about 1,400 workers, people familiar with the company said.

Long Lake's first deals were for businesses that manage the operations of homeowners associations. Those management companies are now adopting AI tools for tasks like generating presentations for HOA board meetings. It is targeting an expansion into other industries, including human-resources services.

Obviously the other trade here is “don't get an accounting degree,” and in fact people seem to be doing that trade. And one way for Long Lake's bet to be wrong is if it is still too far from the end user. What if the efficiency gains from using AI in homeowners' associations are not “homeowners' association management companies will have higher margins” but rather “homeowners' associations won't hire management companies”? You get elected to the HOA, you ask DeepSeek “what should I do,” it tells you, you do it, you never hire a management company.

Also, I have written a lot about “search funds,” which are sort of the finance equivalent of this. The idea of a search fund is something like:

1. Your local pest control business would probably be managed more efficiently if it was run by a recent Harvard Business School graduate than if it was run by the son of its founder.

- 2. That recent HBS graduate would be happy to run the pest control business if she could take most of the efficiency gains for herself as a bonus.
- 3. So the trade is that investors give the HBS grad some money, she uses the money to buy the pest control company, she runs it better, and she and the investors split the gains.

Financial alchemy has turned a pest control business into a high-finance operation that can attract HBS graduates and get financing from sophisticated investors.

This is that but for AI:

1. Your local pest control business could probably be managed more efficiently if it was run by an AI.

- 2. So the trade is that investors give the AI some money, it uses the money to buy the pest control company, it runs it better, and it and the investors split the gains.

Except that the AI can't yet buy the company itself, so you need an intermediary like Long Lake to do the deals and bring in the AI. Eventually someone will notice. "Your local boring-profession-AI-rollup company could probably be managed more efficiently if it was run by an AI," etc.

Elsewhere in rollups

QXO Inc. is a giant, highly valued blank check. QXO founder Brad Jacobs has had a lot of success running previous companies — he wrote a book with the impeccable title *How to Make a Few Billion Dollars* — so investors want to be in on his next thing. His next thing turned out to be rolling up companies that distribute building products. QXO is his vehicle to do that, and he raised about \$5 billion from investors, at a premium, to go out and buy building products distribution companies.

I have praised this several times because it is cool, but it does create a problem. How many building products distribution companies are there? How many of them are big enough to be attractive to Brad Jacobs, with \$5 billion burning a hole in his pocket? If you run one of those companies, you are probably expecting his call. "Sure you have money and enthusiasm," you might tell him, "but you really need a building products distribution company to buy, and we are one of the only games in town." You might drive a hard bargain.

But if your building products distribution company is *public*, Jacobs can go hostile:

Building-products distributor is preparing to take its all-cash offer to acquire Beacon Roofing Supply directly to shareholders after being rebuffed on several occasions, according to people familiar with the matter.

QXO is planning to launch a hostile bid for Beacon as soon as Monday, the people said.

It will offer to buy all shares outstanding of Beacon for \$124.25 per share, the same price it previously proposed, the people said. That would value Beacon at \$7.7 billion, or roughly \$11 billion including debt.

Beacon shares closed Friday at \$118.42, giving the business a market value of around \$7.3 billion. The shares have run up since mid-November, when The Wall Street Journal reported on the bid QXO had privately made to Beacon.

Here are QXO's press release and tender offer document. The nice thing about QXO is that people are willing to buy stock from Jacobs at a premium, but the tough thing is that people want to sell to him at a premium too.

Dark trading

The traditional way to invest was that you would pick the stocks you wanted to own, you would go to the stock exchange, and you would buy them. This was, you hoped, good for you: You paid the market price for the stocks that you thought would go up. But you were also participating in a collective process that was good for everyone else. By picking stocks, you were doing your part to allocate capital to its best uses: The stocks that everyone picked would go up, making it easier for those companies to raise money to do worthwhile things; the stocks that nobody picked would go down, and they would have to stop doing the worthless things they had been doing.

You were also doing your part to make the pricing of stocks efficient: Everyone competed to find out relevant information and to figure out how it might affect companies, and so those companies' stock prices reflected all of the relevant information. The companies' stock prices were "right," or at least as right as everyone could make them.

Modern markets have become, in many ways, more efficient, not in the stock-market-efficiency sense of the word but in the regular sense: You can do more stuff faster, and you can get exactly what you want. One thing that this means is that now you can *unbundle* the "buying stocks that are good for me" part of investing from the "participating in a collective process that creates social goods" part. You can free-ride on the collective process.

People talk about this a lot with index funds. The thesis of an index fund is that a lot of smart hard-working people compete to pick the best stocks. As a product of their competition, all the stocks are pretty fairly priced; if they weren't, those smart hard-working competitors would buy the underpriced ones and sell the overpriced ones. So *you* can just opt out of that competition: You buy *all* the stocks at their market prices, trusting that everyone else's hard work will make the prices right. And so you will be able to buy long-term economic growth at the right price. This is nice for you, but if *everyone* did it, it would be bad: There'd be no one to make the prices right.

On a smaller scale, though, it might also be true of stock exchanges. If you want to buy some stock, you can go to a stock exchange and buy it from a market maker. Or you can *be* a market maker, posting public bids to buy and offers to sell stock on the exchange, so that anyone can show up to trade with you. But exchanges tend to charge fees to trade, and displaying your order on the stock exchange gives away information (about what you are buying, and about how much you think it is worth). This information is useful to other traders; it helps everyone find the correct price for every stock. But why would you want that? You want to buy the stock cheap, and giving away information might not help you with that.

And so if you are an institutional investor, you might want to trade in a dark pool managed by a bank, where your order will not be displayed for others' information. (Or you might use non-displayed orders on a stock exchange that offers them.) If you are a *retail* investor, meanwhile, your broker probably "internalizes" your order, selling it to some electronic trading firm to execute at a price better than what you could get on the exchange. (You might not like this, possibly because you are confused, but it does seem better for you.)

And the result is probably that *you* get better trades, but the public good is undermined. Bloomberg's Katherine Doherty reported Friday:

For the first time on record, the majority of all trading in US stocks is now consistently occurring outside the country's exchanges, according to data compiled by Bloomberg.

This off-exchange activity — which happens internally at major firms or in alternative platforms known as dark pools — is on course to account for a record 51.8% of traded volume in January. ...

The shift toward off-exchange trading is the culmination of a years-long trend, which if it continues could eventually have implications for how the market functions, according to Larry Tabb, head of market structure at Bloomberg Intelligence.

"Theoretically the more trading that goes off-exchange, the fewer orders there are on-exchange competing to determine the best price," he said. "This means the pricing on and off-exchange could get worse."

Yes but on each individual trade *you* expect to do better.

The X loan sale

My main news about X, the website formerly known as Twitter, is that I have at least two impersonators there now. My only X account is @matt_levine (and these days I am more often on Bluesky), but there are fake accounts at @BloombergLevine and @ColumnistMatt who are apparently messaging people for what I can only assume are scam purposes. If I ever want to scam you, I will not DM you from any X account. I will use this email list, thank you very much.

In more general-interest X news, its banks see some light at the end of the tunnel:

Wall Street banks are getting ready to sell a big chunk of debt holdings in X, the social-media platform controlled by Elon Musk.

Morgan Stanley bankers have reached out to investors ahead of a planned sale next week of up to \$3 billion of debt the bank and others such as Bank of America and Barclays lent to Musk to complete his 2022 buyout of the company formerly known as Twitter, people familiar with the matter said.

The banks hope to sell senior debt at 90-95 cents on the dollar, while retaining more-junior holdings, the people said. The banks just sold approximately \$1 billion of debt in a private transaction to several investors, some of the people said.

It seems fair to say that, even if X's equity value is now zero (which it probably isn't?), Elon Musk has done *very* well from this trade. For a mere \$44 billion or so, Musk got himself (1) a pretty valuable artificial intelligence company, (2) a president and (3) the ability to fine-tune his favorite posting/trolling platform exactly the way he likes it. When Musk first announced his position in Twitter in 2022, I wrote:

Look this all makes complete sense, obvious, intuitive, simple sense. If you are the richest person in the world, and annoying, and you constantly play a computer game, and you get a lot of enjoyment and a sense of identity from that game and are maybe a little addicted, then at some point you might have some suggestions for improvements in the game. So you might leave comments and email the company that makes the game saying "hey you should try my ideas." And the company might ignore you (or respond politely but not move fast enough for your liking). It might occur to you: "Look, I am the richest person in the world; how much could this game company possibly cost? I should just buy it and change the game however I want." Even if your complaints are quite minor, why shouldn't you get to play *exactly* the game you want? Even if you have *no* complaints, why not *own* the game you love, just to make sure it continues to be exactly what you want?

And, really, what is the *point* of being the richest person in the world if you can't mold your favorite online message board to your exact specifications?

But this is the difference between debt and equity. Musk bought the equity, he controls the company, and he has reaped various ancillary economic and psychic rewards from that position, even if the equity has lost value. If you buy the debt all you get is the debt; your best case is getting repaid at par plus interest. The value of *that* proposition has gone down since the deal was signed — though up a lot since a year ago — even if things have worked out great for Musk.

Flybor

On Jan. 21, 2020, I wrote about a proposed "derivatives-based trading platform that will allow airlines to protect against declines in ticket prices," and I said:

I do not know how this "series of indexes that capture fare fluctuations across the industry" will be set, but after Libor and Chicken Libor, I tend to expect manipulation in any index of industry prices. Let's set a calendar reminder to meet back here in five years to discuss the scandal of airline ticket price index manipulation. "Flybor," I plan to call the resulting scandal.

Several readers actually set this calendar reminder — I did not — and emailed me last week to check in on Flybor. No scandal, sorry! Can't win 'em all. The platform still seems to exist though.

Things happen

Activist Ancora Seeks US Steel Board Revamp, End of Nippon Deal. Gibson Dunn Rides Lender Deals to Top of Restructuring Market. Investors offloaded record volume of private equity stakes in 2024. Hong Kong prepares for influx of listings from mainland China. The Extra Reward for Owning Stocks Over Bonds Has Disappeared. Why the billable hour is still king in the legal world. How a scammer impersonating Brad Pitt used A.I. imagery to seduce a wealthy French divorcée—and then conned her out of almost \$1 million. Cacio e pepe thermodynamics.

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- 1. It would be terrible; everyone would mostly wish death on their enemies.
- 2. I don't necessarily want to endorse this idea; I'm just saying it's the idea.
- 3. Here is my standard disclaimer that you **might** not like this because you have a sophisticated view that segmenting retail orders creates **much** worse pricing on lit exchanges, to the point that retail price improvement does not compensate for that worse public pricing and so even retail investors are worse off. My gut is that this is wrong, but it is a respectable non-confusion-based reason for retail investors to dislike payment for order flow. Or you might not like it because you invest mostly in funds, who probably do get worse lit pricing because of the segmentation of retail flow.

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it's almost as though a rigorous disclosure regime and thorough vetting process before companies can raise billions of dollars in financing helps to ensure an efficient allocation of capital



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1





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Cf. Nvidia, which is publicly traded, and was down 17% on the day. Is the lack of a *disclosure* regime really the cause of capital misallocation here?



Ann M. Lipton @annmlipton.bsky.social · 10m

yes, bc Nvidia's valuation was tied to the demand from private companies. they were so powerful they distorted a massive market.

same when private wework managed to fuck up real estate markets on two continents



[Securities Law](#)

Jan. 28, 2025, 3:00AM PST

Musk's DOGE Pledge Puts Spotlight on His Own Companies' SpendingBy Dana Hull, Sarah McBride and Kurt Wagner

- **Trump asked the billionaire to run his new efficiency effort**
- **Shift from Silicon Valley to Washington comes with challenges**

Elon Musk's Department of Government Efficiency has vowed to stop wasteful spending in Washington and slash the federal workforce under President Donald Trump. Musk is keen to "delete" entire US agencies, much in the way he likes to delete parts and processes at Tesla, SpaceX and the other four companies he runs.

But current and former employees say there are a number of examples of decision-making that run counter to that narrative when looking back on how the world's richest person has run his corporate empire.

In the early days of Tesla Inc., the EV maker worried it wouldn't be able to churn out its Model S sedan fast enough because shipping key parts was taking longer than expected. Tesla sacrificed cost for speed, and flew a bunch of tires from the Czech Republic to keep production going, Musk said during a February 2013 earnings call.

Though no dollar figure was disclosed about that specific decision, Musk called the move "really inefficient."

"We had to fly a lot of stuff," Musk said. "And when you fly something, it can cost as much as 10 times what it costs to ship it by sea or rail or truck, particularly if it's heavy. And so, we had to do some pretty dumb things."

Placing urgency over financial discipline is a trait that's characterized Musk throughout his career. The billionaire is known for making quick decisions that often have a big impact on the companies he runs – think substantial layoffs, design changes, product launches – then reversing course just as swiftly.

The whiplash can sometimes lead to spending even more money to fix the initial issues, say current and former employees who weren't authorized to speak publicly about their boss.

"Musk's track record of efficiency is a ledger," said longtime Tesla analyst **Gene Munster**. "There is success in one column and in the other is failures."

Munster said Musk has excelled at wringing out productivity from his workers, but that operational inefficiencies do come with real costs.

Take the [layoffs](#) at Tesla last year, in which Musk slashed more than 10% of its workforce. The billionaire axed its Supercharger team, only to hire several people back. Or when Musk backtracked on a 2019 plan to close Tesla's showrooms, a decision analysts [said](#) came after Musk probably realized the company was locked into long-term leases it would have to pay either way.

Read More: The True Cost of Layoffs



Musk speaks during the Tesla China-Made Model 3 Delivery Ceremony at the company's Gigafactory in Shanghai in 2020.

Photographer: Qilai Shen/Bloomberg

Musk also famously reversed course on a highly automated factory he built full of robots to manufacture the mass market Model 3 in 2018.

After telling analysts Tesla's parts-conveyance system was "probably the most sophisticated in the world," he ripped out the entire system weeks later when he realized it wasn't working. "Excessive automation was a mistake," he [said](#).

Tesla burned through \$1.79 billion in just the first half of that year, before Model 3 sales took off and helped get the company back on track.

Twitter Purchase

Shortly after Musk bought Twitter for \$44 billion in 2022, he flew to Sacramento, California, with a handful of loyalists to personally oversee the closing of one of Twitter's data centers as part of a cost-cutting effort. The decision backfired.

"I was told we had redundancy across our data centers. What I wasn't told was that we had 70,000 hard-coded references to Sacramento. And there's still s—t that's broken because of it," Musk told Walter Isaacson for his biography published in 2023, without disclosing the financial impact. "In retrospect, the whole Sacramento shutdown was a mistake."

At the Boring Co., employees at the tunneling company recounted episodes where they would throw money to expediently fix problems and meet deadlines set by Steve Davis, a loyal Musk deputy who's now a key player in the DOGE effort.

It's not unusual to rent an entire truck to move a single part. In one instance, an important component got waylaid on a truck en route to Las Vegas and Boring staffers had to pay for a relative of an employee who lived in the area to go out and find the vehicle and tell the driver in person to get back on the road, according to these people, who weren't authorized to speak publicly about private business decisions.

Valley Versus Washington

There's much to admire about the industrial powerhouses Musk has built. Tesla pushed the auto industry to embrace electric cars and is now worth \$1.3 trillion. SpaceX took on legacy aerospace with lower-cost reusable rockets and is a key partner to NASA and the US military. Engineering teams within Musk's companies are lean and nimble, and constant iteration is part of the ethos.

In Silicon Valley, investors are accustomed to stomaching prolonged financial losses for the promise of a bigger payout later. Tesla went 10 years without making an annual profit until 2020 – a decade in which the S&P 500 rose by 180% but Tesla shares increased more than 5,000%.

The value of X has fallen [roughly 70%](#) in the two years since Musk bought the social media site, leaving banks that helped finance the deal with \$13 billion of debt that's been hard to offload. On Monday, Bloomberg News reported that banks shopped up to \$3 billion in debt with a [sweetener](#) – a claim on X's stake in Musk's AI venture, xAI Corp.



Elon Musk ahead of the 60th presidential inauguration parade at Capital One Arena in Washington, DC.

Photographer: Victor J. Blue/Bloomberg

The federal government is a different beast. Musk is going up against a labyrinth of bureaucracy that's difficult to nudge in a different direction, let alone overhaul. And DOGE might not have the luxury of time for Musk's trial-and-error methods. Trump has given it a deadline of July 4, 2026.

During his first term, Trump signed an executive order requiring agencies to get rid of two regulations for every new one. Critics said the order led to short-term cost savings over long-term benefits, and that many agencies failed to meet deregulation goals. A legal challenge to the order was thrown out of court in part because the judge found it wasn't clear the order had any impact on regulations at all.

When the Obama administration's health-insurance marketplace site's technical glitches caused an uproar, the fallout led to the creation of the US Digital Service in 2014. Last week, Trump renamed the agency the US DOGE Service.

"Successful companies experiment all the time," says Don Moynihan, a professor of public policy at the University of Michigan .
"That is very different from government. When government fails, it is always a big deal."

Musk, who donated more than \$250 million to help elect Trump and Republican allies, pitched the idea of an efficiency commission in August. After predicting DOGE could slash \$2 trillion from the US budget, Musk recently [tempered expectations](#) :
"If we try for \$2 trillion, we've got a good shot" at cutting \$1 trillion.

--With assistance from **Gregory Korte**.

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Short seller Andrew Left seeks to dismiss US fraud case, filing shows

[reuters.com/legal/short-seller-andrew-left-seeks-dismiss-us-fraud-case-filing-shows-2025-01-28](https://www.reuters.com/legal/short-seller-andrew-left-seeks-dismiss-us-fraud-case-filing-shows-2025-01-28)

Reuters

By Reuters

January 28, 2025 4:45 AM PST Updated 5 hours ago

Andrew Left, the founder of Citron Research, speaks during the Reuters Global Investment 2019 Outlook Summit, in New York, U.S., November 12, 2018. REUTERS/Brendan McDermid/File Photo Purchase Licensing Rights [↗](#), opens new tab

NEW YORK, Jan 28 (Reuters) - Prominent short seller Andrew Left is pressing a judge to dismiss U.S. charges that he manipulated the market and defrauded investors with his negative reports about companies, according to a document filed in federal court on Monday.

U.S. authorities charged Left, the founder of Citron Capital, in July, alleging he had for years made misleading claims about his positions in multiple stocks, including Nvidia (NVDA.O) [↗](#), opens new tab and Tesla (TSLA.O) [↗](#), opens new tab. The case was the culmination of a years-long probe by the Justice Department into short sellers' trading activities.

In a motion to dismiss the charges filed in federal court in California on Monday, Left's lawyer said prosecutors' claims relate to the trader's opinions and the government failed to prove Left did not believe them. The information at issue was also not material to investors and Left had no responsibility to disclose it, the filing said.

"Concealing economic information necessary for others to make discretionary economic decisions is not fraud," Left's lawyer James Spertus said in the filing.

The U.S. attorney's office in Los Angeles, which filed the charges, could not be reached immediately for request for comment.

Reporting by Chris Prentice; Editing by Chizu Nomiya

With Trump and Melania's Crypto Coins Likely to Raise Legal Challenges, Why Didn't Trump Fire the SEC's Inspector General in His Purge of IGs?

 wallstreetonparade.com/2025/01/with-trump-and-melania-s-crypto-coins-likely-to-raise-legal-challenges-why-didnt-trump-fire-the-secs-inspector-general-in-his-purge-of-igs

By Pam Martens and Russ Martens: January 28, 2025 ~

Last Friday night, when federal employees thought they could escape to a weekend of relief from Donald Trump's rewriting of the Constitution by Executive Edict, emails went out to at least 16 Inspectors General – the fraud and abuse watchdogs of Federal agencies – informing them that they were terminated “immediately,” without citing any grounds for dismissal, a legal requirement since 2022.

Senator Sheldon
Whitehouse (D-RI)
Writes that Trump's
Firing of IGs Is to
“Clear Out the Cops
Before You Send in
the Thieves.”

What is particularly strange about the mass firings is that many of these IGs were appointed by Trump himself in his first term as President, raising the suspicion that Trump's current demands for personal loyalty have taken an even darker turn in Trump 2.0.

Mark Lee Greenblatt, the IG of the Interior Department (which Trump now seems eager to sacrifice to the fossil fuel industry) took to LinkedIn on Saturday to express his reaction to being fired as a government watchdog – after work hours, by email. Greenblatt, appointed by Trump as IG in 2019, wrote this:

“President Trump fired me last night, along with a number of other Inspectors General.

“I poured my heart and soul into my DOI OIG team and the broader IG community. I tried to be the best IG and the best CIGIE Chair I could possibly be. I am incredibly proud of our high-impact work in the highest-risk areas facing the Department and the IG community. We made a difference for the American people.

“I'm just trying to process this right now. It's all just so surreal.”

“Surreal” may be a bit of a stretch. This is surreal. Trump firing watchdogs is the sine qua non of his presidential career. Also see our report on the Trump 1.0 Friday night ouster of Federal prosecutor Geoffrey Berman here.

If Trump was expecting this cruel destruction of careers and livelihoods by email to frighten other federal workers into submission, it appears to have backfired. There are numerous comments under Greenblatt's post on LinkedIn by current Interior Department employees,

applauding Greenblatt's performance and appearing to give a thumbs down to his ouster by Trump.

The news of the mass firings made their way to Senator Sheldon Whitehouse (D-RI), the Congressional expert on the corrupting influence of megadonor money in Washington. Whitehouse posted at X (Twitter):

"Corruption 101: Clear out the cops before you send in the thieves."

The news also outraged 21 ranking (Democratic) members of House Committees, who whipped off a letter to Trump on Saturday, crisply advising him that his mass firings of IGs were illegal. The ranking members wrote:

"The Inspector General Act of 1978, amended in 2022 with broad bipartisan support, requires the President to notify Congress 30 days prior to removal of an inspector general and provide 'substantive rationale, including detailed and case-specific reasons' for such removal. The email terminating the inspectors general fails to provide the required notice and a legitimate rationale, as required by law.

"Firing inspectors general without due cause is antithetical to good government, undermines the proper stewardship of taxpayer dollars, and degrades the federal government's ability to function effectively and efficiently. We urge you to withdraw your unlawful action and comply with your obligations to the American people."

The Congressional Research Service, the research arm of Congress, has a policy paper on IG removal and updated it expressly to include Trump's mass firings on January 24. It explains:

"The 30-day notice requirement was established under the Inspector General Reform Act of 2008 (P.L. 110-409), and the requirement that notice include a 'substantive rationale' was added by the Securing Inspector General Independence Act of 2022 (Title LII, Subtitle A, of P.L. 117-263)...

"President Trump's January 2025 action appears to be a direct challenge to the enforceability of Congress's removal procedures under the IG Act. If this matter is litigated, the executive branch may seek to curtail Congress's options to control even procedural requirements for removals. A judicial decision limiting Congress's authority to impose such rules could substantially impact fundamental oversight of agency programs, spending, and staff."

The White House issued no press release on the firings, leaving media outlets in the position of having to call individual Inspectors General to learn if they had been fired. Thus far, terminations of IGs at the following federal agencies have been reported: Department of

Agriculture; Department of Commerce; Department of Defense (now in the hands of Trump appointee Pete Hegseth, accused by multiple persons of being routinely drunk in public); Department of Energy; Environmental Protection Agency; Health and Human Services; HUD; Department of the Interior; Department of Labor; Small Business Administration; Social Security Administration; Department of State; Department of Transportation; Veterans Affairs; and White House Office of Personnel Management.

Note that the Inspector General of the Securities and Exchange Commission (SEC) is not listed in the above tally of firings. Given that Trump and First Lady Melania each issued their own crypto coins just days before moving into the White House, whose trading charts now look like pump and dump schemes, and the SEC is one of the federal agencies that oversees crypto, one would have suspected that its Inspector General would have been the first to be ousted.

As it turns out, the SEC Inspector General is not appointed by the President but by the SEC itself. Deborah Jeffrey has been the Inspector General of the SEC since 2023. She arrived during the tenure of Gary Gensler, a President Biden appointed SEC Chair for whom Donald Trump has had less than kind words. Trump's stable of crypto megadonors have had even less kind words for Gensler.

Prior to government service, Jeffrey spent 23 years at the law firm of Zuckerman Spaeder LLP, where she defended both government and corporate individuals in criminal investigations. One of her high-profile clients was Lou Pai, the former Chairman and CEO of Enron Energy Services (EES), one of the few top Enron executives to avoid prison time. Pai also had the distinction of being nimble enough to cash out over \$268 million of Enron stock before the stock price collapsed and the high-flying energy company filed for bankruptcy protection.

On July 30, 2008, Pai agreed to settle civil insider trading charges brought against him by the SEC for \$31.5 million. The SEC wrote the following in its announcement of the settlement:

"Had Enron reported EES's contract-related losses in its Retail Energy Services segment, that segment would have shown a quarterly loss of at least \$60 million, rather than a profit of \$40 million as falsely reported in Enron's Form 10-Q for the first quarter of 2001. Pai knew or should have known that he could not sell Enron stock without first disclosing such material, nonpublic information. By selling Enron stock without disclosing this information, Pai breached his fiduciary duty to Enron shareholders.

"The Commission's complaint further alleges that Pai avoided substantial losses from these sales when the price of Enron stock collapsed in the fall of 2001. Enron's stock price averaged approximately \$53.78 per share during the time of Pai's sales, but closed at \$0.40

on December 3, 2001 – the day after Enron filed for Chapter 11 bankruptcy protection. By selling his shares in May and June 2001 before the collapse of Enron's share price, Pai avoided millions of dollars of losses.”

Given this background, it will be interesting to see if Jeffrey is one of the Inspectors General who remains in the Trump 2.0 administration.

The always insightful Robert Reich had some interesting thoughts on the future of the SEC and its regulation of crypto now that Trump has made himself a crypto billionaire with his crypto coin. Reich wrote this on Substack:

“Trump is putting crypto-friendly people into place at key federal agencies, boosting its prospects. In December, he picked Washington lawyer Paul Atkins, a known crypto booster, to chair the Securities and Exchange Commission, America's main financial regulator. [Atkins has yet to be confirmed by the Senate.]

“Last week, the Securities and Exchange Commission altered its guidance so that financial institutions no longer have to account, on their own balance-sheets, for crypto assets held on behalf of customers. The SEC rolled back accounting guidance that had deterred banks from getting involved with crypto.

“Trump has tapped the venture investor and digital currency enthusiast David Sacks to oversee administration policies on crypto (and artificial intelligence).

“Then, this past Thursday, Trump issued an executive order committing the Trump administration to ‘protecting and promoting’ the crypto industry:

‘The digital asset industry plays a crucial role in innovation and economic development in the United States, as well as our nation's international leadership. It is therefore the policy of my administration to support the responsible growth and use of digital assets.’

“The order gives his administration authority to establish a national cryptocurrency stockpile — a stash of digital coins that the crypto industry has spent months lobbying the new administration for because it further legitimizes crypto and adds to the demand for it.

“Trump's order also prohibits the creation of a ‘central bank digital currency’ overseen by the government. And the order promises ‘fair and open access to banking services’ for crypto (responding to complaints from crypto companies that banks have denied them accounts).

‘In effect, Trump is writing the rules for a business venture from which he and his family are personally profiting. It could earn them hundreds of billions of dollars.’

Trump's view that crypto plays "a crucial role in innovation and economic development" is countered by more than 1600 scientists and experts who call both crypto and blockchain a sham.

Securities Law

Jan. 28, 2025, 8:41AM PST

Trump Memecoin Likely Generated at Least \$11.4 Million in Fees

By Muyao Shen

- Official Trump cryptocurrency was launched before inauguration
- Token surged to more than \$14 billion in value after its debut

Donald Trump's namesake memecoin has likely generated at least \$11.4 million in fees for entities linked to the president since its launch just before his second inauguration, according to an analysis by the crypto risk modeling firm Gauntlet.

The crypto world was caught by surprise when the "official" Trump memecoin was released late on Jan. 17 by the former crypto skeptic turned supporter. The ensuing exuberance swelled the market value of the token to more than \$14 billion, spurring speculation that it could potentially earn billions for Trump, while also raising concern about conflicts of interest.

The memecoin was initially launched through the decentralized finance exchange Meteora on the Solana blockchain. The entities that sponsored it, CIC Digital LLC and Fight Fight Fight LLC, earn fees from the so-called liquidity they send to the platform to support trading of the memecoin, **Tarun Chitra**, the co-founder and chief executive of Gauntlet, said in an interview. Memecoins are a type of cryptocurrency that are typically unlinked to any underlying business and are highly speculative for investors while potentially wildly lucrative for founders.

DeFi exchanges use algorithms to determine asset prices and facilitate trades without the market makers that serve as intermediaries on conventional exchanges. Platform users trade assets, in this case Trump memecoins held in liquidity pools. This allows traders to swap tokens directly from their wallets. As an incentive, users earn a fee for providing liquidity to different pools. Gauntlet tracked all the fees collected from the Trump token's liquidity pools on Meteora. The majority of the liquidity is being provided by the Trump-linked entities. Smart contracts, or automated software programs, record all the trades and fees.



A cartoon image of US President-elect Donald Trump holding a Bitcoin token to mark the cryptocurrency reaching over \$100,000 displayed at a Coinhero store in Hong Kong.

Photographer: Bloomberg/Bloomberg

An 80% share of the virtual asset is owned by CIC Digital and Fight Fight Fight LLC – whose name echoes the words Trump mouthed after a bullet grazed his ear while campaigning last year. Their holdings will be unlocked over a three-year period. According to the site, 200 million tokens immediately became available, a supply that will grow to 1 billion over three years.

A request for comment sent to the email address on the Trump memecoin's website wasn't returned.

The Trump token's debut was likely one of the more successful individual memecoin launches ever, Chitra said.

Pump.fun, which is a platform that allows anyone to create their own memecoins, collected about \$16 million in daily fees at its peak. Hundreds of memecoins are launched daily on Pump.fun.

Trump's token has "basically generated fees on the order of what the best day of memecoins was," said Chitra. "For Pump.fun, there were many memecoins that were earning fees versus here it's just one coin."

To be sure, the actual fee revenue is likely much higher because millions of the Trump tokens were also soon sent to exchanges such as Binance and OKX. With less transparency around centralized exchanges, it's more difficult to calculate the profits made from trading on those exchanges.

The token's price has been highly volatile since the launch, and is down about 60% from a high at \$73.40 reached Jan. 19, according to data compile by CoinGecko.

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Dave Liedtka, Michael P. Regan

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KuCoin Pleads Guilty in Crypto Case, Agrees to Pay \$300 Million

By Bob Van Voris and Chris Dolmetsch

The cryptocurrency exchange KuCoin pleaded guilty to operating an unlicensed money transmitting business and agreed to almost \$300 million in fines and forfeitures, resolving a criminal case after settling similar civil claims in New York more than a year ago.

Seychelles-based Peken Global Ltd., one of three entities doing business as KuCoin, entered its plea Monday before US District Judge Andrew Carter in Manhattan as part of an agreement with federal prosecutors. The judge imposed a fine of about \$113 million and forfeitures of \$184.5 million.

KuCoin and two of its founders, Chun Gan and Ke Tang, both of China, were indicted in March 2024 on charges of conspiring to operate an unlicensed money transmitting business and failing to implement an anti-money-laundering program. Gan and Tang signed deferred prosecution agreements and will each forfeit about \$2.7 million, prosecutors said.

In a December 2023, KuCoin agreed to pay \$22 million in fines and refunds and stop trading in New York to end claims by the state attorney general that KuCoin failed to register as a securities and commodities broker-dealer and falsely represented itself as a crypto exchange.

Earlier this month, pioneering crypto exchange BitMEX, which was also based in the Seychelles, was ordered by a judge to pay a \$100 million fine for violating US anti-money laundering law, capping one of the first big criminal enforcement cases targeting the crypto market. BitMEX pleaded guilty in July to breaking the Bank Secrecy Act, which requires safeguards that include verifying customer identities and programs to prevent money laundering.

The KuCoin and BitMEX cases are among the last to be resolved by the US Justice Department under a years-long crackdown on crypto exchanges under former President Joe Biden. President Donald Trump, who took office last week, has promised to ease government scrutiny of the crypto market.

The case is US v Flashdot Ltd., 24-cr-168, US District Court, Southern District of New York.

--With assistance from Jazper Lu.



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Virtu, Insiders Sued In Del. Over Stock Buybacks

By **Katryna Perera**

Law360 (January 27, 2025, 10:28 PM EST) -- Stockholders of Virtu Inc. have sued the global financial services venture's top brass in Delaware's Court of Chancery, alleging they diverted roughly \$400 million from public stockholders through share repurchases that took advantage of the company's two-tiered corporate structure.

The Iron Workers Local No. 55 Pension Fund filed a **complaint** Friday against Virtu Inc.'s founder and controlling stockholder, Vincent Viola, its CEO Douglas Cifu and several board members and other executives.

The pension fund claims that Viola, who holds 86.9% of Virtu Inc.'s overall voting power, had diverted disproportionate amounts of cash to himself and the other defendants at the expense of the company's public class stockholders while also increasing the value of his control position.

The investors say Viola has used Virtu Inc.'s complex corporate structure and the public's lack of understanding of it to further his scheme. According to the complaint, Virtu Inc. adopted an "Up-C" corporate structure when it went public in 2015, which allows a business to conduct an initial public offering while retaining private partnership status.

To accomplish this two-tiered structure, the complaint states that Virtu Financial LLC has served as the operating entity for Virtu Inc. before and after the IPO.

"To go public in an Up-C structure, Viola kept Virtu Financial as the operating entity but placed a shell corporation, Virtu Inc., on top of Virtu Financial," the complaint states. "Virtu Inc. is a 'controlled company' for purposes of Nasdaq rules and corporate governance standards."

Virtu Inc. is a shell company without any operations, but Virtu Financial is a financial services firm that provides execution services and data, analytics and connectivity products to its clients, according to the complaint.

The complaint further states that Viola controls roughly 86% of Virtu Inc.'s voting power through his ownership of supervoting Class D common stock, which lacks any economic rights, and he has stacked Virtu Inc.'s board of directors with family, friends and longtime business associates.

Meanwhile, the company's public Class A stockholders own a full economic interest in Virtu Inc. According to the complaint, Virtu Inc. was created simply to hold units of Virtu Financial on behalf of Class A stockholders, with each Class A share corresponding to one Virtu Financial unit.

According to the complaint, Virtu Financial has generated "tremendous amounts of excess cash" in recent years, and Virtu Inc.'s board and Viola have had to decide how to direct the excess cash. Investors say the board has consistently decided to have Virtu Inc. cause Virtu Financial to make pro rata profits distributions to all unitholders, including Virtu Inc., Viola, and other private unitholders.

Through these distributions, Viola and private unitholders keep their own portions, and the board is then left to decide what to do with Virtu Inc.'s portion of the distributions. According to the complaint, in the past, the distributions of excess cash to Virtu Inc. would be "dividend" among Class A stockholders, but the complaint alleges that in late 2020, the board began authorizing increasingly large stock repurchases funded by Virtu Inc.

"The board's choice not to dividend the cash at the Virtu Inc. level to Class A stockholders and

instead use the cash for repurchases is a conflicted decision which had the purpose and effect of unfairly benefiting Viola and the other private unitholders," the complaint states.

In a dividend, all public stockholders would get a pro-rata share of the distribution, but in a stock buyback, each repurchase of a Class A share requires the cancellation of one Virtu Financial unit to maintain the one-to-one economic equivalence between Virtu Inc. Class A shares and Virtu Financial units, according to the complaint.

Therefore, because Virtu Inc. owns 60% of Virtu Financial, in a share repurchase, the Class A stockholders would only receive 60% of the value of their share of the repurchases, while Viola and the other private unitholders receive an additional value.

"Using simplified numbers, assume that Virtu Financial makes a \$100 million cash distribution to its unitholders. \$60 million goes to Virtu Inc., which owns approximately 60% of Virtu Financial ... \$40 million goes to Viola and other private unitholders, who own the other 40% of Virtu Financial," the complaint states.

"[If] Viola and the board caused Virtu Inc. to spend \$60 million on repurchases ... because Virtu Inc.'s Class A stockholders own 60% of the Virtu Financial units, they receive 60% of the value of their share of the repurchases, or \$36 million (60% of the \$60 million).," the complaint states. "Viola and the other private unitholders receive \$40 million from the initial pro rata distribution, and they receive an additional \$24 million of the value from the \$60 million of repurchases."

This means that the Class A stockholders only receive \$36 million even though they own 60% of Virtu Financial, according to the complaint.

The pension fund claims that the board had other options that would have treated Class A stockholders more fairly, such as having Virtu Financial fund the repurchases or having Virtu Inc. fund the buybacks from a non-pro rata distribution.

"Having Virtu Financial fund the repurchases through a non-pro-rata distribution would result in all unitholders bearing the costs, and reaping the benefits, of the repurchases pro rata," the complaint states. "The board nevertheless has consistently chosen to approve ever-increasing stock repurchases that benefit Viola with money that should have gone solely to Class A stockholders."

According to the complaint, by the end of 2023, Virtu Inc. had repurchased over \$1.1 billion in shares, and over \$400 million of the value of these repurchases went to Viola and other private unitholders even though the Class A stockholders fully funded the buybacks.

Additionally, the pension fund alleges that the repurchases allowed Viola to increase his control over Virtu Inc.

"Viola's high-vote Class D shares automatically convert to single-vote Class A shares once his equity ownership of Virtu Financial drops below 25% or if he transfers shares outside of his family (or their affiliates)," the complaint states.

"Viola's equity ownership dropped from 58.9% at the 2015 IPO to 31.5% just before the repurchase program began in 2020. Virtu Inc.'s repurchases sharply reversed this trend, allowing Viola to increase his ownership of Virtu Financial to over 40%, and rising," the complaint states.

The suit seeks damages, attorney fees, improvements to Virtu Inc. corporate governance and internal procedures, and directives ordering the more equitable treatment of Class A stockholders through dividends and non-pro-rata distributions.

Counsel for the pension fund did not immediately respond to requests for comment on Monday and the defendants could not immediately be reached.

The pension fund is represented by Joel Friedlander, Jeffrey M. Gorris, Christopher M. Foulds, Christopher H. Lyons, Tayler Bolton, Randall J. Baron and Benny C. Goodman III of Robbins Geller Rudman & Dowd LLP and by Gladriel Shobe and Jarrod Shobe of Shobe & Shobe LLP.

Counsel information for the defendants was not immediately available.

The case is Iron Workers Local No. 55 Pension Fund v. Vincent Viola et al., case number 2025-0058, in the Court of Chancery of the State of Delaware.

--Editing by Michael Watanabe.

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Investors Sue Pharma Co. After Cancer Drug Trial Termination

By **Sydney Price**

Law360 (January 27, 2025, 6:31 PM EST) -- Prostate cancer treatment developer ESSA Pharma Inc. has been hit with a proposed shareholder class action in Wisconsin federal court alleging company shares fell over 70% after the company announced that it was terminating a clinical trial when it discovered its lead product candidate was not as effective as an existing treatment for certain cancer patients.

According to the complaint filed on Friday by shareholder Todd Van Groll, ESSA's lead and most advanced product candidate was masofaniten, an oral drug that inhibited the progression of prostate cancer. Despite ESSA's representations that masofaniten, when used in combination with another drug, showed promising results among certain cancer patients, the company knew that the treatment was less effective than it led investors to believe and that the study was unlikely to meet its efficacy goals, which was revealed in October when ESSA announced its decision to terminate a study involving the drugs, the complaint alleges.

In addition to ESSA, its CEO David R. Parkinson and Chief Financial Officer David S. Wood are individual defendants in the suit.

According to the complaint, ESSA's clinical study involved testing its drug masofaniten with the "standard of care" for a certain prostate cancer patient population known as enzalutamide monotherapy. Throughout the class period, which begins Dec. 12, 2023, ESSA and the individual defendants failed to disclose that the combination of drugs had "no clear efficacy benefit" over enzalutamide alone.

For example, on the day the class period begins, ESSA told investors that phase one of its clinical trial involving the combination of masofaniten with enzalutamide demonstrated promising results for the patient population. Throughout the remainder of the class period, the defendants represented that the combination of drugs was showing to be an effective treatment, the suit states.

Then on Oct. 31, 2024, ESSA announced that it was terminating the second phase of its combination study, stating that there was "no clear efficacy benefit seen with the combination of masofaniten plus enzalutamide compared to enzalutamide single agent."

On this news, shares of ESSA fell \$3.80 each, or about 73%, to close at \$1.40 on Nov. 1, 2024, according to the suit.

"[A]ccordingly, Defendants had overstated masofaniten's clinical, regulatory, and commercial prospects; and as a result, Defendants' public statements were materially false and misleading at all relevant times," the suit states.

The plaintiff said ESSA and the individual defendants acted with scienter, or actual knowledge of wrongdoing or reckless disregard and violated the Exchange Act.

Van Groll is represented by Jeremy A. Lieberman and J. Alexander Hood II of Pomerantz LLP.

Counsel information for ESSA and the individual defendants was not immediately available on Monday.

The case is Van Groll v. ESSA Pharma Inc et al., case number 1:25-cv-00124, in the U.S. District Court for the Eastern District of Wisconsin.

--Editing by Vaqas Asghar.

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Novo Nordisk's Obesity Drug Study Allegedly Duped Investors

By **Dorothy Atkins**

Law360 (January 27, 2025, 5:45 PM EST) -- Novo Nordisk was hit with a proposed securities class action in New Jersey federal court Friday, accusing the drugmaker of duping investors about its new weight loss drug CagriSema by failing to disclose that obesity patients were taking different dosages in a clinical study, which allegedly skewed results.

In a 37-page complaint, investor Changyeon Moon alleges the Danish company misled investors by failing to disclose the dosages patients took of its new weight loss drug CagriSema during a clinical trial study, "Redefine-1," which the company first announced in November 2022.

According to the suit, the company and its top executives made a series of public statements at the time on an earnings call and in financial filings that claimed Novo Nordisk expected the study would show obesity and diabetes patients treated with CagriSema would have a 25% average weight loss.

The company and its executives initially provided "overwhelmingly positive statements" to investors and claimed the study reflected "significant confidence" in the new drug's weight-loss expectations, and they continued to make similar statements through 2023, the suit says.

"Such statements absent these material facts misled plaintiff and other shareholders about the study's risks and prospects for success and, in turn, caused them to purchase Novo's securities at artificially inflated prices," the complaint says.

However, throughout the process, the company failed to disclose that patients had a flexible dosing protocol, which allowed patients to modify their doses throughout the trial, which could lead to lower weight loss results.

In December, the company revealed CagriSema had achieved a weight loss average of only 22.7% after 68 weeks due, in part, to the purportedly previously undisclosed "flexible" nature of the dosage protocol, according to the complaint.

Following the news, Novo's stock dropped from trading at \$103.44 per share on Dec. 19 to \$85 per share on Dec. 20, "a decline of about 17.83% in the span of just a single day," the suit says.

Moon seeks to certify a class of investors who acquired Novo securities between Nov. 2, 2022, and Dec. 19 of last year. The two-count complaint asserts violations of the Exchange Act and related federal securities regulations, and the lawsuit seeks damages plus interest, attorney fees, expert fees and other costs.

The complaint names as defendants Novo Nordisk A/S, which has its principal executive offices in the U.S. in Plainsboro, New Jersey, its CEO, Lars Fruergaard Jørgensen, and Martin Holst Lange, executive vice president of development.

Novo Nordisk said in a statement Monday that the company disagrees with the allegations.

"We believe these claims are without merit and plan to vigorously defend against them," the statement says.

Moon's counsel didn't immediately respond to a request for comment Monday.

This isn't the only lawsuit Novo Nordisk is facing over its weight loss drugs. In recent months, patients who took Novo Nordisk's wildly popular weight loss drug Ozempic and similar drugs have sued the company and others, claiming they did not properly disclose the risks. Many of those cases have been **consolidated in Philadelphia**.

For its part, Novo Nordisk has denied the allegations and said it intends to "vigorously defend" against them.

Moon is represented by Adam M. Apton of Levi & Korsinsky LLP.

Counsel information for Novo Nordisk, Jørgensen and Lange wasn't immediately available Monday.

The case is Changyeon Moon v. Novo Nordisk A/S et al., case number 3:25-cv-00713, in the U.S. District Court for the District of New Jersey.

--Additional reporting by Lauren Berg. Editing by Drashti Mehta.

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2 Firms Want To Co-Lead Humacyte Investor Suit

By **Sydney Price**

Law360 (January 27, 2025, 8:47 PM EST) -- Hagens Berman Sobol Shapiro LLP and Pomerantz LLP have asked to co-lead a proposed class of Humacyte Inc. investors alleging that the company failed to disclose quality assurance issues at its manufacturing facilities, which delayed regulatory review for its bioengineered blood vessel product candidate.

According to the motion filed Friday, plaintiffs Frederick Foote, Matthew Cagnetti and Damion Hopwood allege a collective loss of approximately \$207,000 and seek to lead the suit together to avoid further delay associated with lead plaintiff appointment and provide "broader representation for class members."

Foote, who is represented by Hagens Berman, claims to have lost roughly \$186,000 in connection with the securities. Cagnetti and Hopwood, who are represented by Pomerantz, say they lost about \$21,000.

The suit was filed by investor James A. Cutshall **in November**. After claiming more than \$16,000 in losses, Cutshall withdrew his application for lead plaintiff appointment Friday, according to the suit's docket.

Cutshall's complaint said Humacyte shareholders were blindsided when the U.S. Food and Drug Administration in October said it had observed quality oversight issues such as an absence of microbial testing at the Humacyte's Durham, North Carolina, manufacturing facilities.

When the FDA's findings became available, Cutshall said, trading prices for Humacyte shares fell more than 16% from about \$5.80 a share to about \$4.86 a share, hurting investors.

Cutshall also pointed to market records from August showing that trading prices for Humacyte shares fell when it announced the FDA would miss its original deadline for reviewing Humacyte's product, with trading prices falling more than 16% from just less than \$8 a share to about \$6.60 a share.

At that time, Humacyte representatives acknowledged that the FDA had inspected its facilities, but the company failed to indicate that those inspections had been anything other than routine, the complaint said.

Cutshall claimed the regulator's adverse findings showed it was poised to delay its review of an application Humacyte had filed for its lab-grown human acellular blood vessel implant product candidate.

The proposed class period includes those who purchased Humacyte shares between May 10, 2024, when Humacyte told investors that its FDA product application was "on track," and Oct. 17, when the FDA released its Form 483 inspection observations about Humacyte's manufacturing facilities.

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

Foote is represented by Gagan Gupta of Tin Fulton Walker & Owen PLLC and Lucas E. Gilmore of Hagens Berman Sobol Shapiro LLP.

Cagnetti and Hopwood are represented by David G. Schiller of Schiller & Schiller PLLC, Peretz Bronstein of Bronstein Gewirtz & Grossman LLC and Jeremy A. Lieberman and J. Alexander Hood II of Pomerantz LLP.

The case is James Cutshall v. Humacyte Inc. et al., case number 1:24-cv-00954, in the U.S. District Court for the Middle District of North Carolina.

--Additional reporting by Emilie Ruscoe. Editing by Stephen Berg.

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Advertising Platform's Changes Hurt Investors, Suit Says

By **Emilie Ruscoe**

Law360 (January 27, 2025, 9:11 PM EST) -- Advertising platform Cardlytics Inc. faces a proposed class action alleging that it failed to warn shareholders that fast-paced changes to its technology could impact its ability to deliver on advertiser budgets, hurting investors when it disclosed an associated earnings miss.

In a **complaint** filed Wednesday in Georgia federal court, Cardlytics investor Darien Froess claimed that investors were blindsided by the company's August acknowledgment of a 9% year-over-year quarterly revenue decrease that its representatives attributed to recent changes to its so-called Ads Decision Engine tool.

Froess pointed to market records showing that following the news, trading prices for Cardlytics fell nearly \$4 to just under \$3. The investor also noted that in May, the company saw a nearly 37% decline after it said its first quarter revenue was up only 8% despite the fact the company had seen a 12% jump in billings during that time.

Froess' Jan. 22 suit referenced an August statement from the company's chief financial officer explaining the company's revenue slump as a result of "lower-than-anticipated billings, largely due to under-delivery of budgets we have secured, and higher-than-expected consumer incentive payments."

"[T]his miss was driven by fast-paced changes to our technology platform, which led to unpredictable delivery of the advertiser budgets," Amit Gupta, the company's CEO, said on an August earnings call quoted in the suit.

"We are not satisfied with our results, and we're taking proactive steps to address these challenges. We need to better monetize the value we deliver to our buyers, brands, and banks. That starts with better forecasting, delivery, and pricing, and delivering a platform that fully meets our advertisers' needs," Gupta told investors in August.

Froess described Cardlytics as offering a proprietary advertising channel that uses anonymized purchase data from banks to help its brand clients target potential customers.

On its website, the company says its native ad platform is in banks' digital channels such as their websites and apps, where customers can browse brand discount offers.

The investor noted that, alongside the August earnings miss announcement, the company announced the departure of Karim Temsamani, the Cardlytics CEO during the rest of Froess' proposed class period.

The proposed class would include those who purchased Cardlytics shares between March 14, 2024 — when Froess claims the company offered inadequate risk disclosures — and Aug. 7, 2024, when the company announced its earnings miss.

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

Froess is represented by Corey D. Holzer, Marshall P. Dees and Joshua A. Karr of Holzer & Holzer LLC and Robert V. Prongay and Charles H. Linehan of Glancy Prongay & Murray LLP.

Counsel information for the defendants wasn't immediately available Monday.

The case is Froess v. Cardlytics Inc. et al., case number 1:25-cv-00279, in the U.S. District Court for the Northern District of Georgia.

--Editing by Rich Mills.

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High Court Skips Golf Course Investors' Class Cert. Bid

By **Isaac Monterose**

Law360 (January 27, 2025, 4:03 PM EST) -- The U.S. Supreme Court on Monday rejected a review petition filed by Chinese investors who wanted class certification for their Ponzi scheme suit against a Chinese citizen accused of misusing the investors' money to buy multiple golf courses and other properties in South Carolina.

In their review petition filed in November 2024, named plaintiffs Xunhui Cheng and Kelan Cai argued that the Fourth Circuit's unpublished decision **rejecting** their class certification bid stopped them from holding Chinese citizen Dan Liu and his companies accountable.

"The Fourth Circuit's failure here to permit utilization of a long-recognized civil remedy entitling multiple victims of foreign crimes to jointly seek relief from the criminal perpetrator was clearly envisioned by the drafters of the original Federal Rules of Civil Procedure as codified in Rule 23 in 1938 and going forward," the investors said.

The Fourth Circuit had sided with the lower court, ruling that class certification wouldn't provide relief because most of the putative members' claims sought monetary damages, and the amount of damages that each class member could receive would differ.

The investors argued that the Fourth Circuit and the lower court's rulings both clashed with the U.S. Supreme Court's June 2011 decision in **Wal-Mart Stores Inc. v. Dukes** . The high court determined in its Dukes ruling that monetary relief claims didn't stop classes of litigants from being certified.

"Plaintiffs here, in their application for [class certification] never sought to foreclose the opt out rights of absent class members to have their respective days in court against defendants," they argued. The putative class also argued that their main goal is to gain possession of the South Carolina properties purchased by Liu and his companies.

In December 2024, counsel for Liu and his companies declined to respond to the putative class' review petition.

The investors began their suit in March 2020 in South Carolina state court, and the suit got removed to South Carolina federal court in May 2020. They claimed Liu used their funds to buy properties in the state that included 22 golf courses and nearly 30 acres of oceanfront property.

"Defendant Liu diverted funds to the other defendants and benefited from a multitude of financial transactions with the knowledge and intent of obscuring the true nature of the various business entities and the accurate use of such monies and with the further intent to impair, obstruct, prevent, delay and conceal the true nature and accurate use of such," the investors claimed.

"The racketeering enterprise and the activities thereof resulted in the severe and sustained economic hardship upon plaintiffs and plaintiff class and have left plaintiffs and plaintiff class insolvent and/or without the monies they invested," the suit said.

Class counsel and counsel for the respondents didn't respond to requests for comment Monday.

The putative class is represented by Gene M. Connell Jr. of Kelahe Connell & Connor PC and Anthony Scordo III of Law Office of Anthony Scordo III.

Liu is represented by Thomas E. Lydon of McAngus Goudelock & Courie LLC.

Liu's companies are represented by Benjamin R. Smith III of Nelson Mullins Riley & Scarborough LLP.

The case is Xunhui Cheng et al. v. Dan Liu et al., case number 24-583, in the U.S. Supreme Court.

--Editing by Haylee Pearl.

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Pilgrim's Pride, Investors Ink \$41.5M Price-Fixing Deal

By **Lauren Berg**

Law360 (January 27, 2025, 10:36 PM EST) -- Investors in Pilgrim's Pride asked a Colorado federal judge Friday to greenlight a settlement with the meat company and its former CEO, who have agreed to pay \$41.5 million to resolve long-running claims over misrepresentations and price-fixing in the broiler chicken market that led to artificially inflated stock prices.

In a **motion** for preliminary approval, lead plaintiff George James Fuller told the court that Pilgrim's Pride Corp. and its former CEO William W. Lovette agreed to establish a \$41.5 million cash fund that will be distributed to settlement class members who submit valid claims.

Fuller argues in the motion that he and his counsel at Kahn Swick & Foti LLC have "zealously represented" the proposed investor class, and that the deal provides adequate relief when weighed against the costs, risks and delay of trial and a possible appeals process.

"Here, continued litigation would be protracted and expensive," Fuller said, noting that the defendants have so far produced more than one million documents in discovery and multiple depositions are scheduled to take place. "As key elements of plaintiff's claims, such as falsity, scienter and loss causation, are inherently fact-specific, this case would most likely be destined for a complex and expensive trial."

"While plaintiff believes his claims have merit, defendants vigorously contested them," he added. "The settlement provides an immediate recovery of \$41.5 million."

The **stipulation of settlement** filed alongside the motion notes that Pilgrim's Pride and Lovette have denied all claims alleged in the case and continue to deny any fault, wrongdoing, liability or damages related to the claims.

Fuller's counsel intends to seek an attorney fee award that will not exceed 33.33%, or about \$13.8 million, of the settlement fund, according to the stipulation.

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

The suit — first filed in October 2016 — alleges that Pilgrim's Pride participated in two production cuts, the first between 2008 and 2009 and the second between 2011 and 2012. The coordinated cuts allowed industry players to stabilize their bottom lines, even during a time of soaring feed costs, and the companies continued to suppress the supply of broiler chickens until 2016, the complaint states.

The poultry giant falsely told investors, through public filings, earnings calls and other announcements, that its success was based on legitimate business strategies, but after the alleged antitrust conspiracy came to light, Pilgrim's Pride's stock price plummeted, according to the suit.

But U.S. District Judge R. Brooke Jackson in April 2021 ruled that the suit was subject to the five-year statute of repose for securities actions and any claims predicated on misstatements that occurred before June 2015 are therefore time-barred, even though the proposed class' suit was initially filed in 2016.

Fuller filed a motion for reconsideration the following month, which was denied in 2021.

The case then went to the Tenth Circuit, which in **July 2023 ruled** the suit should not have been tossed as time-barred because statutes of repose create a deadline for filing actions rather than

resolving them.

Back at the district court, Pilgrim's Pride in September 2023 again **moved to toss** the suit, arguing that the judge should follow the lead of courts that have thrown out similar price-fixing claims against it over a lack of meat behind the allegations.

The company cited the dismissal of a "nearly identical securities fraud claim" by another Colorado federal judge in 2022.

In that suit, filed by a United Food and Commercial Workers International Union local and other parties, the court rejected the union's theory that Pilgrim's Pride's public statements about its finances and business operations were rendered false because the poultry company didn't disclose an alleged price-fixing scheme with other broiler chicken producers.

Fuller also relied on "copy-paste" allegations from Lovette's indictment for antitrust claims in order to argue that he intentionally misrepresented the company's financial information, Pilgrim's Pride said, citing a jury's July 2022 verdict finding Lovette and four other executives **not guilty** of a price-fixing scheme.

"That Mr. Lovette and other PPC executives were found not guilty of antitrust conspiracy weighs strongly against any finding of falsity or scienter for Mr. Lovette," the motion asserted.

The investors are represented by Kim E. Miller, J. Ryan Lopatka, Lewis S. Kahn and Craig J. Geraci of Kahn Swick & Foti LLC.

Pilgrim's Pride is represented by Aaron J. Curtis, Brian Kitchen, Caroline Zalka, Evert J. Christensen, Jonathan D. Polkes and Tania C. Matsuoka of Weil Gotshal & Manges LLP and Caitlin McHugh of Womble Bond Dickinson LLP.

The case is In Re Pilgrim's Pride Corp. Securities Litigation, case number 1:16-cv-02611, in the U.S. District Court for the District of Colorado.

--Additional reporting by Sydney Price and Thy Vo. Editing by Emily Kokoll.



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Twitter Investor Can't Recoup Stock Sale Loss, Musk Atty Says

By **Jeff Montgomery**

Law360 (January 27, 2025, 6:48 PM EST) -- An attorney for Elon Musk and Twitter successor X Corp. argued on Monday that seller's remorse prompted a former investor in the social media giant to launch an unsupportable, pro se lawsuit in Delaware's Court of Chancery to recover losses from his premature sale of the taken-private company's stock.

Zacharia Chibane, X Corp.'s senior counsel, told Chancellor Kathaleen St. J. McCormick that Washington state computer software engineer ATM Shafiquel Khalid — representing himself in the suit — bought \$7.4 million worth of Twitter stock at \$49.46 per share and could have earned the premium from an eventual \$54.20-per-share deal for investors, but he bailed early.

Khalid sold at \$36.90 per share after Musk notified the U.S. Securities and Exchange Commission of his unilateral termination of a deal to buy the company, which the billionaire later rescinded.

"Although the merger did close on its original terms on Oct. 28, 2020, Khalid's gamble didn't pay off," Chibane told the chancellor. "He sold all his shares months before close," losing nearly \$2.6 million by selling at a loss and taking into account what he could have earned by holding out for the final price.

By selling early, Chibane told the chancellor, Khalid also relinquished any right months later to seek a portion of a never-triggered \$1 billion termination fee in the original Twitter purchase contract.

Before Khalid's opening argument, Chancellor McCormick said she owed him candor, observing that "this is an uphill battle for you. I recognize that you lost a huge amount of money in trading Twitter stock" at a confusing time.

But she also said she was struggling to see how Khalid's arguments could fly, noting the claims were different from another post-deal Twitter objection — rejected by the same court — in which stockholder Luigi Crispo sought a \$3 million mootness fee in mid-2022 for the purported benefits of an earlier suit to force Musk's follow-through on the Twitter deal.

Crispo said in his original complaint that he had 5,500 shares of Twitter and was owed nearly \$300,000 from Musk based on the rescinded \$54.20-per-share offer. Musk had pulled back after accusing the social media giant of failing to deliver data on fake accounts and automated users, or "bots," on the platform.

After Musk finally took the company private, Chancellor McCormick's opinion said, Crispo's complaint stood up, "zombie-like," with an assertion of partial credit for getting the deal over the finish line and a \$3 million claim. Yet Crispo's attorneys, the opinion said, were unable to show the claim was meritorious despite arguments that Crispo was a third-party beneficiary of the deal.

In his own suit, Khalid argued Musk "owed a duty of good faith and care," adding that he "reneged on a promise."

In a brief, Khalid argued that once the merger agreement was terminated, "it became null and void except for liability. Musk couldn't reinstate a 'null and void' merger agreement of his own choice without disposing of the liability already created and vested by the merger agreement."

"My damage," Khalid told the court, "was in the way he conducted" the process. "He announced to

the world that he was not going to buy it and drove down the price," in breach of his promises.

Chibane told the chancellor that Musk's agreement was "neither abandoned nor rendered null and void," adding that Khalid failed to allege any fraud or misstatements.

Chancellor McCormick said she would take the arguments under advisement.

The case is ATM Shafiqui Khalid v. Elon Musk and X Corp. et al., case number 2024-0443, in the Court of Chancery of the State of Delaware.

--Editing by Philip Shea.

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Ga. Accountant Must Face Fintech Co.'s Share Price Suit

By **Chart Riggall**

Law360 (January 27, 2025, 6:22 PM EST) -- A Georgia federal judge has declined to dismiss most of a British fintech company's suit against Atlanta-based accounting firm Frazier & Deeter LLC over an allegedly bungled stock valuation, ruling Monday that a hold harmless clause in the companies' contract was largely unenforceable.

U.S. District Judge Michael Brown said the fine print of F&D's engagement agreement with Genesis Global Technology Ltd., which purported to absolve the company of all but gross negligence or willful misconduct claims, was couched within other contract provisions and contained no stylistic touches — such as bolding or a larger font size — to make them stand out.

"The court concludes, under the circumstances here, the exculpatory clauses are not, as a matter of law, 'prominent, explicit, clear, and unambiguous' so as to bar plaintiff from asserting its claims," Judge Brown ruled.

Nor, he added, could F&D dismiss Genesis' breach of contract claim, which the accountant had argued was duplicative because it arose from the same underlying conduct at issue in the other claims. Georgia courts have said that such multipronged pleadings are not prohibited, Judge Brown ruled, giving Genesis the green light.

U.K.-based Genesis first **sued F&D** almost exactly a year ago over the accounting firm's alleged mishandling of a common share price calculation it was hired to do in 2021.

Genesis says it was required to report the valuation as part of its compliance with U.S. tax laws, but F&D failed to take into account how the value of the company is distributed to each share class despite Genesis making the necessary documents available to the accounting firm and posting them publicly.

Auditors later caught the error, which showed F&D had missed the mark by about 67% from about 2 cents in Frazier & Deeter's valuation to 3 cents in the corrected valuation, according to the suit. The error not only exposed Genesis to penalties and legal liability, the company said, but cost it about \$600,000 to fix the valuation.

"Defendant's failure to include the required liquidation provision in its calculations was a complete absence of the normal degree of care and wantonness," Genesis said last year as it sought both punitive damages and attorney fees.

F&D hit back last May with a **dismissal bid** that argued the contract's hold-harmless provision nullified the suit in its entirety. Such agreements are considered "valid and binding" by Georgia courts as long as they don't run against public policy, the firm said, particularly in cases where two "sophisticated commercial parties" agree to limit their potential liability to one another.

Judge Brown's order this week, however, said that language was included on the fourth page of the five-page contract, was not visually differentiated from the surrounding language, and lacked any particular section heading — all factors the Georgia Court of Appeals had used to throw out "strikingly similar" language in its 2001 decision **Parkside Center Ltd. v. Chicagoland Vending Inc.** 📌

Only Genesis' claim for gross negligence warranted dismissal at this stage in the suit, Judge Brown

said. While the company said F&D had recklessly ignored the liquidation provision of the share value calculation, the judge stated that it was "completely unclear" how that omission rose to the level of gross negligence.

"For example, plaintiff argues defendant may have misunderstood, misapplied, or failed to consider the liquidation-preference provision altogether," Judge Brown said. "Even assuming the latter, it's unclear how defendant's failure to consider the provision deviated from ordinary care in its valuation beyond that 'which even careless' people observe."

Counsel for the parties couldn't immediately be reached for comment Monday.

Genesis is represented by Jason B. Godwin of Godwin Law Group.

F&D is represented by Johannes S. Kingma and Jeffrey C. Hoffmeyer of Stites & Harbison PLLC.

The case is Genesis Global Technology Ltd. v. Frazier & Deeter LLC, case number 1:24-cv-00345, in the U.S. District Court for the Northern District of Georgia.

--Editing by Kristen Becker.

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Justices Won't Review \$90M Facebook Privacy Settlement

By **Greg Lamm**

Law360 (January 27, 2025, 6:39 PM EST) -- The U.S. Supreme Court on Monday declined to review a case involving a \$90 million settlement for claims Facebook illegally tracked logged-out users' browsing activity, rejecting an argument from an objector who challenged plaintiff service awards and \$26.1 million in attorney fees.

The justices turned away Eric Alan Isaacson's petition challenging the attorney fees awarded in a settlement of an invasion-of-privacy lawsuit against Facebook and parent company Meta Platforms Inc. involving 124 million class members. Isaacson, a California attorney and class member, said the attorney fees were disproportionately large when compared to the "remarkably small recovery" due to individual class members.

Isaacson also argued that service awards of \$3,000 to \$5,000 each to the seven lead plaintiffs in the class action were unlawful under precedents set by a pair of 19th century cases. Justices denied Isaacson's petition, in **a brief order** with no comment.

A Ninth Circuit panel **affirmed the \$90 million settlement** in an unpublished opinion in February.

In urging the justices to review the awards and fees, Isaacson said lower courts are ignoring the U.S. Supreme Court's 1881 mandate in **Trustees v. Greenough** that common-fund attorney fees awards should be made with moderation and while considering the best interests of the class.

Isaacson argued that incentive awards undermine class representatives' ability to adequately represent the interest of absent class members.

"And the case provides an opportunity to require common-fund attorney's fees be awarded with moderation, and in line with the reasonable fees that plaintiffs' lawyers would be paid under fee-shifting statutes if they actually litigated to win," Isaacson said.

In **opposing review**, Meta said Isaacson was not challenging the validity of the underlying settlement.

"Both of them implicate only how the settlement fund is allocated on the other side of the 'v' among named plaintiffs, class members, and plaintiffs' counsel. But Meta respectfully submits that petitioner has not presented questions that warrant this Court's review," the company said in its opposition brief.

The lead plaintiffs in the Facebook class action made a similar argument in opposing Isaacson's petition.

Representatives for Isaacson, the lead plaintiffs and Meta did not immediately respond Monday to requests for comment.

Isaacson is representing himself.

Meta Platforms is represented by Christopher Chorba, Lauren R. Goldman, Daniel R. Adler, Aaron Smith and Olivia Goldberg of Gibson Dunn & Crutcher LLP and Michael G. Rhodes and Kyle C. Wong of Cooley LLP.

The lead plaintiffs are represented by David A. Straite, Amy Keller and Adam Prom of DiCello Levitt LLP, Steve Grygiel of Grygiel Law LLC, and Jason Barnes of Simmons Hanly Conroy LLC.

The case is Eric Alan Isaacson v. Meta Platforms Inc., fka Facebook Inc., et al., case number 24-259, in the Supreme Court of the United States.

--Editing by Emily Kokoll.

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MGM's \$45M Deal To End Data Breach Suits Wins Initial OK

By **Dorothy Atkins**

Law360 (January 27, 2025, 6:15 PM EST) -- A Nevada federal judge has preliminarily approved MGM Resorts International's \$45 million deal — with class counsel seeking up to \$13.5 million in fees — to settle consolidated proposed class action litigation alleging that MGM failed to protect 37 million customers' personal information from multiple data breaches in 2019 and 2023.

In **an order** signed Jan. 21 but filed Jan. 22, U.S. District Judge Gloria M. Navarro granted the plaintiffs' motion for preliminary approval of the proposed settlement, under which class counsel plans to seek up to 30% of the settlement fund — or \$13.5 million — for fees, plus costs.

"Despite the risks involved with further litigation, the settlement provides outstanding benefits, including cash payments and financial account monitoring for all settlement class members," the order says.

If granted final approval, the deal would end dozens of lawsuits that were initially launched in 2019 by multiple plaintiffs who accused MGM of negligently leaving their highly sensitive personal data exposed to a July 2019 hack.

Those cases were consolidated before Judge Navarro and as litigation proceeded, more than a dozen other similar **lawsuits were filed** following a September 2023 hack and those cases were consolidated before another judge, U.S. District Judge Richard F. Boulware II.

The data breach victims generally claim the hospitality company — whose properties in the U.S. include name-brand institutions such as the Bellagio, Mandalay Bay and MGM Grand, all in Las Vegas — did not notify its customers until months after the 2019 breach, and the company retained their sensitive information on its servers for longer than necessary. They also said the company failed to take reasonable efforts to protect their sensitive data by encrypting it and it failed to monitor its software for intrusions, among other alleged safety measure failures.

As a result of those alleged failures, the personal data of MGM customers has since been **made available on the dark web**, and the named plaintiffs claim they've gotten more spam and phishing messages and had to spend time and resources on protecting their data.

Although the 2019 breach mostly involved names, addresses, telephone numbers, email addresses and dates of birth, in some cases customers' military identification numbers, driver's license numbers and passport numbers were exposed, and the subsequent 2023 breach exposed some customers' Social Security numbers, according to court documents.

Before the 2023 breach, in 2021, MGM asked the court to throw out claims tied to the 2019 breach that it negligently exposed their personally identifiable information, arguing that the customers did not suffer any compensable damages. But Judge Navarro **rejected MGM's argument**, and the case over the 2019 breach entered discovery.

Following the 2023 breach, in July, Judge Navarro agreed to pause litigation over the 2019 breach so the parties could enter joint mediation before data breach mediator Bruce Friedman, seeking to settle claims over both breaches. And in late October, they informed the court they had reached a settlement in principle to resolve all litigation over the 2019 and 2023 breaches, according to court documents.

The proposed deal seeks to certify a class of customers whose data was exposed in the breaches, and class members would be entitled to a pro rata cash payment ranging between \$20 and up to \$75 based on the personal information exposed, plus up to \$15,000 in a cash payment to reimburse them for their documented losses, based on the personal information exposed, as well as financial account monitoring.

Under the deal, class members whose Social Security number or military ID number was exposed would receive an average cash payment of \$75, while class members whose passport number or driver's license number was exposed would get \$50. Other class members who had less sensitive information exposed would receive \$20, according to the motion.

Lead plaintiffs would receive \$10,000 each if they were deposed in litigation over the 2019 breach and \$3,500 if they were deposed in litigation over the 2023 breach.

A final approval hearing is currently scheduled for June 18 at 9 a.m.

Cohen Milstein Sellers & Toll PLLC partner Douglas J. McNamara, who serves as co-lead interim class counsel, said in a Jan. 24 statement that he's pleased with the proposed settlement, which he noted is on behalf of millions of MGM Resort customers.

"The hotel and entertainment industries are particularly desirable targets for hackers," he said. "The same hackers also attacked Caesars Entertainment, Inc. in 2023."

Counsel and representatives for MGM didn't immediately respond to requests for comment Monday.

The class is represented by J. Gerard Stranch IV of Stranch Jennings & Garvey PLLC, James J. Pizzirusso of Hausefeld LLP, Lynn Toops of Cohen & Malad LLP, Gary Klinger of Milberg Coleman Bryson Phillips Grossman PLLC, Jeff Ostrow of Kopelowitz Ostrow PA, Douglas J. McNamara of Cohen Milstein Sellers & Toll PLLC, E. Michelle Drake of Berger Montague PC, John A. Yanchunis of Morgan & Morgan Complex Litigation Group and David M. Berger of Gibbs Law Group LLP.

MGM Resorts International is represented by Todd L. Bice and Brianna Smith of Pisanelli Bice PLLC and Ann Marie Mortimer, Jason J. Kim and Neil K. Gilman of Hunton Andrews Kurth LLP.

The consolidated litigation is In re: MGM Resorts International Data Breach Litigation, case number 2:20-cv-00376, in the U.S. District Court for the District of Nevada.

--Additional reporting by Caleb Symons. Editing by Stephen Berg.

Update: This story has been updated to include a comment from class counsel.



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Norfolk Southern Can't Block Expert Testimony On Derailment

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

Law360 (January 27, 2025, 4:53 PM EST) -- A railcar inspector with over 45 years of experience is clear to testify against Norfolk Southern in litigation over the 2023 train derailment and chemical spill in East Palestine, Ohio, a federal judge has ruled, rejecting the rail company's argument that he was not qualified to opine on certain train safety equipment.

U.S. District Judge Benita Y. Pearson said in her Friday **ruling** that James H. Rader offered reliable opinions on Norfolk Southern's inspection practices, specifically questioning whether a crew in St. Louis examined the train's hot bearing detectors or HBDs — devices that monitor the temperature of a train's roller bearings to prevent derailment.

Rader, an expert retained by **third-party defendants** GATX Corporation and its subsidiary General American Marks Co., said that Norfolk Southern also failed to adequately staff its Salem, Ohio, wayside detection desk in charge of monitoring trains for defects.

Norfolk Southern argued that despite Rader's long experience in the industry, he did not have specific expertise in hot bearing detectors and wayside desk operations. But Judge Pearson said the company misrepresented Rader's experience.

"Rader declared in his deposition that although his more than 45 years of experience in the railroad industry did not involve 'designing, installing, maintaining, [or] calibrating wayside detectors,' he does have 'practical industry experience' with HBDs in working on behalf of railcar owners who rely on the accuracy of the data generated by HBDs that is communicated to them by railroads, and also rely on railroads to respond appropriately to that data in real time," Judge Pearson said.

The judge also said that an expert's lack of experience in a certain specialized field within an industry is a question of how much weight to afford the opinion, not whether it is admissible.

She also rejected Norfolk Southern's contentions that Rader's opinions on how the company responds to 953 alerts — which indicate bearing overheating — were unreliable.

The rail company argued that Rader's opinion that Norfolk Southern's wayside detection alert policies impeded the wayside analyst from stopping the train before it derailed was also unreliable and should be blocked, but Judge Pearson denied that request too.

"Norfolk Southern suggests that evidence reviewed by Rader should have led him to conclude that the wayside analyst on duty when train 32N derailed would not have alerted the train crew even had he seen the 953 alert at Salem," Judge Pearson said. "But that kind of challenge to the factual basis of Rader's opinions has nothing to do with the reliability or admissibility of the testimony. Rather, it is the kind of argument that Norfolk Southern may make to the jury if it truly thinks that Rader's opinions deserve little weight."

In a Nov. 22 filing, GATX claimed Norfolk Southern was attempting to offload liability for the Feb. 3, 2023, toxic spill on it because it manufactured the tank cars Norfolk Southern used on train 32N.

GATX argued that Norfolk Southern didn't exercise "ordinary care" in checking the train before departure.

Norfolk Southern is represented by Alan Schoenfeld, Andrew Rhys Davies, Davina Pujari, Christopher Rheinheimer and Albinas Prizgintas of WilmerHale, and J. Lawson Johnston, Scott D. Clements, Aaron Ponzo and Paul Roman of Dickie McCamey & Chilcote PC.

GATX and General American Marks are represented by Hariklia Karis, Robert B. Ellis, Steven J. Lindsay, Jonathan O. Emmanuel, Aaron Stevenson and Sydne K. Collier of Kirkland & Ellis LLP, and Joseph A. Castrodale and Meggan A. Loudon of Benesch Friedlander Coplan & Aronoff LLP.

The case is In re: East Palestine Train Derailment, case number 4:23-cv-00242, in the U.S. District Court for the Northern District of Ohio.

--Additional reporting by Linda Chiem. Editing by Robert Rudinger.

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SoCal Edison To Leave Power Off Amid Eaton Fire Litigation

By **Rachel Scharf**

Law360, Los Angeles (January 27, 2025, 9:30 PM EST) -- Southern California Edison agreed Monday that it won't re-energize the power lines leading to the site of this month's deadly Eaton Fire for three more weeks, after plaintiffs' firm Edelson PC obtained a video that appears to show electrical sparks near the utility's equipment just before the fire began.

The agreement resolved a daylong hearing in Los Angeles County's Glendale courthouse, where Eaton Fire victim Evangeline Iglesias is suing SCE for **allegedly igniting the blaze** that killed 17 people and destroyed nearly 10,000 structures in Altadena. The suit is among more than three dozen that have been filed against SCE since the Jan. 7 disaster.

Superior Court Judge Ashfaq G. Chowdhury entered a **temporary restraining order** last week requiring SCE to preserve its equipment in a one square-mile area near the Eaton Fire's origin. An attorney for Iglesias, Edelson partner Ali Moghaddas, asked the judge on Monday to expand that order to include a greater section of the power grid amid "eye-opening" new evidence.

Moghaddas cited newly obtained CCTV footage from a gas station supposedly showing several flashes of light near an SCE transmission tower in Eaton Canyon just before the fire ignited. He also said SCE just disclosed to the California Public Utilities Commission that an electrical abnormality occurred near its so-called Gould substation, roughly five miles away from the fire's origin, around the same time on Jan. 7.

"This is all interconnected, this system. There could be a fault down the road, five miles away, that then explodes," Moghaddas told Judge Chowdhury. "Until we can pinpoint this, they should not be allowed to discard this evidence."

SCE's counsel at first opposed expanding the preservation order, with Doug Dixon of Hueston Hennigan LLP comparing the ever-changing requests to a "game of whackamole." Dixon said Edelson's request "would continue to hinder our ability to restore power and safely secure the return of Altadena residents."

But the SCE team eventually changed its tune, coming back after a lunch break with a proposal to preserve all the towers and transmission lines for five power circuits between the Gould substation and Eaton Canyon. SCE said it would not re-energize these circuits for 21 days or until ordered to do so by local regulators.

Moghaddas agreed to the proposal as "acceptable for the time being." Judge Chowdhury **incorporated** this language into the existing temporary restraining order, set to stay in place through a preliminary injunction hearing Feb. 18.

"I appreciate counsel working it out," the judge said.

Addressing the media outside the courthouse, Moghaddas said the updated order "makes sure critical potential evidence in this case will remain preserved."

"That happened after we put before the court this remarkable video that you've all seen now, showing arcing up at Eaton Canyon," Moghaddas said. "Southern California Edison today did a 180 ... Seeing the writing on the wall, they finally agreed to maintain that evidence."

Meanwhile, SCE spokesperson Kathleen Dunleavy told Law360 on Monday that the Eaton Fire's cause remains unknown and is subject to an ongoing investigation. Dunleavy said the video cited by Moghaddas, which SCE first saw when The New York Times published it this weekend, "requires careful analysis" by experts before its meaning is determined.

As to the abnormality near the Gould substation, Dunleavy said SCE transparently disclosed this finding to the California Public Utilities Commission after examining distant lines that do not run through Eaton Canyon itself. The impact on lines closer to the canyon was "well within standard operating parameters," Dunleavy said.

"It's disheartening to see false narratives being spread," Dunleavy said. "We will continue to focus on the facts and cooperate with the authorities."

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 by John C. Hueston, Douglas J. Dixon, Brittani A. Jackson 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 Janice Carter Brown.

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AIG Unit Says No Coverage For McKinsey Opioid Suits, Deals

By **Ganesh Setty**

Law360 (January 27, 2025, 6:54 PM EST) -- Management consulting giant McKinsey & Co. shouldn't have any coverage for more than 250 opioid lawsuits and roughly \$1.3 billion it's paid in corresponding settlement payments to date, an AIG unit told a Delaware state court, arguing the underlying claimants have accused McKinsey of uninsurable "deliberate misconduct and greed."

Suing various McKinsey entities Thursday, National Union Fire Insurance Co. of Pittsburgh, Pa. **further argued** that because the underlying cases seek damages for societal economic losses from the opioid epidemic, but not particular bodily injuries, the policies' coverage grant for damages "because of" bodily injury wasn't triggered.

The Delaware Supreme Court **already ruled** in the 2022 case **Ace American Insurance Co. v. Rite Aid Corp.** that Ace had no duty to defend Rite Aid in underlying opioid litigation for that very reason, National Union noted.

Thursday's suit comes after a group of Chubb units filed **their own** declaratory action on Jan. 21, which similarly cites the Rite Aid decision.

According to court filings, the coverage dispute centers on McKinsey's work for manufacturers and distributors of opioids, like Purdue Pharma LP, and lawsuits from a slew of different plaintiffs, including the U.S. Department of Justice, state attorneys general, Native tribes, school districts and children born with neonatal abstinence syndrome.

They've specifically alleged that McKinsey played both sides of the opioid epidemic by advising opioid manufacturers and distributors on how to increase sales while simultaneously advising governmental agencies and nonprofits on how to abate the impact of the drugs.

To support its no-coverage position under various McKinsey umbrella policies spanning from July 2008 to July 2021, National Union on Thursday also pointed to a "statement of facts" accompanying a deferred prosecution agreement McKinsey **reached with** the DOJ in December. It stated in part that during its work for Purdue, McKinsey unit McKinsey & Co. Inc. United States "worked side by side [with Purdue] to develop marketing messages and increase OxyContin sales," even though the entity "knew the risks and dangers associated with OxyContin, a powerful and addictive opioid."

In a statement following the settlement with federal prosecutors, McKinsey said it "should have appreciated the harm opioids were causing in our society and we should not have undertaken sales and marketing work for Purdue Pharma."

"This terrible public health crisis and our past work for opioid manufacturers will always be a source of profound regret for our firm," the statement added.

Plaintiffs in multidistrict proceedings against McKinsey, meanwhile, have further "repeatedly disclaimed any damages because of bodily injury and have instead argued that they seek to recover only for their own economic losses," National Union maintained.

All told, the AIG unit said McKinsey has paid roughly \$1.3 billion in opioid-related settlement payments, including a \$650 million payment as part of the deferred prosecution agreement.

Aside from the nature of the underlying opioid claims, National Union argued it should owe no coverage because McKinsey failed to provide any notice of the underlying lawsuits "as soon as practicable," as its umbrella policies required. Though state and federal authorities have investigated McKinsey since at least 2019 and reached various settlements in early 2021, the consulting firm only provided notice of potential liability in December 2021, National Union said.

"This selective and unexcused, years-long delay in notice cannot be construed as being 'as soon as practicable,'" National Union said.

Representatives of the parties did not immediately respond to a request for comment Monday.

National Union is represented by Christopher J. St. Jeanos, James Fitzmaurice, Jocelyn Sher and Elizabeth J. Bower of Willkie Farr & Gallagher LLP and Robert J. Katzenstein and Julie M. O'Dell of Smith Katzenstein & Jenkins LLP.

Counsel information for McKinsey was not immediately available.

The case is National Union Fire Insurance Co. of Pittsburgh, Pa. v. McKinsey & Co. Inc. et al., case number N25C-01-384 MAA, in Delaware Superior Court.

--Additional reporting by Hope Patti, Shane Dilworth and Julie Manganis. Editing by Leah Bennett.

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Yen Libor-Rigging Case Lands Before 2nd Circ. Again

By **Jessica Corso**

Law360 (January 27, 2025, 8:05 PM EST) -- Institutional investors urge the Second Circuit to again revive a lawsuit accusing Bank of America, UBS and others of rigging the interbank borrowing rate for Japanese yen, arguing in a brief Monday that a lower court judge dismissed the case on "obviously erroneous grounds with little (if any) supporting analysis."

The Second Circuit is being asked to weigh in on the decade-old dispute for the second time, after **reviving the case** back in 2020 on the finding that investor plaintiffs convincingly linked their financial losses to the banks' alleged market manipulation.

While some of the fifteen financial institutions originally sued in the case **have since settled**, U.S. District Judge George B. Daniels last year partially dismissed the remaining claims against non-settling defendants like Bank of America and UBS.

"Defendants' second round of pleading motions once again ended up in dismissal of the action on obviously erroneous grounds with little (if any) supporting analysis, bringing plaintiffs back to this court nearly ten years after the case began," the suing investors argue in a brief suing filed with the Second Circuit on Monday.

They urge the court to overturn Judge Daniels' ruling "so that the case against the remaining defendants can proceed swiftly to trial."

The case was first filed in 2015 and accuses the banks of conspiring to rig the London Interbank Offered Rate for Japanese yen between 2006 and 2011. Libor was the benchmark used to determine the rate at which banks borrowed foreign currency from one another.

The benchmark has been replaced with the Secured Overnight Financing Rate after a number of rate-rigging scandals came to light, and some of the world's largest banks **paid billions in penalties** to regulators in the United States and Europe to settle accusations that they participated in the market manipulation.

The California State Teachers' Retirement System and a pair of investment funds, Hayman Capital Master Fund LP and Japan Macro Opportunities Master Fund LP, hope to lead a class of investors who say they were harmed by the rigging of yen Libor because they traded derivatives underpinned by the benchmark.

They told the Second Circuit that Judge Daniels was wrong to rule that the lead plaintiffs could only press antitrust claims against the banks with which they directly traded.

"Defendants collectively conspired to fix the prices at which plaintiffs transacted with members of their conspiracy," according to Monday's brief. "It cannot be the case that plaintiffs are barred from pursuing their antitrust claims against the entire group of defendants responsible for their injuries simply because they did not transact individually with each and every one."

The plaintiffs also assert that, contrary to the lower court's opinion, U.K.-based bank RBS does enough business in New York for the court to have jurisdiction over it. The company has a branch office located in the area and employs traders in the state, according to the plaintiffs.

CalSTRS also contends that it released its claims against UBS through a settlement the company entered into with several state attorneys general, arguing that the bank delayed in raising the

argument and that the supposed release doesn't cover the entirety of the class period.

Aside from UBS, Bank of America and RBS, the other nonsettling banks party to the appeal are Lloyds Bank PLC and Coöperatieve Rabobank U.A.

A UBS spokesperson declined to comment. The remaining banks didn't immediately respond to a request for comment Monday.

The investors are represented by Vincent Briganti, Margaret MacLean, Raymond Girnys and Charles Kopel of Lowey Dannenberg PC.

Bank of America is represented by Davis Polk & Wardwell LLP, UBS is represented by Gibson Dunn & Crutcher LLP, RBS is represented by King & Spalding LLP, Lloyds is represented by Hogan Lovells and Herbert Smith Freehills LLP, and Rabobank is represented by Milbank LLP.

The case is Sonterra Capital Master Fund Ltd. et al. v. UBS AG et al., case number 24-1954, in the U.S. Court of Appeals for the Second Circuit.

--Additional reporting by Emilie Ruscoe. Editing by Kristen Becker.

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Crypto Exchange KuCoin Pleads Out, Agrees To Pay \$297M

By **Stewart Bishop**

Law360, New York (January 27, 2025, 9:58 PM EST) -- Cryptocurrency exchange KuCoin on Monday pled guilty and agreed to pay \$297 million for failing to implement anti-money laundering protocols and allowing more than \$5 billion worth of criminal funds to flow through its trading platform.

Seychelles-incorporated Peken Global Ltd., which does business as KuCoin, pled guilty during an afternoon proceeding before U.S. District Judge Andrew Carter in Manhattan to one count of operating an unlicensed money transmitting business.

KuCoin CEO BC Wong was in court Monday and entered the guilty plea on behalf of the company.

Prosecutors say KuCoin failed to implement effective anti-money laundering and know-your-customer programs, in violation of the Bank Secrecy Act, and neglected to register with the U.S. Department of Treasury's Financial Crimes Enforcement Network, despite having approximately 1.5 million registered users in the U.S.

KuCoin founders Chun "Michael" Gan and Ke "Eric" Tang entered into two-year deferred prosecution agreements with the government. The Chinese nationals, who have not been arrested, agreed to pay over \$2.7 million apiece and refrain from any involvement in the management or operations of KuCoin.

The crypto exchange agreed to forfeit \$184.5 million and pay a fine of \$112.9 million, however the total monetary penalty imposed in the deal with federal prosecutors is expected to be offset by an expected forthcoming settlement with the U.S. Commodity Futures Trading Commission, as well as a \$5.3 million fine it paid as part of a settlement of **a civil action** brought by the New York attorney general's office.

Prosecutors say KuCoin began cooperating with the government immediately after it was indicted, and as such, the \$112.9 million fine represents a 25% discount off of the bottom end of the applicable sentencing guidelines range.

The interim U.S. attorney for the Southern District of New York, Danielle Sassoon, said KuCoin for years steered clear of instituting required anti-money laundering policies.

"As a result, KuCoin was used to facilitate billions of dollars' worth of suspicious transactions and to transmit potentially criminal proceeds, including proceeds from darknet markets and malware, ransomware, and fraud schemes," Sassoon said in a statement.

The crypto exchange has agreed to exit the U.S. market for at least the next two years.

KuCoin said the deal with U.S. prosecutors to resolve the case "marks a pivotal milestone in KuCoin's journey."

"The resolution underscores KuCoin's commitment to acting responsibly and operating with high compliance standards," the company said in a statement Monday.

Prosecutors say KuCoin, Gan and Tang have actively sought and obtained business with U.S. customers since the exchange's founding in 2017, yet actively tried to conceal its large U.S. customer

base in order to make it appear that KuCoin was exempt from U.S. AML and KYC requirements.

Between around September 2017 and March 2024 — when it was indicted — KuCoin illegally reaped at least \$184.5 million in fees and over \$125.4 in profits from more than 1.5 million registered users in the U.S., prosecutors said.

KuCoin did not even require customers to provide any identifying information until at least July 2023, according to the government, and its staff made repeated public statements on social media that KYC was not mandatory on KuCoin.

Prosecutors say the defendants used this falsehood to avoid registering with the CFTC or FinCEN, and they did not implement any AML protocols between its founding in 2017 and 2023.

As a result, KuCoin, Gan and Tang accepted \$5.4 billion worth of illicit funds onto its platform, according to the indictment, including terrorism financing and proceeds from cyberattacks, fraud schemes and sanctions violations.

The government is represented by Emily Deininger and David Felton of the U.S. attorney's office for the Southern District of New York.

Peken Global and related entities are represented by John Nathanson, Christopher LaVigne and Katherine Stoller of Allen Overy Shearman Sterling.

Gan is represented by Alexander Wilson and Stephanie Pryor of Jones Day.

Tang is represented by David Meister of Skadden Arps Slate Meagher & Flom LLP.

The case is U.S. v. Flashdot Ltd. et al., case number 1:24-cr-00168, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Rachel Scharf and Aislinn Keely. Editing by Michael Watanabe.



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SCOTUSblog Publisher Pleads Not Guilty To Tax Crimes

By **Ali Sullivan**

Law360 (January 27, 2025, 4:18 PM EST) -- U.S. Supreme Court advocate and SCOTUSblog co-founder Tom Goldstein pled not guilty in Maryland federal court on Monday to charges that he schemed to evade taxes and used funds from his boutique law firm to cover gambling debts.

Appearing in court in Greenbelt, Maryland, for the first time since his **Jan. 16 indictment**, Goldstein was permitted by U.S. Magistrate Judge Timothy J. Sullivan to remain out of custody ahead of trial, but he was ordered to put up his Washington, D.C., home as collateral. Goldstein, described in the indictment as an "ultrahigh-stakes poker player," is also barred from gambling while his case plays out.

The 22-count indictment accuses Goldstein of carrying out a scheme between 2016 and 2022 to "evade the assessment of taxes, file false tax returns and fail to pay his tax obligations when they were due." Federal prosecutors allege that Goldstein failed to report millions of dollars in gambling winnings on tax filings and diverted legal fees from his boutique appellate-focused law firm, Goldstein & Russell in Bethesda, to help cover his gambling debts from high-stakes poker matches.

In addition to the tax-related charges, Goldstein is accused of omitting more than \$15 million in outstanding debts on mortgage applications in 2021 for his \$2.65 million house in D.C. — counts to which he also pled not guilty.

Goldstein, who has argued more than 40 cases in the Supreme Court, **retired from** private practice in 2023. Judge Sullivan said Monday, however, that Goldstein's legal career "moves the needle zero."

"Let's talk about why he's not a serious risk of flight," the judge said, adding the indictment describes Goldstein as a sort of "man of magic" playing poker games **around the globe**.

John F. Lauro of Lauro & Singer, who represented Goldstein at the hearing, urged the judge to allow Goldstein to remain free on his own recognizance, saying Goldstein has no inclination to flee the charges and possesses deep ties to the D.C. area. Goldstein had also planned to use equity in his house to cover legal fees in connection with the case, Lauro said.

The potential for charges had been on Goldstein's radar for "quite some time," Lauro said, and he has not absconded. Assistant U.S. Attorney Patrick Kibbe said the investigation "went overt" in the fall of 2020.

But Judge Sullivan said an indictment is "a much different animal" than a federal investigation.

"I'm trying to make it very difficult for Mr. Goldstein to even think about not showing up," the judge said.

A trial date has not been set, and the government anticipates the proceedings will take 14 days. U.S. District Judge Lydia Kay Griggsby is presiding over the case.

Goldstein is represented in a limited capacity by John Lauro of Lauro & Singer, Stuart A. Berman of Lerch Early & Brewer and Christopher Kise of Continental PLLC.

The government is represented by Patrick David Kibbe of the U.S. Attorney's Office for the District of

Maryland and Hayter L. Whitman of the U.S. Department of Justice's Tax Division.

The case is US v. Goldstein, case number 8:25-cr-00006, in the U.S. District Court for the District of Maryland.

--Additional reporting by Phillip Bantz. Editing by Emily Kokoll.

Update: This article has been updated to include further details.

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