

COVID-19 Was Still Relevant in Securities Class Actions During 2024, Report Says

 [law.com/newyorklawjournal/2025/01/30/covid-19-still-relevant-for-securities-class-actions-dockets-in-2024](https://www.law.com/newyorklawjournal/2025/01/30/covid-19-still-relevant-for-securities-class-actions-dockets-in-2024)

Alyssa Aquino

Several years after businesses began lifting their pandemic-related restrictions, investors brought more COVID-19 securities class actions in 2024 than the year before, according to a report from Cornerstone Research and the Stanford Law School Securities Class Action Clearinghouse.

Researchers found that 15 COVID-19-related cases were brought in 2024, up from 11 in 2023. The number of filings is still below 2022's record—20 in one year, however, the activity is remarkable in that it comes years after the worst of the pandemic.

Jonathan Youngwood, who leads Simpson Thacher & Bartlett's Civil Securities Litigation Practice, expressed some surprise with the consistency of the pandemic-related filings but said the cases' core claims had likely shifted.

The initial pandemic cases were based on companies' reaction to the pandemic and whether they had sufficiently disclosed any known pandemic risks, he said.

"What you might be seeing related to the latest batch... are cases related to COVID recovery, and businesses that benefited, perhaps, from COVID, that are now out of COVID, and consumer patterns changing," Youngwood said.

Despite the activity, Jesse Bernstein, the co-chair of Quinn Emanuel Urquhart & Sullivan's securities litigation practice—and another defense-side attorney—predicted that the filings would soon dry up.

"I think we're going to see them trickle to close to nothing within the next year or so," he said.

The findings come in a snapshot of securities class action filings that is released each year.

According to the report, researchers found that COVID-19 tied with artificial intelligence as the most popular themes in securities class actions in 2024. Cases related to special purpose acquisition companies trailed, with 11 filings in the last year, down 16 from 2023.

Researchers also determined that fewer litigants brought cases under the Securities Act of 1933 than in 2023.

Generally, researchers found an uptick in the amount of securities class action filings lodged in 2024: 225 cases this year, as opposed to 215 in 2023. They also reported 220 "core" filings—cases that exclude M&A filings—in 2024, which is 14% higher than the 1997-2023

average of 193.

For Bernstein, the report confirmed that securities class actions aren't going away.

"In past years, there have been people saying, 'Look at the slowdown in securities class actions,'" he said. "I think they're going to remain a major part of major corporate litigation for years to come."

The report's findings roughly correspond with broad market trends, including shifting interest rates and recent artificial intelligence breakthroughs, according to plaintiffs attorney Darren Robbins.

"This is a profound reality that we are living through," said Robbins, a cofounder of Robbins Geller Rudman & Dowd. He predicted that amid market hype over artificial intelligence, the number of cases would rise over the coming years.

In discussing the report, Robbins stressed the broader picture, which is that a couple hundred class actions are filed across 50 states in a given year. A couple extra COVID-19 cases in 2024?

"I don't think that's significant in either direction," he said.

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Trending

New Suit - Copyright, Patent

P4S LLC filed a copyright and patent infringement lawsuit on Jan. 30 in Illinois Northern District Court over the alleged sale of counterfeit goods. The court action, brought by Flener IP Law, pursues claims against e-commerce operators. Counsel have not yet appeared for the defendants. The case is 1:25-cv-01059, P4s, LLC v. The Partnerships and Unincorporated Associations Identified In Schedule A.

Securities Suit Risks From Covid Pandemic Still Linger Years Later

By Martina Barash

Analysis

- Rise in securities class actions over AI expected to continue
- IPO, crypto suit trends could reverse in 2025, attorneys say

The impact of the Covid-19 pandemic, even as it recedes into history, is expected to provide fodder for new securities litigation in the year ahead after buoying activity in 2024.

The longevity of the trend surprised legal observers, with one saying that some business effects from the public health crisis may be still recent enough to generate a number of investor lawsuits in 2025.

Suits against ZoomInfo Technologies Inc., Rent the Runway Inc., and Humana Inc. were among those filed in 2024, alleging changes in demand for software, clothing rentals, and medical services, respectively, as the pandemic progressed and abated. Other business effects of Covid could persist in litigation in the coming year.

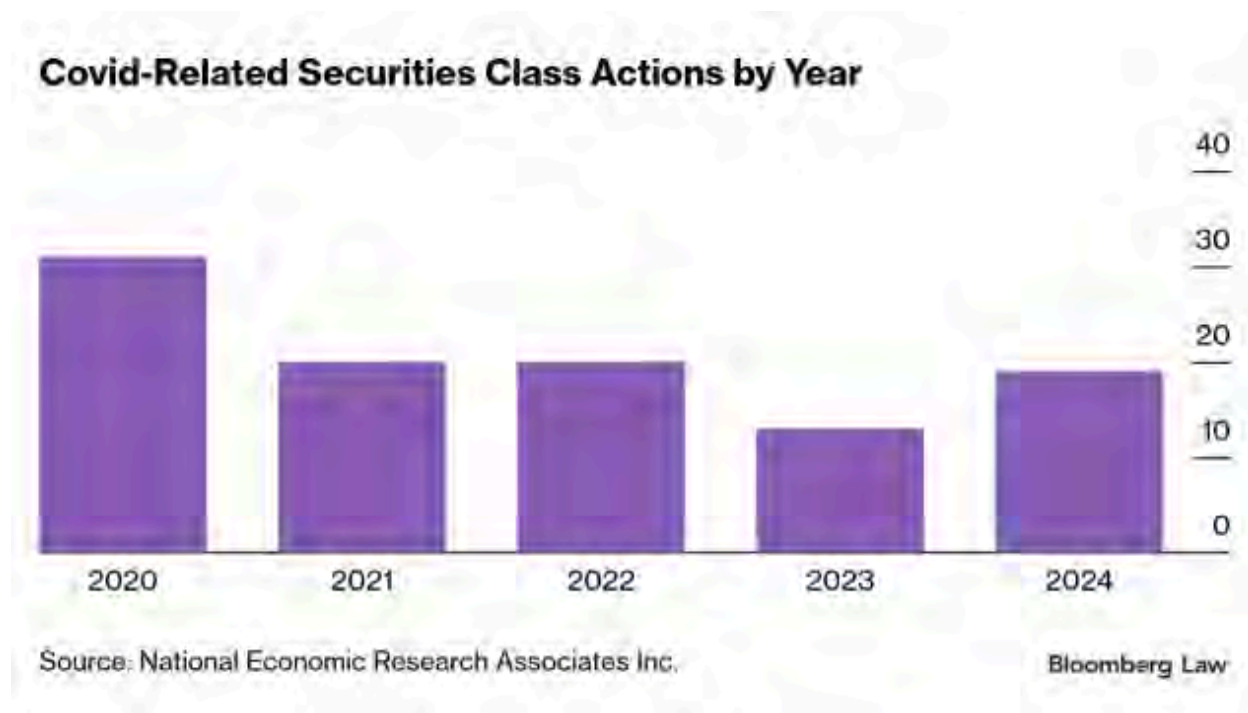
Overall, the number of new securities class actions held steady in 2024, according to newly released data analyses. That's unusual, said Jill Fisch, a professor at the University of Pennsylvania Carey Law School. "We tend to see more securities fraud filings when there's a market downturn, and the public markets have been pretty robust over the last few years," Fisch said. "Usually when the stock price rises, even if you think you were lied to, you don't actually have an actionable securities fraud claim."

Some 229 class actions were filed in both 2023 and 2024, according to a National Economics Research Associates Inc. report on securities class action trends released Jan. 22. A Cornerstone Research report released Jan. 29 comparably shows 225 such complaints filed last year.

New investor suits over cryptocurrency and initial public offerings declined from previous years, according to the groups' data. Those trends may reverse in 2025, attorneys say. But suits over artificial intelligence, already on the rise, are expected to increase further.

Covid's Long Shadow

Nineteen Covid-related suits were filed in 2024, up from 13 in 2023, according to NERA. Cornerstone counted 15 such suits in 2024, up from 11 in 2023.



The increase “is interesting because you’d think we were past those types of cases,” said Jonathan Youngwood of Simpson Thacher & Bartlett LLP. “My prediction would be you don’t see an increase in these in ’25 over ’24 because you’re starting to get even more distant from the pandemic.”

But Fisch said it depends on the nature of the claims. “Is it that a company wasn’t accurately disclosing Covid-related effects on its business? That seems a little bit untimely,” she said. But if a company had a problem with its entitlement to Covid relief money, or failed to realize Covid-related opportunities, or a vaccine maker’s product was unsuccessful and misrepresentations are alleged, those events could be more recent, she said. “Things like that could have a long tail in terms of possible lawsuits,” she said.

The pandemic might also have a role in NERA’s data showing a higher percentage of dismissals in 2024 over previous years.

That increase could be at least partially due to courts “catching up post-Covid, back in chambers full time, and perhaps reducing some of the backlog,” said Scott Musoff of Skadden, Arps, Slate, Meagher & Flom LLP.

Musoff also attributed some of the rise to some plaintiffs’ firms “pushing quantity over quality in the types of cases they bring, and as those percolate through the system, the number of dismissals has increased.”

Crypto Down, AI Up

NERA and Cornerstone both show a decline in the number of digital asset cases filed in 2024. According to NERA, filed cases—including cases alleging the offer of unregistered securities and those brought by shareholders—stood at 29 in 2022, 17 in 2023, and eight in 2024. Cornerstone shows 23, 15, and seven for the three sequential years.

The direction of crypto litigation in the next year raises a broader question, according to Fisch, who serves on an advisory board for the plaintiff-side Institute for Law and Economic Policy: Should private securities litigation mirror SEC enforcement trends or fill a gap?

Skadden is watching for regulatory changes with the new administration and whether private plaintiffs step in to fill a gap, firm partner Lara Flath said. “If in fact there is a change in regulatory priority and approach, but also as the capital markets open up, if the crypto industry also continues to expand in a more friendly regulatory environment, plaintiff attorneys can be very creative in looking for ways to find cases,” she said.

Suits alleging securities fraud related to artificial intelligence more than doubled to 13 in 2024 from six in 2023, according to NERA, with Cornerstone showing a jump to 15 from seven.

“We would certainly expect that to continue as AI continues to proliferate” in many areas of life, Flath said—including in the business world, where companies make statements “about their use of AI, how it’s impacting their business.”

Meanwhile IPO-related suits have declined in number. NERA found only 16 fraud or prospectus and registration misstatement cases related to IPOs, “a 62% decline relative to 2022 and the lowest level of such filings over the past decade,” the report said. That relatively low number is “more of a reflection of the IPO market over the last one or two years,” said Youngwood. “It takes IPOs to make IPO cases.”

That decline isn’t surprising, agreed Musoff. But “if people are correct that 2025 may see an increase in the capital markets, meaning more IPOs, we may be in store for an increase in overall filings in 2025,” he said.

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PayPal shakes off investor suit over 'bot' accounts, for now | Secondary Sources | National

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PayPal shakes off investor suit over 'bot' accounts, for now

2025 SECDBRF 0404

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By Nicole Banas

WESTLAW Securities Enforcement & Litigation Daily Briefing

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January 31, 2025

(January 31, 2025) - A New Jersey federal judge has dismissed a consolidated shareholder lawsuit against PayPal Holdings Inc., saying it failed to show that the digital payment company misled investors about record user growth it experienced in 2021.

In re PayPal Holdings Inc. Securities Litigation, No. 22-cv-5864, 2025 WL 325603 (D.N.J. Jan. 29, 2025).

The proposed class action is based on speculation that PayPal and three former executives knew that fake "bot" accounts inflated user counts, U.S. District Judge Robert Kirsch of the District of New Jersey ruled Jan. 29.

The judge granted the defendants' motion to dismiss the suit but gave lead plaintiff Caisse d'épargne du Québec an opportunity to amend the complaint.

Bloated user counts?

The lawsuit alleged that PayPal deceptively boasted strong growth in "net new actives" representing the number of active accounts added to its digital and mobile platforms.

PayPal claimed that NNAs were engaged customers, while concealing that its promotional campaigns "literally paid people" to sign up for accounts, the consolidated complaint said.

The company knew by late 2021 that many of its NNAs were illegitimate accounts created by "bot farms" for the purpose of receiving the incentives, the complaint said. Bot farms are computer networks that use automated processes to complete online tasks.

The suit contained confidential statements by seven former PayPal employees about the risks of the company's incentive payments. It also referenced Chinese websites that explained how to exploit the promotions.

PayPal disclosed Feb. 1, 2022, that previously reported NNA figures included millions of illegitimate accounts, the suit said. The company explained that its promotional activities caused reduced engagement and increased user churn, according to the complaint.

The day after this disclosure, PayPal's share price fell nearly 25% to close at \$132.57, the suit said.

The suit named as defendants PayPal, former CEO Daniel Schulman, former Chief Financial Officer John Rainey and former Chief Strategy, Growth and Data Officer Jonathan Auerbach.

'Abstract assertions'

The defendants moved to dismiss the suit, arguing that it failed to plead a false or misleading statement or omission under Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C.A. § 78j(b).

Judge Kirsch agreed that the allegations fell short.

The suit did not allege that the NNA figures were inaccurate, but that the omission of illegitimate accounts rendered them misleading, he said. The plaintiffs failed to show that the defendants knew about the fake accounts or the exploitation of its promotions, the judge said.

The suit relied on confidential witnesses who were too far from "the vortex of power" at PayPal to know if or when the individual defendants learned about the illegitimate accounts, Judge Kirsch said.

As a result, the complaint is "replete with speculative, conclusory, and abstract assertions" rather than specific details supporting the allegations, he said.

Judge Kirsch also dismissed claims related to statements about user engagement and NNA projections.

Adam S. Hakki and Agnès Dunogué of Allen Overy Shearman Sterling LLP represented the defendants on the motion to dismiss.

Carol C. Villegas and Jake Bissell-Linsk of Labaton Keller Sucharow LLP and Tor Gronborg and Matthew I. Alpert of Robbins Geller Rudman & Dowd LLP represented the plaintiffs.

By Nicole Banas

PayPal Gets Investor Claims of Bot-Boosted Metrics Thrown Out

By Martina Barash

- Complaint lacks detail about execs' knowledge, court says
- Investors will be able to re-plead class action complaint

Paypal Holdings Inc. investors can't proceed with a lawsuit alleging the payment platform company touted user account growth without disclosing a boost from bot farms, at least as the investors' claims are currently pleaded, a federal court ruled.

The investors didn't show some of the targeted statements by the company and its executives were known to be false when made, Judge Robert Kirsch said Wednesday for the US District Court for the District of New Jersey. And other statements aren't actionable, he said.

PayPal offered a \$10 financial incentive for new accounts to improve user metrics, the investors said in the proposed class action. But that allegedly made the system vulnerable to fake accounts. Bot farms created millions of illegitimate accounts that wouldn't generate future revenue for PayPal, they said.

Positive company statements about the number of "net new accounts," the quality of new users, and the prospects for future earnings misled shareholders and the public, according to the complaint. When the account inflation came to light, PayPal's stock price dropped 25% in a single day and continued to fall, the investors said.

But the investors didn't sufficiently support their claims, Kirsch said. They didn't allege "actual knowledge about the manipulation of PayPal's marketing promotions" in statements before October 2021, when a confidential witness who worked for the company as a risk manager said he first became aware of fraudulent accounts at a large scale, the judge determined.

None of the allegations about statements made after October 2021 "contains details about actual meetings or communications where Defendants learned information that contradicted their public statements," he said.

Forward-looking statements fall within the Private Securities Litigation Reform Act's safe harbor in this case, and statements about user quality are inactionable puffery, he said.

The investors will have a chance to re-plead their claims.

Bleichmar Fonti & Auld LLP is lead counsel for the investors. Archer & Greiner PC and Allen Overy Shearman Sterling US LLP represent PayPal.

The case is In re Paypal Holdings Inc. Sec. Litig. , 2025 BL 28486, D.N.J., No. 22-5864, 1/29/25 .

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Class Action

Jan. 31, 2025, 9:00 AM PST

Walgreens, CEOs Accused of Defrauding Investors in Opioid Scheme

By Sam Skolnik

- **COURT:** N.D. Ill.
- **TRACK DOCKET:** [No. 1:25-cv-01058](#) (Bloomberg Law subscription)

Walgreens Boots Alliance Inc. and several of its former and current executives have been sued for allegedly defrauding investors by scheming to boost the company's bottom line through opioid sales.

Former Walgreens Chief Executive Officer Rosalind G. Brewer sold nearly \$2.4 million in shares of Walgreens stock during the proposed class period, and former company Chief Financial Officer James Kehoe sold over \$4.3 million in Walgreen stock, each while disseminating "false and misleading" statements to maintain artificially inflated stock prices, according to the proposed investor class action filed Jan. 30 with the US District Court for the Northern District of Illinois.

The executives "participated in a scheme to defraud and committed acts, practices, and participated in a course of business that operated as a fraud or deceit on purchasers of the Company's common stock during the Class Period," the complaint says.

The investors filed their suit soon after the Department of Justice sued Walgreens on Jan. 16 for allegedly dispensing millions of prescriptions for opioids and other controlled substances at their US pharmacies while ignoring what one top DOJ official said were "clear red flags that indicated the prescriptions were highly likely to be unlawful." Despite the warning signs, the company "systematically pressured" its pharmacists to fill controlled substance prescriptions without taking the time needed to confirm their validity, the official said.

Following the DOJ's announcement, Walgreens' stock price fell 12.06% over the following two trading sessions, the complaint here says.

The defendants allegedly made false statements designed to deceive the investing public by artificially inflating and maintaining the market price of Walgreens common stock, causing named plaintiff Steve Klein and the proposed class to purchase stock at higher prices. Those statements included quarterly and annual reports, US Securities and Exchange Commission filings, and press releases, Klein claims.

The suit alleges violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5.

The six individual defendants—who in addition to Brewer and Kehoe include former CEO Stefano Pessina, former interim CEO Ginger Graham, current CEO Timothy C. Wentworth, and current CFO Manmohan Mahajan—are liable both directly and indirectly, Klein says.

The investors seek a jury trial; certification of Klein as class representative; damages; pre- and post-judgment interest; and reasonable attorneys' fees and related costs.

Walgreens media representatives didn't immediately respond to requests for comment on the lawsuit.

Pomerantz LLP represents Klein.

The case is Klein v. Walgreens Boots Alliance Inc. , N.D. Ill., No. 1:25-cv-01058, complaint 1/30/25

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Jan. 30, 2025, 4:22 PM PST

Value-Oriented Grocery Retailer Hit with Securities Class Action

By Bloomberg Law Automation

- **COURT:** N.D.Cal.
- **TRACK DOCKET:** [3:25-cv-00957](#) (Bloomberg Law subscription)

Grocery Outlet Holding Corp., its top executive, and its former CFO are facing a new proposed securities class action.

The complaint, filed in the US District Court for the Northern District of California by Riccio Liberato, alleges violations of federal securities laws related to alleged misrepresentations and omissions concerning Grocery Outlet's ability to timely and effectively execute a transition to upgraded internal systems.

"Grocery Outlet is a value retailer of consumables and fresh products sold via a network of independently operated stores across the United States," the complaint says.

Liberato alleges that the defendants made false and misleading statements and failed to disclose material adverse facts regarding issues Grocery Outlet faced in upgrading its systems, including inventory and ordering disruptions. This allegedly artificially inflated the price of Grocery Outlet's stock during the class period of November 7, 2023, to May 7, 2024.

The complaint asserts claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5. It seeks certification as a class action, damages, interest, reasonable attorneys' fees, and costs.

Grocery Outlet Holding didn't immediately respond to a request for comment.

Levi & Korsinsky LLP represents Liberato and the proposed class.

The case is Liberato v. Grocery Outlet Holding Corp. , N.D. Cal., No. 3:25-cv-00957, complaint 1/30/25 .

This story was produced by Bloomberg Law Automation.

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Class Action

Jan. 31, 2025, 10:01AM PST

Telus, Top Executives Misled Investors on AI Pivot, Suit Says

By Ben Miller

- **COURT:** S.D.N.Y.
- **TRACK DOCKET:** [1:25-cv-00889](#) (Bloomberg Law subscription)

Telecommunications giant Telus International Inc. and its top brass overstated the potential upsides from pivoting to artificial intelligence, misleading investors until two consecutive quarters showed lackluster margins and prompted stock drops, according to a proposed class action.

The shift began after Telus acquired Lionbridge AI in 2020, expanding its digital customer experience footprint and introducing AI data solutions to its services, the shareholder plaintiff said in a complaint filed Thursday in the US District Court for the Southern District of New York. The alleged misrepresentations occurred from 2023 to 2024, when the company's earnings releases revealed lower margin yields.

Shareholder class actions making AI-related allegations are ticking upward, according to reports from Cornerstone Research and National Economic Research Associates, as the risks associated with the popular technology make company disclosures on the topic ripe for securities litigation

Vancouver-based Telus didn't immediately respond to a request for comment. The defendant, a unit of Telus Corp., rebranded itself as Telus Digital last year.

Telus and several of its top executives allegedly violated the Securities Exchange Act with their false statements or omissions. The telecom company's primary business had been customer experience management for business call centers before the AI pivot, according to the complaint.

Gopi Chande, the company's chief financial officer, revealed on a May 9 earnings call for the first quarter of last year that margins generated by the company's AI offerings "can be a bit below average," even after the company shifted its focus to digital customer service powered by the technology.

That same day, Telus' share price fell more than 18% to close at \$6.36, according to the complaint.

Telus released its second quarter 2024 financial results on Aug. 2, significantly reducing its full-year fiscal projections and disclosing that its CEO at the time, Jeffrey Puritt, would retire the following month. Puritt then disclosed on an earnings call that the company's AI pivot "necessitates some cannibalization of our tenured and higher margin" customer experience work, telling investors that the company would need to "take it on the chin" regarding its historical margins, the proposed class action said.

Telus shares that day fell more than 35% to close at \$4.15, the stock's biggest single-day drop ever, according to Bloomberg data.

The shareholders plaintiff seeks to recover damages and legal fees for all investors who acquired Telus securities from Feb. 16, 2023, to Aug. 1, 2024.

Glancy Prongay & Murray LLP and Howard G. Smith, who practices in Bensalem, Pa., represent the investor plaintiff and the proposed class.

The case is Sarria v. Telus Int'l (CDA) Inc. , S.D.N.Y., No. 1:25-cv-00889, complaint filed 1/30/25 .

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ModivCare Misled Investors on Degrading Cash Flow, Suit Says (1)

By Jorja Siemons

- **COURT:** D. Colo.
- **TRACK DOCKET:** No. [1:25-cv-00306](#) (Bloomberg Law subscription)

Health-care services company ModivCare Inc. was hit with a proposed class action alleging it failed to disclose details to investors about deteriorating cash flows, artificially inflating its stock price.

ModivCare and its chief executives violated federal securities law by misleading the market to believe certain contracts used in the company's non-emergency medical transportation segment mitigated risks to its so-called free cash flow, according to a complaint filed Wednesday in the US District Court for the District of Colorado. But the company's free cash flow deteriorated, the complaint said.

A measure of a company's financial health, free cash flow shows how much cash is available after a business covers its operations and makes any capital expenditures.

"When the truth began to reach the market, ModivCare's stock price suffered significant declines, harming investors," plaintiff Dinesh Kalera's complaint said.

ModivCare said in an emailed statement that it's "committed to the safety of our members, our employees, and the public," adding that it "complies with all rules and regulations."

"We will pursue judicial resolution of this case and have no further comment at this time," the statement said.

Kalera brought the suit on behalf of other ModivCare investors who held shares between Nov. 3, 2022 and Sept. 15, 2024.

The complaint pointed to statements made in ModivCare's filings with the US Securities and Exchange Commission, as well as its press releases and a series of earnings calls.

As a result of certain contracts causing ModivCare's free cash flow to deteriorate, contract renegotiations and pricing accommodations hurt the company's adjusted earnings before interest, taxes, depreciation, and amortization, or EBITDA, the suit said. The company failed to disclose that information, it said.

Kenneth Shepard, chief financial officer of the ModivCare Mobility unit, revealed in a May 2023 earnings call that the company had experienced a reduction of cash flow from operations during the quarter, the complaint said. ModivCare Mobility comprises the company's non-emergency medical transportation segment.

The suit named Shepard as a defendant, as well as ModivCare Chief Executive Officer L. Heath Sampson and Chief Financial Officer Barbara Gutierrez.

Shepard, Sampson, and Gutierrez didn't immediately respond to requests for comment.

Scott+Scott Attorneys at Law LLP represents Kalera.

The case is Kalera v. Modivcare Inc. , D. Colo., No. 1:25-cv-00306, complaint filed 1/29/25 .

((Updates with statement from ModivCare in fifth paragraph.))

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Crypto Platform Pump.fun Sued by Investor Over All Memecoins

By Gillian R. Brassil

- **COURT:** S.D.N.Y.
- **TRACK DOCKET:** [No. 1:25-cv-00880](#)

Cryptocurrency platform pump.fun put investors at high financial risk and lured nearly half a billion dollars in fees by marketing and issuing unregistered and volatile memecoins, said a proposed class action filed Thursday.

Pump.fun, which the lawsuit said is run by Baton Corp., hinges on “a novel evolution in Ponzi and pump and dump schemes,” said plaintiff Diego Aguilar in the complaint filed in the US District Court for the Southern District of New York. Thursday’s suit targets all pump.fun’s memecoins for the first time.

Thursday’s complaint targets all of the tokens on pump.fun, highlighting issues through three popular Solana-blockchain-backed memecoins: First Convicted Raccoon, FWOOG, and Griffain, which leverages artificial intelligence and “positions itself as both an investment vehicle and funding mechanism for an AI-powered trading platform,” Aguilar said.

Memecoins gain their value from internet hype and are highly speculative. But pump.fun didn’t register with the US Securities and Exchange Commission and left investors without key protections, Aguilar said, while attracting investors with aggressive marketing tactics that emphasized the potential for returns.

Pump.fun’s operators get traction with easy tools that let anyone “create and sell nearly worthless digital tokens in minutes,” he said.

And pump.fun lures users with coins that “promote child abuse, potentially underage pornography, antisemitism, racism, self-harm, advocating violence, the continued and ongoing use of unlicensed intellectual property, including likenesses of law firms, or any other means of pumping a token’s price, hence the name Pump.Fun,” the complaint said.

Memecoins on pump.fun are unregistered securities in violation of federal law, Aguilar said. Pump.fun controls the formation and trading of memecoins, the complaint said, with token developers merely “participants.”

Aguilar, who seeks damages, estimates anywhere from hundreds to thousands of prospective class members.

The complaint partially mirrors another filed against pump.fun this month by the same law firms representing Aguilar, Burwick Law PLLC and Wolf Popper LLP. The first suit cited the PNUT memecoin named for late social media icon Peanut the Squirrel. In December, the firms went after promoters of the HAWK token, the name of which derives from the so-called “Hawk Tuah Girl,” Haliey Welch.

Since the first suit, pump.fun users have made multiple Burwick-themed memecoins—some with a photo of attorney Max Burwick, some of his dog, and others referencing the first pump.fun suit, according to an exhibit.

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

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

President Donald Trump’s SEC has formed a crypto task force to develop digital asset guidance. The president and first lady both have memecoins named for them that launched before he assumed office.

The case is Aguilar v. Baton Corp. Ltd. , S.D.N.Y., No. 1:25-cv-00880, complaint 1/30/25 .

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Pension Funds Move Closer to Certify Class Case Against Natera

By Sam Skolnik

- Common questions in case predominate over individualized ones
- Small damages would make individual litigation too expensive

Several large pension funds took a key step toward certifying as a class in a securities lawsuit against genetic testing company Natera Inc., which investors claim misrepresented billing and sales practices the company used to grow.

The district judge overseeing the case, David A. Ezra, should grant the investors' motion to certify as part of the class any person or entity that bought Natera stock between Feb. 27, 2020, and March 8, 2022. Class members from that period also must show they were damaged because of the investment, said Magistrate Judge Thomas M. Howell in a report.

Howell recommended that named plaintiffs British Airways Pension Trustees Limited and Key West Police & Fire Pension Fund be appointed class representatives. The University of Puerto Rico Retirement System is also a named plaintiff.

The proposed class action plaintiffs allege Natera and several executives violated the Securities Exchange Act, and a Securities and Exchange Commission rule, by making false statements regarding the accuracy of Panorama, a non-invasive prenatal test that screens for fetal chromosomal abnormalities.

The investors also claim that the company fabricated Natera's growth by claiming that its success had been driven by sales of the test.

The investors satisfied the four conditions for class certification under Federal Rule of Civil Procedure 23, as well as the rule's requirements that "common questions predominate over individualized ones," and that a class action is the "superior method" of resolving the claims at issue in the case, Howell said.

Regarding Rule 23(a), Howell said the numerosity condition is met given Natera's outstanding shares and average trading volume on the Nasdaq during the class period.

The commonality condition has been met, Howell said, because proffered questions—including whether the defendants omitted or misrepresented facts, or whether those facts were material—will affect all, or a significant number of the proposed class members.

Typicality has been met, Howell said, because the representative parties' claims arise from the same alleged misrepresentations as the claims of the class. At the same time, the representative parties and the class share the legal theory that the Natera made materially false and misleading statements regarding Panorama.

The investors had met the adequacy requirement, because even if the investors purchased Natera stock after the market became aware of disclosures made in 2020 in The Capitol Forum regarding Natera's practices, it's not clear that doing so would limit their ability to "fairly and adequately protect the class's interests," Howell said.

Howell said questions of law or fact common to the class do predominate in the Natera case. Because the presumption in *Basic Inc. v. Levinson* applies "and defendants have failed to rebut it," predominance is met, he said. The Supreme Court held in that case that investor plaintiffs can establish a classwide, rebuttable presumption of reliance if they show that the defendant's misstatements were publicly known, among other conditions.

The investors established superiority in part by showing that the investors' small individual damages make individual litigation of the claims in this suit prohibitively expensive, and that there are no other pending individual actions concerning the claims in this case, Howell said.

Kessler Topaz Meltzer & Check LLP and Nix Patterson LLP represent Schneider. Howell recommended that Bernstein Litowitz Berger & Grossman LLP also be appointed as class counsel. Katten Muchin Rosenman LLP represents Natera.

The case is *Schneider v. Natera Inc.*, 2025 BL 28963, W.D. Tex., No. 1:22-cv-00398, report 1/28/25

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California Walnut Grower and German Investment Firm Vie for Lead Plaintiff Status in Super Micro Securities Action

 [law.com/therecorder/2025/01/30/investors-including-california-walnut-grower-vie-for-lead-plaintiff-status-in-super-micro-securities-action-](https://www.law.com/therecorder/2025/01/30/investors-including-california-walnut-grower-vie-for-lead-plaintiff-status-in-super-micro-securities-action-)

Kat Black

What You Need to Know

- A California walnut grower and German asset management firm are competing for the status of lead plaintiff in a securities class action against Super Micro.
- The class action alleges Super Micro materially misled investors about its revenue outlook and caused them to lose millions when its stock plummeted after a damning report of its accounting practices was published by a research firm.
- A San Jose federal court named the walnut grower as the presumptive lead plaintiff but noted that its rival had raised "serious questions" about its fitness for the role.

Two investors, including a family-run California walnut grower and a German investment asset management firm, are competing for the designation of lead plaintiff in a class action accusing Super Micro Computer Inc. of securities accounting fraud in San Jose federal court.

Universal-Investment-Gesellschaft mbH, based in Frankfurt, Germany, has repeatedly disputed the fitness of Crain Walnut Shelling in Los Molinos, California, to serve as lead plaintiff in the case against Super Micro, which was filed by Levi & Korsinsky and Kirby McInerney on Aug. 30, 2024 in the U.S. District Court for the Northern District of California. Super Micro CEO Charles Liang and Chief Financial Officer David Weigand are listed as co-defendants in the putative suit.

Super Micro is represented by counsel from Jones Day, who did not immediately respond to a request for comment.

The complaint, filed on behalf of all those who acquired Super Micro securities between Aug. 10, 2021, to Aug. 26, 2024, alleges that the Silicon Valley-based AI server maker had materially misled its investors about its revenue and revenue outlook for years. On Aug. 27, 2024, investment research firm Hindenburg Research published a damning exposé about Super Micro's "accounting manipulation" on its website, the complaint alleges, concluding after a three-month investigation that it was a "serial recidivist" that had committed "significant accounting misconduct." As a result, Super Micro's stock plummeted 21.16% between Aug. 26 and Aug. 27 in 2024, it said.

A month later, The Wall Street Journal reported that the Department of Justice had opened a probe into Super Micro, causing its shares to decline 12%.

In a November 2024 filing, Bernstein Litowitz Berger & Grossmann, which represents Universal, contended that Universal should be appointed lead plaintiff in the class action because it "has the largest financial interest of any movant," having "expended the most net funds," "purchased the most net shares" and incurred a loss of about \$12.27 million from Super Micro's alleged securities violations.

The firm also claimed that Universal has a "proven history" of serving as the lead plaintiff for injured investors in other complaints and, as a "sophisticated" institution that manages approximately 417 billion euros in assets, meets the standards for an "adequate" lead plaintiff as articulated by the provisions of the Private Securities Litigation Reform Act.

Bernstein Litowitz wrote in a separate filing that same month that Crain Walnut, owned by Charles R. Crain, is "the only movant that claims to have incurred a larger loss than Universal." Per the court document, Crain Walnut Shelling reported that it had lost \$49 million as a result of its investment in Super Micro, gutting "between 3 and 6.5 years" of its estimated revenues.

"The information provided by Mr. Crain provides no explanation of how, or why, over the course of six weeks his walnut processing company invested more than \$144 million (representing between nine and nearly 20 times its estimated annual revenue) in the common stock of a Silicon Valley tech company," it said.

Crain Walnut's reportedly prodigious investment in Super Micro made no financial sense, it said, given that "California's walnut crop yields are facing a 19% decline in 2024 as compared to 2023, due to poor weather conditions."

Universal's counsel declined to comment at this time.

Though presiding U.S. District Judge Edward J. Davila declared Crain Walnut Shelling the presumptive lead plaintiff in a Dec. 12, 2024, filing, he also concluded that Universal had "raised serious questions" about Crain's adequacy for the role.

"Whether or not pouring this much money this quickly into a single stock is unusual for large institutional investors, it raises eyebrows when a walnut company does so," wrote Davila. "That being the case, the Court has its doubts about whether Crain Walnut relied on Super Micro's alleged misrepresentations to purchase Super Micro stock, like the typical class member, or [if] some other reason might have driven Crain Walnut's decision to rapidly acquire stock."

According to the filing, Universal's own investigations revealed that Crain Walnut's annual revenues amount to about \$7.5 million—a number that, said Davila, called into question "whether Crain Walnut can bear the [\$49 million loss incurred by its investment in Super Micro] and continue operating." Crain Walnut has dismissed the revenue estimate as "unreliable hearsay," he said.

In addition, Davila concurred with Universal's concerns that Charles Crain had misrepresented that he was the sole owner of the walnut operation when Crain Walnut Shelling is a Delaware limited partnership, which cannot have a sole owner under Delaware law.

The court granted discovery into Crain Walnut's "ownership structure and decision-making processes" and "the circumstances of Crain Walnut's purchase of Super Micro stock," as well as discovery into Crain Walnut's financial condition, despite Crain Walnut's offer to submit financial documents for the court to review in camera as a discovery alternative. The court did not grant discovery into Crain Walnut's choice of counsel, as advocated by Universal.

The case was referred to Magistrate Judge Susan van Keulen for discovery. On Jan. 27, van Keulen issued an order resolving discovery disputes and ordered Crain Walnut to "provide supplemental productions and responses consistent with the Court's rulings" by Friday, Jan. 31.

Crain Walnut Shelling and its counsel at Hagens Berman Sobol Shapiro did not immediately respond to requests for comment.

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Class Action

Jan. 31, 2025, 8:08 AM PST

Claims That LinkedIn Trained AI With Personal Data Are Scrapped

By [Cassandra Coyer](#)

A proposed class action against Microsoft Corp.'s LinkedIn Corp. accusing the networking platform of sharing millions of Premium customers' messages with third parties without consent was dropped.

Less than two weeks after he first sued the tech giant, named plaintiff and LinkedIn user Alessandro De La Torre ended his claims on Thursday in a voluntary notice of dismissal, without prejudice, filed in the District Court for the Northern District of California.

De La Torre had alleged LinkedIn "quietly" introduced a new privacy setting in August 2024 that automatically opted users into a program that allowed LinkedIn and its affiliates to train artificial intelligence large language models with users' personal data.

De La Torre's counsel didn't immediately respond to a request for comment.

"Sharing the good news that a baseless lawsuit against LinkedIn was withdrawn earlier today. It falsely alleged that LinkedIn shared private member messages with third parties for AI training purposes. We never did that," Sarah Wight, VP of Legal at LinkedIn, wrote in a platform Thursday. "It is important to always set the record straight."

Edelson PC represents the plaintiff and proposed class.

The case is De La Torre v. LinkedIn Corporation , N.D. Cal., No. 5:25-cv-00709, notice of voluntary dismissal filed 1/30/25 .

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Authors v Anthropic: Judge gets tutorial on AI training in copyright battle

DJ [dailyjournal.com/articles/383177](https://www.dailyjournal.com/articles/383177)

Technology,
Intellectual Property

Jan. 31, 2025

Attorneys for Anthropic PBC and authors presented a tutorial on the AI model Claude to a federal judge in San Francisco, focusing on copyright infringement claims related to training data use.

U.S. District Judge William Alsup

Attorneys for Anthropic PBC, an AI software development company, and a group of authors provided a San Francisco federal judge a "tutorial" on the large language model powering the company's AI chatbot, Claude, during a hearing on Thursday.

At the heart of the dispute is the putative class action filed in August that accuses Anthropic of committing "massive" copyright infringement by allegedly including the plaintiffs' literary works in the dataset that powers Claude. *Bartz v. Anthropic PBC*, 3:24-cv-05417 (N.D. Cal. filed Aug. 19, 2024).

During the hearing before U.S. District Judge William Alsup in San Francisco, attorneys from both sides provided the court a 45-minute explanatory presentation on how Anthropic's technology takes large amounts of information, including written works, and translates the information into "tokens" to train the Claude chatbot to provide users with realistic responses to text prompts.

Alsup originally ordered the tutorial hearing following a discussion among the parties during a case management conference in October. He wanted information about the underlying claims in the complaint. Throughout the hearing Alsup asked both sides questions about their presentations to better inform himself on the legal issues.

The parties' presentations centered on the plaintiffs' claims that Anthropic used a large open-source data set known as Pile, hosted by the non-profit EleutherAI, that allegedly contained copies of the plaintiffs' copyrighted works in a subset of data known as "Book3."

Anthropic's legal team from Arnold & Porter Kaye Scholer LLP and Latham & Watkins concede that the large language model used Pile to train its AI software but deny liability on the grounds of fair use.

Justin Nelson, one of the plaintiffs' attorneys who led Thursday's tutorial and a Houston partner for Susman Godfrey LLP, summarized the technology tutorial and explained the gravity of the case in a phone interview. *Bartz v. Anthropic PBC*, 3:24-cv-05417 (N.D. Cal. filed Aug. 19, 2024).

"The AI model takes this data, this human expression, and basically encodes it and so the software is able to spit out a predictive model of what's next," Nelson said. "A ruling against the authors, the copyright holders, would be devastating for all types of creators throughout the country."

In an email from Anthropic's media relations office Thursday, the company thanked Alsup for ordering the hearing and summarized its presentation.

"We appreciated the opportunity to share with Judge Alsup some foundational principles on how AI models are built," the company stated. "As we demonstrated in our tutorial, large language models are trained by deriving facts, patterns and relationships from a myriad of information to create entirely new material and we take steps to prevent the use of our model to generate content that already exists. We believe that the use of any copyrighted content for model training is a quintessential example of transformative fair use under copyright law."

The following attorneys for Anthropic could not be reached for comment Thursday: Douglas A. Winthrop, Angel T. Nakamura of Arnold & Porter Kaye Scholer LLP; and Joseph R. Wetzel of Latham & Watkins LLP.

The following attorneys from Leiff Cabraser Heimann & Bernstein LLP serve as Nelson's co-counsel in the matter: Reilly T. Stoler of San Francisco; Rachel Geman, Anna Freymann and Jacob S. Miller of New York. The following attorneys from Susman Godfrey also serve as Nelson's co-counsel: Rohit D. Nath and Alejandra C. Salinas of Houston.

In the company's answer to the complaint, the defense team denied wrongdoing and explained how its use of copyrighted material does not create grounds for liability.

"Anthropic admits that building Claude requires breaking down input text into smaller pieces --words or portions of words, called 'tokens' -- and then training a model on those tokens," the filing stated. "The quality and the quantity of the training corpus contribute to the quality

of the resulting model and that the phrase 'garbage in, garbage out' is one way to describe that idea. Anthropic admits that it has used portions of the Pile in connection with the training of certain Claude models."

Both parties are drafting dueling motions in the case. The plaintiffs' motion for class certification is due in March, and Anthropic has repeatedly told the court it intends to file a motion to dismiss the lawsuit soon.

In recent years Anthropic has been accused of violating intellectual property laws in several lawsuits across the country.

Currently, the company is battling a similar action by a group of music publishers, including Universal Music Group and Capital Music Group, in the Northern District.

The plaintiffs originally sued Anthropic over claims that "cutting edge" AI virtual assistant is built on "widespread" copyright infringement and illegally transcribes song lyrics for purposes of training the large language model behind Claude. While the parties are still litigating the case, Anthropic agreed to institute "guardrails" to prevent future infringement in a Jan. 2 stipulation. *Concord Music Group, Inc. et al. v. Anthropic PBC*, 5:24-cv-03811 (N.D.Cal. filed June 26, 2024).

#383177

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Law firms clash over clients in \$2.8 billion Blue Cross settlement

 [reuters.com/legal/legalindustry/law-firms-clash-over-clients-28-billion-blue-cross-settlement-2025-01-30](https://www.reuters.com/legal/legalindustry/law-firms-clash-over-clients-28-billion-blue-cross-settlement-2025-01-30)

Mike Scarcella, David Thomas

A man counts hundred dollar bills at a bank in Seoul, September 3, 2008. REUTERS/Jo Yong-Hak/File photo Purchase Licensing Rights , opens new tab

Jan 30 (Reuters) - (Legal Fee Tracker is a weekly feature focused on attorney compensation. Please send tips or suggestions to D.Thomas@thomsonreuters.com , opens new tab)

A tug-of-war is underway between law firms in a \$2.8 billion antitrust settlement with Blue Cross Blue Shield, as a deadline approaches for hospitals and other health providers to decide whether to participate in the deal or sue the insurer on their own.

The fight pits plaintiffs firm Whatley Kallas, which brokered the antitrust accord in Alabama federal court, against other lawyers that could seek to represent "opt-out" plaintiffs. At stake are millions of dollars in potential new legal fees for law firms that worked on related prior litigation against the health insurer.

Whatley Kallas asked Chief U.S. District Judge R. David Proctor to bar law firms Zuckerman Spaeder and Polsinelli from soliciting and representing any hospitals opting out of the settlement to wage new cases against Blue Cross. The firm said attorney ethics obligations required it to present its concerns to the court.

"As class counsel we want to make sure that the decisions of class members are made based on full and complete information, coming from lawyers who are not conflicted," the firm told Reuters.

A certain number of opt-outs can sometimes allow a defendant to scrap a class action settlement. That number often is not made public, and it does not appear in the Blue Cross settlement. Whatley Kallas said the opt-out number was not driving the firm's disqualification bids.

Whatley Kallas accused Zuckerman in a court filing of abusing its access to confidential information based on its prior work for a class of insurance subscribers that settled similar claims with Blue Cross in 2020 for \$2.7 billion.

Blue Cross was the primary defendant in both cases. Subscribers accused the organization of overcharging them for insurance, and providers said they were under-reimbursed.

The U.S. Supreme Court upheld the earlier settlement last year, and the subscribers' law firms were awarded \$667 million in fees.

Polsinelli, according to Whatley Kallas, has a conflict based on other prior work for Blue Cross.

Zuckerman denied that its work on the earlier case created a conflict, and warned in a recent filing [↗](#), opens new tab that disqualifying the firm from representing hospitals in new Blue Cross litigation could also handcuff dozens of other law firms that were involved in the subscriber case.

"A large number of highly qualified law firms...would be barred from advising and representing prospective opt-outs," lawyers for Zuckerman Spaeder and its partner Cy Smith told the judge, calling Whatley Kallas' allegations false and misleading.

A Polsinelli partner did not immediately respond to a request for comment.

Boies Schiller Flexner, one of the lead firms in the earlier subscriber settlement, waded into the dispute proactively last week, telling the Alabama judge [↗](#), opens new tab that it should be allowed to continue to represent an anesthesia practice already suing Blue Cross Blue Shield of Michigan.

The firm has represented the client since 2020. The case is on hold pending resolution the providers' class settlement, and Boies Schiller said there is "no basis" to suggest that its prior work in the subscribers' class action would be an ethical conflict.

Whatley Kallas has not moved to disqualify Boies Schiller.

Hospitals and other providers in the Alabama case have until March 4 to opt out of the settlement class.

-- President Donald Trump's picks to represent the United States in international trade negotiations and to lead the U.S. Justice Department's antitrust division filed new financial disclosures this week.

U.S. trade representative nominee Jamieson Greer reported [↗](#), opens new tab earning \$1.4 million in salary from law firm King & Spalding, where he is a Washington-based partner. His clients included the National Milk Producers Federation.

Gail Slater, Trump's choice to lead DOJ's antitrust division, reported [↗](#), opens new tab earning a \$1.1 million salary and \$400,000 in severance from Roku, where she served as the streaming service's vice president of public policy. She was an economic adviser for Vice President J.D. Vance.

-- The Nevada Supreme 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.

Nevada's proposed fee cap would have been the most restrictive in the country, opponents of Uber's proposed ballot initiative said. The high court said Uber's initiative contained "misleading and confusing" language.

-- Sierra Leone must face a lawsuit by U.S. law firm Jenner & Block seeking to recover more than \$8 million in fees from the West African country for several years of legal work, a federal judge ruled.

Read more:

Law and lobbying disclosures show earnings for Pam Bondi, RFK and top firms

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

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

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Reporting by David Thomas and Mike Scarcella

Our Standards: The Thomson Reuters Trust Principles. [↗](#), opens new tab

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Litigators of the Week: A \$630M Antitrust Settlement for Automotive Software Vendors—\$140M More Than Alleged Overcharges

 [law.com/litigationdaily/2025/01/31/litigators-of-the-week-a-630m-antitrust-settlement-for-automotive-software-vendors140m-more-than-alleged-overcharges-](https://www.law.com/litigationdaily/2025/01/31/litigators-of-the-week-a-630m-antitrust-settlement-for-automotive-software-vendors140m-more-than-alleged-overcharges-)

Ross Todd

More than eight years ago, **Michael Nemelka** of **Kellogg, Hansen, Todd, Figel & Frederick** got a call from an automotive software company alleging industry tech giant CDK Global conspired with its main rival, The Reynolds and Reynolds Company, to eliminate competition from independent data integrators. This week, on the eve of trial, Nemelka and partners **Derek Ho** and **Dan Dorris** helped a class of vendors reach a \$630 million antitrust settlement with CDK over claims the company conspired to limit access to dealership management systems. That number, reached after Kellogg Hansen launched an investigation of the industry that had no government parallel, was more than \$140 more than the alleged overcharges by both CDK *and* Reynolds. The proposed settlement is subject to approval by U.S. District Chief Judge James Peterson in Madison, Wisconsin, who has been overseeing the litigation.

Litigation Daily: Who were your clients and what was at stake here?

Mike Nemelka: Our clients are software companies that provide services— things like inventory management, customer relationship management and registration and titling—to automotive dealerships across the United States. These companies need access to the dealer's data to perform their services, but CDK (the defendant in this case) and its co-conspirator Reynolds ran the databases where the dealers stored their data. CDK and Reynolds worked together to seize control of the data and eliminate the competition that provided access to it. As a result, they could charge highly inflated prices to our clients for access to that data. For example, where competitors would charge \$50 a month per dealership for that access, our clients were forced to pay CDK and Reynolds many times more than that, over \$1,000 a month in some cases. Multiply that across thousands of car dealerships, and the stakes were huge.

I gather all this started with a phone call you got from an automotive software vendor back in 2016. How did this case initially come to you and the firm? And what did the investigation that you launched after that phone call involve?

Nemelka: One of these software companies, called Motor Vehicle Software Corp. or MVSC, called us because CDK and Reynolds wouldn't even let them into their data access programs. CDK and Reynolds jointly owned a competitor to MVSC, and so they wanted to put MVSC at a disadvantage and block it from being able to get the data. It wasn't right, and

we sued CDK and Reynolds for that group boycott. And then through that investigation, we saw damning evidence that CDK and Reynolds conspired beyond that to control access to dealers' data. The evidence was really remarkable. I mean, they exchanged emails and presentations about how they needed to destroy the competition so they could raise data access prices. At one point the top executives at CDK and Reynolds had a party to celebrate their "cooperation" and they had a cake made with their two logos on it. And they were supposed to be competitors.

There were eventually enough cut-and-paste copies of your early work that there was an MDL to centralize all the antitrust litigation against CDK and Reynolds. Was it frustrating to see others simply copy work you'd put in, or were you glad to have other firms and lawyers putting resources into the effort?

Nemelka: Yes, it was disconcerting to see that. But the court organized the MDL in a fair way and recognized our role in developing the claims.

Who all is on your team and how did you divide the work—especially when it came to negotiating this settlement with the trial date approaching?

Nemelka: The Kellogg Hansen team was amazing. To the extent we've been successful here, it's because of our firm's secret sauce, which is to put talented, smart and hard-working people together and then serve our clients with absolute devotion. I also want to mention that our co-counsel—**Jennifer Gregor** at **Godfrey & Kahn** and **Prof. Sam Issacharoff**—were absolutely instrumental to our success here. They both worked extremely hard and were indispensable to our efforts.

This settlement was filed right as you were set to go to trial on these antitrust claims for the class against CDK. Is there part of you that wishes you could have tried this case?

Nemelka: Of course. We spent eight years on this case. We took and defended over 100 depositions; reviewed an ungodly number of documents; defeated summary judgment and every *Daubert* challenge to our economic and damages expert; got our class certified; and we were on the eve of trial. We were ready. But when the defendant offers you 130% of your clients' actual damages—the class's single damages were \$490 million and we settled for \$630 million—then you have to recognize that is an amazing result for the class that we could not turn down.

What's important here for your clients in this settlement?

Dan Dorris: Our clients will obtain significant monetary relief to re-invest in their businesses. The class size is small in comparison to many class actions—243. It has been an honor to represent them.

What can lawyers on the receiving end of a phone call like the one you received back in 2016 take from your experience here?

Nemelka: Be creative and dogged. If a potential client calls with a big problem, try and find a solution. It's too easy to see all the difficulties with a case. It's much more challenging—but ultimately our job—to find the solutions. And when you work hard, assemble a great team and have client support, you can do something special.

What will you remember most about this matter?

Nemelka: What I'll remember most is when we first started to see the conspiracy documents, when we saw emails between the top executives at Reynolds and CDK actually coordinating to control access to the data to the detriment and harm of the entire industry. And then of course, I'll remember working with the team here at Kellogg Hansen and Jennifer Gregor and Prof. Issacharoff. They were the dream team.

Derek Ho: Mike Nemelka's tireless and single-minded devotion to his clients and to the success of these cases. He was a tour de force.

Fox Rothschild Blocks DeepSeek's AI Model for Attorney Use

By Evan Ochsner

- Law firms vet new tools before allowing attorneys to use them
- DeepSeek's China ties create added security concerns

Fox Rothschild LLP blocked its lawyers from accessing tools from DeepSeek, the Chinese artificial intelligence startup, citing concerns about the privacy risks it may pose to client data.

The swift action comes as other Big Law firms, such as Polsinelli and Wilson Sonsini Goodrich & Rosati, are responding to the rapid development of generative artificial intelligence by implementing guardrails on their lawyers' use of new technology.

Fox Rothschild's 900-plus attorneys use AI tools and, like many other firms, it doesn't generally bar its lawyers from using ChatGPT, although it imposes restrictions on the use of AI with client data, Mark G. McCreary, the firm's chief artificial intelligence and information security officer, said. But DeepSeek, launched by a Chinese investor, poses unique security challenges.

"It's one thing to have a risk that somebody makes a mistake with ChatGPT," McCreary said. "It's a completely different risk for someone to make a mistake with China."

McCreary, who chairs Fox Rothschild's artificial intelligence practice and co-chairs its privacy and data security practice, said it was prudent to ban the app while details are still emerging, like how and where DeepSeek stores data.

DeepSeek in its privacy terms says it collects and stores data in servers in China, Bloomberg News reported. "Hundreds" of companies are working to block DeepSeek, whose AI chatbot recently rocketed to the top of Apple Store app downloads.

A data breach this week illustrates further security concerns with DeepSeek, aside from the technology's national origin, McCreary said. The cloud security company Wiz on Wednesday revealed it had discovered chat data and "highly sensitive information" from DeepSeek on a public platform.

"We were not comfortable with the security," McCreary said of the decision to block DeepSeek.

Vetting new models

New models, like DeepSeek's R1, have to be vetted by Wilson Sonsini Goodrich & Rosati's chief information security officer and general counsel before their lawyers can use them, Annie Datesh, the Silicon Valley firm's chief innovation officer said. DeepSeek's R1 model hasn't yet gone through that process, so therefore lawyers can't use it, she said.

"We don't know what's under the hood," Datesh said. "We'd have to do a whole assessment."

It's a similar story at Polsinelli, according to Chase Simmons, the national firm's chairman and chief executive officer. The firm doesn't have a specific policy addressing DeepSeek yet, he said, but it doesn't generally allow AI models to run on firm computers without approval. There are also client restraints regarding AI use, he added.

"We do have a pretty strict regime over here," Simmons said.

Vendor Risk

AI concerns aren't limited to Wilson Sonsini's own use of new models, Datesh said. Vendors that law firms use rely on AI models on the back end and there could be an issue if those vendors switch from a known entity like ChatGPT to DeepSeek's R1, she said.

"We expect them to kind of make sure that they're alerting us when LLMs are changing that are not on our approved LLM list," Datesh said about vendors.

Vendors are required to notify Fox Rothschild of those kinds of changes, McCreary said.

Vendor concerns are less acute with the legal world's leading technology tools, because the companies that make them understand that the protection of law firm data is integral to their ability to retain customers, McCreary said.

"I'm not real worried about somebody deciding they're gonna save some money and go use DeepSeek," he said.

—With assistance from Chris Opfer in New York

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JPMorgan Chase Charged by Yet Another Internal Whistleblower with Cooking the Books

 wallstreetonparade.com/2025/01/jpmorgan-chase-charged-by-yet-another-internal-whistleblower-with-cooking-the-books

By Pam Martens and Russ Martens: January 31, 2025 ~

The International Consortium of Investigative Journalists (ICIJ) has gotten its hands on a blockbuster 35-page letter that a former JPMorgan banker sent to the bank's Audit Committee of the Board of Directors in August 2023. The letter asserts that the bank has been ginning down the amount of capital it is required to hold by improperly using an accounting technique called "netting." The whistleblower asserts that "this could have allowed JPMorgan Chase to generate an additional \$2 billion in net income in one year alone."

The whistleblower indicates that he/she brought this alleged malfeasance to bank officials in 2018 but was "ultimately retaliated against and laid off in 2022."

That is becoming a common refrain by whistleblowers inside JPMorgan Chase: they say they are rewarded for bringing improper, or brazenly illegal, conduct to the attention of their superiors by being shown the exit door.

Consider what we reported in October 2022:

"The plaintiff in the case is Shaquala Williams, an attorney and financial crimes compliance professional with more than a decade of experience at multiple global banks. The defendant is JPMorgan Chase – the largest bank in the U.S. which has been charged with five felony counts by the U.S. Department of Justice since 2014. Despite the bank's unprecedented crime spree, federal regulators and the Board of Directors of JPMorgan Chase have allowed the same Chairman and CEO, Jamie Dimon, to continue to run the bank.

"Williams charged in her lawsuit that JPMorgan Chase was keeping two sets of books and effectively making a monkey out of the U.S. Department of Justice by brazenly flouting the non-prosecution agreement it had signed with the Justice Department in a previous case. It came out in her deposition testimony, which is part of the court record, that one of the people being paid under her allegation of the bank keeping two sets of books was Tony Blair, the former Prime Minister of the U.K. (See our report: JPMorgan Whistleblower Names Former U.K. Prime Minister Tony Blair in Court Documents as Receiving 'Emergency' Payments from Bank.)"



Jamie Dimon Sits in Front of Trading Monitor in his Office (Source — 60 Minutes Interview, November 10, 2019)

Williams' lawsuit also charged that the bank retaliated against her protected whistleblowing activities by terminating her employment after she raised concerns about the improper payments.

Like so many other federal lawsuits alleging brazen crimes at JPMorgan Chase, the Williams case ended up before Judge Jed Rakoff in the U.S. District Court for the Southern District of New York. And like so many other cases against JPMorgan Chase, Rakoff allowed the lawsuit to be settled with a vast array of documents remaining under seal. (See Judge Jed Rakoff Has Regularly Dined in the Past with the Chairman of the Law Firm that Just Got a Big Win in His Court in the JPMorgan Sex Trafficking Case.)

Then there was the federal lawsuit brought by Donald Turnbull, a former trader on the precious metals desk at JPMorgan Chase. Turnbull alleged that the bank trumped up false charges against him as a pretext to terminate him when it was actually terminating him for cooperating with the Department of Justice's investigation of illegal precious metals trading at the bank. Turnbull states in the lawsuit that the indicted traders received better benefits when they were released from employment than he did. Despite a seriously-ill wife, Turnbull alleges in the lawsuit that JPMorgan Chase cancelled his health insurance, did not pay him severance, and took away his unvested stock awards when they terminated him.

This would also not be the first time that JPMorgan Chase has been alleged to have engaged in dodgy tactics to reduce the amount of capital it must hold. The Office of Financial Research (OFR) called the bank out for just such an issue in a June 2015 report.

The Office of Financial Research was created under the Dodd-Frank financial reform legislation of 2010 to make sure that Wall Street megabanks would never again ravage the economy and financial system of the United States — as they did in 2008 — by engaging in reckless derivative trades and toxic bets. OFR describes its mission as follows:

“Our job is to shine a light in the dark corners of the financial system to see where risks are going, assess how much of a threat they might pose, and provide policymakers with financial analysis, information, and evaluation of policy tools to mitigate them.”

Buried in OFR's June 2015 report was a bombshell. When JPMorgan Chase was initiating hundreds of billions of dollars in risky derivative trades in London in 2012, *using deposits from its federally-insured bank in the U.S.*, it was attempting to engage in tricked-up capital relief trades. This outrageous gamesmanship resulted in \$6.2 *billion* in losses at the bank; an investigation by the FBI; embarrassing Senate hearings; a scathing 300-page report by the U.S. Senate's Permanent Subcommittee on Investigations; charges of engaging in “unsafe and unsound” banking practices by the Office of the Comptroller of the Currency; and the payment of \$920 million in fines to its regulators.

The OFR researchers wrote this in their June 2015 report:

“Despite limited public data, post crisis, there is reason to believe banks continue to use credit derivatives for capital relief. JPMorgan Chase & Co.’s losses in the 2012 London Whale case were the result of CDS [Credit Default Swap] usage which was undertaken to obtain regulatory capital relief on positions in the trading book. SEC staff said in early 2015 they were evaluating potential transactions at other banks akin to those that resulted in JPMorgan’s losses. Additionally, banking regulators have observed that banks’ use of high-cost credit protection could only be economically viable if the cost of the risk weights on the asset in question were high. Specifically, the Federal Reserve said in a 2011 supervisory letter that regulators would scrutinize high-cost transactions and could disallow favorable regulatory capital treatment in some cases.”

Clearly, JPMorgan Chase and its long-tenured Chairman and CEO, Jamie Dimon, believe they have nothing to fear from the U.S. court system, the Department of Justice, or their regulators.

US SEC case over massive Allen Stanford fraud ends, judge orders fines

 [reuters.com/legal/us-sec-case-over-massive-allen-stanford-fraud-ends-judge-orders-fines-2025-01-30](https://www.reuters.com/legal/us-sec-case-over-massive-allen-stanford-fraud-ends-judge-orders-fines-2025-01-30)

Jonathan Stempel

By Jonathan Stempel

January 30, 2025 9:08 AM PST Updated a day ago

The seal of the U.S. Securities and Exchange Commission (SEC) is seen at their headquarters in Washington, D.C., U.S., May 12, 2021. REUTERS/Andrew Kelly/File Photo Purchase Licensing Rights [↗](#), opens new tab

- Convicted financier ordered to pay \$5.9 billion fine
- Fake CDs used in Ponzi scheme
- Stanford serving 110-year prison term

Jan 30 (Reuters) - A federal judge ordered an end to the U.S. Securities and Exchange Commission's 16-year-old lawsuit over Allen Stanford's \$7.2 billion Ponzi scheme, directing the financier and two former colleagues to pay sums that will go largely uncollected.

In a decision on Wednesday, Chief Judge David Godbey of the Dallas federal court imposed a \$5.9 billion civil fine on Stanford, who is serving a 110-year prison sentence after being convicted in 2012 of defrauding about 18,000 investors.

Godbey ordered Stanford Financial Group's former chief financial officer James Davis to pay \$17.66 million, including a \$5 million fine, and former chief accounting officer Gilberto Lopez to pay \$3.42 million over their roles in the fraud.

Authorities said Stanford sold fraudulent high-yielding certificates of deposit through his Antigua-based Stanford International Bank during a two-decade fraud, and used investor money to make risky investments and fund a lavish lifestyle.

The judge also deemed billions of dollars owed by various Stanford entities satisfied by court-appointed receiver Ralph Janvey's recovery of more than \$2.5 billion for fraud victims, including \$1.2 billion from Toronto-Dominion Bank (TD.TO) [↗](#), opens new tab.

Godbey said there was "no just reason for delay" in ordering the payments and closing the case.

Once considered a billionaire, Stanford was declared indigent in 2010. Now 74, he is ineligible for release from prison until 2103.

Lawyers for Davis and Lopez did not immediately respond to requests for comment. An SEC spokesperson declined to comment.

Davis was the top government witness at Stanford's trial, testified against his former college roommate, and was sentenced in 2013 to five years in prison. Lopez was convicted separately, and sentenced in 2013 to 20 years in prison.

The SEC sued Stanford in Feb. 2009, two months after the late swindler Bernard Madoff was criminally charged with running a much larger Ponzi scheme.

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Reporting by Jonathan Stempel in New York. Editing by Mark Potter

Our Standards: The Thomson Reuters Trust Principles. [↗](#), opens new tab

- Suggested Topics:
- Government

Allen Stanford, Entities Liable for Billions in SEC Suit End (1)

By Gillian R. Brassil

- Stanford is serving a 110-year sentence for investor fraud
- Judge ordered two other officers to pay \$21 million in SEC case

Convicted fraudster R. Allen Stanford, associates, and affiliated businesses have been found to owe an aggregate \$9 billion in judgments, concluding a 16-year long Securities and Exchange Commission case concerning a \$7 billion Ponzi scheme.

Robert Allen Stanford, who is serving 110 years in prison, was also ordered to pay a \$5.9 billion civil penalty by Chief Judge David C. Godbey in the US District Court for the Northern District of Texas on Wednesday. Stanford was convicted in 2012 on multiple criminal counts of mail fraud and conspiracy related to defrauding about 18,000 people who invested in certificates of deposit issued by his Stanford International Bank.

But the financial penalty might be more symbolic than fulfilled. Stanford was declared indigent in 2010.

Former Stanford Financial Group chief financial officer James Davis was ordered to pay almost \$17.7 million in disgorgement and fines, according to Godbey's final judgment. Chief accounting officer Gilbert Lopez will pay over \$3.4 million. Davis was sentenced to five years in prison in 2013; Lopez was sentenced to 20. Both men's payments are due within 30 days, the judge said.

Stanford was additionally determined to be jointly and severally liable with his bank and with his Stanford Group Co. for \$6.76 billion. Godbey said that judgment would be deemed satisfied by the money ultimately collected via liquidation of Stanford assets and through third-party lawsuits brought by court-appointed receiver Ralph Janvey and distributed to investors.

Three other Stanford entities' liabilities, tallying more than \$2.25 billion, were deemed satisfied by Janvey's collection efforts.

The SEC sued Stanford and affiliates in 2009, claiming a two-decade long Ponzi scheme utilizing investment's in fraudulent high-yielding certificates of deposit in an Antigua-based offshore bank that he used to fund his lavish lifestyle which collapsed under a federal investigation that year.

Several banks agreed to pay to settle investor claims that they allegedly enabled the scheme—including Toronto-Dominion Bank, which agreed in 2023 to pay more than \$1.2 billion.

The SEC declined to comment in an email.

David Finn, PC had been representing Davis. Finn said he is no longer in touch with Davis. Lopez's current counsel could not be determined from the court's docket. Stanford has been representing himself.

The case is SEC v. Stanford Int'l Bank Ltd. , N.D. Tex., No. 3:09-cv-00298, judgment entered 1/29/25 .

(Updates to say the SEC declined to comment in the ninth paragraph.)

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Matt Levine's Money Stuff: How Long Do You Have to Be Short?

By Matt Levine

Opinion

Short rules

Here's a thing you can do:

1. Research a company and decide that its stock looks good.
- 2. Buy some stock.
- 3. Go on social media, or television if you are famous enough, and say "this stock looks good, and I have bought some."
- 4. The stock will go up, as people see you on social media or television and say "oh that person knows about stocks, I should buy some of that stock."
- 5. You sell the stock and make a profit.

I mean, maybe *you* can't do that. You need a reputation, and some social media following and/or the ability to get on television, to pull this off. If you don't have that, maybe you can bootstrap it. Go on X, tweet "this stock looks good and here's why," back it up with some good analysis and compelling detail, and maybe the stock goes up. (Not because people read your posts, but because you're right.) Do it again next week. Keep doing it. Maybe someone will discover your X account and say "hey this person is good at picking stocks," and it snowballs from there. Eventually you can move stocks with a tweet, because your tweets have a track record of being correct, and you have built up a following.

Here is a precisely symmetrical thing that you can do:

1. Research a company and decide its stock looks bad.
- 2. Sell some stock short.
- 3. Go on social media or television and say "this stock looks bad, and I have shorted it."

- 4. The stock will go down, as people see you on social media or television.
- 5. You buy back the stock and make a profit.

Same constraints: People need to pay attention to you. Same way to bootstrap it: Write *good* tweets about stocks that *do* go down, and eventually the stocks will go down *because* of your tweets.

Here is a question. How long do you need to wait to do Step 5? Well. If you buy stock, say “this stock is good,” and wait five years to sell your stock, then in some sense you *mean it*. You have made a long-term bet on the fundamental business of the underlying company: You think it is undervalued by the market, and you are willing to wait for the market to come around to your point of view. (It might never come around: You might be *wrong*, and you might eventually have to throw in the towel, but if you wait five years to throw in the towel then you were clearly *sincere*.) Over five years, what will matter to the stock is whether your thesis is correct: The stuff that you said about the company’s business will either turn out to be right, and you’ll make money, or wrong, and you won’t.

If you buy stock, say “this stock is good,” and wait five minutes to sell your stock, then ... what? Like you tweet “hey Stock X is good,” people read your tweets, they buy Stock X, it goes up a lot in five minutes, and at the end of the five minutes you sell all your Stock X at a profit. What does that mean? Here are four possible answers:

1. Markets are — with your help — extremely efficient. You thought the stock would go up a lot over the next five years, you made a strong case for that, the market read and digested your argument very quickly, and within five minutes your case was *priced in*. After five minutes, the stock’s market price reflects all of the good things that you have uncovered. The stock is fairly valued and you can sell.

- 2. Markets are — with your help — *pretty* efficient. The stock price, after five minutes, does not *fully* reflect all of your positive expectations about the stock. You think it will still go up more, over the next five years. But the price now reflects a *lot* of what you said. The market read and digested your argument and said “yeah, this is pretty good, we’ll buy some stock to reflect, say, a 40% probability that it’s right.” You think that the probability that you’re right is higher — maybe not 100%, but 80%. But you got halfway there in five minutes. Do you want to wait five years for the other half? Your rate of return over those five minutes is much higher than your expected rate of return over the five years. You can sell now and free up capital for other trades. And your capital is not unlimited; you are just some person on social media. There is a division of labor here: Other people have a lot of capital that they have to invest somewhere, and you are telling them (with your tweets) the best place to invest. But *you* have a lot of *ideas*, and are capital-constrained. The market is effectively paying you, in five minutes, for your advice on where to invest over the next five years. But you don’t have to stay invested for five years. You can take your paycheck and move on to other things. Your work here is done.
- 3. You changed your mind. New information came to light that made you think your thesis might be wrong, so you changed your mind and sold the stock. This one is probably important over *some* time horizon — if you sell a week after tweeting, maybe you changed your mind — but seems implausible over five minutes. Could happen, though. Maybe you tweeted about the stock and a follower pointed out a math error and you were like “ehh never mind.”

- 4. Markets are — with your interference — quite *inefficient*. You are just *lying*. You tweet “Stock X is good,” your ignorant followers on social media are like “ooh Stock X must be good,” they all buy the stock, you think “hahaha suckers,” you sell the stock and move on to your next scam. You had no good reason to think that Stock X was good; you just thought it was an opportunity to trick your followers.

The fourth answer is traditionally called a “pump and dump.” And the analysis is precisely the same for the short trade, which also has a catchy rhyming name, a “short and distort.”

The fourth answer is pretty clearly securities fraud. (There are weird legal theories that it isn’t, but I think they are wrong.) If you lie about a stock to trick people into buying it, and then sell to them, you will get sued by the US Securities and Exchange Commission and also maybe arrested.

The first and second answers ... I mean, I think they’re fine? (The third answer is probably also fine, but more awkward.) But you can see why they might be a little problematic. How can anyone tell what is in your heart? Sure you *say* that you really believed what you wrote, that Stock X would be a good stock for the long term, but then you sold five minutes later? That’s pretty suspicious.

How do you deal with this problem? Well, you could try to document your reasoning so that, if the SEC comes to you and says “hey why’d you tweet that this stock was good and then sell it five minutes later,” you can say: “Here is all of my research about how the stock was good. I think that you will find that it is accurate and sincere and reflects a lot of hard work and careful thinking. Clearly I was not pumping and dumping. And then I sold because the market rewarded me for my efforts and insight, and I took those rewards.” The SEC might not like this! But it will probably grudgingly accept it, or in any case will have a hard time proving in court that you were lying. (Not legal advice.)

But if your only research consists of an email to your colleague saying “lol let’s pump Stock X to make some money off of suckers,” the SEC will sue you, and you’ll probably lose, because that’s good evidence that you were lying. And in fact emails like that are pretty common in pump and dump cases.

That is, the way to tell if you were sincere or lying is by trying to figure out if you were sincere or lying. The fact that you sold the stock five minutes after tweeting about it *raises questions*, but then you and the SEC try to *answer* those questions.

You could, however, imagine another way to deal with the problem. There could be a *bright-line rule*. The SEC could just put out a rule saying: “If you buy a stock and then tweet about how good it is, you have to wait at least 24 hours after tweeting before selling it. If you sell within 24 hours, that’s fraud. If you wait more than 24 hours, that’s fine.”

Is that a better system? I dunno. It’s more efficient, I guess? It doesn’t require any inquiry into your intentions. It would mean fewer SEC investigations, fewer examinations of your emails, fewer court cases. Also it might *work* pretty well. A lot of pump and dumps have a pretty short window of opportunity: Tweeting lies about a stock will often move it for 10 minutes or an hour, but not a whole day. (Often! Not always!) Making scammers wait a day to sell their stock would make scamming much less attractive; making serious researchers wait a day to sell their stock would not make serious research much less attractive.

Anyway. Andrew Left is an activist short seller who tweets a lot about stocks under the name Citron Research. He's had some pretty good calls, he has a big following, and he can move stocks. Last summer he was arrested, charged by the SEC and federal prosecutors with doing short-and-distort trades. The *main* evidence against him is that he would short stocks, tweet that they were bad, and then very quickly cover his shorts. "Andrew Left Wasn't Short for Long," was my headline.

There was also some evidence that he didn't mean his calls all that sincerely — he messaged a colleague things like "I have a hot voice in cannibas. Let's take a vantage [sic] of it" and "It's OK to be wrong" — but also some evidence the other way. For instance, the SEC criticized Left for shorting a company called Cronos Group, tweeting that it was "ALL HYPE with possible securities fraud," and then quickly covering his short. But the SEC didn't mention that Cronos did eventually trade down to, and below, Left's target price, and also that the SEC itself charged Cronos with fraud. Left's report about Cronos was *essentially correct*, which makes it kind of rough to say it was fraud just because Left took money off the table.

Other activist short sellers noticed, and we have discussed a trolly disclaimer in a Kerrisdale Capital short report, saying "in the absence of second-by-second trading updates and so that investors don't feel wronged that we may close out of a lot of a position very quickly after publishing, just assume that that is exactly what we'll do. Then, you won't be, er, defrauded. Or something like that." It is pretty common for activist shorts to take some profits if their reports move markets: Is it fraud?

This week, Left's lawyers asked a court to dismiss the criminal case against him, arguing that "there are no allegations of an intent to deceive and cheat others of property in the indictment": He sincerely believed all the things he said about the companies he traded. Fine. But Left's lawyers also sent the SEC a petition suggesting that it'd be easier if there was just a bright-line rule:

The SEC's lawsuit against Mr. Left, which raises core First Amendment concerns, has caused alarm across the investment community because it injects vast uncertainty into how the SEC will view individual trading decisions of non-regulated market participants juxtaposed against their various public statements. No longer will individual investors be free to "take profits," reduce the size of a position, or even cover a short position without closely scrutinizing their prior public statements and attempting to figure out if the undisclosed trade (no matter how small or how long after a statement) somehow contradicts a previously made Tweet or post. ...

The SEC's recent enforcement actions raise a host of serious questions which the Commission should answer through rulemaking to protect individual investors. ...

If an investor provides truthful information to the public about a stock or crypto-asset, and advocates for a long or short position, how long must the investor wait to effect a trade?

For example, if an investor posts on social media that they believe a security will rise in value, does the investor need to wait for a certain number of days to elapse, or for the security to reach a specific price, before the investor can sell shares of the security?

Likewise, if an investor with a short position predicts that the price of a security will go down, at what point can the investor cover their position?

This is also a bit trolly, but I will say, it does fit with the spirit of the times. Securities fraud enforcement seems a bit passé, but “regulation by enforcement” seems *very* passé. The way that the modern SEC has mostly operated is that, if you do stuff that seems shady, they will sue you, and they will show the jury your shadier emails, and maybe you will lose in court. “How long do I have to wait to close out a short” is the wrong question; the right questions are “did you have deceptive intent in your heart” and “how bad are your emails?” Not everything is a bright-line rule; a lot of things are “ehh I know fraud when I see it.”

This system actually works well in a lot of ways; in particular, it is somewhat robust to financial industry gamesmanship. But people really don't like it, and it is philosophically unappealing: You really should be able to figure out in advance if what you are doing is legal. The *crypto* industry, in particular, hates this whole approach, and has been begging the SEC for years to write clear rules about what is and isn't allowed in crypto. Donald Trump's election win probably means, among other things, a shift at the SEC toward more of a bright-line-rules approach. And why shouldn't activist short sellers get in on that?

PM hiring

If you are a hedge fund looking to hire a portfolio manager from a competitor, how can you tell if she has investing skill? There are two main sources of information:

1. You can look at her results. If she was up a lot last year, that could just be luck, but if she was up a little bit every day for the last five years, that probably isn't.
- 2. You can interview her, look at her resume and ask about her process. If she worked at increasingly fancy hedge funds with increasingly fancy titles, those are good signs. If you interview her and she thoughtfully describes a surprising but intuitively plausible investment process that seems like it ought to work, that's a good sign. If she's like “I keep flipping coins to pick stocks and it works great,” that's a bad sign.

These sources are complementary. Good results backed up by a good process are encouraging. Good results with a bad process could be luck. Bad results with a good process *could* be bad luck — her luck *has* to change, and you can get a good portfolio manager at a discount! — though they could also indicate that you're wrong about the process being good. “She went to Harvard and worked at Point72, so she must be good” is perhaps a useful heuristic, but it can be refuted by performance data.

There is a problem, though. You can look at her resume, and interview her about her process, to your heart's content; she'll probably be happy to talk to you. (Perhaps she cannot disclose proprietary information about her process but, you know.) And you can ask her about her results, and she'll probably be happy to tell you, but you can't *check*. Your competitor fund is not going to send over a spreadsheet listing the returns attributable to her investment calls. That's *definitely* proprietary information, and they don't want to help you out.

At Business Insider, Alex Morrell and Bradley Saacks have a fun story about this problem:

Multimanager funds now regularly fork over eight-figure deals to PMs, with some coveted stars receiving packages north of \$50 million. But firms often must take it on faith that PMs claiming tens or hundreds of millions in profits at their former employers are being forthright.

The dirty secret, according to conversations with nearly two dozen portfolio managers, recruiters, hedge fund execs, and business-development professionals, is that many of them aren't. When it comes to performance, traders regularly prevaricate and exaggerate; it's just a matter of degree and audacity.

And possible — but also problematic — solutions:

Last summer, a senior headhunter who places PMs at multimangers saw a change emerging on the hiring front lines. Before finalizing multimillion-dollar deals to hire candidates, funds were making a bold request: direct, proprietary evidence of the PM's trading performance. Some, for example, asked PMs to jump on FaceTime or Zoom while at home and pan the camera over to their computer screen to show their P&L in their company's internal system. Others were meeting candidates at coffee shops or going to their homes. ...

Another senior headhunter said he also observed a change starting around the summer, with multiple funds asking candidates to bring their laptop to a café, log onto their internal system, and show their P&L to finalize a hire. ...

"It violates all the confidentiality agreements," another PM who's worked at multiple funds said. "I don't think reputable firms would ask you to do that."

I wonder if there are any cases of a hedge fund asking a PM "hey please show us your firm's P&L records," and the PM saying "sure here you go," and the hedge fund saying "no that was a trick, we expected you to say no, we only hire ethical people here and you have proven that you can't be trusted." I bet the answer is no.

There is a simpler solution:

Perhaps the most popular and ubiquitous way of corroborating a trader's performance is by obtaining the candidate's pay history through W-2 tax records and deferred-compensation statements.

Because hedge fund payouts are formulaic — most multimangers pay a standard percentage of a trader's profits that's typically upward of 20% — a PM's compensation is a direct indicator of their past performance.

One multimanager exec said he asked for W-2s and screenshots of P&L, describing these requests as "the same thing everyone else asks for." But many states, including the hedge fund hot spots New York, California, and Connecticut, have barred employers from asking about salary history.

If you tell a potential employer that you are making \$100 million of profits at your current firm, and your pay stubs say you are getting paid \$200,000, then either you are on a *very* bad deal or you're lying.

White knight

There is a book — one of the very greatest finance books — called *Barbarians at the Gate*, by Bryan Burrough and John Helyar, about the 1988 buyout of cigarettes-and-snacks conglomerate RJR Nabisco. The barbarians at the gate, in that book, are what used to be called “corporate raiders,” and then “leveraged buyout firms,” and then “private equity firms,” and now “alternative asset managers.” More specifically, though, the barbarians are one particular LBO firm, Kohlberg Kravis Roberts & Co., which bought RJR Nabisco over the objections of its managers. (Who were trying to buy it themselves.) The managers found that barbaric. Was it? Did KKR load RJR Nabisco with junk debt, sell it off piecemeal and lay off a bunch of workers? Ehh maybe a little, I don't know, it was a long time ago.

In the 1980s, the traditional way that corporate managers tried to fight off corporate raiders was with a “white knight.” If a corporate raider was trying to buy your company, you'd call up a white knight — a nice strategic buyer, or even maybe a nice private equity firm — and ask for help. The white knight might buy your company (and keep you around to manage it), or it might buy a big block of stock in your company to prevent the raider from taking you over. You'd offer the white knight a somewhat sweet deal, in order to prevent your company from falling into the hands of barbarians like KKR.

At the Wall Street Journal, Miriam Gottfried reports:

The private-equity firm KKR has taken a big stake in the medical- and dental-supply company Henry Schein and plans to work with the company to improve its operations.

KKR has amassed a large stake in the company and announced a deal Wednesday that includes increasing that stake to 12% with the option to buy up to 2.9% more in the future, confirming an earlier Wall Street Journal report. Henry Schein has agreed to give the private-equity firm two board seats. ...

The Melville, N.Y., company has been the subject of an activist campaign by Anonym Capital Management, which had been focused on CEO succession planning. ...

“This is a role we can play, being a long-term shareholder to a company truly under attack from activists,” said Pete Stavros, KKR's global co-head of private-equity. He said the firm would be open to making similar investments in companies beset by activists if it has a good relationship with management and can secure formal governance rights. ...

The deal represents a twist on a traditional corporate-defense strategy. Companies sometimes work with a friendly buyer to keep a hostile buyer at bay. Rarely, if ever, has that “white knight” role been played by a private-equity firm.

I guess if you are successful enough for long enough you become the establishment. “Who will save us from these barbaric activists,” corporate managers ask, and the answer is “KKR.”

CBDC

I have always found the term “central bank digital currency” annoying. *Dollars* are a central bank digital currency. The Federal Reserve issues dollars in the form of digital entries in the reserve accounts that banks keep at the Fed. *Your* dollars consist of electronic entries in the ledger of some bank, not the Fed; your dollars are not exactly central bank digital currency. But your bank has some dollars at the Fed, and those dollars are digital. They are central bank digital currency.

Of course ordinarily when people say “central bank digital currency,” or “CBDC,” they mean something slightly different. They mean that the Fed would issue dollars that (1) are on some blockchain and (2) anyone — not just a bank — can hold. In this structure, CBDC dollars would be liabilities of the Fed (not of particular commercial banks), and could be transferred freely on the blockchain between banks, companies, individuals, etc.

Now perhaps my annoyance is petty. “Widely available, non-fractional-reserve, central bank-issued, blockchain-based dollar” is probably more descriptive than “central bank digital currency,” but it is unwieldy, and everyone involved in crypto monetary discussions understands what “central bank digital currency” is shorthand for. If you are *not* involved in crypto monetary discussions, it can be misleading — “wait, Fed reserves *are* central bank digital currencies?” — but whatever, you can figure it out.

Still sometimes one wants to be a bit pedantic. This week I mentioned Donald Trump’s executive order on crypto, which among other things prohibits US agencies from taking “any action to establish, issue, or promote CBDCs within the jurisdiction of the United States or abroad.” This is a plausible policy choice: CBDCs have potential weird effects on monetary policy, and crypto’s techno-libertarians oppose them on techno-libertarian grounds. (The Fed could track your spending or seize your money, etc.) My impression is that the Fed was already pretty skeptical of CBDCs anyway. (And some of Trump’s team are close with Tether, which issues digital dollars, and perhaps don’t want competition from the Fed.)

But! A reader emailed me to point out that there is some concern in the market that the executive order *prohibits bank reserves*. After all, it prohibits CBDCs, and defines CBDCs as:

“Central Bank Digital Currency” means a form of digital money or monetary value, denominated in the national unit of account, that is a direct liability of the central bank.

Right no that does seem to include bank reserves. Ehh I’m sure it’s fine.

Enron??

Last month, someone relaunched the Enron.com website and @Enron accounts on social media. They were, I figured, kidding. For one thing, they said that “Enron” now stands for Energy, Nurture, Repentant, Opportunity and Nice, which is funny. Also the website included a disclaimer saying it was a parody.

But in 2025, what does it mean to be “kidding”? What is the difference between “a parody” and “a meme” and “a financial product” and “a viable business”? Are all the best businesses parodies of themselves? I am sure I do not know. I wrote at the time:

Things are different, standards are lower, and people are up for a bit more fun. If you launched Enron Corp. on the stock exchange today — even without a business — the stock would go up, because that is funny. “Synonymous with willful corporate fraud and corruption” is the sort of meme that, in 2024, is *valuable*. ...

“The information on the website is First Amendment protected parody,” says a disclaimer, “represents performance art, and is for entertainment purposes only,” but these days you’d say that even if you actually were launching a crypto token, or a meme stock, or for that matter an energy company.

Anyway here’s a Houston Chronicle article that is like “Enron is sort of kidding but also sort of not”:

It’s not hard to see why skepticism runs high. Enron’s social media feeds are filled with outlandish posts, including Impossible claims about an egg-shaped nuclear reactor capable of powering a home for a decade. The company’s 28-year-old CEO, Connor Gaydos, also has a history with Birds Aren’t Real, the internet’s favorite satirical conspiracy theory from 2017.

But a subsidiary of Enron, Enron Energy Texas LLC, recently filed to become a Texas retail electric provider. Gaining this designation would allow Enron to sell electricity plans to Texas consumers — a move that, unlike the Enron Egg, at least has the appearance of sincerity

Gregory Forero, one of Enron’s newly revealed executives and founder of a legitimate company known as HGP Storage, submitted signed and notarized affidavits attesting to the company’s intent to become a bonafide energy provider. HGP develops utility-scale battery storage farms, a resource that has grown rapidly on the Texas grid in recent years.

In a Wednesday interview, Forero again emphasized to the Chronicle that Enron is not a parody or a publicity stunt. Residents may soon be able to choose Enron as their power provider, he said.

“The retail energy provider business hasn’t changed since deregulation,” Forero said, referencing the break-up of Texas’ electricity market into three separate sectors in the early 2000s. “It’s stagnant. The user experience for residential is suboptimal. It’s AOL dial-up technology, basically.”

Okay! On the one hand it is weird to launch a Texas retail electric power company and choose, from all the possible names in the world, *Enron*. On the other hand, I mean, yes: These days Bad is Good, Actually, and having a name that is synonymous with accounting fraud and also manipulating markets to gouge retail customers and cause blackouts is probably good marketing. “Oh man, I remember Enron being super evil, I’d better sign up!”

On the one hand, it is weird to launch a real (???) retail power offering a week after you launch a fake egg-shaped home nuclear reactor. On the other hand, has that not been Tesla’s whole schtick for years? I think a lot about the time in 2019 that Elon Musk announced a rocket-powered flying Tesla. There are also real Teslas. It’s fine! Your business can be half real and half jokes, and you can grin coyly whenever anyone tries to figure out which half is which. Enron is back, in the literal(ish) sense but also in the spiritual sense.

Things happen

SoftBank in Talks to Invest Up to \$25 Billion in OpenAI. Compute Exchange. Deutsche Bank chief says 'nothing is off limits' as profits plunge. Blackstone defends \$80bn data centre investment as DeepSeek shakes market. Blackstone Set for New York Office Comeback With Midtown Tower. Goldman Venture Buys \$300 Million of Warehouses From Blackstone. Fortress Targets \$1 Billion for Latest Litigation Finance Fund. Blackstone Turns to Canada's Wealthy to Broaden BXPE's Reach. Major Penn Entertainment Shareholder Launches Proxy Fight. "Barnes & Noble has become something of a gathering place for book influencers." Deutsche Bank has published a bunch of memes about DeepSeek.

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- 1. I apologize for typing out the two different versions of this — the long and short versions — because I think that they are identical in every material respect. "You make a bet on a stock, you tweet the bet, the bet works out and you close out the bet," where the bet is long or short. But I should say that some people seem to disagree with this: There is a popular view that short selling is inherently bad and therefore the short version is market manipulation, while the long version is fine.
- 2. This is oversimplified, and it's of course quite common for your thesis to be right (or wrong) and to lose (or make) money anyway for unrelated reasons you weren't thinking about, but you know what I mean.
- 3. This doesn't necessarily mean that the stock price is what you said it would be worth in five years. It means that the stock's price today equals what you said it would be worth in five years, discounted at some rate that reflects the risk of that prediction.
- 4. I have written about this model of quickly taking profits from activist shorting before, including about Andrew Left: "Citron is in this model a service provider to the market: It informs the market that Company X is a fraud, the market saves a lot of money (by not buying Company X at \$100 anymore), and Citron gets a reasonable cut of the money immediately. Citron is not a long-term investor that has to ride Company X all the way down, and it doesn't have to make 100% of its profits on any trade contingent on being 100% right about Company X. In the long run, all of its profits are contingent on being right enough about enough of its trades that people keep listening to it and prices keep going down."
- 5. This one is considerably less common, but it exists in the academic literature and has been around for decades.
- 6. And some pump-and-dump trades: He was not *only* a short seller.
- 7. This is a very slight joke; you can still call them "private equity firms." (Or "sponsors.") But all they want to talk about these days is private credit, so the more generic term seems more correct.

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FT Alphaville Tesla Inc

What might explain Tesla's night moves?

When the products are vapourware, extended-hours trading takes on an oversized importance



© Bloomberg

Bryce Elder 8 HOURS AGO



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After-hours [trading](#) is an odd, mostly American phenomenon. How a stock moves immediately after post-close earnings will tend to set the tone for the next regular trading day ([Jiang et al, 2012](#)), even though it's on thin liquidity where the only active players are high-frequency firms and retail punters ([Cui, 2021](#); [Scharnowski, 2024](#)).

One of the companies posting earnings this week was Tesla. In extended-hours trading, its shares very briefly went down, then went up:



© IG Index, with FTAV annotation

To recap, the [politically advantaged](#) automaker missed fourth-quarter expectations by a mile.

EBIT was \$1.58bn (consensus: \$2.7bn). Net margin was 6.2 per cent (consensus: 9.9 per cent). Auto revenue of \$18.7bn missed by 11 per cent following a quarter-on-quarter drop in the average selling price.

EPS was in line only after Tesla booked \$837mn of “Other income”, nearly all of which was from marking to market its bitcoin wallet. Without the crypto write-up, EPS would have been \$0.49 (consensus: \$0.77). Logically, nothing here supports the stronger post-close share price. And yet . . .

The usual explanation for when Tesla trading resembles a Pump.fun shitcoin is: “because Elon talks a lot”. Here’s JPMorgan analyst Ryan Brinkman to expand on the theme:

“

It's not clear to us why Tesla shares traded as much as +5% higher in the aftermarket Wednesday, although we have some leading theories. Perhaps it was management's statement that it had identified an achievable path to becoming worth more than the world's five most valuable companies taken together (i.e., more than the \$14.8 trillion combined market capitalizations of Apple, Microsoft, NVIDIA, Amazon, & Alphabet). Or maybe it was management's belief that just one of its products has by itself the potential to generate "north of \$10 trillion in revenue". It may have even related to management guidance for 2026 (no financial targets were provided, but it was said to be "epic") and for 2027 and 2028 ("ridiculously good").

Brinkman, who has a long-standing "underweight" rating on Tesla, is beginning to sound a bit exasperated:

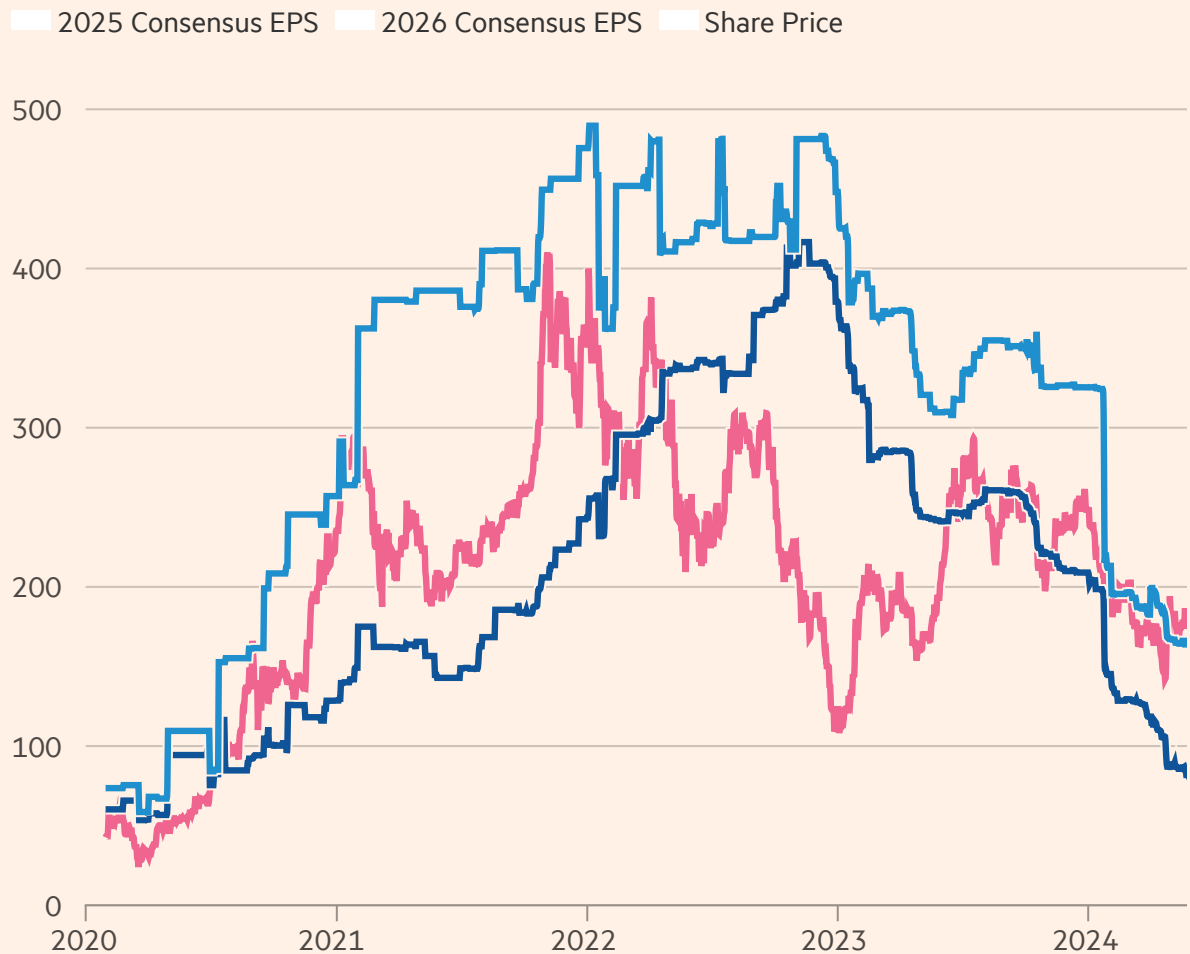
“

[T]he company's financial performance and Bloomberg consensus for revenue, margin, earnings, and cash flow all keep coming down, but analyst price targets and the company's share price keep going up. For instance, Tesla has missed Bloomberg consensus EBIT in 9 of the past 10 quarters by an average of -16.3%.

Consistently missing estimates is one thing. What Tesla has been doing is consistently missing *lowered* estimates, per this chart from [Dan's post](#) earlier in the week:

Trump sent Tesla to the moon

Consensus earnings estimates versus the share price



FINANCIAL TIMES

Source: Bloomberg

On JPMorgan's numbers, Tesla's reported Q4 EBIT was 82 per cent below the level expected 10 quarters ago. The stock is up 75 per cent over the same period, and the sellside has been YOLOing through it all:

“

From October 19, 2022 through January 29, 2025, analysts tracked by Bloomberg have lowered their average EBIT estimates by -70% for 2025 (from \$36.8 bn then to \$11.2 bn today) and by -67% for 2026 (from \$46.5 bn then to \$15.4 bn today) but have over the same time raised their 12-month price target for TSLA shares by +18% (from an average \$289 then to \$342 today).

Several other commentators have spotted this apparent disconnect between Tesla's fundamentals and the fundamental analysis.

"The sellside analysts taking up their price targets on these numbers are whores," Gordon Johnson, the Tesla permabear founder of GLJ Research, told us by email on Thursday, adding helpfully: "feel free to quote GLJ on that word for word."

Brinkman's perspective is more measured:

“

For how much longer can [Tesla] stock remain divorced from the fundamentals? It has continued for far longer than we would ever have suspected, but we don't think it can continue forever; given the considerable run up in the shares as performance and expected future performance have by equal measure deteriorated, we sense a high risk of mean reversion (including by potential catalysts that may be difficult to foresee at present).

All of which brings us back to the extended-hours trading.

As noted above, the immediate share-price reaction to earnings sets the tone. Tesla's 5 per cent after-hours bounce impelled commentators to back-engineer an explanation. That meant diving into Q4 outlook, skipping near-term guidance for ASP and COGS that was to lower expectations further, and pulling out the (mostly reiterated) stuff about full-self driving, cybercabs and helper robots by 2026.

Awaiting Musk's headliner performance on the conference call, the positive market reaction to promises of jam next year was a helpful support act.

It seems to work this way every quarter, pretty much:



© GLJ Research

Tesla Stock Price Reaction to Earnings Surprise in EPS and Revenue

	EPS Surp	Rev Surp	% Change 1-Day	% Change 1-Month
1Q20	NM	3.1%	(2.3%)	0.7%
2Q20	NM	11.8%	(5.0%)	18.0%
3Q20	38.4%	6.0%	0.8%	15.1%
4Q20	(22.0%)	3.5%	(3.3%)	(21.1%)
1Q21	15.7%	0.6%	(4.5%)	(17.9%)
2Q21	48.7%	5.3%	(2.0%)	7.4%
3Q21	11.3%	(1.1%)	3.3%	25.8%
4Q21	7.5%	6.5%	(11.6%)	(14.6%)
1Q22	41.8%	4.7%	3.2%	(27.4%)
2Q22	23.8%	0.4%	9.8%	22.8%
3Q22	4.5%	(2.7%)	(6.7%)	(15.8%)
4Q22	6.1%	1.1%	11.0%	39.9%
1Q23	(0.6%)	(0.1%)	(9.8%)	(3.7%)
2Q23	12.5%	1.7%	(9.7%)	(22.5%)
3Q23	(10.2%)	(2.9%)	(9.3%)	0.1%
4Q23	(3.0%)	(2.8%)	(12.1%)	(5.0%)
1Q24	(13.3%)	(4.3%)	12.1%	29.0%
2Q24	(13.9%)	3.4%	(12.3%)	(10.3%)
3Q24	20.8%	(1.1%)	21.9%	60.1%
4Q24	(2.9%)	(5.5%)	3.7%	NA
Avg. EPS Miss Stock % Move			(4.4%)	(1.8%)
Avg. EPS Beat Stock % Move			0.6%	7.0%
Avg. Rev Beat Stock % Move			(2.2%)	(0.8%)
Avg. Rev Miss Stock % Move			0.4%	12.9%

Note: Green = periods when TSLA's EPS missed Cons. ests.

Source: Company filings, Bloomberg, GLJ Research.

© GLJ Research

Tesla's biggest asset is hyperbole. The more extreme the hyperbole, the more valuable it gets. Maybe after-hours market participants understand the dynamics better than Tesla bears, so are primed to park fundamentals and trade on vibes. Or maybe something else entirely is going on.

Further reading:

- [Tesla's departure from reality, in one chart](#) (FTAV)
- [A fork in the road for Tesla](#) (FTAV)

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Exclusive: Musk aides lock government workers out of computer systems at US agency, sources say

 [reuters.com/world/us/musk-aides-lock-government-workers-out-computer-systems-us-agency-sources-say-2025-01-31](https://www.reuters.com/world/us/musk-aides-lock-government-workers-out-computer-systems-us-agency-sources-say-2025-01-31)

Tim Reid

Tesla and SpaceX CEO Elon Musk in the Rotunda of the U.S. Capitol on January 20, 2025 in Washington, DC. Chip Somodevilla/Pool via REUTERS/File Photo Purchase Licensing Rights , opens new tab

- Musk aides restrict access to federal employee data systems
- Musk's team works around the clock, installs sofa beds at OPM
- Concerns include cybersecurity and lack of oversight

WASHINGTON, Jan 31 (Reuters) - Aides to Elon Musk charged with running the U.S. government human resources agency have locked career civil servants out of computer systems that contain the personal data of millions of federal employees, according to two agency officials.

Since taking office 11 days ago, President Donald Trump has embarked on a massive government makeover, firing and sidelining hundreds of civil servants in his first steps toward downsizing the bureaucracy and installing more loyalists.

Musk, the billionaire Tesla (TSLA.O) , opens new tab CEO and X owner tasked by Trump to slash the size of the 2.2 million-strong civilian government workforce, has moved swiftly to install allies at the agency known as the Office of Personnel Management.

The two officials, who spoke to Reuters on condition of anonymity for fear of retaliation, said some senior career employees at OPM have had their access revoked to some of the department's data systems.

The systems include a vast database called Enterprise Human Resources Integration, which contains dates of birth, Social Security numbers, appraisals, home addresses, pay grades and length of service of government workers, the officials said.

"We have no visibility into what they are doing with the computer and data systems," one of the officials said. "That is creating great concern. There is no oversight. It creates real cybersecurity and hacking implications."

Officials affected by the move can still log on and access functions such as email but can no longer see the massive datasets that cover every facet of the federal workforce.

Musk, OPM, representatives of the new team, and the White House did not immediately respond to requests for comment.

OPM has sent out memos that eschew the normal dry wording of government missives as it encourages civil servants to consider buyout offers to quit and take a vacation to a "dream destination."

Don Moynihan, a professor at the Ford School of Public Policy at the University of Michigan, said the actions inside OPM raised concerns about congressional oversight at the agency and how Trump and Musk view the federal bureaucracy.

"This makes it much harder for anyone outside Musk's inner circle at OPM to know what's going on," Moynihan said.

MUSK INFLUENCE

A team including current and former employees of Musk assumed command of OPM on Jan. 20, the day Trump took office. They have moved sofa beds onto the fifth floor of the agency's headquarters, which contains the director's office and can only be accessed with a security badge or a security escort, one of the OPM employees said.

The sofa beds have been installed so the team can work around the clock, the employee said.

Musk, a major donor to a famously demanding boss, installed beds at X for employees to enable them to work longer when in 2022 he took over the social media platform, formerly known as Twitter.

"It feels like a hostile takeover," the employee said.

The new appointees in charge of OPM have moved the agency's chief management officer, Katie Malague, out of her office and to a new office on a different floor, the officials said.

Malague did not respond to a request for comment.

David Lebryk, the top-ranking career U.S. Treasury Department official, is set to leave his post following a clash with allies of Musk after they asked for access to payment systems, the Washington Post reported on Friday.

The new team at OPM includes software engineers and Brian Bjelde, who joined Musk's SpaceX venture in 2003 as an avionics engineer before rising to become the company's vice president of human resources. Bjelde's role at OPM is that of a senior adviser.

The acting head of OPM, Charles Ezell, has been sending memos to the entire government workforce since Trump took office, including Tuesday's offering federal employees the chance to quit with eight months pay.

"No-one here knew that the memos were coming out. We are finding out about these memos the same time as the rest of the world," one of the officials said.

Among the group that now runs OPM is Amanda Scales, a former Musk employee, who is now OPM's chief of staff. In some memos sent out on Jan. 20 and Jan. 21 by Ezell, including one directing agencies to identify federal workers on probationary periods, agency heads were asked to email Scales at her OPM email address.

Another senior adviser is Riccardo Biasini, a former engineer at Tesla and most recently a director at The Boring Company, Musk's tunnel-building operation in Las Vegas.

Reporting by Tim Reid; Editing by Ross Colvin and Howard Goller

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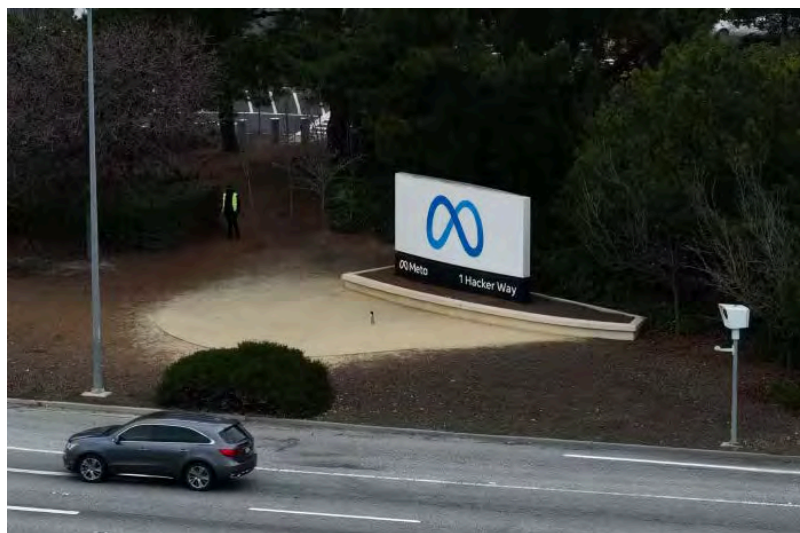
EXCLUSIVE TECHNOLOGY

Meta in Talks to Reincorporate in Texas or Another State, Exit Delaware

Potential step by social-media giant follows similar move by Elon Musk, who moved to reincorporate his companies in Texas and Nevada

By [Emily Glazer](#) [Follow](#), [Berber Jin](#) [Follow](#) and [Meghan Bobrowsky](#) [Follow](#)

Updated Jan. 31, 2025 2:37 pm ET



Meta's corporate headquarters would remain in Silicon Valley. Company headquarters and operations are often in different states than their legal domicile. PHOTO: JUSTIN SULLIVAN/GETTY IMAGES

First Mark Zuckerberg moved Meta's **META 0.68% ▲** fact checkers to Texas. Now, he is exploring moving his social-media giant's legal residence to the Lone Star state.

Meta Platforms is discussing moving its incorporation from Delaware, where most big U.S. companies are legally housed, people familiar with the matter said. Texas has billed itself as a better destination for companies such as Meta with controlling shareholders like Zuckerberg. The paperwork change wouldn't relocate its corporate headquarters.

The company has talked to Texas officials about the possible changes, one of the people said. It has also considered reincorporating in other states, another person said.

A Meta spokesman said there are no plans to move the company's corporate headquarters from California. He declined to comment further.

Elon Musk has said he reincorporated several of his companies outside of Delaware, including Tesla and SpaceX to Texas and startup Neuralink to Nevada. Musk's decision to exit from the state came after a Delaware court ordered him to give up a compensation package valued at \$55.8 billion.

Although a majority of Fortune 500 companies incorporate in Delaware, other corporations have also looked closely at similar moves in the last year, often following shareholder-driven litigation.

Executives and controlling shareholders of public companies have long expressed frustration with the Delaware Court of Chancery, which has become home to a thriving shareholder plaintiffs' bar. The big companies that have reincorporated elsewhere have tended to have a dominant owner potentially affected by recent Delaware decisions.



Executives and controlling shareholders of public companies have expressed frustration with the Delaware Court of Chancery. PHOTO: SARAH SILBIGER/BLOOMBERG NEWS

Company headquarters and operations are often in different states than their legal domicile. Separately, Meta in January said it would relocate its "trust and safety teams" responsible for writing policy and reviewing content from

California to Texas and other U.S. locations. The company also ended fact-checking on Facebook and Instagram in favor of a so-called Community Notes system, one of a number of steps Zuckerberg, Meta's CEO, has taken as he seeks to build ties with the Trump administration. Musk applauded Meta's fact-checking decision.

The talks between Meta and Texas predate the new administration, the people said. Meta has been incorporated in Delaware since 2004—well before its 2012 initial public offering. The company is considering the pros and cons of legal setups outside the state and how other companies fared when they reincorporated, the people said.

About two-thirds of S&P 500 companies—regardless of where they are actually based—are incorporated in Delaware, largely because the tiny state has specialized courts that handle business matters and stacks of legal precedents for addressing disputes. In recent years, controlling stockholders of publicly traded companies incorporated in Delaware have chafed at rulings bolstering the rights of minority stockholders.

Meta, Zuckerberg and some of the company's current and former board members are facing a lawsuit in Delaware that was brought by shareholders in the wake of the Cambridge Analytica scandal. The case is set to go to trial in April, and the court last week granted a request from plaintiffs to depose Zuckerberg.

Current litigation is unlikely to get moved out of Delaware with any reincorporation, legal scholars say. But any lawsuit filed after a reincorporation would play out in the new state.

Paramount in Settlement Talks With Trump Over '60 Minutes' Lawsuit

 [nytimes.com/2025/01/30/business/media/paramount-trump-cbs-news-settlement.html](https://www.nytimes.com/2025/01/30/business/media/paramount-trump-cbs-news-settlement.html)

Lauren Hirsch, James B. Stewart, Michael M. Grynbaum

January 31, 2025

SKIP ADVERTISEMENT

When Donald J. Trump sued CBS for \$10 billion days before the 2024 election, accusing the company of deceptively editing a “60 Minutes” interview with Vice President Kamala Harris, many legal experts dismissed the litigation as a far-fetched attempt to punish an out-of-favor news outlet.

Now Mr. Trump is back in the White House, and many executives at CBS’s parent company, Paramount, believe that settling the lawsuit would increase the odds that the Trump administration does not block or delay their planned multibillion-dollar merger with another company, according to several people with knowledge of the matter.

Settlement discussions between representatives of Paramount and Mr. Trump are now underway, according to three people with knowledge of the talks. There is no assurance, though, that they will result in a deal, and it is unclear what the terms of any such deal might include.

Shari Redstone, Paramount’s controlling shareholder, strongly supports the effort to settle, according to two people with knowledge of her thinking. Ms. Redstone stands to clear billions of dollars on the sale of Paramount, the media empire founded by her father Sumner Redstone, in a deal with Skydance, an entertainment company backed by the billionaire Larry Ellison and run by his son David.

A settlement would be an extraordinary concession by a major U.S. media company to a sitting president, especially in a case in which there is no evidence that the network got facts wrong or damaged the plaintiff’s reputation.

What you should know. The Times makes a careful decision any time it uses an anonymous source. The information the source supplies must be newsworthy and give readers genuine insight.

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It could also cause an uproar within CBS News and among the “60 Minutes” staff. Journalists at the network have expressed deep concern about the notion of their parent company settling litigation that they consider tantamount to a politician’s standard-issue gripes about a news organization’s editorial judgment, according to several people familiar with internal discussions.

Edward Paltzik, Mr. Trump's lawyer on the case, wrote in a statement on Thursday: "Real accountability for CBS and Paramount will ensure that the president is compensated for the harm done to him, and will deter the Fake News from further distorting the facts to advance a partisan agenda. President Trump looks forward to seeing this case through to a just conclusion."

During the "60 Minutes" interview at the center of the lawsuit, which aired in October, the CBS correspondent Bill Whitaker asked Ms. Harris a question about the conflict in the Middle East.

In a preview of the interview that aired on "Face the Nation," CBS's Sunday morning show, Ms. Harris was shown giving a different answer than the one she gave in the version of the interview that was broadcast the next evening on "60 Minutes."

Mr. Trump's team accused "60 Minutes" of selecting a more coherent quote from Ms. Harris for the prime-time telecast in order to boost her candidacy. CBS News said that Ms. Harris had given one lengthy answer to Mr. Whitaker's question, and that the network followed standard journalistic practice by airing a different portion of her answer in prime-time because of time constraints.

"The interview was not doctored," CBS News said in a statement in October, adding that it "did not hide any part of" Ms. Harris's answer. At the time, the network described Mr. Trump's lawsuit as "completely without merit."

Mr. Trump's legal complaint relied on a largely untested interpretation of a Texas law that prohibits deceptive trade practices in things like marketing products to consumers. Among other objections to the lawsuit, CBS lawyers have noted that Mr. Trump's standing to bring the suit in Texas was tenuous at best.

Regardless of the lawsuit's merit, Mr. Trump's administration wields leverage. Because Paramount owns broadcasting licenses, it needs the blessing of the Federal Communications Commission to complete its planned merger with Skydance.

People inside Paramount have been expecting the F.C.C., which is now led by a Trump appointee, Brendan Carr, to request that CBS News hand over an unedited transcript of its interview with Ms. Harris, according to people with knowledge of the plans. CBS had refused previous requests from Mr. Trump's lawyers to release the transcript.

Mr. Carr has said that the commission would probably look into the "60 Minutes" interview as part of its review of the Paramount merger.

Mr. Trump's demonization of the news media is a centerpiece of his political rise, and he has repeatedly clashed with "60 Minutes," which is the country's most popular television news show. He declined to be interviewed by the program during last year's presidential race. In

2020, Mr. Trump cut short an interview with Lesley Stahl after becoming irritated with her questions; his campaign then posted unfiltered footage from the interview online.

In recent months, "60 Minutes" has also faced scrutiny from Ms. Redstone herself, who complained to CBS executives about a story featuring State Department employees who expressed misgivings about the Biden administration's handling of the war between Israel and Hamas, according to two people familiar with the matter. One day after the segment aired, CBS News installed a longtime producer, Susan Zirinsky, as an interim executive editor overseeing journalistic standards and practices.

The Wall Street Journal earlier reported that Paramount executives were discussing a possible settlement internally. If the company reaches such a deal, it would be at least the third major company in recent weeks to settle a lawsuit brought by Mr. Trump.

Last month, ABC News paid \$15 million to resolve Mr. Trump's defamation lawsuit against the network and its anchor George Stephanopoulos, who had imprecisely said that the president had been found "liable for rape" in a civil trial in New York. (In fact, Mr. Trump had been found liable for sexual abuse.)

And on Wednesday, Meta, the parent company of Facebook and Instagram, said it had agreed to a \$25 million settlement to resolve a lawsuit that Mr. Trump filed after the social networks suspended his accounts in 2021.

Benjamin Mullin and David Enrich contributed reporting.

The Trump Administration's First 100 Days

- **Presidential Power:** The prospect of legal challenges to President Trump's purges of officials may be a feature, not a bug, for adherents of sweeping presidential authority.
- **Education:** With sweeping executive orders, Trump is seeking to promote "patriotic education" and restrict discussions about racism and gender. But schools are often resistant to change.
- **Immigration:** Trump ordered his administration to prepare to house tens of thousands of "criminal aliens" at the Navy base at Guantánamo Bay, the latest prong in his widening crackdown on immigration.
- **Federal Work Force:** The Trump administration's effort to get federal workers to leave their posts could lead to an exodus of experienced employees, some officials warned.

Trump Media gifts DJT shares to FBI pick Kash Patel

 [cnbc.com/2025/01/31/trump-media-djt-stock-shares-kash-patel.html](https://www.cnbc.com/2025/01/31/trump-media-djt-stock-shares-kash-patel.html)

Kevin Breuninger

January 31, 2025

Key Points

- Trump Media gifted DJT shares to six board members, SEC filings revealed.
- Shares were awarded to President Donald Trump's pick for FBI director, Kash Patel, Donald Trump Jr. Education secretary nominee Linda McMahon, former U.S. trade representative Robert Lighthizer, and two other directors.
- The disclosures come as critics say the president's financial entanglements and recent business ventures pose conflicts of interest for members of his administration.

In this article

DJT+0.05 (+0.15%)

Kash Patel, U.S. President Donald Trump's nominee to be director of the FBI, looks on as he testifies before a Senate Judiciary Committee confirmation hearing on Capitol Hill in Washington, U.S., January 30, 2025.

Evelyn Hockstein | Reuters

Trump Media this week gifted thousands of shares of company stock to President Donald Trump's nominee for FBI director, Kash Patel, to Trump's eldest son and to four other board members, new regulatory filings show.

The company awarded 25,946 stock shares each to Patel, Donald Trump Jr. and the president's pick for Education secretary, Linda McMahon, who all serve as Trump Media directors, the filings Thursday reveal.

Three other directors — former U.S. trade representative Robert Lighthizer, Eric Swider and Kyle Green — received the same number of DJT shares at no cost, according to Securities and Exchange Commission filings.

The filings said the awards were granted Tuesday. Trump Media that day closed trading at \$30.04 per share.

At that price, the shares have a paper value of more than \$779,400. But most of the stock awarded has restrictions on what it can be sold.

DJT was trading at around \$31.50 per share as of 2:30 p.m. ET Friday.

The filings said the stock was granted “as consideration for services provided” between late March — when Trump Media went public after completing a merger with a blank-check company — and Dec. 25.

The disclosures come as critics say President Trump’s financial entanglements and recent business ventures pose conflicts of interest for members of his administration.

The stock awards were made public hours after Patel appeared for a Senate hearing on his nomination to lead the FBI, the top U.S. law enforcement agency.

Trump Media, which operates the Truth Social app, on Wednesday announced it was expanding into financial services.

Weeks after winning the presidential election, Trump transferred his majority stake in Trump Media to his revocable trust. Trump is the sole beneficiary of the trust, and Trump Jr. is its only trustee.

The new SEC filings said that the shares awarded Tuesday to the six board members are restricted stock units that will vest in installments.

Twenty-five percent of the awarded RSUs — about 6,487 shares per director — immediately vested, meaning they can be sold at any time. The paper value of those shares was nearly \$195,000 as of Tuesday’s closing trade.

The remaining 75% of the RSUs will vest in nine quarterly installments over two years beginning March 25.

Trump Media did not immediately respond to CNBC’s request for comment.

Trump Raised Millions From Crypto Firms for His Inauguration

By Bill Allison

- Coinbase, Kraken, Galaxy Digital each gave \$1 million
- Energy producers and tech firms also donated to festivities

President Donald Trump's inaugural committee received millions of dollars in donations from firms in the cryptocurrency industry that's already seeing special attention from his administration, disclosures filed with the Senate Office of Public Records show.

Coinbase Inc., Crypto.com, Galaxy Digital, Paradigm Operations and Payward Inc., better known as Kraken, each gave \$1 million. Robinhood Markets, Inc., which offers a trading platform for digital currencies, contributed \$2 million, according to the reports.

Once a crypto skeptic, Trump enthusiastically embraced the industry as an investor, entrepreneur and source of political fundraising. Among large donors to his campaign and super political action committee were venture capitalists Marc Andreessen and **Ben Horowitz** and billionaire twins **Tyler** and **Cameron Winklevoss**.

In his first week in office, the president tapped David Sacks, the venture capitalist he named as his crypto czar, to head a task force that includes top cabinet officials to promote US digital financial technology. They're to consider regulatory reform and creating a digital asset stockpile.

Earlier: [How Trump Came Around to Crypto — and What Crypto Wants in Return](#)

Trump, who's expected to easily surpass the \$107 million he raised for his 2017 inauguration, received donations from other industries expecting more favorable policies from his administration. Chevron Corp. gave \$2 million, a much heftier gift than the \$525,000 it contributed for his first inauguration. Oklo Inc., which makes fission reactors that can run on nuclear waste, gave \$250,000. **Chris Wright**, Trump's pick to run the Energy department, sat on its board.

Companies in the renewable energy business also donated. Hanwha Q Cells America Inc., the US subsidiary of the German solar panel maker, gave \$500,000, as did GE Vernova, a General Electric spinoff that manufactures everything from gas turbines to blades for wind power. The American Clean Power Association, a trade group that represents wind, solar, clean hydrogen and transmission companies, gave \$100,000.

Among the flurry of executive orders he issued to start his term, Trump froze permits to new offshore wind power installations, a major setback for the industry, and invoked emergency powers in a bid to bolster domestic energy production.

His inaugural committee also received money from many donors who didn't give the first time around. They include some who had earlier acknowledged they were doing so, such as Amazon.com Inc., Meta Platforms Inc. and Goldman Sachs Group Inc., who each gave \$1 million. Other new donors that gave that amount include health-care companies Bayer Corporation and Johnson & Johnson.

The disclosures offer a partial glimpse into some of the moneyed interests who paid hefty sums to help welcome Trump back to Washington. Organizations with in-house lobbyists are required to semiannually disclose their political contributions.

Trump's inaugural committee isn't due to release its complete list of donors to the Federal Election Commission until April 19.

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Securities Law

Jan. 31, 2025, 6:48 AM PST

Trump Media Deal Architect Gets Stock Theft Lawsuit Put on Hold

By [Mike Leonard](#)

- **Suit says Patrick Orlando is funneling shares to Caymans**
- **Delaware case halted pending parallel litigation in Florida**

The ex-CEO of the blank-check company that combined with Donald Trump's social media platform persuaded a judge to pause litigation over his alleged scheme to funnel millions of shares to offshore dummy entities.

A Delaware judge temporarily halted the lawsuit against Patrick Orlando, a founding sponsor and former chief of Digital World Acquisition Corp., the shell company that took Trump Media & Technology Group Corp. public through a blank-check merger. Trump and Trump Media, which operates the president's Truth Social network, aren't named as defendants.

The ruling by Vice Chancellor Lori W. Will cited parallel disputes pending in Florida involving overlapping allegations. Litigation in Delaware's Chancery Court can resume after the Florida cases clear away some of the legal underbrush, or "upon good cause shown" by either side, Will said Jan. 29. She previously declined to block Orlando from transferring any Trump Media shares while the lawsuit plays out.

Orlando has spent much of the last year entangled in multiple court fights over Truth Social, the special purpose acquisition company it combined with, and ARC Investment Global II LLC, the jointly held entity formed to finance the transaction. He also faces civil litigation brought by the Securities and Exchange Commission over fraud allegations stemming from his time at the SPAC's helm.

The lawsuit in Delaware, filed by more than three dozen ARC investors, says Orlando secretly transferred about two-thirds of the entity's ownership interests to affiliates and corporate "alter-egos" based in the Cayman Islands. ARC, controlled by Orlando, has allegedly received nearly 8.2 million Trump Media shares since the transaction.

But rather than distribute the shares proportionally to his co-investors, Orlando has diverted most of them to fund his own widening legal troubles and "lavish purchases" including a \$6 million Miami home, according to the November 2024 court complaint filed hours after Trump won the presidency for a second time.

Orlando is represented by Richards, Layton & Finger PA. The co-investors are represented by Morris, Nichols, Arsht & Tunnell LLP and Paul Hastings LLP.

The case is ACRA Assets SA v. ARC Global Inv. II LLC , Del. Ch., No. 2024-1141, 1/29/25 .

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<https://www.wsj.com/finance/regulation/trump-meme-coin-etf-b2c22877>

MARKETS & FINANCE | REGULATION

Want to Double Your Exposure to the Trump Meme Coin? There's an ETF in the Works for That.

Speculative meme coin funds to test the SEC's boundaries under Trump

By [Jack Pitcher](#) [Follow](#)

Jan. 31, 2025 9:00 am ET



ILLUSTRATION: RACHEL MENDELSON/WSJ, JOE RAEDLE/GETTY IMAGES, ANDREW KELLY/REUTERS

Investors looking for the chance to double down on President Trump's new meme coin might soon get their wish.

The boutique asset manager Tuttle Capital Management filed Monday to launch 10 new leveraged exchange-traded funds that would magnify investors' exposure to the first family's meme coins and other niche cryptocurrencies.

The applications are the latest sign that market speculation has reached a fever pitch and will pose an early test of the Securities and Exchange Commission's boundaries under the new Trump administration.

Dubbed \$TRUMP and \$MELANIA, the tokens are a type of cryptocurrency that doesn't serve any economic purpose and whose value is based largely on demand stoked by internet memes. Since their launch about two weeks ago, the tokens have lost more than 60% of their values compared with their peaks.

The funds proposed by Tuttle Capital would give investors the chance to capture twice the daily return, or loss, of the tokens through the use of financial derivative contracts.

"There's been a long, long bull market without a hard rain to wash the froth out," said Eric Balchunas, senior ETF analyst at Bloomberg Intelligence. "And you've got a new SEC chair who is a lot more open to crypto stuff," Balchunas added, referring to Paul Atkins, Trump's pick for SEC chair. "Those two things combined is why you see these filings."

In an odd twist that shows how risky the funds might be, investors in the leveraged Trump fund would have likely been wiped out had the ETF been launched on Jan. 20, when \$TRUMP tumbled in intraday trading.

The fund applications put the SEC in an awkward position during Mark Uyeda's opening weeks as acting chairman. Denying the applications on the grounds that they aren't suitable for investors could appear to be an indictment of the coins that Trump endorsed. Most of the token supply is owned by affiliates of the Trump Organization.



Matthew Tuttle, the founder of Tuttle Capital, has been launching headline-grabbing ETFs for the past decade. PHOTO: GEORGE ETHEREDGE FOR WSJ

The SEC, under the Biden administration, begrudgingly approved funds that directly hold bitcoin and Ethereum, along with those that provide leveraged exposure to bitcoin.

Gary Gensler, during his tenure as SEC chair, was long opposed to such funds based on concern about potential market manipulation. The agency lost a lawsuit that overturned its decision to deny the applications. Gensler departed earlier this month.

“The SEC has to look at this stuff and make a call somewhere where the line is. Is it between Solana and Bonk?” Balchunas said, referring to two other cryptocurrencies. “Or is it here, with the Trump coin? Remember, he’s the SEC’s boss.”

James Angel, a professor at Georgetown University’s McDonough School of Business, said the SEC could choose to reject the applications on the logic that the coins are new. Their legal and financial status is so unclear, he added, that the information required for proper disclosures to investors doesn’t yet exist.

Some fund managers argue that one should be able to “sell investors any piece of garbage as long as you tell them it’s a piece of garbage,” Angel said. But securities laws, he said, go further, repeatedly mentioning protection of investors without defining exactly what that means.

“Our financial regulatory structure has not yet come up with a coherent approach to dealing with risky and complex products,” Angel added.

Assets in risky, leveraged exchange-traded funds soared to top \$100 billion last year. That emboldened small investment managers such as Tuttle Capital to push the envelope with exotic funds that command above-market fees.

The fund manager Rex Shares followed Tuttle Capital’s applications with paperwork for the first ETF that would invest in dogecoin, a meme cryptocurrency that has been touted by Elon Musk. In all, issuers have filed for more than three dozen new crypto-related ETFs since Trump took office.

“You can’t swing a dead cat these days without hitting a new crypto product and new crypto ETF,” Doug Cifu, chief executive of the market maker Virtu Financial, said on an earnings call Wednesday.

Matthew Tuttle, the founder of Tuttle Capital, has been launching headline-grabbing ETFs for the past decade, most of which remained tiny. That changed with the September launch of MSTU, a single-stock fund that uses derivatives to seek double the daily return of MicroStrategy, the bitcoin-linked tech company.

The fund, widely considered the most volatile ETF in the market today, attracted billions from thrill-seeking traders in a matter of months. It is generating tens of millions in revenue for Tuttle's small firm, which charges a 1.05% fee on the fund's assets. Some say the fund's investors are playing with fire.

"We have a president and admin that is very pro crypto," Tuttle said of his most recent fund applications. "We've got a crypto czar—I don't know what that means but we have one. That is going to open up the floodgates, and I wanted to be first in line."

Similar funds offering leveraged exposure to such stocks as Nvidia have exploded in popularity—and Monday's rout in technology stocks highlights their peril. The most popular single-stock fund, the GraniteShares 2x Long Nvidia Daily ETF, plunged 34% that day, its worst performance on record.

Single-stock leveraged funds—which were approved by the SEC in 2022—had about \$25 billion in assets at the end of December, up from \$3.4 billion a year earlier, according to Morningstar.

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<https://www.wsj.com/business/former-barclays-ceos-relationship-with-jeffrey-epstein-ran-deeper-than-disclosed-d21b7d9a>

BUSINESS

Former Barclays CEO's Relationship With Jeffrey Epstein Ran Deeper Than Disclosed

'I toast your courage!!!!' Jes Staley wrote to Epstein the day he was released from jail, filings from the U.K.'s financial regulator show

By [Joe Wallace](#) [Follow](#)

Jan. 31, 2025 12:26 pm ET



Jes Staley, former chief executive officer of Barclays, in New York in 2023. PHOTO: BLOOMBERG NEWS

In the fall of 2016, Jeffrey Epstein emailed the daughter of one of Britain's most powerful financiers an intriguing question: Would Jes Staley, chief executive of Barclays, like to be considered as U.S. Treasury Secretary?

"Spoke with him. He said not yet, but thanks," Alexa Staley replied.

The emails, revealed in a filing by the U.K.'s main financial regulator Friday, are among dozens detailing the relationship between Staley and Epstein over more

than 15 years.

The Financial Conduct Authority, which banned Staley from holding powerful positions in U.K. finance in 2023, argued he misled both Barclays and regulators about the nature and timeline of his relationship with Epstein. The U.K. regulator asked Barclays about Staley's relationship with Epstein after the disgraced financier's arrest in the U.S. in 2019. Prosecutors indicted Epstein in the U.S. on federal sex-trafficking charges.

Staley disputed the ruling, and the two sides will slug it out in front of London's Upper Tribunal over several days in March. Some of the leading lights of British finance, including Bank of England Gov. Andrew Bailey, are expected to testify.

Key arguments the FCA plans to make: Staley maintained communication with Epstein after becoming Barclays CEO in 2015, using his daughter as a go-between, and that his relationship was deeper and more personal than Staley portrayed.



Jeffrey Epstein in West Palm Beach, Fla., in 2008. PHOTO: UMA SANGHVI/THE PALM BEACH POST/ZUMA PRESS

Staley's lawyers denied in a filing that their client had acted without integrity. They said the FCA ignored the time that elapsed between some of Staley's interactions with Epstein and the period after Epstein's arrest in 2019, when the then-Barclays CEO was questioned about their relationship. Barclays declined to comment and Alexa Staley didn't immediately respond to a request for comment.

The FCA filing lays out a pattern of intensive communication between the two men, often peppered with terms of endearment about the depth of their friendship. The relationship between the pair had blossomed after they met around the turn of the millennium, when Epstein was a client of JPMorgan's private bank, which Staley ran.

"I owe you much. And I deeply appreciate our friendship. I have few so profound," Staley told Epstein from the latter's ranch in New Mexico in late 2009.

The FCA's filing draws on correspondence supplied by the latter's estate, as well as evidence that emerged when JPMorgan sued Staley in the U.S. in 2023, alleging he had covered up for his client.

"Free and home," Epstein emailed a group of confidants the day he was released from jail in Florida in July 2009.

"I toast your courage!!!!" came the reply from Staley the same day.

In a deposition, Staley described Epstein as a "business friend." The FCA contends the evidence shows they were "close friends" belying Staley's earlier assertions to Barclays officials and the regulator.

In late December 2009, Epstein sent Staley an email with no text but an image of a woman's face attached.

In 2015, after leaving JPMorgan but before joining Barclays, Staley took a flight on Epstein's plane to an island Epstein owned in the U.S. Virgin Islands. The FCA said this contradicts Staley's claims to Barclays officials that he had taken one earlier flight on Epstein's private plane.

"Thanks for the flight and thanks for the lunch. Your place is crazy, and special. It has a warmth and silliness that makes it yours. I count u as a deep friend," Staley wrote in an email to Epstein.

The U.K.'s Financial Conduct Authority determines whether executives are 'fit and proper' to lead.

PHOTO: TOBY MELVILLE/REUTERS

After becoming CEO of Barclays that December, Staley remained in contact with Epstein using his daughter Alexa as an intermediary, according to the FCA. In their filing, Staley's lawyers denied this. In preceding years, Staley had thanked Epstein for career advice he provided to Alexa Staley.

Staley's lawyers said in their filing the emails don't prove the two financiers communicated using Alexa Staley as an intermediary, and said the FCA ignored the fact Staley didn't try to contact Epstein despite the latter's attempt to engage him.

Epstein died in jail in August 2019, in what medical examiners ruled was a suicide.

In 2023, the FCA fined Staley £1.8 million, equivalent to around \$2.2 million, and banned him from holding any senior position in the financial industry. It ruled he had misled Barclays and regulators by both downplaying how close he was to Epstein and saying they had dropped contact well before he joined the British lender in 2015. The FCA, the U.K.'s financial watchdog, determines whether executives are "fit and proper" to lead.

JPMorgan settled with Staley in 2023 without disclosing the terms. In a separate deal, the bank agreed to pay \$75 million to settle a lawsuit alleging it had helped Epstein's sex-trafficking.

JPMorgan isn't a party in the FCA hearing, but the bank has asked the judge presiding over the case for permission to respond if Staley make claims about Epstein's relationship to other senior JPMorgan executives.

Write to Joe Wallace at joe.wallace@wsj.com

Videos

The vital role of cybersecurity representations and warranties in M&A

 [reuters.com/legal/transactional/vital-role-cybersecurity-representations-warranties-ma-2025-01-30](https://www.reuters.com/legal/transactional/vital-role-cybersecurity-representations-warranties-ma-2025-01-30)

Anjali Das, Gregory Parker

Compulsory cyber cover will boost UK cybersecurity: Howden Purchase Licensing Rights , opens new tab

January 30, 2025 - In today's digital landscape, cybersecurity has emerged as a critical concern in mergers and acquisitions (M&A). The risk associated with cyberattacks necessitates that security considerations permeate every stage of the M&A process. Just as financial, legal, operational, or reputational risks are meticulously assessed, a thorough evaluation of the target company's cybersecurity preparedness should be customary.

Despite rigorous due diligence, it's challenging to confirm with certainty that a target company is free from incidents compromising data security. Therefore, buyers increasingly seek protection through comprehensive cybersecurity representations and warranties in the purchase agreement. These contractual provisions are essential tools for risk allocation, enabling buyers to safeguard against potential cyber threats that could undermine the value of the transaction.

This is the second article in a three-part series on cybersecurity in M&A and navigating hidden risks. The first article , opens new tab discussed the importance of cybersecurity due diligence.

Why cybersecurity representations and warranties are essential

When acquiring a company — particularly through a stock purchase or merger — a buyer generally inherits not only the target's assets and opportunities but also its liabilities and risks. In asset acquisitions, by contrast, the buyer may have more flexibility in selecting which liabilities to assume, although certain obligations may still carry over depending on applicable law and contractual arrangements.

Cybersecurity breaches and data privacy issues can significantly impact the value of a deal, leading to financial losses, legal liabilities, reputational damage, and operational disruptions. While due diligence aims to uncover vulnerabilities, previous incidents, or outdated systems, it may not reveal all potential cyber risks.

Buyers rely on representations and warranties to determine an appropriate purchase price and to allocate risks effectively. These provisions serve as contractual assurances from the seller about the state of the target company's cybersecurity and data privacy practices. They supplement the due diligence process by:

- Allocating risk: Clearly defining which party bears the responsibility for specific cybersecurity risks.
- Providing legal recourse: Offering the buyer remedies if the actual situation differs materially from what was represented.
- Encouraging disclosure: Motivating the seller to disclose all relevant cybersecurity information during negotiations.
- Acting as a backstop: Protecting the buyer from cybersecurity issues that due diligence may not have uncovered.

Even when a buyer conducts robust due diligence, the seller has more intimate knowledge of the target entity. Therefore, the inclusion of carefully drafted representations and warranties can serve as a critical safety net.

Key cybersecurity and data privacy representations and warranties

A buyer should consider including the following representations and warranties to mitigate cyber risks effectively. Ideally, to ensure comprehensive protection these provisions should not have significant materiality or knowledge qualifiers.

Compliance with laws and regulations

Representation: The target entity has at all times conducted its business in compliance with applicable privacy and data security laws, which are expressly described in the purchase agreement.

Example: "The Company is and has been in full compliance with all applicable data protection, privacy, and cybersecurity laws, including but not limited to [list specific laws and regulations]."

Existence and adherence to privacy policies

Representation: The target company has established, implemented, and maintained comprehensive data security and privacy policies in accordance with industry best practices and legal requirements.

Example: "The Company has adopted and adheres to written data security policies that comply with all applicable laws and accurately reflect its data handling practices."

No violations of policies or obligations

Representation: The consummation of the M&A transaction will not violate any existing policies, contractual obligations, or applicable privacy laws.

Example: "Neither the execution nor the performance of this Agreement will result in a violation of any data privacy or security policies, contracts, or legal obligations binding upon the Company."

Absence of data or security breaches

Representation: The target entity has not been the subject of a data or security breach, including any breach that required reporting to government entities, regulators, or affected individuals.

Example: "The Company has not experienced any data or security breaches, unauthorized access, or other compromises of its information systems or data that required notification under any applicable law."

Compliance with designated security standards

Representation: The target company's cybersecurity practices comply with certain designated security standards, frameworks, or practices, or exceed them where appropriate.

Example: "The Company maintains cybersecurity measures that comply with, or exceed, the requirements of [specific security standards/frameworks, e.g., ISO 27001, NIST Cybersecurity Framework]."

Compliance with contractual data privacy obligations

Representation: The target company complies with all data privacy and security provisions within its contracts with customers, vendors, and partners.

Example: "The Company is and has been in compliance with all data privacy and security obligations under its agreements with third parties, including customers, suppliers, and service providers."

Adequacy of security measures

Representation: The target company maintains appropriate and up-to-date security measures, technologies, and safeguards to protect its systems and data.

Example: "The Company has implemented and maintains commercially reasonable security procedures and practices appropriate to the nature of the information to protect personal data from unauthorized access, destruction, use, modification, or disclosure."

No legal actions or claims

Representation: There are no actions, claims, investigations, or proceedings threatened or pending against the target company concerning its data privacy or cybersecurity practices.

Example: "There are no current or past claims, investigations, or proceedings by any governmental authority or third party alleging violations of data privacy or cybersecurity laws or regulations."

Future compliance assurance

Representation: The target company commits to maintaining compliance with data privacy and cybersecurity laws from the date of the agreement until the closing of the transaction.

Example: "Between the date of this Agreement and the Closing Date, the Company shall continue to comply with all applicable data privacy and cybersecurity laws and shall not undertake any actions that would cause a breach of the representations and warranties herein."

Negotiating representations and warranties

Since representations and warranties are ultimately about risk allocation, sellers may attempt to limit their exposure by:

- Introducing knowledge qualifiers: Limiting warranties to matters within the actual knowledge of certain individuals within the company.
- Adding materiality thresholds: Restricting warranties to issues that are materially significant to the value of the transaction.
- Setting look-back periods: Limiting the representations to a specific time frame in the past.

However, buyers should aim to minimize such limitations, especially for cybersecurity matters. Representations and warranties without significant materiality or knowledge qualifiers provide stronger protection, ensuring that the buyer can rely on the seller's assurances.

Impact of due diligence findings on representations and warranties

If due diligence uncovers vulnerabilities, previous incidents, or outdated systems, the buyer should anticipate additional costs to enhance the target's security infrastructure. This may prompt:

- Negotiation of purchase price adjustments: Seeking a lower price to account for the investment needed in cybersecurity improvements.
- Holdback or escrow mechanisms: Setting aside a portion of the purchase price to secure remedies for cyber risks post-closing.

- Specific covenants: Requiring the seller to undertake certain cybersecurity measures before closing.
- Extended survival periods: Implementing longer survival periods for cybersecurity representations and warranties, as deficiencies may not be detected until long after closing.

Moreover, a cyberattack occurring between signing and closing could represent a material adverse change (MAC) in the target's business. Properly drafted representations and warranties, along with MAC clauses, can enable the buyer to reassess the terms of the deal or potentially terminate the agreement.

Conclusion

Considering the significant risks associated with cyberattacks, cybersecurity should be an integral part of every stage in the M&A process. Even the most thorough due diligence may not reveal all potential cyber threats. Therefore, including detailed cybersecurity and data privacy representations and warranties in the purchase agreement is crucial.

These provisions not only allocate risk appropriately but also encourage full disclosure and compliance, ultimately protecting the buyer's investment. Buyers can mitigate the inherent cyber risks in M&A transactions by requesting representations and warranties that cover (1) the existence of and adherence to data security policies, (2) compliance with contractual obligations, (3) absence of unauthorized access and security incidents, and (4) the adequacy of security measures.

In an era where cyber threats are evolving, taking proactive steps through well-crafted representations and warranties is essential for securing the value and success of M&A deals.

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ANALYSIS: 2024 IPO Market Was Just Like 2022–2023, Only More So

By Preston Brewer

The most recent quarter and year in the IPO market maintained trends that have been prevalent since early 2022. Initial public offerings continued increasing in both quantity and total volume, but those figures remain substantially lower than during the pandemic boom years of 2020–2021.

Lineage Inc.'s IPO in July topped all others in 2024. The global temperature-controlled warehouse REIT raised over \$5.1 billion, by far the most for any IPO last year. The next largest offering—and the biggest in the fourth quarter—was aircraft parts and equipment manufacturer Standardaero, which raised over \$1.6 billion.

2024 IPO Market Performance

Looking at how 2024 compares to annual results since 2016, IPO count has returned to 2019 levels, which represents a more typical time in the IPO market than the pandemic boom or the IPO winter of the past several years.

Annual IPO Deal Count Returns to Pre-Pandemic Level

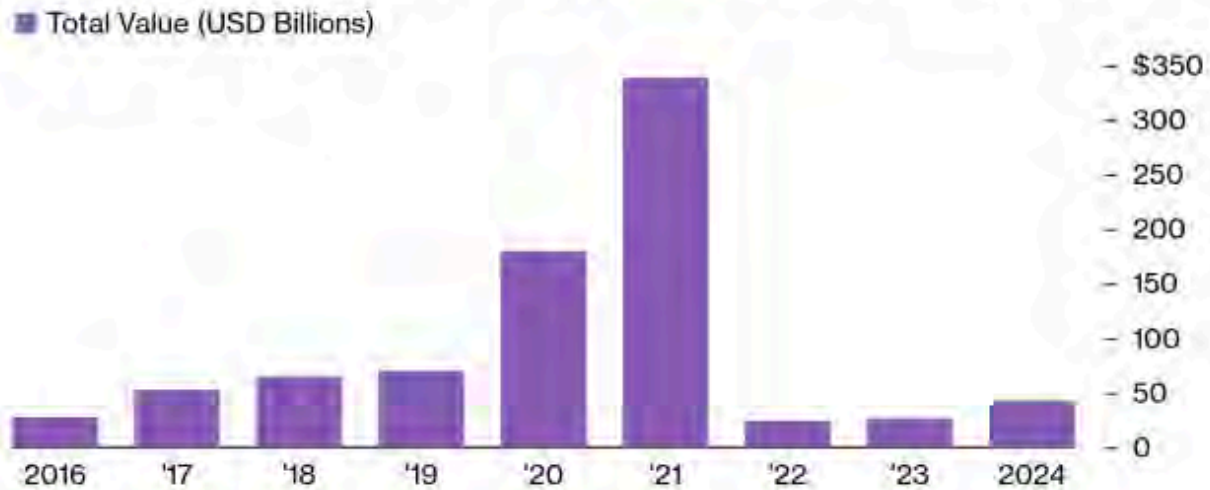


Source: Bloomberg. Initial public offerings of at least \$1 million priced on US exchanges during the time periods indicated.

Bloomberg Law

The rebound in deal volume, a stronger indicator of market health, lags behind deal count. Last year saw IPOs raise a combined \$43 billion—better than in 2022 or 2023, but still short of the pre-pandemic years of 2017–2019.

Annual IPO Deal Volume Rises But Still Trails Pre-Pandemic Level



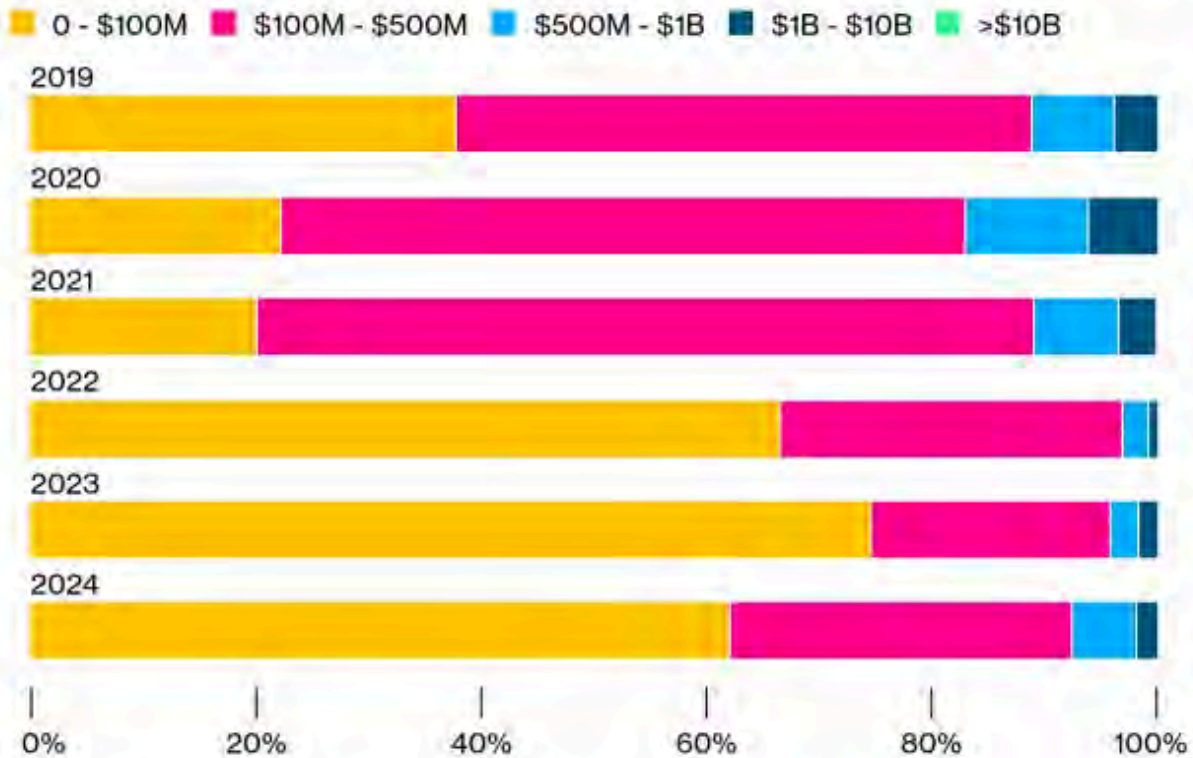
Source: Bloomberg. Initial public offerings of at least \$1 million priced on US exchanges during the time periods indicated.

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The typical size of an initial public offering is substantially smaller than 3-4 years ago when the market was booming – but deals over \$100 million did grow modestly over 2023 levels. The size of deals remains smaller on average than before the pandemic.

Smaller-Sized Offerings Continue Post-Pandemic Boom

Deal values of announced IPOs, 2019–2024



Source: Bloomberg. Initial public offerings of at least \$1 million priced on US exchanges during the time periods indicated.

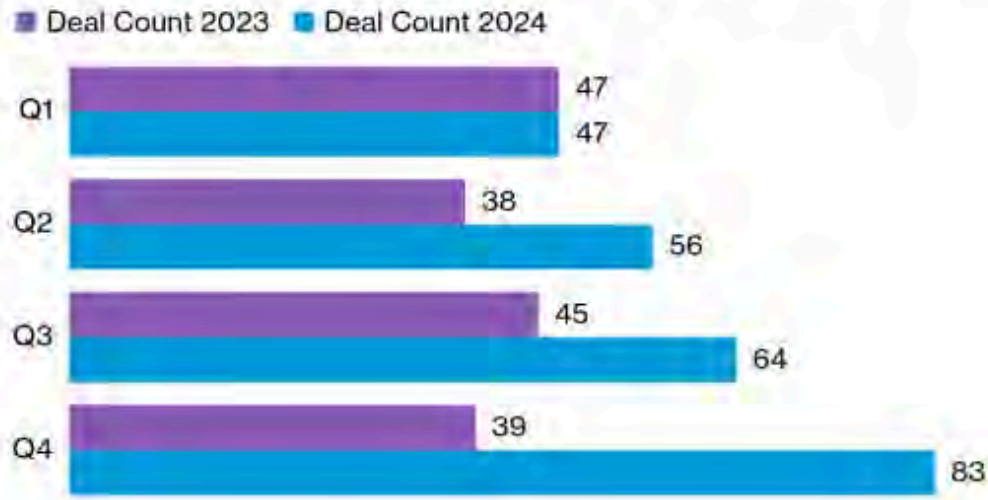
Bloomberg Law

Deals in the \$500 million to \$10 billion range saw large increases year-over-year, as shown in the chart above. This indicates conditions for IPOs are improving, if modestly.

Quarter-by-Quarter Changes

Looking at each quarter in 2024 and comparing results to its 2023 counterpart, deal count in the fourth quarter was 83, more than double the 39 notched a year ago. That continues a growing quarter-by-quarter trend in 2024, as shown below. It also shows that IPOs in 2024 met or improved upon their 2023 total in each quarter.

2024 Quarterly IPO Counts Meet or Exceed 2023

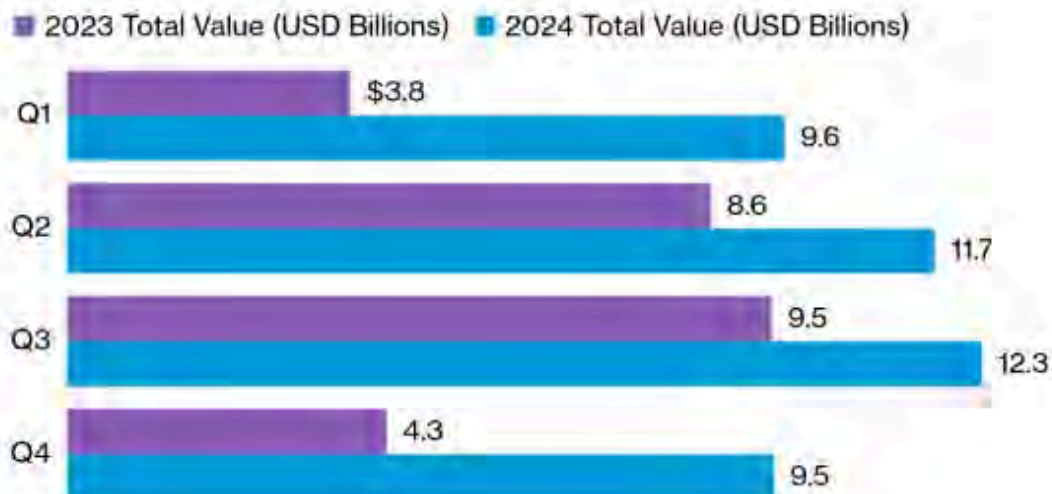


Source: Bloomberg. Initial public offerings of at least \$1 million priced on US exchanges during the time periods indicated.

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Deal value also improved in each quarter in 2024 compared to the same quarter a year prior. The trend from Q1 to Q4, however, was less consistent than with deal count, because a small number of large offerings can skew results larger or smaller in a given quarter.

2024 Quarterly IPO Volume Exceeds YOY 2023 Results



Source: Bloomberg. Initial public offerings of at least \$1 million priced on US exchanges during the time periods indicated.

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Outlook for 2025

The outlook for 2025 has been marked by increasing optimism for an improving IPO environment, tempered by uncertainty over the Federal Reserve's ability to cut interest rates (reflected in rising bond yields), US economic policy (especially the threat of tariff wars), market volatility, and worsening geopolitical conditions. On Wednesday, the Fed acknowledged the difficulty it faces in reducing rates further when it decided to leave rates unchanged and said it will wait to inflation to ebb before making additional rate cuts.

However, the upward trend of these 2024 figures notwithstanding, that upbeat mood may be dampening. Investor expectations for IPOs received a shock last week when liquefied natural gas exporter Venture Global Inc. slashed its IPO price range by more than 40%. This negative sentiment could affect IPOs significantly in the first quarter, particularly hampering the energy sector.

Bloomberg Law subscribers can find related content on our Equity Deal Analytics page and on our Securities Practice Center resource.

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Investors Push To Consolidate Suits On Cash Sweep Programs

By **Carolina Bolado**

Law360, Miami (January 30, 2025, 7:19 PM EST) -- Investors claiming brokerage firms' cash sweep investment programs unfairly enriched the brokers at the expense of customers asked the U.S. Judicial Panel on Multidistrict Litigation Thursday to consolidate their suits, arguing they risk ending up with wildly different judicial rulings without it.

Stephen Astley of Robbins Geller Rudman & Dowd LLP, who represents investors Safron Capital Corp. and Brickman Investments Inc., said there's a "central question that cuts across all these cases" — what a reasonable standard for a cash sweep interest rate is, so that judges can compare the brokerage firms' actions against it.

Without a reasonable standard, consumers in different states would get wildly different rates depending on what the judge in their districts ruled, according to Astley, who pushed for consolidation in the Southern District of New York.

"How is that fair? How is that competitive?" Astley asked. "That is the inevitable result if centralization is denied and the decision of reasonableness is left to the 26 judges who currently have one of these cases."

But the judges on the JPML pointed out that there is no collusion alleged between defendants, which means discovery will be defendant-specific.

"Hasn't the panel been hesitant to centralize in multi-defendant cases where there's no conspiracy or collusion alleged?" U.S. District Judge Dale Kimball asked.

The class actions in the proposed MDL target 11 financial institutions and their affiliates over their cash sweep programs, which "sweep" clients' uninvested cash into interest-bearing accounts at their affiliates. The plaintiffs allege they did not get to choose where the cash in their brokerage accounts went, and they were paid unreasonably low interest rates once the money was transferred, while the financial firms generated large profits for themselves in the sweeps.

Wells Fargo, Morgan Stanley, UBS and JPMorgan are among the financial firms named in the lawsuits.

But the plaintiffs are split as to whether to consolidate the actions, with several groups arguing that each of these cases will turn on the investors' distinct contracts with their financial institutions.

Meaghan VerGow of O'Melveny & Myers LLP, who argued on behalf of defendants E*Trade Securities and Morgan Stanley, said so far, the moving plaintiffs had identified only common issues of law, not fact.

"Whether reasonableness is the right standard at all will depend on the contracts in the case," she said.

In rebuttal, Astley acknowledged that a vote tally of parties might not go his way in favor of consolidation, but that should not determine the panel's decision. He pointed out that in the Southern District of New York, 40% of the judges there have been "swept up" in this litigation and have at least one of the lawsuits before them, which he said is a waste of resources.

"There's got to be a better way for a court system to handle these cases," Astley said.

U.S. District Judges Karen K. Caldwell, Nathaniel M. Gorton, David C. Norton, Dale A. Kimball, Roger T. Benitez and Madeline Cox Arleo sat for the JPML.

Safron Capital and Brickman Investments are represented by Stephen R. Astley, Andrew T. Rees and Rene A. Gonzalez of Robbins Geller Rudman & Dowd LLP.

The financial institution defendants are represented by attorneys at Katten Muchin Rosenman LLP, O'Melveny & Myers LLP, Dorsey & Whitney LLP, Jones Day, Davis Polk & Wardwell LLP, Morgan Lewis & Bockius LLP, Faegre Drinker Biddle & Reath LLP, White & Case LLP and WilmerHale.

The case is In re: Cash Sweep Programs Contract Litigation, case number 3136, before the U.S. Judicial Panel on Multidistrict Litigation.

--Editing by Janice Carter Brown.

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PayPal Beats Investor Suit Over Inflated User Metrics Claims

By **Sydney Price**

Law360 (January 30, 2025, 9:34 PM EST) -- A New Jersey federal court has dismissed a proposed class action that accused PayPal of misleading investors with user metrics inflated by a scam that took advantage of a PayPal promotion that paid people to set up new accounts, saying the investors did not show PayPal knew of the alleged scam when certain statements were made.

In the suit, launched in 2022, PayPal investors alleged the company's growth of "net new actives" — users who completed a transaction through PayPal or one of its partner accounts within the past year — in 2021 was achieved in large part due to "risky promotions" that paid people to sign up for PayPal accounts purely to earn cash that PayPal was offering for new accounts.

Though the investors claim PayPal was aware its marketing strategies had given rise to illegitimate and unengaged accounts, U.S. District Judge Robert Kirsch said Wednesday, when dismissing the suit, that the plaintiffs have not adequately alleged PayPal misled investors by not revealing the risks of its marketing practices.

"Defendants were under no duty to disclose risks that had not yet materialized," Judge Kirsch said. He gave the plaintiffs 45 days to file a new complaint.

In their suit, the investors said PayPal's promotion was popular among Chinese users, with one website promising each user the ability to make up to \$1,000 a day by fraudulently signing up for multiple new PayPal accounts. PayPal's marketing budget in 2021 increased 33% year over year and up 71% from 2019, the suit said. The "heavy use of promotional activity" led to a large increase in unengaged users on the platform, according to the complaint.

The suit claimed PayPal's guidance failed to disclose that growth was due to "minimally engaged" users, which gave the false impression that these users would contribute to the future total payment volume.

However, Judge Kirsch said the statements the investors point to are inactionable since the defendants "genuinely believed them to be true" based on the earnings PayPal was reporting.

"Plaintiffs have not alleged that it was clear to PayPal, at this point, that its marketing practices had led to an increase in illegitimate accounts," Judge Kirsch said. "Rather, PayPal only knew about certain risks associated with its promotions. Further, when PayPal employees did become aware of the fraudulent accounts, it was not clear that defendants were made aware of these statements prior to disclosing its [fourth-quarter 2021] results."

The complaint featured several confidential witnesses, including those in PayPal's compliance department and alleged whistleblowers. Judge Kirsch said, however, that none of the confidential witnesses were "in a position to possess" information about when and whether former CEO Dan Schulman and former Chief Financial Officer John David Rainey learned about the alleged fake accounts.

"The simple fact that [a confidential witness] interfaced with Schulman and Rainey on a particular subject matter does not mean that he was privy to any relevant communications," Kirsch said. "In short, plaintiffs do not allege that any witnesses had sufficient seniority in the company to have known what was being discussed in meetings with Schulman or Rainey; each one was at least a few

reporting levels away."

The investors are represented by Carol C. Villegas, Jake Bissell-Linsk, Lisa Strejlau, Danielle Izzo and Mark Willis of Labaton Sucharow LLP, Tor Gronborg, Matthew I. Alpert, Jacob G. Gelman and Patton L. Johnson of Robbins Geller Rudman & Dowd LLP and Christopher A. Seeger, Christopher L. Ayers and Jennifer R. Scullion of Seeger Weiss LLP.

PayPal and the individual defendants are represented by Audra Jan Soloway of Paul Weiss Rifkind Wharton & Garrison LLP and David F. Edelstein and Maureen Theresa Coghlan of Archer & Greiner PC.

The case is Defined Benefit Plan of the Mid-Jersey Trucking Industry et al. v. PayPal Holdings Inc. et al., case number 3:22-cv-05864, in the U.S. District Court for the District of New Jersey.

--Editing by Drashti Mehta.

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PNC Units Face Investor Suit Over 'Cash Sweep' Program

By **Emilie Ruscoe**

Law360 (January 30, 2025, 9:45 PM EST) -- PNC Financial and its investment unit are the latest to face a proposed class action alleging their cash sweep program funneled customer funds into low interest-bearing accounts, hurting investors who should have seen their money earn a reasonable market interest rate.

In a **complaint filed Wednesday** in Pennsylvania federal court, plaintiff Marlene Dehner said PNC Financial and PNC Investments LLC breached their fiduciary duties to clients by putting clients' money into PNC Bank NA accounts that "pay far below market rates of interest."

Dehner described the defendants' implementation of the cash sweep program as "exploitative and unfair," saying members of her proposed class of PNC customers "lost significant amounts of interest" by missing out on higher interest rates.

Cash sweep accounts are bank or brokerage accounts that automatically transfer funds from a linked bank or brokerage account when the account balance crosses a certain threshold, allowing customers to earn interest on capital that would otherwise have remained in an account that wasn't earning interest.

Dehner, who has a retirement account with PNC, said the firm's customer agreement states that PNC Financial, as its customers' fiduciary, will pick the banks that participate in its cash sweep program, the accounts the program applies to and the types of accounts into which customer funds are swept.

The PNC customer said between 2018 and 2019, and then again from March 2022 onward, "the reasonable value of swept cash consistently exceeded the amounts paid by defendants on sweep accounts" as the Federal Reserve raised the target federal funds rate.

For example, Dehner said, Fidelity Investments customers received annual returns of as much as 2.72% on their swept cash, regardless of the net value of their assets under management. She also cited R.W. Baird, Robinhood and Vanguard Investments as comparable brokerages that paid higher rates.

"By contrast, defendants have been paying interest rates as low as 0.04% — virtually nothing," Dehner said.

A distinction between PNC and the other brokerages is that the other brokerages didn't sweep cash to affiliated banks, "but rather swept cash to independent, unaffiliated banks," Dehner noted.

PNC is far from the first financial institution to be hit with claims over their cash sweep program. Wells Fargo and Bank of America brokerage customers sued those banks' brokerage firms over **similar claims**, and investors have moved to centralize the cases before the Judicial Panel on Multidistrict Litigation.

Earlier this month, Merrill Lynch and two units of Wells Fargo paid a **combined \$60 million** to the U.S. Securities and Exchange Commission to resolve claims they failed to implement preventative procedures concerning their cash sweep programs.

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

Dehner is represented by Kenneth J. Grunfeld of Kopelowitz Ostrow Ferguson Weiselberg Gilbert, Scott A. Edelsberg and Adam A. Schwartzbaum of Edelsberg Law PA, and Andrew J. Shamis of Shamis & Gentile PA.

Counsel information for PNC was not available Thursday.

The case is Dehner v. PNC Investments LLC et al., case number 2:25-cv-00127, in the U.S. District Court for the Western District of Pennsylvania.

--Additional reporting by Sarah Jarvis, Jessica Corso and Sydney Price. Editing by Lakshna Mehta.

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Grocery Chain Investor Sues Over Systems Upgrade Claims

By **Emilie Ruscoe**

Law360 (January 30, 2025, 10:30 PM EST) -- Discount grocery operator Grocery Outlet Holding Corp. and two of its executives face a proposed investor class action alleging they failed to offer realistic forecasts for the company's internal systems upgrade process, hurting investors after they were forced to acknowledge systems transition issues had hurt profits.

In a Thursday complaint in a federal court in San Francisco, Grocery Outlet investor Riccio Liberato pointed to market records showing that in May, there was an over 19% decline in trading prices for Grocery Outlet shares after the company lowered its financial guidance for the remaining three quarters of its 2024 fiscal year.

The company blamed its lackluster performance on "unforeseen systems transition costs that surfaced at the end of the quarter," telling investors it was very disappointed with its financial results for the first quarter of 2024.

But Liberato also cited statements the company made about its systems transition months earlier in November 2023, when it told investors that it expected the transitional impacts would be "largely behind us as we get to the end of the year."

In May, when the company shared its early 2024 financial results, it presented an overview of its systems transition that was at odds with its earlier suggestion that much of the impact of from the transition would already be done when 2024 started.

"Our low first quarter margins were the result of both expected and unexpected impacts from our systems transition," one of the company's representatives said on a May earnings call.

California-based Grocery Outlet sells consumables and produce in nine states, including New Jersey, Pennsylvania and Ohio, Liberato said in his suit.

The investor claimed that when the company described its system transitions in November 2023, it said they were upgrades to product, inventory, financial and reporting platforms that began in August 2023.

"The transition to these new systems has resulted in ordering and inventory disruptions that have impacted third and fourth quarter results," the company said in 2023, reassuring investors that it was working to minimize the impact of the systems changes on customers and sales.

But when May rolled around, the company said that as late as February "there were two large remaining system issues impacting profit."

"One was related to warehouse product expiry data and the other related to store level reporting," the company's representative told investors.

The proposed class includes those who purchased shares of the company between Nov. 7, 2023, and May 7, 2024.

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

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

Counsel information for the defendants wasn't immediately available Thursday,

The case is Liberato v. Grocery Outlet Holding Corp. et al., case number 3:25-cv-00957, in the U.S. District Court for the Northern District of California.

--Editing by Andrew Cohen.

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Pump.Fun Faces Suit Over Unregistered Memecoin Sales

By **Aislinn Keely**

Law360 (January 30, 2025, 8:45 PM EST) -- Memecoin launchpad Pump.Fun and its executives should have registered the tokens spawned on its platform with the U.S. Securities and Exchange Commission, according to a proposed securities class action brought by a purchaser in New York federal court.

Memecoin buyer Diego Aguilar says Baton Corp. Ltd., which does business as Pump.Fun, along with CEO Noah Bernhard Hugo Tweedale, Chief Technology Officer Dylan Kerler and Chief Operating Officer Alon Cohen, deprived him and potentially thousands of others of investor protections when the platform "co-issued" crypto tokens designed to capitalize on cultural moments without registering the assets with the SEC.

The memecoin launcher has "extracted nearly half a billion dollars in fees from investors by selling highly-volatile unregistered securities," Aguilar charges.

"Pump.Fun's core function is to work alongside influencers to co-issue and market unregistered securities," the complaint says. "Inherent to its operations are a novel evolution in Ponzi and pump and dump schemes."

Pump.Fun is a platform that allows anyone to quickly and freely launch their own token on the Solana blockchain, spawning swaths of so-called "memecoins" based on cultural phenomena. According to Aguilar, memecoins "are created and marketed purely for speculative trading purposes" that often rise and fall with internet zeitgeist, unlike other classes of crypto tokens that can serve a purpose or represent an economic function.

But the ease of Pump.Fun's token creation process is belied by the omission of risk disclosures, anti-money-laundering protocols and know-your-customer procedures, Aguilar contends, adding that the tokens themselves meet the characteristics of unregistered securities.

Pump.Fun should be held liable for their sale as a statutory seller or co-issuer due to the templated way it allows users to launch the coins and its subsequent efforts to market them, Aguilar argues.

"Pump.Fun qualifies as a statutory seller under Section 12(a)(1) of the Securities Act through its direct solicitation of investments and substantial participation in the sale of every Token on its platform," the complaint contends. "Pump.Fun's involvement extends far beyond providing basic infrastructure, as it actively promotes, facilitates, and profits from all Token sales."

According to Aguilar, Pump.Fun "exercises complete control" over the creation, launch and trading of the tokens users generate on its platform through its "proprietary smart contract templates, unified pricing mechanisms, and centralized liquidity management." Those same standardized mechanisms for each issuance also tied investors' fortunes together through "shared technical systems, unified marketing efforts, and centralized management of token economics," he says.

Pump.Fun also regularly crafted social media campaigns to generate buzz with market-capitalization milestones and other statements that created an expectation of profits and helped drive demand, Aguilar asserts. The firm also helped orchestrate exchange listings in some cases, according to the complaint.

"The defendants demonstrated their central role through professional marketing materials including high-quality digital artwork, coordinated exchange listing announcements, and strategic partnership reveals," it says.

Aguilar says he bought three projects launched through Pump.Fun, "the First Convicted Raccoon Token, the FWOOG Token, and the GRIFFAIN Token," and claims that at least 174,000 other wallets are known to hold those projects. The proposed class could number hundreds or thousands of U.S. buyers, he posits.

Pump.Fun and its executives could not be reached Thursday.

Aguilar is represented by Wolf Popper LLP and Burwick Law PLLC, which recently brought a separate proposed class action against Pump.Fun on behalf of a purchaser of the memecoin PNUT. The suit claims PNUT was an unregistered security, and Pump.Fun acted as a statutory seller and co-issuer of the token. Aguilar's complaint uses some of the same language and arguments as the PNUT suit.

Wolf Popper and Burwick Law also represent a group of 20 buyers who claim they collectively lost \$151,000 on the viral memecoin \$HAWK, affiliated with internet personality Haliey Welch, better known as Hawk Tuah Girl. Welch is not named **in that suit**, but the firms took aim at the project's promoters and development platform with claims they should have registered the token as a security.

Counsel for Aguilar did not immediately respond to a request for comment Thursday.

Aguilar is represented by Chet B. Waldman, Joshua W. Ruthizer and Terrence Zhang of Wolf Popper LLP, and Max Burwick of Burwick Law PLLC.

Counsel information for the defendants was not immediately available.

The case is Aguilar v. Baton Corp. Ltd. d/b/a Pump.Fun et al., case number 1:25-cv-00880, in the U.S. District Court for the Southern District of New York.

--Editing by Kristen Becker.



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Patient Transportation Co. Hid Cash Flow Woes, Investor Says

By **Sydney Price**

Law360 (January 30, 2025, 9:22 PM EST) -- Patient transportation company Modivcare Inc. has been hit with a proposed shareholder class action in Colorado federal court alleging the company failed to disclose that its contract renegotiations with customers negatively impacted its bottom line.

According to the **complaint filed Wednesday** by shareholder Dinesh Kalera, Modivcare provides non-emergency medical transportation services directly to customers. Medicaid agencies and managed care organizations typically make payments for these services, according to the complaint. Modivcare misled the public to believe certain contracts mitigated risks to its free cash flow when they actually stifled the company's liquidity, the suit alleges.

In addition to Modivcare, individual defendants named in the suit are CEO L. Heath Sampson, Chief Financial Officer Barbara K. Gutierrez and Chief Financial Officer of ModivCare's mobility segment Kenneth Shepard.

According to the complaint, many of Modivcare's contracts with customers were "full risk" contracts, which meant payors paid a fixed amount per eligible member per month, and Modivcare was responsible for meeting all of the transportation needs for the eligible members in the payor's program. Unlike shared risk contracts, full risk contracts do not allow for periodic reconciliations based on actual costs, the suit states.

The suit's class period begins Nov. 3, 2022. On that day, Modivcare touted the "benefits" of the newly negotiated contracts to investors, saying that the contracts were a "win-win" and that they allowed Modivcare to share increasing transportation costs, the suit states.

The truth began emerging, the suit alleges, on May 3, 2023, the day Modivcare announced its first-quarter 2023 earnings. Modivcare revealed it experienced a reduction of cash flow from operations during the quarter, the complaint states.

On this news, shares of Modivcare fell \$11.30, or about 16%, to close at \$58 on May 4, 2023, according to the complaint.

A few months later, on Aug. 3, 2023, Modivcare announced it experienced the expansion of a "large payable balance" that impacted its cash flow from operations during the second quarter of the year, the suit states.

On this news, shares of Modivcare fell \$2.86, or about 7%, to close at \$35.38 on Aug. 4, 2023, the complaint states.

After continuing to suffer from negative cash flow over the year, Modivcare announced on Sept. 12, 2024, that it would "undertak[e] actions to seek additional capital, including filing a shelf registration statement" with the U.S. Securities and Exchange Commission to improve its liquidity.

On this news, shares of Modivcare fell \$18.43, or about 59%, to close at \$12.76 per share on Sept. 12, 2024, the complaint states.

A few days later, Modivcare announced it was downwardly adjusting its guidance on EBITDA, or earnings before interest, taxes, depreciation, and amortization, primarily due to "segment pricing

accommodations made to strategically retain and expand key customer relationships," the suit says.

On this news, shares of Modivcare fell \$1.40, or about 10%, to close at \$12.72 per share on Sept. 15, 2024, according to the complaint.

Shareholder Kalera said Modivcare and the individual defendants acted with scienter, or actual knowledge of wrongdoing or reckless disregard, and violated the Exchange Act.

Counsel for Kalera and a representative of Modivcare did not immediately respond to requests for comment Thursday.

Kalera is represented by Matthew A. Peller, Thomas L. Laughlin IV and Nicholas S. Bruno of Scott + Scott Attorneys at Law LLP.

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

The case is Kalera v. ModivCare Inc. et al., case number 1:25-cv-00306, in the U.S. District Court for the District of Colorado.

--Editing by Michael Watanabe.

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Calif. AG Asks 9th Circ. To Block Meta's MDL Discovery Win

By **Dorothy Atkins**

Law360 (January 30, 2025, 10:15 PM EST) -- The California attorney general urged the Ninth Circuit on Wednesday to block orders requiring third-party state agencies to respond to Meta Platforms' discovery demands in multidistrict litigation over social media's alleged harms, arguing in a mandamus petition the "clearly erroneous" ruling "runs roughshod" over the state's constitutional divisions of power.

In a **39-page petition**, the state's attorney general, who is representing the people of California in a civil enforcement action against Facebook owner Meta Platforms Inc., asked the appellate court to exercise its mandamus authority and block U.S. Magistrate Judge Peter Kang's September discovery order, which U.S. District Judge Yvonne Gonzalez Rogers has kept in place, requiring third-party state agencies to hand over documents demanded by Meta.

"Specifically, that order — issued by a magistrate judge and left in place by the district court — runs roughshod over California's structure of divided executive power among independently elected officials," the petition says.

The hotly contested discovery dispute is the latest in personal injury litigation **launched in 2022** against Meta and other social media tech giants, including Snap Inc., TikTok Inc. and YouTube LLC. A coalition of 35 state attorneys general also filed civil enforcement actions seeking to enforce state consumer protection laws against the tech giants.

Since 2022, the litigation has been consolidated and the current MDL involves hundreds of claims by parents of minors, school districts and dozens of state attorneys general who allege that the social media companies' platforms, which bring in billions of dollars annually in ad revenues, are designed to be addictive to the detriment of minors' mental health and livelihood.

In a series of orders last year, Judge Gonzalez Rogers **trimmed** some claims from the consolidated complaints, but she refused to throw out the bulk of the allegations against the tech companies. Meanwhile, the parties have been fighting it out in discovery as they head toward bellwether trials, which are expected to take place sometime in the next year.

In September, Judge Kang, who is presiding over the MDL's discovery, ordered third-party state agencies to hand over documents demanded by Meta, despite arguments by dozens of state attorneys general that Meta's requests were irrelevant, overbroad and impractical given the hundreds of agencies implicated in Meta's demands. They also argued that the AG offices don't have the statutory authority to access and hand over state agency documents.

But Judge Kang repeatedly rejected the state AG offices' arguments, and in November, he **ordered** those AG offices to provide the names and state bar numbers of agency counsel who have refused to comply. The states appealed Judge Kang's ruling to Judge Gonzalez Rogers, who refused to stay the magistrate judge's order after a **lengthy hearing**. Judge Gonzalez Rogers also threatened to **sanction agencies that refuse to comply**, although she held off on issuing a written ruling on the merits of the appeal.

But in the petition Wednesday, the California AG argued that Judge Kang's decision "clearly errs as a matter of law" by finding that the California attorney general has "legal control" over documents held by the state's third-party agencies for purposes of responding to an opponent's discovery demands.

The state AG noted that the third-party state agencies are "controlled by and report to" California Gov. Gavin Newsom and other elected officials, and not the independently-elected state attorney general.

The California AG also argued that Judge Kang's ruling "squarely contravenes" California's constitution and "long-settled" state law clarified in the 2004 California appellate court ruling, *People ex rel. Lockyer v. Superior Court* , which held that each state agency or department is established as a separate entity under various state laws or constitutional provisions.

That ruling further clarified that when the California attorney general brings a civil law-enforcement action in the name of the people, "the people, by prosecuting [that] action, are not deemed to have possession, custody or control over documents of any state agency," according to the petition.

The California AG's petition added that complying with Judge Kang's order creates "legal and practical impossibilities" by requiring the AG's office to produce third-party state agency documents that the AG "has no legal means to access," particularly since Gov. Newsom has declined to provide the AG's office with access to the documents that Meta has demanded even though both the magistrate judge and district judge have repeatedly threatened severe sanctions for not complying.

"The district court has directed Meta to report on appropriate sanctions," the petition says. "And the magistrate judge has employed public shaming by ordering the California Governor's Legal Affairs Secretary to post his bar number and contact information on the docket as the decisionmaker 'responsible' for noncompliance with federal court orders."

The California AG argued that the Ninth Circuit should act fast and stay the magistrate judge's order, in part because five other state agencies have withdrawn from the MDL in light of it and one more state AG is in the process of withdrawing, leaving only 29 state AG plaintiffs. Other AG offices are "teetering," given that the magistrate judge appears "poised to extend his legally erroneous rationale to 'party' depositions."

The California AG additionally noted that Judge Kang's order is already being cited by defendants in other litigation pending in the Northern District of California, including *in the case Nugent v. Secretlab* . Judge Kang's ruling has also been "wielded by defendants in other State Attorney General enforcement actions around the country," including in the U.S. v. Apple Inc. case *pending in New Jersey* "for the specious proposition that all instrumentalities of state government are subject to party discovery when a State Attorney General prosecutes in federal court."

"These developments further underscore the immediate need for mandamus relief," the petition says.

On Thursday, the Colorado attorney general filed a motion to join, which the other state AGs joined, echoing arguments in the California AG's petition and additionally arguing that Judge Kang's ruling runs afoul of the Ninth Circuit's 1999 ruling in *In re Citric Acid Litig.*,  which clarifies that a party is only responsible for producing documents it possesses or controls — defined as the legal right to obtain documents upon demand — and the party seeking the documents "bears the burden of proving that the opposing party has such control."

"[Judge Kang's] order engages in improper burden shifting and fails to identify any vehicle by which the AGs could obtain agency documents," the motion says.

The motion notes that Meta's discovery requests demanded documents from 270 independent nonparty state agencies, including state governors, even though "these agencies are not parties to this lawsuit, had no role in the filing of this lawsuit and have no right to any relief the AGs might obtain in this lawsuit."

Meta and representatives for the Colorado AG's office declined to comment Thursday and counsel and representatives for the other parties didn't immediately respond to requests for comment Thursday.

The other parties of interest who have joined the appeal include the states of Kentucky, Kansas, Illinois, Louisiana, South Carolina, Maryland, Hawaii, Indiana, Wisconsin, Connecticut, Ohio, Rhode Island, New Jersey, Nebraska, Delaware, Washington, Minnesota, North Carolina, Arizona, Idaho,

Maine, Pennsylvania, South Dakota, Michigan, Virginia, Oregon and New York.

The people of California are represented by Bernard A. Eskandari, Nicklas Arnold Akers and Megan O'Neill of the California Department of Justice's Office of Attorney General.

The state of Colorado is represented by Shannon Stevenson, Krista Batchelder, Danny Rheiner and Lane Towery of the Colorado Department of Law.

Meta is represented by Antonio Perez-Marques, James Rouhandeh, Caroline Stern and Corey M. Meyer of Davis Polk & Wardwell LLP and Nathan Evans Shafroth, Phyllis Alene Jones and Timothy Channing Hester of Covington & Burling LLP.

The appeal is the People of the State of California et al. v. U.S. District Court for the Northern District of California, Oakland, et al., case number 25-584, in the U.S. Court of Appeals for the Ninth Circuit. The MDL is In re: Social Media Adolescent Addiction/Personal Injury Products Liability Litigation, case number 4:22-md-03047, in the U.S. District Court for the Northern District of California.

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Chancery Reverses Magistrate Toss Of Paramount Doc Suit

By **Jeff Montgomery**

Law360 (January 30, 2025, 4:33 PM EST) -- A Paramount Global pension fund stockholder has won a Delaware Court of Chancery reversal of a magistrate's dismissal of a suit for company books and records on events surrounding a proposed multibillion-dollar merger between Paramount and Skydance Media, in a decision heavily focused on unnamed sources.

In a fresh review of the full demand on appeal, Vice Chancellor J. Travis Laster on Wednesday issued an unequivocal finding that news articles central to the Employees' Retirement System of Rhode Island investigative demand can "bear sufficient indicia of reliability to be considered."

"News articles from reputable publications that rely on anonymous sources will generally be sufficiently reliable for a court to consider when assessing whether a stockholder has a credible basis to suspect wrongdoing" for purposes of a books and records demand, the vice chancellor wrote.

"Doubtless, there will be case-specific exceptions, but the possibility that a court could decline to rely on particular news articles in a given case does not warrant the company's stark rule" that anonymously sourced statements must be accompanied by "contemporaneous, corroborative evidence," such as descriptions of the sources, the vice chancellor added.

The decision revived the Paramount books and records demand, with an order returning the dispute to the senior magistrate and detailing the scope of production not yet filed.

The points made by the vice chancellor stood in contrast to Senior Magistrate in Chancery Selena E. Molina's declaration in August, following a one-day trial, that the news accounts used to support demands for Paramount records "share a common indicia of unreliability." The alleged faults included "anonymity and lack of pre-demand corroboration," factors purportedly undermining "even the low bar of a credible basis test," the senior magistrate said in oral ruling on Aug. 2.

Vice Chancellor Laster's contrary finding — including an observation that the company's precedents supporting dismissal "bear no resemblance to the record in this case" — cleared the way for a further probe of documents surrounding the complex deal, allegedly lined up in part to benefit Shari Redstone.

Attorneys for the Rhode Island agency managing the pension fund investors who sued for the records alleged that Redstone — whose family founded and owned movie theater and media giant National Amusements Inc. since 1936 — had conflicting interests between her need to sell the family business and the fiduciary duties owed to Paramount stockholders.

David Ellison's Skydance Media announced on July 7 that it would move forward with a Paramount takeover in a transaction to be preceded by Skydance's acquisition of National Amusements — which owns ViacomCBS and, through Redstone, controls Paramount — for \$2.4 billion in cash. Redstone is nonexecutive chairwoman of Paramount and president of National Amusements.

The Skydance-Paramount merger would pay \$4.5 billion to stockholders, plus \$1.5 billion toward Paramount's balance sheet.

In a suit filed on April 30, the Rhode Island fund sued for documents on the deal under Section 220 of Delaware's General Corporation Law, citing concerns that Redstone was usurping company

opportunities and tilting the terms and processes toward her own benefit.

Magistrate Molina ruled that news articles the pension fund used as evidence were not "sufficiently reliable" to prove a credible basis for inspection. Most of the articles quote anonymous sources or "people familiar with the situation," but do not bolster the reported rumors with facts, she said.

"The evidence provides a credible basis to suspect that Redstone responded to market interest in the company by diverting bidders to a parent-level transaction to the detriment of minority stockholders," Vice Chancellor wrote after his review.

In sending the case forward, Vice Chancellor Laster stressed that a books and records demand "does not have to articulate a specific legal theory. A demand has to explain why the stockholder has a credible basis to suspect wrongdoing. Here, the demand describes a situation that could give rise to breaches of the duty of loyalty" and wrongful conduct.

"The company's conceptual objection to the demand's purpose is misguided," the vice chancellor further noted, saying separately that the stockholders had shown a credible basis for their request, and had support for referencing developments after the initial demand for records.

Counsel for the parties did not immediately respond to a request for comment Thursday.

The Rhode Island General Treasurer's Office is represented by Michael Hanrahan, Corinne Elise Amato, Eric J. Juray, Stacey A. Greenspan, Jason W. Rigby and Seth T. Ford of Prickett Jones & Elliott PA, and Lee D. Rudy, Eric L. Zagar, Grant D. Goodhart, Cameron N. Campbell and Michael W. McCutcheon of Kessler Topaz Meltzer & Check LLP.

Paramount is represented by Jon E. Abramczyk, D. McKinley Measley, Alexandra M. Cummings and Louis F. Masi of Morris Nichols Arsht & Tunnell LLP, and Jonathan K. Youngwood and Meredith Karp of Simpson Thacher & Bartlett LLP.

The case is State of Rhode Island Office of the General Treasurer on behalf of the Employees Retirement System of Rhode Island v. Paramount Global, case number 2024-0457, in the Court of Chancery of the State of Delaware.

--Additional reporting by Al Barbarino and Leslie Pappas. Editing by Melissa Treolo.



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2nd Circ. Sees No Skadden Conflict In Pharma Merger Work

By **Katryna Perera**

Law360 (January 30, 2025, 9:50 PM EST) -- The Second Circuit on Thursday declined to revive an investor suit alleging a merger between Sumitomo Pharma America Inc. and Myovant Sciences Ltd. was undervalued because the lawyers from Skadden Arps Slate Meagher & Flom LLP who helped negotiate the deal had undisclosed conflicts of interest.

A three-judge panel for the Second Circuit issued an **order** saying the district court was correct to **dismiss** the suit with prejudice last January.

Myovant is a biopharmaceutical company that develops and commercializes drugs to treat prostate cancer, uterine fibroids and endometriosis. In October 2022, it and Sumitomo Pharma's wholly owned subsidiary, Sumitovant Biopharma, announced that the parties had entered a merger agreement, in a deal with an enterprise valuation of about **\$2.9 billion**, under which Sumitovant would acquire all of Myovant's outstanding common shares for \$27 per share in cash.

Myovant's board retained Skadden to advise the special committee negotiating the merger.

The suit, **filed in 2023**, did not name Skadden or any of its lawyers as defendants, but instead named Myovant, its CEO David Marek, its general counsel Matthew Lang, several board members and Sumitomo Pharma.

According to the order, investor Joseph Zappia argued on appeal that there were deep ties between several Sumitomo Group entities and that while advising on the merger, Skadden attorneys were simultaneously representing Sumitomo Banking and other Japanese companies affiliated with Sumitomo Pharma.

However, the panel said Thursday that the district court correctly concluded that Skadden's advice in the merger could not have been affected by its representation of other Sumitomo Group entities.

"The amended complaint makes no allegations that Skadden or any Sumitomo Group entity it represents has a direct relationship with Sumitovant or its parent, Sumitomo Pharma, but instead alleges far more attenuated connections — namely, that two Sumitomo Group entities represented by Skadden each held minority shares of less than 2% in Sumitomo Chemical, which is still multiple corporate layers of ownership away from Sumitovant," the order states.

Additionally, the panel said that although Zappia alleges that Sumitomo Banking provided financing in the merger, there are no allegations that Sumitovant and Sumitomo Banking maintained a close or ongoing relationship because of their affiliations with the Sumitomo Group.

"Absent more particularized facts, the conclusory allegations in the amended complaint amount to speculation that the connections between the Sumitomo Group entities and Sumitovant impacted Skadden's advocacy, which is insufficient to defeat a motion to dismiss," the complaint states.

The panel also stated that Zappia undercuts his own argument that Skadden's advice was skewed by describing, in the complaint, pretransaction negotiations between Myovant and Sumitovant.

"Zappia alleges that Myovant, based, in part, on Skadden's advice, rejected Sumitovant's offers to purchase shares at \$22.75, \$25.25, \$26.25 and \$26.75 before accepting Sumitovant's 'best and final

offer' of \$27 per share, which was within the range of fair purchase prices calculated by the financial advisors for both the special committee and Sumitovant," the order states.

Finally, the panel said the district court was correct to dismiss the action with prejudice because Zappia already amended his complaint once and did not provide the district court with any new facts supporting his request to plead a second time.

"In his reply brief on appeal, Zappia proposes that he would 'supplement his [Sumitomo Group]-related allegations to address any deficiencies identified.' This proposal, however, does not identify any particular facts that would be included upon repleading, nor does it even explain generally how additional facts regarding the Sumitomo Group would address the deficits in Zappia's complaint," the order states.

Counsel for Myovant, Sumitomo Pharma and the other defendants declined to comment on Thursday, and counsel for Zappia did not immediately respond to requests for comment. A Skadden representative did not immediately respond to a request for comment.

U.S. Circuit Judges John M. Walker Jr., Joseph F. Bianco and Beth Robinson sat on the panel for the Second Circuit.

Zappia is represented by Joshua E. Fruchter of Wohl & Fruchter LLP and Joshua M. Rubin and Michael A. Rogovin of Weiss Law LLP.

Myovant, Sumitomo Pharma and the other defendants are represented by Boris Feldman, David Yuri Livshiz, Elena Hadjimichael, Peter J. Linken and Nathan A. Hembree of Freshfields Bruckhaus Deringer LLP.

The case is Zappia v. Myovant Sciences Ltd. et al., case number 24-253, in the U.S. Court of Appeals for the Second Circuit.

--Editing by Jay Jackson Jr.



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2nd Circ. Voices Unease Over Ex-Iconix CEO's Fraud Retrial

By **Stewart Bishop**

Law360, New York (January 30, 2025, 10:04 PM EST) -- The Second Circuit on Thursday expressed doubt regarding the conviction of Iconix Brand Group founder Neil Cole, who was found guilty of fraudulently booking \$11 million of revenue to hit earnings targets, and appeared open to the argument that his retrial violated the double jeopardy clause of the Fifth Amendment.

A jury in 2021 acquitted the founder and former CEO of Iconix — a brand manager that licenses apparel labels such as London Fog and Starter to retailers and manufacturers — of conspiracy to commit securities fraud, falsify Securities and Exchange Commission filings and deceive auditors, as well as conspiring to destroy or falsify records in federal investigations, but deadlocked on all other counts.

The Manhattan U.S. Attorney's Office retried Cole the following year on the hung — and substantive — counts of securities fraud, false SEC filings and improperly influencing auditors, and **he was found guilty** on all remaining charges. He was sentenced to 18 months in prison, but was granted bail pending appeal.

During oral arguments Thursday, a three-judge Second Circuit panel seemed dubious at times with respect to the government's argument that reversal is not warranted, since this is not a case where collateral estoppel bars prosecutors from relitigating issues that were "necessarily" decided by a jury's acquittal in the first trial, such as the notion that Cole's scheme did not exist or that he wasn't a part of it.

Prosecutors say, for example, that since one of the acquitted counts alleged three objects of the conspiracy — securities fraud, false SEC filings and conning auditors — jurors could have disagreed over the object of the conspiracy but not reached a conclusion that Cole never joined the conspiracy.

"I think a rational jury, based on the evidence, could have found that there was a very meaningful difference between willfully defrauding the accountants, based on what they're focused on, and [defrauding] the investors," Assistant U.S. Attorney Justin Rodriguez told the panel.

Circuit Judge William Nardini was skeptical that those two objects could be separated.

"I'm a little confused as to why anyone would defraud their auditors ... just out of spite," Judge Nardini said. "I thought the point of defrauding the auditors is to get all the fake information to the investors, right? You don't want the auditors to reveal these fraudulent side agreements."

Rodriguez argued that a rational jury could find a meaningful difference between the two.

"These are different harms, different victims, and the government presented different witnesses," he said.

The government says that in a case over a complicated and lengthy scheme with multiple potential coconspirators and a mountain of evidence to sort through, a jury could rationally find that Cole was assisted by others in his inflated revenue scheme without conspiring with them.

Circuit Judge Susan Carney raised concerns that the essence of the government's case at the second trial was the same as the first, in that it was Cole working with others as part of a scheme to defraud

investors and lie to the SEC and auditors.

"It's the way you framed it in the second trial, that you were basically trying again for the same agreement and scheme perpetrated in the same way with the same people," Judge Carney said. "You omitted the conspiracy charge, but all the actions were exactly the same."

The key piece of evidence against Cole in both cases was the testimony of former Iconix executive Seth Horowitz, who pled guilty and cooperated with the government.

Horowitz testified that he schemed in secret with Cole to book \$11 million of fake revenue by structuring sham contracts in 2014 with Iconix's joint venture partner, Hong Kong-based Global Brands Group Holding Ltd.

Prosecutors say Cole and Horowitz schemed to falsely inflate Iconix's reported revenue and non-GAAP diluted earnings per share through a series of "round trip" transactions in which they induced GBG to pay an inflated price for joint venture interests, with the understanding that Iconix would then reimburse the partner for the overpayments.

It was a goal of the scheme to ensure that Iconix's performance met or exceeded Wall Street analysts' expectations, according to the indictment, and absent the inflated revenue from the joint ventures, the company would have missed the analysts' consensus for the company's financial performance.

The defense maintains that despite Cole's acquittal on both conspiracy counts at trial, prosecutors nevertheless presented a conspiracy case to the second jury in all but name, even though he was only facing substantive counts at retrial.

An attorney for Cole, Alexandra Shapiro of Shapiro Arato Bach LLP, told the panel that prosecutors treated the first trial "as no more than a dry run for the second prosecution."

"The government's arguments at both trials are completely bound up in the conspiracy theory," Shapiro said.

While U.S. District Judge Edgardo Ramos barred the government from using the word "conspiracy" at the second trial, Shapiro said prosecutors got around that by using phrases like "Cole and his crew," "the inner circle," how Horowitz and a GBG employee "needed to play ball and "the scheme to inflate."

"The dispositive factor at the first trial was whether the jury believed the cooperator, Horowitz, or whether it believed Neil Cole, the defendant," Shapiro said. "And clearly the verdict demonstrates that the jury at the first trial didn't believe Horowitz and did credit Cole."

Judge Nardini said it was unclear what the first jury was thinking. Jurors could have concluded that there was no conspiracy, but that Cole was aiding and abetting the alleged crimes, he said. (The jury was instructed about the latter concept.)

"You don't know what juries think. I mean, really, they're black boxes. They could have thought that his hair looked funny, and they could have acquitted, right?" he said.

Circuit Judge Dennis Jacobs later voiced doubt about whether the aiding and abetting theory fits the facts of the case, noting that prosecutors cast Cole as "the kingpin."

"If any time you lose a conspiracy case, you could just put on the same case again and call it aiding and abetting, and forget the fact that ... the defendant we're talking about was depicted as the kingpin. It looks as though you're simply making a case for doing away with double jeopardy in this field," Judge Jacobs told Rodriguez.

The panel reserved decision.

Iconix agreed in 2019 to pay \$5.5 million to settle accounting fraud allegations by the SEC and has previously settled private litigation from investors that accused the company of cooking the books.

The government is represented by Justin Rodriguez, Andrew Thomas and Danielle Sassoon of the U.S. attorney's office for the Southern District of New York.

Cole is represented by Alexandra Shapiro, Daniel O'Neill and Bronwyn Roantree of Shapiro Arato Bach LLP.

The case is U.S. v. Cole, case number 23-7566, in the U.S. Court of Appeals for the Second Circuit.

--Additional reporting by Pete Brush. Editing by Peter Rozovsky.

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