

'Magical' Efficient-Market Theory Rebuked in Era of Big Passive

By Justina Lee

- Investors overall are responding less to prices, paper says
- That's making stocks more volatile and perhaps less efficient

At first blush, stock trading this week is hardly a paragon of the market-efficiency theory, an oft-romanticized idea in Economics 101. After all, big equity gauges plunged on Monday, spurred by fears of an AI model released a week earlier, before swiftly rebounding.

A fresh academic paper suggests the rise of passive investing may be fueling these kind of fragile market moves.

According to a study to be published in the prestigious American Economic Review, evidence is building that active managers are slow to scoop up stocks en masse when prices move away from their intrinsic worth. Thanks to this lethargic trading behavior and the relentless boom in benchmark-tracking index funds, the impact of each trade on prices gets amplified, explaining how sell orders, like on Monday perhaps, can induce broader equity gyrations.

As a result, the financial landscape is proving less dynamic and more volatile in the era of Big Passive, according to authors at the UCLA Anderson School of Management, the Stockholm School of Economics and the University of Minnesota Carlson School of Management.

"This efficient markets view is a little bit of what I would call magical thinking," said co-author Valentin Haddad, an associate finance professor at UCLA. "If a fraction of investors become passive, and the remaining active ones don't change what they do, prices will become less stable."

It's far from a purely academic debate. A less efficient market risks misallocating capital across Corporate America, while undercutting investing strategies that bet on market fundamentals.

Echoing warnings about “broken markets” from the likes of Greenlight Capital’s David Einhorn, the study is the latest critique of the idea that stock pickers — long lionized as Wall Street’s rational opportunist — will instinctively correct market anomalies. AQR Capital Management’s Cliff Asness and Apollo Global Management’s Torsten Slok have both cited the study as one lens into how the passive-investing boom might be reshaping markets.



Bloomberg Intelligence

Combing through 13F filings and individual stock data, the paper examines how aggressively active managers trade a stock when prices change and more of it is owned by index funds, which typically buy shares in proportion to their capitalization — with scant consideration to valuations.

The bad news is that investors as a whole are judged to be 11% less sensitive these days to shifts in prices, a measure known as demand elasticity, thanks to the rise of passive over the last 20 years. Put another way, the active cohort is increasingly declining to snap up a stock in droves when it’s, say, trading at \$10 even when they reckon it’s ultimately worth \$11.

“Aggressivity or elasticity is what makes sure that prices stay stable or close to fundamentals,” said Haddad.

The paper is far from consensus in both academia and Wall Street. While Apollo and Citadel have also voiced concerns over the impact of passive, Goldman Sachs Group Inc. and Citigroup Inc. analysts have recently argued the other side.

While stock pickers do trade more when they are surrounded by sleepy index funds, they don't do so nearly enough to make up for the latter's growing dominance, according to the paper by Haddad, Paul Huebner and Erik Loualiche. All this risks making the equity market less liquid and less tied to fundamental information. Einhorn said last year markets are now "broken," owing to the thinning ranks of investors like him focused on long-term corporate value.

The paper suggests a few reasons why investors aren't being more aggressive. Many managers are constrained by their mandates or turnover limits, with some even being outright benchmark-huggers. As a result, they may be even more reluctant to tinker with their biggest holdings.

The conversion to passive has continued unabated since the paper was posted online in 2021. In the US, stock index funds raked in \$585 billion last year, marking the 11th straight year of passive inflows and active outflows, data compiled by Bloomberg Intelligence show.

To be sure, the paper found too much noise in the data to definitively conclude that the world's biggest equity market is less efficient – an inherently hard proposition to measure. Another study published in 2022 found little impact on that from the rise of passive.

Still, the paper by Haddad, Huebner and Loualiche has found traction among those that fear the passive juggernaut can easily destabilize markets.

Michael Green, one of the sector's loudest critics, has seized on the economists' finding that larger stocks have even lower elasticity — meaning the bigger the stock, the less investor demand is being swayed by the change in price. So every trade has the potential to move prices even more — as seen in Monday's moves.

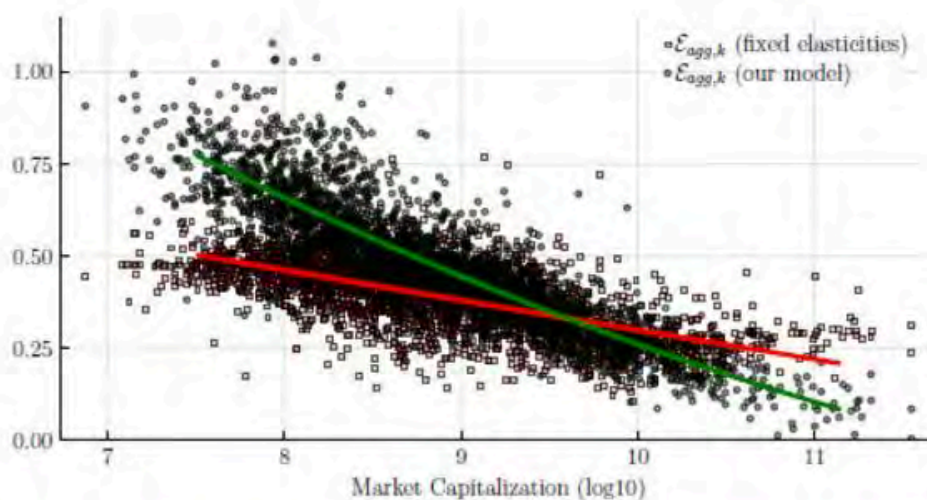


Figure 3. Aggregate elasticity at the stock level: $\mathcal{E}_{agg,k}$.

Figure 3 represents estimates of the aggregate elasticity $\mathcal{E}_{agg,k}$ as a function of their market capitalization (in logarithm) for the date 2011Q3. Each point represents a stock; green circles are our estimates, while red squares correspond to a model where elasticities are fixed.

The paper found that larger stocks are even less elastic. (Source: "How Competitive is the Stock Market? Theory, Evidence from Portfolios, and Implications for the Rise of Passive Investing")

Source: "How Competitive is the Stock Market? Theory, Evidence from Portfolios, and Implications for the Rise of Passive Investing"

Large caps are even "more prone to wide swings in dollar value that makes it very difficult for managers to correct mis-valuation," Green said.

Haddad is unsure himself about the broader takeaways from his research. While most individual investors probably benefit from index funds, the paper suggests their popularity is starting to affect markets' role in directing resources.

"If the price drops for non-fundamental reason, somebody's going to come in and buy and that's going to stabilize prices – that's the basic idea of how prices stay stable and close to fundamentals in finance," he said. "The less of this elasticity you have, the less the market is going to absorb this because passive don't react to anything."

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This Week in Chancery Court: Apollo, Fidelity, FTX Creditor

By Jennifer Kay

Apollo Global Management Inc. will ask the Delaware Chancery Court this week to dismiss claims that it bet on senior citizens' longevity by acquiring illegal life insurance policies and funneling the payouts through shell entities.

Here's a look at more on the court's calendar this week:

Tuesday: Roofers Local 149 Pension Fund v. Fidelity Nat'l Fin. Inc., Del. Ch., No. 2024-0562, oral arguments 2/4/25.

At issue: A pension fund sued Fidelity National Financial Inc. and billionaire chairman Bill Foley in June, alleging they pushed partial subsidiary F&G Annuities & Life Inc. into an unnecessary and unfair financing transaction. Foley was dismissed as a defendant in September. Fidelity seeks to dismiss the litigation entirely, arguing in a brief that F&G had an independent special committee negotiate the deal. Records show that committee "took its role seriously, was fully empowered, retained Barclays and Sullivan & Cromwell as advisors, met ten times, and exchanged numerous offers and counteroffers," according to Fidelity's brief.

Court action: Oral arguments on the motion to dismiss will be heard in Wilmington, Del.

Fidelity National, Bill Foley Targeted Over F&G Financing Deal

Wednesday: In re Skillsoft Corp. S'holder Litig., Del. Ch., No. 2023-1179, oral arguments 2/5/25.

At issue: A Skillsoft Corp. stockholder filed a lawsuit in December 2023 against members of its board and a major backer, Dutch technology investor Prosus NV, over the edtech company's \$525 million acquisition of online learning platform Codecademy. The lawsuit claimed Prosus exploited its control over Skillsoft to push for an overpriced deal for Codecademy, in which the Amsterdam-based firm had allegedly bought a 24% stake for about \$65 million at a significantly lower valuation. Former US Treasury Secretary and Harvard President Larry Summers is among the defendants who seek to dismiss the amended complaint. The investor leading the litigation argues in a brief that a books-and-records investigation revealed that seven of Skillsoft's nine directors were conflicted in the transaction.

Court action: Oral arguments on the motion to dismiss will be heard in Wilmington, Del.

Skillsoft's \$525 Million Codecademy Deal Draws Legal Challenge

Wednesday: Est. of Martha Barotz v. Wilmington Savs. Fund Soc. FSB, Del. Ch., No. 2024-0447, oral arguments 2/5/25.

At issue: In a statement replying to the April 2024 lawsuit, Apollo said its allegations were “disingenuous and flat out wrong” and the fund targeted by the lawsuit, instead of originating life insurance policies, only acquired pools of insurance-linked securities before it was wound down in 2019. The private equity giant and affiliates of Wells Fargo Bank NA and Wilmington Savings Fund Society FSB now seek to dismiss the litigation.

Court action: Oral arguments on the motions to dismiss will be heard in Wilmington, Del.

Apollo Denies Illegal Life-Insurance Practices Alleged in Suit

Friday: City of Sarasota Firefighters' Pension Fund v. Inovalon Holdings Inc., Del. Ch., No. 2022-0698, oral arguments 2/7/25.

At issue: The Delaware Supreme Court in May 2024 revived shareholder litigation over Inovalon Holdings Inc.'s \$7.3 billion sale to a private equity consortium led by Nordic Capital, with a ruling applying a form of heightened legal scrutiny that covers deals conferring special benefits on corporate controlling stockholders. The case was remanded to Chancellor Kathaleen St. Jude McCormick, and Inovalon has renewed its motion to dismiss the litigation.

Court action: Oral arguments on the motion to dismiss will be heard in Wilmington, Del.

Inovalon Investors Get Another Chance at \$7 Billion Buyout Case

Friday: SPCP Grp. LLC v. Floating Point Grp. Int'l LLC, Del. Ch., No. 2024-0576, oral arguments 2/7/25.

At issue: A Silver Point Capital LP affiliate sued an FTX crypto creditor in May 2024 for allegedly backing out of the heavily discounted sale of a \$10.5 million bankruptcy claim after getting a higher offer. Defendants Svalbard Holdings Ltd. and Attestor Master Value Fund LP seek to dismiss the amended complaint, saying in a brief that the litigation is “a transparent attempt to gin up nuisance value by going after a deep-pocketed defendant.” Another defendant, FPG Inc., was dismissed from the case in September.

Court action: Oral arguments on the motion to dismiss will be heard in Wilmington, Del.

FTX Creditor Sued by Silver Point for Reneging on Sale of Claim

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Carmaker Polestar Sued After Announcing Balance Sheet Errors

By Jorja Siemons

- **COURT:** D.N.J.
- **TRACK DOCKET:** No. [2:25-cv-00840](#) (Bloomberg Law subscription)

Swedish electric car manufacturer Polestar under-reported problems with its internal financial guardrails, leading to a decline in its securities' market value, a proposed class action said.

Polestar Automotive Holding UK PLC's financial statements didn't disclose material issues with accounting for the company's unique development of tools used in its vehicle manufacturing, according to a complaint filed Thursday in the US District Court for the District of New Jersey.

Plaintiff John Britton brought the suit on behalf of other investors who held publicly traded securities between Nov. 14, 2022 and Jan. 16, 2025.

In a Jan. 16 restatement announcement filed with the US Securities and Exchange Commission, the company said balance sheet errors concerning the tooling resulted in an underreporting of assets and accrued liabilities in matching amounts for several periods.

Polestar pointed to several documents with errors, including its audited financial statements in annual reports for the years that ended on Dec. 31, 2022 and Dec. 31, 2023.

The company violated federal securities law by engaging in business practices that amounted to "fraud or deceit" upon Britton and others, the complaint said.

Thomas Ingenlath, Polestar's former chief executive officer, was also named as a defendant, as well as former chief financial officer Johan Malmqvist and Malmqvist's successor Per Ansgar.

Polestar, Ingenlath, Malmqvist, and Ansgar didn't immediately respond to requests for comment.

The Rosen Law Firm PA represents Britton.

The case is Britton v. Polestar Automotive Holding UK PLC , D.N.J., No. 2:25-cv-00840, complaint filed 1/30/25 .

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Lucid executives face derivative suit over 'fantastical' production claims

DJ [dailyjournal.com/articles/383191-lucid-executives-face-derivative-suit-over-fantastical-production-claims](https://www.dailyjournal.com/articles/383191-lucid-executives-face-derivative-suit-over-fantastical-production-claims)

Securities

Feb. 3, 2025

Attorneys representing Lucid shareholders claim that an Aug. 8 ruling from U.S. District Judge Araceli Martínez-Olguín in a separate securities case set the precedent for a new derivative suit. The complaint accuses 10 executives of breaching fiduciary duties by misleading investors about the electric automaker's production goals before its public debut, resulting in "tens of billions" in lost market cap and "millions" in investor losses.



Attorneys representing shareholders in a derivative suit filed last week against executives for Lucid Group Inc., the company behind electric auto manufacturer Lucid Motors, claim that a ruling last year from U.S. District Judge Araceli Martínez-Olguín in a separate case "paved the way" for their clients to sue.

Their complaint, filed on Jan. 29 in the Northern District of California, accused Peter Rawlinson, Lucid's CEO, and nine other executives of breaching their fiduciary duties under the Securities Exchange Act by misleading about Lucid's production goals prior to going public in 2021. They say that resulted in the loss of "tens of billions" in market capitalization for the company and "millions" in losses to investors.

Rawlinson has been named as a defendant alongside Lucid Motors and its investors in three putative securities fraud class actions filed in the Northern District since 2022, two of which were consolidated before Olguin.

The defendants have routinely denied wrongdoing across the separate lawsuits and secured the dismissal of a different, individual securities case before Olguin that was unanimously affirmed by the 9th U.S. Circuit Court of Appeals on Aug. 8, the same day Olguin is said to have "paved the way" for the latest lawsuit. *In re: CCIV/Lucid Motors Securities Litigation*, 23-16049 (9th Cir. filed Aug. 8, 2024).

Leonid Kandinov and Andrew Robertson of Morris Kandinov LLP, the lead attorneys for the plaintiffs, filed the lawsuit under different statutes than the previous cases and argued that Olguin's Aug. 8 order on the defendants' motion to dismiss laid the foundation for their clients to bring their claims forward. *Uvaydov v. Rawlinson et al.*, 3:25-cv-00943 (N.D. Cal., filed Jan. 29, 2025).

"Olguín denied the defendants' motion to dismiss as to some of the challenged statements. In ruling, the court held that the plaintiff adequately alleged Rawlinson made false and misleading statements with scienter," the complaint states. "Pointing to the financial motive, his hands-on involvement, and the 'core operations inference,' the court held that 'as to Rawlinson, the inference of intent to defraud here is at least as compelling as an inference of innocent conduct.'"

In that order, Olguin partially dismissed the securities fraud plaintiffs' claim under Section 20(a) of the Securities Exchange Act with leave to amend. *In re: Lucid Group, Inc. Securities Litigation*, 3:22-cv-02094 (N.D. Cal. filed April 1, 2022).

The wave of litigation against Lucid and Rawlinson stems from a February 2021 interview during which they said that the company would produce 6,000 to 7,000 cars in 2021.

Five months later, in July 2021, Lucid Group Inc., Lucid's current corporate form, was created following a \$11.7 billion merger with special purpose acquisition company Capital Corporation IV to take the company public. Following the public announcement, Lucid received a \$24 billion valuation.

In the company's 2021 year-end results, published in February 2022, Lucid's investor relations team announced that it had sold only 125 vehicles that year. The company scaled back its 2022 production goal from 20,000 units to between 12,000 and 14,000.

In the latest complaint, the plaintiffs' legal team called the companies' production claims "fantastical" and described the impact they said these claims had on the shareholders.

"The Company has been substantially damaged as a result of the Individual defendants' knowing or highly reckless breaches of fiduciary duty and other misconduct," the complaint states. "Such damage includes, among other things, costs incurred in defending itself in the Securities Class Action, exposing the Company to millions of dollars in potential class-wide damages in the Securities Class Action, costs to undertake intake internal investigation and to implement adequate internal controls, and losses from the waste of corporate assets, and losses due to the unjust enrichment of Individual Defendants who were improperly overcompensated."

Lucid markets itself as a luxury electric automaker and currently sells one line of vehicles, Lucid Air, which the company claims is "the most efficient" electric vehicle on the market and is currently valued at \$8.4 billion.

#383191

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Domino's Faces Derivative Suit for International Stores' Numbers

By Bernie Pazanowski

- **COURT:** E.D. Mich.
- **TRACK DOCKET:** [No. 2:25-cv-10289](#) (Bloomberg Law subscription)

Domino's Pizza Inc.'s officers allegedly breached their fiduciary duties when they fell short of their target for a promised number of new international stores, a derivative suit filed in federal court says.

The defendants breached their fiduciary duties to the company's shareholders by disseminating materially false, misleading, and inaccurate public statements, including Security and Exchange Commission filings, press releases, and conference calls, according to the complaint filed by Patrick Ayers Thursday in the US District Court for the Eastern District of Michigan.

Domino's operated 3,840 stores in 12 international markets as of December 2023, and issued a long-term guidance saying that from 2024 to 2028 it intended to have an annual global net growth of 1,100 stores a year, the complaint says. But the company issued a press release in July 2024 saying it would fall 175 to 275 international stores short for the year, it says.

Domino's said the shortfall was caused by challenges experienced by a master franchisee with store openings and closures. The company then suspended its guidance metric of adding 1,100 stores a year, the complaint says.

Domino's stock price fell \$64.23 per share, or 13.57% on July 18, 2024, the complaint says.

But Chief Executive Officer Russell Weiner sold his stock during the class period from Dec. 7, 2023, to July 2024, and made nearly \$13 million, it says.

The defendants willfully ignored "pervasive problems" with Domino's internal controls and procedures and failed to make a good faith effort to correct them, the complaint says, also accusing the defendants of unjust enrichment and claiming Weiner committed insider selling.

The plaintiffs seek damages; an order directing Domino's to improve its corporate governance and internal procedures; restitution from individual defendants and disgorgement of all profits, benefits, and other compensation; and costs and fees. They also seek a jury trial.

The case was assigned to Judge Stephen J. Murphy III.

Domino's didn't immediately respond to a request for comment.

Fink Bressack PLLC and the Weiser Law Firm PC represent Ayers.

The case is Ayers v. Weiner , E.D. Mich., No. 2:25-cv-10289, complaint filed 1/30/25 .

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Zuora Sued by Investor for \$1.7 Billion Silver Lake Deal Files

By Mike Leonard

- **COURT:** Del. Ch.
- **TRACK DOCKET:** [No. 2025-0099](#)

Zuora Inc.'s founder likely engineered an underpriced \$1.7 billion sale to Silver Lake for self-dealing reasons, according to a shareholder lawsuit seeking information about the transaction.

Philadelphia's public transport agency sued the software company for documents Thursday, saying public disclosures suggest chairman Tien Tzuo worked with the private equity giant behind the scenes on a deal that prioritized unique perks for himself over maximizing the price for public investors. The side benefits include Tien's continued service as CEO and deal terms rolling over most of his equity, which placed him on both sides of the transaction, the suit says.

The allegations echo a recurring theme in Delaware's Chancery Court, the leading US forum for merger litigation, which frequently features fights over buyouts by corporate controlling stockholders. Its seven specialist judges and the state's top court have spent recent years cracking down on insider conflicts of interest, including with landmark rulings tightening deal review standards and voiding Elon Musk's record \$56 billion Tesla Inc. pay package.

"Silver Lake was given special treatment," such as details about "who the other bidders were and what they were willing to bid," handing the investment firm "insight not available to other bidders that increased its leverage," according to the 69-page filing by the Southeastern Pennsylvania Transportation Authority.

San Mateo, Calif.-based Zuora didn't immediately respond to a request for comment Friday. Tzuo and Silver Lake aren't named as defendants.

According to the lawsuit, the \$10-a-share price falls 13% below Wall Street expectations—lower even than the midpoint of valuations prepared for the company by its financial adviser that were themselves already weighed down by "highly questionable assumptions."

The two sides then ensured the low price would stick by looking only at “financial buyers (who would likely need to keep Tzuo as CEO) over strategic buyers (who would have been able to realize synergies and, thus, pay a higher price),” the suit says.

Although a board dominated by Tzuo and Silver Lake ultimately agreed to a shareholder vote, Tzuo allegedly conditioned the minority investor protection on a deal that rolled over his equity, rather than putting it in place from the outset of negotiations.

‘Absurd’

The court complaint seeks documents under a law giving investors broad access to corporate records if they have credible but preliminary suspicions of self-dealing. Records cases—often reflecting an attempt to drum up fiduciary breach claims—have played a role in the court’s ballooning workload crisis, although the specific burden they pose is debatable.

Rather than engage in good faith with Septa’s document requests, subject to a standard confidentiality agreement, Zuora is stonewalling by insisting on “absurd, off-market terms” that “no competent lawyer would agree to,” according to Thursday’s filing.

“The behavior here reflects an ongoing pattern with the forwarding counsel that represents Zuora,” the suit says. It seeks an award of legal fees to “send an important message.”

The transportation authority is represented by Bernstein Litowitz Berger & Grossmann LLP and Equity Litigation Group LLP. The company hasn’t yet made a court appearance.

The case is Se. Pa. Transp. Auth. v. Zuora Inc. , Del. Ch., No. 2025-0099, complaint filed 1/30/25 .

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Tech Company Hit with Securities Suit Alleging AI-Related Omissions

dandodiary.com/2025/02/articles/artificial-intelligence/tech-company-hit-with-securities-suit-alleging-ai-related-omissions

February 3, 2025



By Kevin LaCroix on February 3, 2025

Posted in Artificial Intelligence

In my recent year-end wrap up, I noted that one of last year's top stories was the rise of artificial intelligence (AI) as a source of corporate and securities litigation risk. Among the evidence reflecting the rise of AI as a source of risk was the onset of securities class action litigation containing AI-related allegations. Last week, in a new lawsuit filing showing that AI-related litigation risks are continuing, a plaintiff shareholder filed a securities suit against a Canadian technology services company whose revenues declined and whose margins shrunk as the company shifted its services to an AI-based model. A copy of the January 30, 2025, complaint against Telus International (CDA) Inc. can be found [here](#).

Background

Telus is a British Columbia-based company providing digital customer experience solutions. The company's primary business is providing customer experience management services and solutions for business call centers. The company's "subordinate voting shares" trade on the NYSE.

Beginning in December 2020, the company introduced "AI Data Solutions" for its customer experience management services. As part of this shift toward AI-based services, the company made several acquisitions to bolster its AI-related capabilities.

On May 9, 2024, the company released its 1Q24 results, reporting that the company had experienced a \$29 million decrease in year-over-year revenue. During its earnings call, company management acknowledged that the margins generated by its AI offerings "can be a bit below average." The company share price fell over 18% on this news.

On August 2, 2024, the company released its 2Q24 results, announcing further reductions in revenue, EBITDA, and margins. The company also significantly reduced its 2024 fiscal guidance, and announced further that its then-CEO would retire effective September 1, 2024. In the company's earnings call, management noted that its shift to an AI-based

services model had resulted in the “cannibalization” of some higher margin work, and that the AI-based model entailed the “complete eradication of margin yields,” in order for the company to try to realize “the revenue upside” of AI. The adoption of the AI model means that the Company “is going to have to take it on the chin a little bit in terms of our historical margin profile.” The company’s share price fell 38% on this news and fell an additional 20% the next trading day.

The Lawsuit

On January 30, 2025, a plaintiff shareholder filed a securities class action lawsuit in the Southern District of New York against Talus and certain of its directors and officers. The complaint purports to be filed on behalf of investors who purchased the company’s securities between February 16, 2023, and August 1, 2024.

The complaint alleges that during the class period the defendants failed to disclose that: “(1) the Company’s AI Data Solutions offerings required the cannibalization of its higher-margin offerings; (2) that Talus International’s declining profitability was tied to the Company’s drive to develop AI capabilities; (3) that Talus International’s shift toward AI put greater pressure on the Company’s margins than previously disclosed; and (4) that, as a result of the foregoing, Defendants’ positive statements about the company’s business, operations, and prospects were materially misleading and/or lacked a reasonable basis.”

The complaint alleges that the defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. The complaint seeks to recover damages on behalf of the class.

Discussion

As noted at the outset, securities class action lawsuit filings involving AI-related allegations were among the key developments in the corporate and securities litigation arena in 2024. But while this latest lawsuit also involves AI-related allegations, it arguably differs in important ways from much of the litigation that was filed in 2024.

Much of the 2024 AI-related litigation involved so-called “AI Washing” allegations – that is, allegations that the defendant company misrepresented its AI capabilities or AI prospects. By contrast, this complaint does not involve allegations that the company overstated its AI capabilities or prospects; rather, the allegation is that the company omitted to disclose that its adoption of an AI-based service delivery model would result in the company cannibalizing its own business, as well as in the reduction of the company’s revenues and margins.

In other words, the company isn’t alleged to have overstated its AI *capabilities*; rather it is alleged to have understated its AI-related *risks*.

In my year-end review of the top stories, in my discussion of AI as an area of corporate and securities litigation risk, I had conjectured that misrepresentations with respect to AI-related *risk*, rather than misrepresentations with respect to AI capabilities or prospects, could be a growing area of corporate litigation risk going forward. This new lawsuit provides a good example of the ways in which AI-related risks (and in particular disclosures with respect to AI-related risk) can translate into litigation.

As far as I know, this new lawsuit against Talus International is the first AI-related federal court securities class action lawsuit to be filed so far in 2025, after 15 AI-related securities lawsuits were filed in 2024. While this new suit appears to be the first of the year of its type, I do not think this suit will be the last. The likelihood is that there will be further AI-related securities suits filed in the weeks and months ahead. While some of these future suits are likely to involve AI-washing allegations, I suspect a significant number will also involve alleged misrepresentations or omissions with respect to AI-related risk.

Class Action

Feb. 3, 2025, 9:22AM PST

Disco Must Face Investor Suit on Ex-CEO Revenue Drive Statements

By Gillian R. Brassil

- **Investor adequately alleged Disco misled on revenue stream**
- **CEO could've recklessly disregarded growth truth, judge said**

CS Disco Inc. must defend against a proposed class action lawsuit over its former chief executive officer's statements about the legal technology company's revenue prospects, a federal judge ruled.

Lead plaintiff Bert W. Pluyman sufficiently alleged that former CEO Kiwi Camara's descriptions in two venues that "customer spending was driven by gradual adoption across a wide range of matters—with the result being a steady mature spend by the customers—were either false or misled investors" if customer spending was actually "spiky" and driven by just a few big projects, Judge David Alan Ezra said in the US District Court for the Western District of Texas.

Pluyman was able to plead Camara was at least severely reckless, if not intentionally misleading, in a September 2021 earnings call and January 2022 conference when discussing revenue growth and steadiness, Ezra said in his Jan. 30 order granting and denying in part Disco's motion to dismiss.

Other allegations supported an inference of intent—scienter—Ezra said, including that Camara and chief financial officer Michael LaFair participated in insider trading and that the then-CEO closely watched customer usage and attended monthly meetings where revenue was discussed.

Claims on other revenue growth statements, earnings call projections, and a Wall Street Journal article alleging sexual misconduct by Camara didn't meet stringent pleading standards for securities fraud, Ezra said.

Disco, an artificial intelligence-powered legal technology company co-founded by Camara in 2013, repeatedly announced large revenue growth and beat earnings expectations after its 2021 initial public offering, Ezra said. Investors alleged that the company masked that its strong financials came from a small number of large projects on limited timetables, per Pluyman's amended class action complaint filed last March. When projects ended in the second fiscal quarter of 2022, Disco had to lower its annual revenue projection that August downward by \$17 million. The stock price collapsed over 53% the next day, Pluyman said.

Camara, Harvard Law School's youngest-ever graduate, abruptly resigned as Disco's CEO in September 2023, sending share prices down when investors found out, Pluyman's complaint said. The Wall Street Journal reported later that month Camara left after the company's board began investigating allegations he'd groped a young woman from Disco at a staff dinner.

The investor can re-plead dismissed claims, Ezra said. The class would include people who invested in Disco from July 21, 2021 through Sept. 11, 2023. Investors originally sued in September 2023.

The Rosen Law Firm PA is lead counsel for the proposed class. Kendall Law Group PLLC is liaison counsel. Cooley LLP and Graves, Dougherty, Hearon & Moody PC represent Disco.

None of the firms immediately responded to emails seeking comment.

The case is Gambrill v. CS Disco, Inc. , W.D. Tex., No. 1:24-cv-00028, 1/30/25 .

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Class Action

Jan. 31, 2025, 12:26 PM PST

SharpSpring Settles Investor Suits Challenging \$240 Million Sale

By [Mike Leonard](#)

- **Lawsuits in Florida, Delaware said sale favored insiders**
- **Agreement to pay \$4.6 million would end parallel cases**

SharpSpring Inc. and its senior leaders at the time of its \$240 million sale to Constant Contact Inc. have agreed to pay \$4.6 million to end litigation challenging the transaction.

The agreement, submitted Thursday, would resolve parallel shareholder lawsuits filed in Delaware's Chancery Court in 2023 and a Florida federal court in 2021. The accord requires the approval of Chancellor Kathaleen St. J. McCormick—the Delaware court's chief judge—at which point the investor leading the Florida case would also drop that suit, according to settlement filings.

The proposed class actions said SharpSpring's CEO, chief financial officer, and four other board members prioritized transaction-related bonuses for top executives over maximizing the overall price. Although investors in the sales automation platform approved the sale the same day it closed, in September 2021, they lacked key information about those conflicts of interest, according to the court complaints.

Judge Robert L. Hinkle of the US District Court for the Northern District of Florida in February 2024 threw out the federal case, which involved securities fraud claims, prompting an appeal that's still pending. McCormick let the Delaware lawsuit move forward in April.

The plaintiff in Delaware, Loren Trent Hightower, is represented by Cooch & Taylor PA and Kahn Swick & Foti LLC. The Florida plaintiff is represented by Monteverde & Associates PC and Smith, Gambrell & Russell LLP. SharpSpring and its corporate leaders are represented in Florida by Sidley Austin LLP. The executives are represented in Delaware, where the company isn't named as a defendant, by Potter Anderson & Corroon LLP.

The cases are Hightower v. Carlson , Del. Ch., No. 2023-0482, settlement filed 1/30/25 and Morse v. SharpSpring Inc. , N.D. Fla., No. 21-cv-209 .

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Investors Unable to Convince Court Fracking Deal Was Unlawful

By Quinn Wilson

- Investors couldn't convince chancellor of control over board
- Couldn't show Crestview was more than a minority stockholder

Former US Well Services Inc. investors, who alleged the entity's \$270 million sale to another fracking company constituted an illegal breach, had their lawsuit dismissed Friday.

The investors couldn't sufficiently allege that Crestview Partners LP controlled USWS's board of directors, either generally or specifically in connection with the 2022 merger with ProFrac Holding Corp., according to a memorandum opinion in Delaware's Court of Chancery. Vice Chancellor Bonnie W. David also ruled that the investors failed to allege a majority of USWS's nine-member board lacked independence over the merger.

"[T]he amended complaint fails to adequately allege that the director defendants acted in bad faith," David said.

The plaintiffs alleged the merger followed a series of unfair financing transactions and stock conversions that increased Crestview's control over USWS without serving any legitimate business purpose. They said these transactions let Crestview cash out certain stock warrants and roll over other of its holdings into ProFrac, depending on which was more profitable.

Neither ProFrac nor its owners—who are the billionaires Dan and Farris Wilks—were party to the lawsuit.

The investors lodged various allegations against USWS' former board of directors, including: that they failed to provide them with material information for them to make an informed decision about the merger; acted to advance the interests of Crestview and ProFrac to the detriment of USWS's minority stockholders; entered into the merger upon unfair terms to USWS' minority stockholders; allowed certain directors to "taint" the merger negotiations; and extracted the release of derivative claims in the merger, according to the opinion.

They also alleged that Crestview was USWS' controlling stockholder and breached its fiduciary duties by extracting a "non-ratable benefit in the merger," David wrote. Crestview asked to have the suit dismissed in March 2024, alleging it failed to state a claim.

David ruled that the plaintiffs failed to show that Crestview was any more than a minority stockholder in USWS, which doesn't fit the needed definition of a "controlling stockholder" in their claims, according to the opinion. The plaintiffs could also only show that one of the nine board members was actually beholden to Crestview, rather than the three they alleged in their complaint.

The various examples of Crestview members' conversations with ProFrac, their attendance at USWS board meetings, and the board's decision to form a special committee prior to the merger aren't sufficient enough to show the company had specific control over the merger, David wrote. The investors were also unable to convince David that at least five of the nine board members acted in Crestview's interest under a "deferential business judgment review."

Ashby & Geddes PA and Levi & Korsinsky LLP represent Adam Turnbull. Cooch and Taylor PA and Kahn Swick & Foti LLC represent David Acosta. Potter Anderson & Corroon LLP and Porter Hedges LLP represent the remaining investors. Prickett Jones & Elliott PA and Paul Hastings LLP represents the former board members. Abrams & Bayliss LLP and Vinson & Elkins LLP represents Crestview.

The case is *Turnbull v. Klein*, Del. Ch., No. 2023-1125, opinion 1/31/25.

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Class Action

Feb. 3, 2025, 9:00 AM PST

Ex-Shanda Games Investors Get Fraud Suit Over Freeze-Out RevivedBy [Martina Barash](#)

Minority shareholders in Shanda Games Ltd. can proceed with claims that they accepted an undervalued tender offer in a take-private merger because of misleading proxies, a federal appeals court ruled Monday.

The fraud allegedly perpetrated on the market supplies a basis for the investors' reliance on the proxy statements, the US Court of Appeals for the Second Circuit said in a 2-1 decision reinstating the suit against the video game maker and several members of its leadership. And the investors adequately pleaded that the statements caused their losses, Judge Debra Ann Livingston said for the court.

Judge Dennis Jacobs, in dissent, said the majority improperly extended circuit precedent in a way that allows freeze-out cases "to be established by pure speculation."

The case is *In re Shanda Games Ltd. Sec. Litig.*, 2d Cir., No. 22-3076, 2/3/25.

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Litigation

Feb. 3, 2025, 9:47AM PST

Anaplan's Ex-Leaders Win Again in Challenge to Thoma Bravo SaleBy Jennifer Kay

- **Investors, executives argued over disclosure requirements**
- **Corwin standard upheld by court's full five-member panel**

The Delaware Supreme Court affirmed Monday a lower court's dismissal of claims that Anaplan Inc.'s former senior leaders cost investors \$400 million by awarding themselves equity grants that threatened the software company's roughly \$10 billion sale to Thoma Bravo LP.

The opinion preserves a standard for reviewing shareholder approval in merger cases involving fiduciary breach claims set by the high court in 2015.

An attorney for Anaplan's ex-leaders cautioned the justices in Jan. 22 oral arguments against rewriting a 2015 Delaware Supreme Court decision that said investor approval of a merger defeats virtually all post-closing legal challenges, except ones involving board conflicts of interest. Pentwater Capital Management LP affiliates and a pension fund, who appealed a June 2024 Delaware Chancery Court ruling, argued the *Corwin v. KKR Financial Holdings LLC* opinion left them no way to remedy the reduced transaction price in the Anaplan deal.

Justice Karen L. Valihura's one-page order did not elaborate on the court's reasoning.

The investors are represented by Bernstein Litowitz and Labaton Keller Sucharow LLP. Anaplan's former executives are represented by Skadden Arps.

The case is *In re Anaplan Inc. S'holders Litig.*, Del., No. 284,2024, 2/3/25.

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State Street Appvion Stock Plan Lawsuit Advances After Revival

By Jacklyn Wille

- Six-year-old lawsuit includes dozens of claims, parties
- Seventh Circuit revived portions of case on appeal in 2024

State Street Bank & Trust Co. must face claims challenging its role in transactions involving the employee stock ownership plan of bankrupt paper company Appvion Inc., a federal judge ruled.

State Street said it couldn't have caused any injuries allegedly suffered by the Appvion Inc. Retirement Savings & Employee Stock Ownership Plan, because the 2012 valuation it signed off on—which set Appvion's stock price at \$17.55 per share—was superseded by a later valuation blessed by the company that succeeded State Street as plan trustee. Judge William C. Griesbach of the US District Court for the Eastern District of Wisconsin disagreed, saying in a Thursday order that it's plausible certain stock purchases might not have gone through at the same price without State Street's approval.

Griesbach added that determining causation “often involves thorny, fact-laden issues that are not well suited to be decided at the pleadings stage.”

The six-year-old lawsuit, which brings 37 claims and names dozens of defendants, stems from a 2001 transaction in which Appvion employees paid \$810 million to become owners of the company. Employees say they were “fraudulently persuaded” to transfer more than \$106 million out of their 401(k) accounts into an employee stock ownership plan holding stock in Appvion's parent company. A slew of advisers and executives played up the benefits of the ESOP while downplaying its risks, and they worked to conceal the fact that plan participants were overcharged until Appvion's 2017 bankruptcy, according to the lawsuit.

Griesbach dismissed much of the case in 2022, but the US Court of Appeals for the Seventh Circuit last year revived multiple claims based on the alleged post-2012 conduct of various defendants, including State Street, Reliance Trust Co., and various Appvion corporate directors and officers.

Griesbach's latest order considered only claims raised against State Street.

Previant Law Firm SC and Williams Blackhurst Terhune PLLC represent the stock plan. Goodwin Procter LLP and T. Wickham Schmidt of Green Bay, Wis., represent State Street.

The case is Appvion, Inc. Ret. Savings & Emp. Stock Ownership Plan v. Richards , 2025 BL 30219, E.D. Wis., No. 1:18-cv-01861, 1/30/25 .

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Ann M. Lipton: "Wasn't sure whether to post this paper yet, but in light of *hand waves* everything, here's my take on current corporate governance disputes, DExit, Tornetta, Moelis, ESG

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Wasn't sure whether to post this paper yet, but in light of *hand waves* everything, here's my take on current corporate governance disputes, DExit, Tornetta, Moelis, ESG - the whole shebang papers.ssrn.com/abstract=512...

The Legitimation of Shareholder Primacy

38 Pages • Posted:

[Ann Lipton](#)

Tulane University - Law School; Tulane University - The Murphy Institute

Date Written: February 01, 2025

Abstract

We are living in a particularly polarized era, and corporate governance is no exception. With controversies raging over "environmental, social, governance" (ESG) investing, diversity, equity, and inclusion initiatives, climate change as an investment concern, and even Elon Musk's pay package at Tesla, it seems as though corporate governance has never been so starkly divided along partisan lines.

The divisions have threatened to spill over to Delaware, the preferred jurisdiction for incorporation in the United States. Several high profile cases-including those involving Elon Musk-have called Delaware's neutrality into question. Commenters have argued that Delaware's newly-politicized approach threatens to splinter the corporate governance universe, driving corporations to other states that are more reliable (or that follow different corporations' preferred politics).

This Article argues that, in some ways, the critics are correct: Delaware law is on a path toward politicization. But it is not because of any particular bias of its judges or its law; to the contrary, the pressures toward politicization are inherent in any system that purports to guide how vast aggregations of capital will be deployed. What is unique about the current moment is that the trends toward politicization result from tensions inherent in shareholder primacy. Shareholder primacy was conceived, in large part, as a compromise to keep politics out of business management; what the modern controversies reveal is the futility of that effort.

February 1, 2025 at 2:27 PM

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Litigation

Feb. 3, 2025, 9:36 AM PST

Target, Executives Face Shareholder Lawsuit Over DEI Initiatives

By [Mallory Culhane](#)

- **COURT:** M.D. Fla.
- **TRACK DOCKET:** [No. 2:25-cv-00085](#) (Bloomberg Law subscription)

Target Corp. and its top executives misled investors about the risks of the company's diversity, equity, and inclusion initiatives, the pension fund for the City of Riviera Beach Police alleges in a proposed class action.

Target, CEO Brian Cornell, and the company's board violated federal securities law when they failed to disclose risks around the company's LGBTQ+ campaigns and DEI efforts, the pension fund claims in a complaint filed Jan. 31 in the US District Court for the Middle District of Florida. The fund is suing on behalf of Target investors who acquired the stock between Aug. 26, 2022, and Nov. 19, 2024.

The suit follows Target's move earlier this month to roll back its three-year DEI goals, joining several other companies rescinding those efforts amid pressure from President Donald Trump and conservative activists to abandon DEI policies. Target and its top executives are also facing two other lawsuits tied to alleged securities violations in connection to its 2023 Pride campaign.

Target released more than 2,000 LGBTQ+-related items in May 2023 for its Pride campaign—including products for children—and was met with backlash and boycotts from consumers. The pension fund here alleges that Target and Cornell "misleadingly downplayed the scope of consumer boycotts" in response to the Pride campaign. Target launched another Pride campaign in 2024.

The pension fund claims Target's stock price has "never recovered" from a dip it took following the 2023 Pride campaign, as the company deals with "lingering effects" of its DEI efforts. Target's stock price is down 13%—with the declines beginning in May 2023—while competitor Walmart Inc. is up 125%, the complaint says. The fund alleges the "bulk if not entirety" of the decline started following the 2023 Pride campaign.

Although Target and the board assured investors in securities filings and press releases that it "was carefully monitoring for any social and political risks," the pension fund claims the board "only monitored risks it perceived from *failing to achieve its self-imposed*" DEI mandates, the complaint says.

The pension fund points to Target's 2022 annual report, which stated that the only risks stemming from its DEI initiatives are any perceived lack of position or transparency. Target's quarterly reports throughout 2023 reference its 2022 report, stating there was no change in risk, according to the complaint.

The board and Cornell allegedly knew the risks of Target's Pride campaigns but failed to disclose them to investors, causing the price to sell at inflated prices.

The pension fund also claims Target's 2023 Proxy misled investors by stating its proposed executive compensation plans aligned incentives with boosting shareholder value, "when, in reality, they included substantial incentive payments to executives for meeting ambiguous and subjective 'DEI progress' mandates."

The suit asserts violations of the Securities Exchange Act of 1934 and US Securities Exchange Commission rules. It seeks compensatory damages, attorneys' fees, and costs. The pension fund also requests a jury trial.

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

Judge John L. Badalamenti is assigned the case.

Florida attorney Joshua E. Dubin and Grant & Eisenhofer PA represent the pension fund.

The case is City of Riviera Beach Police Pension Fund v. Target Corp. , M.D. Fla., No. 2:25-cv-00085, complaint filed 1/31/25 .

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McDonald's settles lawsuit challenging Latino scholarship program

 [reuters.com/sustainability/boards-policy-regulation/mcdonalds-settles-lawsuit-challenging-latino-scholarship-program-2025-02-01](https://www.reuters.com/sustainability/boards-policy-regulation/mcdonalds-settles-lawsuit-challenging-latino-scholarship-program-2025-02-01)

Nate Raymond

The logo for McDonald's restaurant is seen as McDonald's Corp. reports fourth quarter earnings, in Arlington, Virginia, U.S., January 27, 2022. REUTERS/Joshua Roberts/File Photo Purchase Licensing Rights , opens new tab

Feb 1 (Reuters) - McDonald's (MCD.N) , opens new tab said it will revise a program that awards scholarships to Latino and Hispanic students to eliminate any eligibility criteria based on applicants' race or ethnicity, to settle a lawsuit by a group opposed to affirmative action. American Alliance for Equal Rights, founded by affirmative action foe Edward Blum, filed , opens new tab in federal court in Nashville on Friday to say it had agreed to withdraw a Jan. 12 lawsuit after the fast-food chain said it would alter its program.

Since its launch in 1985, McDonald's says the HACER National Scholarships Program has awarded more than \$33 million in college scholarships to more than 17,000 students. Up to 30 students annually receive up to \$100,000 each.

Republican President Donald Trump has made clear that he strongly opposes workforce diversity, equity and inclusion measures and has issued executive orders seeking to dismantle them in the federal government and the private sector.

Blum's group had accused McDonald's of not going far enough when it rolled back other diversity initiatives in January but retained the scholarship program.

Blum's group alleged that, by restricting eligibility to students with at least one parent of Hispanic or Latino heritage, the program unlawfully discriminated against other ethnic groups.

McDonald's in a statement said it disagreed but "reached the conclusion that settling this lawsuit and evolving the program is the right thing to do for its recipients".

McDonald's said it will remove the parent-related criteria and instead require applicants to demonstrate their impact and contribution to the Hispanic and Latino community through their activities and leadership.

Blum said in a statement: "It is a shame that over many years thousands of students were shut out of this program because they were not the preferred ethnicity."

The Chicago-based company on Jan. 6 retired its goal for diversity in corporate leadership and shifted away from some diversity practices, citing a "shifting legal landscape".

It referred to a 2023 ruling by the conservative-majority U.S. Supreme Court that barred the consideration of race as a factor in college admissions, a result of lawsuits successfully pursued by another group founded by Blum.

Other companies have similarly backed away from diversity practises following pressure from conservative activists.

Make sense of the latest ESG trends affecting companies and governments with the Reuters Sustainable Switch newsletter. [Sign up here](#).

Reporting by Nate Raymond in Boston; Editing by Kevin Liffey

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

Pfizer resolves conservative challenge to diversity fellowship program

 [reuters.com/business/healthcare-pharmaceuticals/pfizer-resolves-conservative-challenge-diversity-fellowship-program-2025-01-31](https://www.reuters.com/business/healthcare-pharmaceuticals/pfizer-resolves-conservative-challenge-diversity-fellowship-program-2025-01-31)

Nate Raymond

A compagny logo is seen at a Pfizer office in Puurs, Belgium, December 2, 2022.

REUTERS/Johanna Geron/File Photo Purchase Licensing Rights , opens new tab

- Group alleged bias toward white, Asian-American applicants
- Pfizer expresses pride in its commitment to diversity

Jan 31 (Reuters) - Pfizer (PFE.N) , opens new tab has resolved a lawsuit by a conservative group that alleged that a fellowship program that the drugmaker established to boost the pipeline of Black, Latino and Native American people in leadership positions at the company unlawfully discriminated against white and Asian-American applicants.

According to papers , opens new tab filed on Friday in Manhattan federal court, Pfizer will stop accepting new fellows and has already opened its program to applicants regardless of their race after being sued in 2022 by Do No Harm, an advocacy group opposed to diversity initiatives in medicine.

The settlement came after the New York-based 2nd U.S. Circuit Court of Appeals on Jan. 10 reversed a judge's decision to dismiss the case and gave Do No Harm a new shot at establishing that it had the necessary legal standing to pursue the litigation.

"While Pfizer would like to quietly sweep their unlawful discrimination under the rug, their settlement acknowledges what we said all along: racially discriminatory programs are unlawful and will not go unchallenged," Stanley Goldfarb, Do No Harm's chair, said in a statement.

Pfizer in a statement said it was pleased Do No Harm had decided to voluntarily dismiss the case, which the company said had no merit.

The New York-based company changed the program's criteria in February 2023 but continued to fight the case, and on Friday said it remained "proud of its commitment to diversity, equity and inclusion."

Several other companies including Walmart (WMT.N) , opens new tab and McDonald's (MCD.N) , opens new tab have recently backed away from diversity practices following pressure from conservative activists. An executive order signed by Republican President Donald Trump following his return to office sought to eradicate workforce DEI (diversity, equity and inclusion) initiatives in the federal government and the private sector.

Virginia-based Do No Harm is a non-profit organization that has said it counts doctors, medical students and others as members and aims "to protect healthcare from radical, divisive and discriminatory ideologies." Goldfarb is white.

The group sued Pfizer over the company's Breakthrough Fellowship Program, which the company launched in 2021, arguing the program discriminated against white and Asian-American applicants in violation of federal anti-discrimination laws.

The lawsuit was filed a month before the U.S. Supreme Court heard arguments in cases in which its 6-3 conservative majority would later in June 2023 declare unlawful race-conscious student admissions policies used by Harvard University and the University of North Carolina.

Reporting by Nate Raymond in Boston; Editing by Will Dunham

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5h

Giving access to SSNs, other data on government employees to non-employees like Musk is a violation of 5 USC 552a, and carries with it a penalty of \$1000 per person whose data was accessed. We are building a case. Govt employees who want to participate should contact me directly

February 3, 2025 at 5:35 AM

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Arguing Class Actions: With Friends Like These...

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Adam J. Levitt

Adam J. Levitt, founding partner of DiCello Levitt. Courtesy photo

Commentary

Arguing Class Actions is a monthly column for the National Law Journal.

February 03, 2025 at 06:00 AM

🕒 7 minute read

Rule 29 of the Federal Rules of Appellate Procedure generally controls who can file amicus curiae briefs in a federal appellate court, when they may do so, and what the briefs must contain. In August 2024, the Judicial Conference Committee on Rules of Practice and Procedure proposed amendments to Rule 29, which, among other things, impose a new requirement that amici *must* move for leave from the court to file their briefs, even if none of the parties object to the filing. This proposed judicial consent requirement, coupled with the proposed “Purpose” section of the Rule, could radically limit the ability of third parties to file amicus briefs, while simultaneously creating additional, unnecessary work for judges’ chambers.

Currently, Rule 29 allows the authors of amicus briefs to file their briefs with the consent of the court *or* with the consent of all parties. See FRAP 29(a)(2). The proposed amendments remove the option to file with consent of the parties, leaving judicial consent as the only possible avenue for a prospective amicus. See Comm. on R. of Practice and Proc. of the Judicial Conf. of the United States, Proposed Amendments to the Federal Rules of Appellate and Bankruptcy Procedures, and the Federal Rules of Evidence (Aug. 2024) (committee proposal) at 29. If these recommended amendments are adopted, the appellate courts will be taking the exact opposite approach to amici as the Supreme Court has, which removed *all* consent requirements for amicus brief filing in 2023, when it amended Supreme Court Rule 37.2.

In its proposal, the committee even acknowledges its departure from the Supreme Court’s position on amici and states that it had initially been inclined to follow the court’s lead, but ultimately decided that the rules for the appellate courts were distinguishable from those of the Supreme Court for two reasons. See Committee Proposal at 25-26. First, it argues, the Supreme Court also requires that amicus briefs must be submitted as printed booklets, which creates a “modest filter” on amicus filings. Second, the participation of an amicus in a case might force panel judges to recuse themselves, because: (a) a judge may have an interest in the organization or firm filing the amicus brief; and (b) parties typically consent to

the filing of amicus briefs as a professional courtesy and without checking whether the amicus' participation will create recusal issues for a judge, so party consent does not meaningfully protect against a potential spate of recusals.

Neither argument is persuasive. The committee's insistence that the Supreme Court is somehow "filtering" potential amici by requiring them to print their arguments into a booklet lacks any factual support. The committee does not provide a single example of a third party being deterred from filing an amicus brief because of the trivial amount of time and money it would cost to print their brief in booklet form. If the committee were truly convinced that the Supreme Court's booklet deterrent makes a meaningful difference, then it could have drafted a rule incorporating the booklet requirement into its proposed amendments for the appellate courts, which would have placed much less of a burden on amici and the courts than the actual proposed amendments. It didn't do that.

Perhaps recognizing the frivolousness of the booklet argument, the committee focuses much more of its energy on the potential issue of recusals. Here, too, however, the committee provides no evidence that the existing rules permitting consent of the parties have, in fact, caused a troubling number of recusals in cases before the appellate courts. It notes that circuit court judges have historically recused themselves because of amicus briefs filed with the court, but provides no evidence of the actual quantum of judicial recusals resulting from filed amicus briefs, which is needed to evaluate whether this phenomenon is truly concerning or ultimately trivial. More importantly, the Federal Rules of Appellate Procedure *already* protect against the threat of amicus briefs triggering recusal issues. Rule 29(a)(2) currently permits courts to "strike an amicus brief that would result in disqualification," giving judges the ultimate authority to decide whether to recuse themselves or strike a brief that would otherwise necessitate their recusal. The committee provides no insight into why it believes the existing rule is insufficient to prevent the supposed recusal problem that it has identified.

Beyond the lack of meaningful justification, the proposed amendments to Rule 29 would also chill amicus activity. While some amicus briefs are propounded by well-resourced firms and organizations that can afford to engage in the extended motion practice that requesting leave from a court may require—including, where necessary, retaining local counsel—others are certainly not. The proposed rule changes would, therefore, disproportionately favor parties with connections to monied interests, categorically denying access to prospective amici that do not have large budgets to participate in this manner, which is manifestly unjust and undermines the value of amicus briefs in providing perspectives from interested parties not directly represented in the instant litigation. See, e.g., *Ryan v. Commodity Futures Trading Commission*, 125 F.3d 1062, 1063 (7th Cir. 1997) (an amicus brief should be accepted where "the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide").

The judicial consent requirement is further problematized by the new “purpose” language for Rule 29 that the committee recommends, which needlessly increases the administrative and evaluative burden on judges. The new language states that amicus briefs are “disfavored” if they are “redundant with another amicus brief” or if they cover matters “already mentioned by the parties.” Committee Proposal at 28. Such requirements constitute bad policy on their face. “Redundancy” in an amicus brief can be valuable to a court in illustrating broad consensus around a particular issue, particularly if the amicus brief presents a different perspective on the same issue. Moreover, the language restricting matters “already mentioned by the parties” is so vague that it could prohibit amici from expanding significantly on a point that a party rose only in passing. These requirements also create unnecessary work for judges’ chambers. Judges would be forced to carefully evaluate every single amicus brief for redundancy by comparing them with every other submitted amicus brief, as well as the parties’ filings, before granting a motion for leave to *any* potential amicus. The committee has said nothing to suggest why such a system is preferable to the current system, which gives judges’ chambers flexibility to both: (a) evaluate amicus briefs through any method of their choosing as they are filed; and (b) quickly discard those that they would not find useful.

The committee has not advanced a compelling argument as to why its proposed amendments around judicial consent will be a boon to the appellate courts, while a quick consideration of the potential consequences suggests that such amendments may only disproportionately harm certain amici, while hobbling judges with additional, unnecessary work. Attorneys on all sides of appellate litigation should be wary of how such changes may sideline useful amicus allies if they are adopted. Attorneys may still submit comments on the proposed amendments through Feb. 17, and if they are adopted, they will take effect on Dec. 1, 2026. I respectfully suggest that we, on both sides of the bar, take steps to stop the madness.

Adam J. Levitt is a founding partner of DiCello Levitt, where he heads the firm’s class action and public client practice groups. He can be reached at alevitt@dicellolevitt.com.

Thank you to DiCello Levitt associate Rebecca Trickey for contributing to this column.

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Lawyers supporting J&J's \$9B talc settlement seek protection from rival firms



setexasrecord.com/stories/669385970-lawyers-supporting-j-j-s-9b-talc-settlement-seek-protection-from-rival-firms

February 3, 2025

Asbestos

Jere Beasley | beasleyallen.com

HOUSTON - Law firms that want Johnson & Johnson's massive talc bankruptcy plan approved object to the nature of a probe by lawyers who want it rejected, as the fight for votes continues ahead of a key hearing.

J&J is trying to use a spinoff company, Red River Talc, to absorb the company's liabilities in cases alleging its Baby Powder caused ovarian cancer in tens of thousands of individuals. Rather than fight each case individually in various courts nationwide, J&J hopes to streamline the process through bankruptcy.

If approved, ovarian cancer claims will be resolved through a bankruptcy trust in Houston federal court. Supporters say this will pay claimants quicker and easier, but law firms opposed say their clients won't get their day in court and lose the potential for a blockbuster, multimillion-dollar verdict from a jury.

Key to the process is the approval of the actual claimants. Court records show 83% approve it, clearing a threshold by eight percentage points, but the firms opposing the settlement say that figure is false.

The Coalition of Counsel for Justice for Talc Claimants is a group of three firms including Beasley Allen hoping to gain enough votes to block the plan. Many firms notified the court that their clients changed their minds after J&J vowed to pump an extra \$1 billion into the settlement, which would now be worth more than \$9 billion.

The coalition plans to depose lawyers at firms whose clients are on board with the settlement. Those firms fear the depositions are fishing expeditions with the goal of proving some nefarious methods led to their claimants deciding to accept the settlement.

On Jan. 30, the Ad Hoc Committee - 18 firms supporting the settlement - filed a motion to limit the scope and duration of depositions of 11 lawyers at some of those firms. At a hearing later this month, those lawyers will testify as to their clients' wishes, with short declarations forming the basis of their testimony.

"Despite being advised of the limited scope of these declarations, opposing counsel has refused to agree to reasonable limitations on deposition length and scope," the Ad Hoc Committee says.

The coalition and Traveler's Insurance want depositions to run up to three-and-a-half hours, with the AHC seeking a 90-minute time limit. The AHC seeks a protective order from Judge Christopher Lopez imposing its proposed time limit and limiting questions to what is in the declarations submitted by the AHC firms.

"Allowing half-day depositions, as proposed by opposing counsel, of direct testimony declarations that are less than five pages is unnecessary, disproportionate to the issues at stake, would impose an undue burden on the witnesses, and simply makes no common sense, especially with depositions and cross examination volunteered to opposing counsel to protect their clients' rights to due process," the AHC wrote.

The coalition and insurers are aligned in their goal of getting the settlement rejected. Like J&J, Allstate says there is no evidence Baby Powder is causing these cancers. On that, plaintiffs lawyers disagree.

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

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

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

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

ORGANIZATIONS IN THIS STORY

U.S. Bankruptcy Court for the Southern District of Texas

US government could seek over \$1 billion from J&J for cancer treatment costs

 [reuters.com/business/healthcare-pharmaceuticals/us-government-could-seek-over-1-billion-jj-cancer-treatment-costs-2025-01-31](https://www.reuters.com/business/healthcare-pharmaceuticals/us-government-could-seek-over-1-billion-jj-cancer-treatment-costs-2025-01-31)

Dietrich Knauth

A Johnson & Johnson banner is displayed on the front of the New York Stock Exchange (NYSE) in New York City, U.S., December 5, 2023. REUTERS/Brendan McDermid/File Photo Purchase Licensing Rights , opens new tab

NEW YORK, Jan 31 (Reuters) - The U.S. Department of Health & Human Services may seek over \$1 billion from Johnson & Johnson (JNJ.N) , opens new tab as reimbursement for federal health agencies' payments of medical costs for patients who allege that the company's baby powder and other talc products caused them to develop cancer, a government attorney said Friday.

HHS and the Department of Veterans Affairs recently objected to J&J's \$10 billion proposed settlement of tens of thousands of ovarian cancer lawsuits, saying that resolving those cases in bankruptcy could impair the government's reimbursement rights.

Bethany Theriot, a U.S. Justice Department attorney representing the two agencies, said that HHS alone could seek \$1.1 billion under the Medicare Secondary Payer law, which allows federal health agencies to seek reimbursement from other parties that are primarily responsible for health care costs incurred by the government.

"HHS and VA do have significant claims here, and we have serious objections to the ways in which the plan appears to potentially curtail federal rights," Theriot said at a Friday bankruptcy court hearing in Houston.

The HHS estimate is based on the number of people who have alleged that J&J products caused their cancer, and the government could seek additional reimbursements as more people develop cancer in the future, Theriot told U.S. Bankruptcy Judge Christopher Lopez, who is overseeing the bankruptcy of a J&J subsidiary.

J&J, which has denied allegations that its baby powder or other talc products contained asbestos and caused cancer, did not immediately respond to a request for comment on Friday.

J&J is attempting to resolve tens of thousands of lawsuits alleging that its talc products caused ovarian cancer through a \$10 billion settlement that would resolve all current lawsuits and prevent new cases from being filed. J&J placed its subsidiary Red River Talc into bankruptcy on Sept. 20, 2024, in an attempt to finalize the settlement.

Courts have rejected J&J's two previous efforts to resolve the talc litigation, ruling that J&J's subsidiary was not eligible for bankruptcy because it was not in "financial distress." J&J is trying again in a different bankruptcy court, and it says that the third effort can succeed where the others faltered because it now has votes showing a broad level of support for its settlement proposal.

J&J's proposal is opposed by attorneys representing some cancer victims, insurers, and the Office of the U.S. Trustee, a Justice Department watchdog that promotes integrity and efficiency in U.S. bankruptcy proceedings. Cancer victims who oppose the bankruptcy said they should be allowed to resume their lawsuits instead of being forced to settle on J&J's terms.

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

J&J will defend its bankruptcy plan in a multi-day court hearing scheduled to begin on Feb. 18. Lopez will consider competing demands to approve or reject the talc settlement.

Reporting by Dietrich Knauth, Editing by Alexia Garamfalvi and Deepa Babington

More than dozen objections filed to \$2.8B NCAA antitrust settlement, lawyers confident of approval

 [courthousenews.com/more-than-dozen-objections-filed-to-2-8b-ncaa-antitrust-settlement-lawyers-confident-of-approval](https://www.courthousenews.com/more-than-dozen-objections-filed-to-2-8b-ncaa-antitrust-settlement-lawyers-confident-of-approval)

Associated Press

This is a March 12, 2020, file photo showing NCAA headquarters in Indianapolis. (AP Photo/Michael Conroy, File)

(AP) — More than a dozen objections have been filed against the \$2.8 billion settlement of antitrust allegations against the NCAA and the nation's biggest conferences — concerns ranging from roster limits and Title IX to what some call an unfair salary cap — but attorneys say they don't see any threats to pushing the industry-changing lawsuit through this year.

The deadline arrived Friday to submit objections to the so-called House settlement, which calls for former athletes to receive millions in back pay and also gives schools the option to distribute up to \$20.5 million a year in payments to athletes for use of their name, image and likeness (NIL).

U.S. District Judge Claudia Wilken will have at least 14 objections to review — ranging from letters from soccer players to legal briefs picking apart the entire settlement — before the April 7 hearing she set to consider final approval of the settlement. The schools want to clear the way for the deal to take effect starting with the next academic year.

“We don’t think there’s anything in the objections that hasn’t been known about the settlement, wasn’t raised by others at the preliminary approval process,” said the NCAA's lead counsel on the lawsuit, Rakesh Kilaru. “We don't think there's anything in the objections that will give the judge reason to change her mind.”

Plaintiff attorney Jeffrey Kessler points to the more than 40,000 athletes who have filed claims for damages as evidence of the settlement's strength. Defendants in the lawsuit are the NCAA, Big Ten, Southeastern, Big 12, Atlantic Coast and Pac-12 conferences.

Watch Video At: <https://youtu.be/GPp6tktlfzo>

Some of the key topics related to the settlement:

Salary cap

The Justice Department in the final days of the Biden Administration joined lawyers and athletes in arguing the \$20.5 million — which represents 22% of TV and other revenue at the biggest schools — amounts to an unfair salary cap.

One of the legal briefs objecting to the settlement called the figure "totally arbitrary." It also argued that setting limits on what athletes can make violates the very antitrust concerns the settlement was designed to address.

Attorneys who negotiated the deal disagree. They also say athletes can opt out of the class-action settlement to pursue damages on their own, and also that third-party NIL payments that don't count against the \$20.5 million would still be allowed under terms of the deal.

"One of the persistent questions is, 'What's your alternative. what's your better solution to this?'" Kilaru said. "We sat down with lawyers who often engage in collective bargaining with sports leagues, who have this exact type of discussion where they represent a group and they vigorously advocate for their interests. And I think what we received at the end of that negotiation on both ends is a good resolution of the antitrust claims and a good, stable state going forward."

Title IX

How schools navigate Title IX requirements under a new system in which players can make money is not an issue unique to the settlement. The statute is intended to ensure gender equity in education, with broad ramifications, including athletics.

Last-minute guidance from the Biden administration's Education Department suggested that NIL payments from schools should be treated the same as educational benefits — a caveat that could put schools in violation of the law if they pay most of their NIL money to male athletes.

The issue, while daunting, should not be enough to scuttle approval of the settlement, Kessler said.

"I am a supporter of gender equity, but this is an antitrust case, not a Title IX case," Kessler said. "This settlement cannot resolve the Title IX issues. It's a misplaced forum. If Title IX requires the benefits to be paid in a certain way, the schools will have to comply with Title IX."

Roster limits

Hundreds of athletes have already lost roster spots on their teams as athletic departments prepare to adhere to a settlement that's still awaiting final approval.

The NCAA, however, views the rules that set new roster sizes while eliminating scholarship limits as a net gain for athletes, even if many rosters will diminish in size, costing walk-ons their spots.

“Prior to the settlement, there were scholarship limits. I think those were often called arbitrary,” Kilaru said. “There were lots of calls to change them and then provide more scholarship opportunities for student-athletes. And in the main, the roster limits that have come about do that.”

Kessler didn't see the objections over roster size as a roadblock to Wilken approving the settlement. He also said the roster limits were determined by the NCAA, not the plaintiffs, as part of the overall settlement.

“This is an issue between the people feeling this way about the roster limits and the NCAA imposing them,” he said. “We did agree that the settlement would allow this, and that's because it's a compromise. We can't achieve everything in a compromise.”

Back pay

There have also been objections over how the \$2.8 billion will be distributed to former athletes who played before NIL payments were allowed starting in July 2021.

Those payments, out of funds coming from the NCAA and the conferences, have been determined via a formula that tried to gauge an athlete's market value. Some of the objections have come from walk-on football players, who aren't eligible for payments, and athletes in small sports who are receiving very small payments.

On that and all the issues, Gabe Feldman, the director of the Tulane Sports Law program who has been following the settlement, said it's no surprise not every party in a class-action lawsuit covering thousands of people is happy and “there is no way to have a perfect agreement.”

He suggested the lawsuit needs to be seen for what it is — antitrust litigation that remains likely to be approved on April 7.

“They don't have the power to create an entirely new model of college sports,” Feldman said. “They don't have the authority to do that, and that's not what they're trying to do. So there are a lot of gaps left to be filled in by the NCAA, and by the conferences.”

—

By EDDIE PELLIS AP National Writer

Categories / Sports

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Australian Class Action to be Launched Against Google Over Display Advertising

 [law.com/international-edition/2025/02/03/-australian-class-action-to-be-launched-against-google-over-display-advertising](https://www.law.com/international-edition/2025/02/03/-australian-class-action-to-be-launched-against-google-over-display-advertising)

Christopher Niesche

Two Australian plaintiff law firms are launching a class action against media giant Google seeking compensation for publishers who it alleges have endured years of lower revenue because of the tech giant's dominance of the digital display advertising industry.

The looming class action is the latest of a series of legal actions against Google around the world over concerns that it has too much power in the online advertising market.

In a class action to be filed by February 14, 2025, Maurice Blackburn Lawyers will argue that Google's ad technology platforms dominate the open display advertising industry, serving advertisements to Australian internet and app users.

Google's alleged misuse of its dominant market position has forced local publishers to accept less revenue for the advertisements they sell than they otherwise would have, had there been more effective competition in open display advertising.

Krista Schade, general manager of lead plaintiff regional Australian publisher, The Riverine Grazier, said Google needs to be held to account.

"The Grazier is just one of many thousands of publishers in Australia and worldwide simply trying to earn fair income from online advertising to support the important job of news publishing, who find themselves stifled by Google's conduct. That's why we have stepped forward to lead this action," Schade said in a statement.

Plaintiff law firm Phi Finney McDonald is joining Maurice Blackburn in conducting the class action. The firm did not respond to a request for comment.

Responding to news of the class action, a Google spokesperson said the company will defend the class action.

"Our advertising technology tools help websites and apps fund their content, and enable businesses of all sizes to effectively reach new customers. Google creates value for our publisher and advertiser partners in this highly competitive sector. This lawsuit ignores the intense competition where ad buyers and sellers have plenty of choice," the spokesperson said.

"Beyond this, Google is a major contributor to Australian publishers providing support for more than two decades through partnerships, products and programs."

Google's ad tech is responsible for many of the display advertisements seen on media and other websites. Advertisers place bids to have their advertisements displayed to internet and app users. When a consumer opens a website or app, Google determines which advertisement to display to them, based on what it knows about the user and the advertiser's bid.

In the U.K., Herbert Smith Freehills is defending Google in a \$16.7 billion lawsuit alleging that Google has too much power over the online advertising market and last month the The U.K. Competition and Markets Authority launched an investigation into Google over its position in search advertising.

In December, Canada's competition watchdog said it is suing Google for alleged anti-competitive behavior in the online advertising market. The Competition Bureau asked Canada's Competition Tribunal to order Google to sell two of its ad tech tools, fine the company billions of dollars, and prohibit it from continuing to engage in anti-competitive practices.

And the looming class action isn't the first time Google's practices in Australia have come under scrutiny. In December the Australian government said it would require Google, Facebook-owner Meta and TikTok to pay for Australian news, replacing the voluntary news media bargaining code that was introduced in 2021 to push the tech giants to pay for content.

However, after Facebook said last year it would stop paying for news, the government said it would force the tech giants to do so.

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Latest

Trending

Litigation

Feb. 3, 2025, 1:30 AM PST

Shifting PFAS Regulation, Litigation Trends Raise New Challenges

- *Akerman partners examine legal landscape for PFAS*
- *Fluorine testing issues could boost defense in consumer cases*

As we enter a new year—with a new administration—the combination of political agendas and recent litigation trends provides insight into the future landscape of regulation and litigation of “forever chemicals” in the US.

President Donald Trump’s pick to lead the Environmental Protection Agency raises questions about whether the administration’s deregulation plans will include the EPA’s progress in regulating per- and polyfluoroalkyl substances. PFAS, a class of chemicals used in a variety of consumer products, has been linked to cancer, liver damage, and other health problems.

Under former President Joe Biden, the EPA restricted companies from starting or resuming the manufacture or processing of 329 PFAS. It also established the first nationwide (and legally enforceable) drinking water standards for six PFAS and invested approximately \$50 billion toward this effort. The cost of compliance for water providers has already prompted litigation against the EPA.

New EPA Administrator Lee Zeldin historically voted against federal environmental regulations when he represented New York’s First District in the House of Representatives from 2015 to 2023. However, of the few environmental regulations he supported, those targeting PFAS were among them.

He was one of only 23 Republicans who voted in favor of HR 2467, the PFAS Action Act, in a 241-183 vote. It would have regulated PFAS in drinking water and set drinking water standards had the Senate voted to pass it. Zeldin’s record on PFAS, though limited, suggests PFAS regulation may be one area with fewer rollbacks and deregulation compared to other environmental regulatory areas.

State Action

While the future of PFAS regulation at the federal level remains unclear, PFAS regulations at the state level continue. As of Jan. 1, Minnesota prohibits 11 categories of products that contain intentionally added PFAS from entering the market. Maine now requires manufacturers of products with intentionally added PFAS to report the presence of PFAS in a registry.

New York and California have instituted bans on PFAS in textiles and apparel. And Colorado began prohibiting the distribution and sale of outdoor apparel used in severe wet conditions that contain intentionally added PFAS, unless the article contains certain disclosures.

While the state-level bans on textiles and apparel containing intentionally added PFAS are limited so far, these regulations are expected to affect the broader US market.

Litigation Trends

The recent wave of PFAS litigation has left courts doing their best to apply existing precedent to novel issues, as this newly minted landscape continues evolving.

More recently, this evolution includes questions about how judges interpret scientific results, how plaintiffs choose to plead economic injuries, and how defendants—most recently, consumer product manufacturers—are learning to hedge against potential PFAS liabilities.

Traditional claims involving PFAS focused on contaminated water supplies and exposure to firefighting foam. However, the trend has shifted recently with plaintiffs targeting consumer product manufacturers, alleging the companies fail to disclose on their packaging the presence of PFAS.

More recently, plaintiffs have targeted producers of consumer products branded and advertised using terms such as “all natural,” “pure,” and “organic” yet allegedly packaged in PFAS-containing materials. Some examples of consumer products recently subjected to these lawsuits include popular chocolate candies, baby wipes, and adhesive bandages.

This trending class of claims has been fueled in part by courts’ findings that the plaintiffs can plead purely economic injuries: that consumers wouldn’t have purchased the product, or at least would have paid less for it, had they known it contained PFAS. The increase in putative class actions also has been driven in part by plaintiffs’ allegations these defendants know the products contain PFAS due to having allegedly tested them.

Many of these plaintiffs allege that total organic fluorine testing revealed the presence of PFAS. In evaluating defendants’ motions to dismiss the plaintiffs’ suits, courts in some states (but not others) have found plaintiffs’ allegations about their scientific testing to be enough to overcome the low pleading threshold of a motion to dismiss.

The issue with the courts’ deference, as many defendants have noted, is that the science surrounding PFAS testing isn’t as definitive as plaintiffs suggest in their complaints.

Because PFAS refers to many different types of substances, testing for PFAS isn’t as simple as it might sound. The term covers a large class of synthetic chemicals, some more ubiquitous than others. Although some plaintiffs have dubbed fluorine testing as the gold standard for PFAS sampling, and maintain that it renders dependable results, defendants are questioning the reliability of fluorine testing to quantify the presence of PFAS.

Some courts have agreed with these defendants, including federal courts in California and Washington. One court explained that while fluorine testing can detect many variations of PFAS, it also detects a wide array of fluorine-containing compounds that aren’t PFAS. A result displaying high concentrations of these compounds might not actually have any PFAS at all.

Going forward, other defendants faced with allegations based on fluorine testing and similar methods purporting to identify or quantify PFAS now have some authority to persuade courts to scrutinize the methodologies plaintiffs use to support allegations that they purchased PFAS-containing products.

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

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Write for Us: Author Guidelines

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California's new bar exam hits early snags, examinees report

 [reuters.com/legal/legalindustry/californias-new-bar-exam-hits-early-snags-examinees-report-2025-01-31](https://www.reuters.com/legal/legalindustry/californias-new-bar-exam-hits-early-snags-examinees-report-2025-01-31)

Karen Sloan

Jan 31 (Reuters) - California will roll out its new bar exam on Feb. 25, but test takers say they have already encountered technical and logistical problems ranging from crashed computers and distracting online proctors on mock exams to an inability to schedule their tests.

The stakes are high for the state's more than 5,300 February bar takers — who must pass the two-day exam in order to become licensed lawyers — and for the State Bar of California, which last year became the first to ditch the national bar exam and develop its own test to cut costs.

The February test will also be the first bar exam to allow remote participation since the COVID-19 pandemic pushed testing online in 2020 and 2021, which led to technology problems.

With about three weeks to go, some examinees have been unable to schedule their in-person tests and are finding that there are fewer locations than they anticipated. Many say communication with the State Bar and Meazure Learning — the vendor contracted to deliver the exam — has been sparse and at times contradictory.

“I know people say the bar exam is supposed to be tough, but this is getting to a point of absurdity,” said Santa Clara law graduate Gino Mazzoni. He said he gave up on taking the test remotely due to frustration with online proctors talking and creating distractions, and then lost a day of studying Thursday as he struggled to book a testing site.

Spokespeople for the State Bar and Meazure Learning acknowledged that technical problems prevented some planned test registrations on Thursday but said that the issue had been fixed by Friday.

The State Bar in August fast-tracked a new exam written by Kaplan Exam Services and gave examinees the option of testing in person or remotely under the supervision of online proctors — a change projected to save as much as \$3.8 million annually by eliminating the need to rent out large event spaces.

Bar officials said Friday that 67% of February bar takers are remote while 33% will test in person. But only four large in-person testing sites are planned — one each in the San Francisco, Los Angeles, San Diego and Sacramento areas — meaning farther travel for many.

Frustrated examinees have flocked to Reddit and other message boards to trade information, troubleshoot and complain about the exam's rollout.

Harshita Ganesh, a 2024 Georgetown law grad who practices at a small firm in Massachusetts, said the exam has been a much rockier experience than the Uniform Bar Exam she took and passed last year. (California does not reciprocate bar admission, meaning attorneys licensed by other states within the past four years must take and pass its full bar exam.)

Ganesh still doesn't know where she will be taking the exam after encountering problems Thursday with Meazure Learning's online booking system.

"This entire process has been horrible," Ganesh said.

Read more:

California finalizes deal to give its own bar exam
California to allow its new bar exam to be taken from anywhere
Reporting by Karen Sloan

Karen Sloan
Thomson Reuters

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



SEC Whistleblower Program: What to Expect Under the Trump Administration

 [law.com/dailybusinessreview/2025/02/03/sec-whistleblower-program-what-to-expect-under-the-trump-administration](https://www.law.com/dailybusinessreview/2025/02/03/sec-whistleblower-program-what-to-expect-under-the-trump-administration)

David Chase and Scott Silver

Scott Silver, left, of Silver Law Group, and David Chase, right, of the Law Firm of David R. Chase. Courtesy photos

Expert Opinion

The Trump administration will likely impact the SEC whistleblower program in terms of a change in its enforcement priorities, as well as the amounts of financial bounties paid, but will not, in our opinion, threaten its existence given bi-partisan support or alter its core functions.

February 03, 2025 at 10:09 AM

🕒 6 minute read

The Trump administration will likely impact the SEC whistleblower program in terms of a change in its enforcement priorities, as well as the amounts of financial bounties paid, but will not, in our opinion, threaten its existence given bi-partisan support or alter its core functions.

By way of background, the SEC whistleblower program pays monetary awards to eligible individuals who come forward with high-quality original information that leads to a commission enforcement action in which over \$1 million in sanctions is ordered. The range of an award to the whistleblower is between 10% and 30% of the money collected.

A Change in SEC Enforcement Priorities

President Donald Trump's nomination of Paul Atkins to lead the SEC will likely result in major changes to the SEC's Enforcement Division's priorities. Whereas those priorities under former SEC Chair Gary Gensler focused on cryptocurrency registration, environmental and governance disclosures and a rule making by enforcement approach, Atkins, if confirmed, will likely revert to a more basic, retail investor protection approach to the enforcement of the federal securities laws.

Atkins, a Republican SEC commissioner who served on the commission from 2002 to 2008, is widely regarded as pro-business and, in particular, an advocate for crypto adoption. His tenure was characterized by a focus on the protection of mom-and-pop investors, a disdain

for heavy-handed regulation and clarity on the process by which the Enforcement Division calculated its civil penalties. Tellingly, after leaving the SEC, he started a consulting firm, which provided advice to, among others, the digital assets industry.

Crypto

Assuming Atkins is confirmed, we anticipate a sea change in the SEC's approach to cryptocurrency and digital assets generally, both in rulemaking as well as in enforcement.

As to rulemaking, an SEC headed by Atkins is expected to craft new crypto rules and regulations in conjunction with a Republican-controlled Congress to provide market clarity and to facilitate the raise of capital.

In terms of enforcement, the possibilities vary from the SEC completely relinquishing its crypto enforcement powers to the U.S. Commodity Futures Trading Commission's jurisdiction, to ceasing enforcement of pure crypto registration cases against issuers and exchange platforms (i.e., those solely alleging the sale of unregistered securities, but not fraudulent conduct), assuming it retains its crypto enforcement authority.

A Return to a Focus on Protecting Retail Investors From Fraudulent Conduct

Under Gensler, the SEC's Enforcement Priorities were expansive and, in many respects, treaded new ground in its emphasis on requiring corporate disclosures on such matters as cybersecurity breaches, environmental policies and internal governance. In addition to the prioritization of these areas of corporate disclosure, the Gensler-led Enforcement Division allocated a significant amount of otherwise limited investigative and litigation resources pursuing cases involving crypto and digital assets, as well as securities registration enforcement actions (in particular dealer cases), many of which did not involve allegations of either fraudulent conduct or investor loss. This is bound to change under an Atkins-led commission.

While we expect the SEC to continue to pursue securities fraud where it finds it (even in crypto cases where investor funds are in jeopardy), there will likely be a keener focus on protecting Main Street—the mom and pop investors who risk the loss of their hard-earned retirement savings from old-school securities frauds, such as market manipulations, Ponzi schemes, broker and financial adviser sales practice abuses, and public company accounting frauds. In particular, we anticipate a surge in cases involving the sale of illiquid, hard-to-value alternative investments by hedge funds to retail investors, as well as private placement Regulation D offerings by private issuers that have historically been prosecuted for undisclosed exorbitant commissions and/or the misappropriation of investor funds.

This investor protection-centric approach will thus require a reallocation of enforcement resources that were otherwise tied up in cases that did not directly implicate investor losses. We would not be surprised to see several of these pending cases voluntarily dismissed, or settled on much more favorable terms than that which would have been agreed to under a Gensler regime, in order to clear the decks.

Smaller and Perhaps Fewer Corporate Civil Penalties

Lastly, under an Atkins commission, we foresee the commission imposing smaller civil penalties on corporations where the violative conduct is perpetrated by identifiable individuals. Atkins is on record as having expressed his serious concerns with the concept of fining, or at least imposing a significant monetary penalty upon, a corporation where its shareholders did not receive a benefit from the entity's wrongdoing and would thus arguably be unfairly penalized. Accordingly, a commission under Atkins may be disinclined to approve large civil penalties in such circumstances, or possibly refuse to approve them at all. However, we do not think this marks an end to the use of civil monetary penalties by the commission as it is too critical of a deterrence weapon in its enforcement arsenal. Rather, we believe the commission will adopt a more stringent, exacting approach when evaluating the propriety and amount of a civil penalty based upon the particular facts before it.

What Do These Changes Mean for the SEC Whistleblower Program?

Notwithstanding the anticipated changes as discussed above, we expect the SEC whistleblower program to continue to successfully operate in its present form with no material change to its fundamental nature. However, as SEC whistleblower counsel, we will be more focused upon those whistleblower tips that are more in line with the commission's new enforcement priorities and are thus more likely to be investigated and prosecuted. Notably, the critical elements of a potentially successful whistleblower tip will remain the same: original, timely and detailed evidence, along with meaningful cooperation with the SEC. Finally, we expect that in certain cases (but not all), the financial awards paid out to our clients may be less than in the prior administration given the pro-business lense through which the commission will likely vet civil penalties.

David Chase is a former SEC enforcement attorney and the founder of The Law Firm of David R. Chase in Fort Lauderdale. He has represented whistleblowers in some of the SEC's most complex and high-stakes enforcement cases, earning a reputation as a leading advocate for individuals exposing corporate wrongdoing.

Scott Silver is the managing partner of Silver Law Group, based in Boca Raton, Florida, and is recognized nationwide for his work representing investors and whistleblowers in securities and investment fraud cases. A staunch advocate for protecting investors, Silver has been

SEC Staff Told to Seek Approval to Start Probes, Reuters Reports

news.bloomberglaw.com/product/blaw/bloomberglawnews/exp/eyJpZCI6IjAwMDAwMTk0LWM2ZjQtZDhhMy1hMzk0LWY2ZjdkMDAyMDAwMyIsImN0eHQiOiJTTE5XIiwidXVpZCI6IjBSdXhUWFlyQVFVb3ZodG5TQkxZMHc9PQwemVxYXZibFBuUklsOFh5eIREQXc9PSIsInRpbWUiOiIxNzM4NTg0ODY4OTM3Iiwic2lnIjoieRkxYeStMd3QzZjNjJdFJWTmdoKzk2K3NFUTVnPSIsInYiOiXln0=

Securities Law News

Feb. 2, 2025, 5:47 AM PST

Valentine Baldassari



US Securities Exchange Commission staff have been told to seek permission from leadership before formally starting probes, Reuters reported, citing people briefed on the matter who weren't identified.

The change, which marked a move away from recent norms, was made since since President Donald Trump took office on Jan. 20, the people told Reuters. The news service didn't determine who ordered the change or whether the Commission had formally voted on it.

Enforcement staff can still informally investigate, according to the report. Formal orders are needed to issue subpoenas for testimony or documents, the people said.

A spokesperson for the SEC declined to comment to Reuters.

The SEC usually has five commissioners, appointed by the president. Currently there are three, two Republicans and one Democrat.

Mark Uyeda is acting as the agency's chair until a permanent head is confirmed by the Senate, replacing Gary Gensler. Trump has tapped former Commissioner **Paul Atkins** to lead the SEC, which was created after the 1929 stock market crash to to enforce laws against market manipulation.

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Ros Krasny

Legal reform group: Meta is leaving Delaware because of its judges

 legalnewsline.com/stories/669370541-legal-reform-group-meta-is-leaving-delaware-because-of-its-judges

February 1, 2025

State Court

Delaware Chancery Court Judge Kathaleen St. J. McCormick (L) and Meta CEO Mark Zuckerberg (R). | Wikipedia

A Delaware legal reform group says judges on the state's Chancery Court are to blame for Meta and other businesses leaving the state.

Wilmington-based Citizens for Judicial Fairness says "overreaching rulings" including "exorbitant fees to lawyers" from judges like Kathaleen St. J. McCormick are leading companies to incorporate elsewhere.

"Citizens has been raising the red flag for years now that the Chancery Court's overreaching rulings are becoming more poignant - and more dangerous - with each ruling," the group said. "Chancellor McCormick and the Chancery Court continue to award exorbitant fees to lawyers while exploiting businesses and their workers. Companies that once flocked to Delaware for its globally renowned courts are now seeking refuge in other states, leaving Delaware's economy to bear the consequences of this misguided judicial shift."

"The thousands of Delaware residents and more who have stood with our Citizens group must not only take notice of this troubling trend but also stand up and demand a course correction," the group said. "Delaware generates billions in revenue from companies choosing to incorporate here, and if we don't act to protect this vital industry, we risk losing the very foundation that has long supported Delawareans' economy and livelihoods. Without swift action from Delaware's legislature, our State's role as the corporate haven could become a distant memory."

The *Wall Street Journal* reported Friday that Meta is "in discussions about moving its incorporation from Delaware to Texas or other states."

Also on Friday, Dropbox announced its shareholders had approved moving from Delaware to Nevada.

Plaintiff's lawyers suing on behalf of shareholders in Delaware typically demand a percentage of what they claim to have saved them, leading to eye-popping legal fee demands which have been supported by Chancery Court judges.

In December, McCormick blocked Tesla shareholders from paying its CEO Elon Musk per a 2018 contract. She also ordered the company to pay lawyers \$345 million for suing the company. That case is on appeal.

This month, McCormick ordered Tesla to pay another \$176 million in legal fees to lawyers suing the company's board of directors.

Tesla said that McCormick's rulings "means that judges and plaintiffs' lawyers run Delaware companies rather than their rightful owners- the shareholders."

In 2017, the Delaware Chancery Court responded to a shareholder dispute by seizing and auction off TransPerfect, the nation's largest translation company. The resulting litigation required the company to pay \$244 million in legal fees, it estimated, \$44.5 million of which were for work the court acknowledged wasn't documented.

TransPerfect left Delaware in 2018 and incorporated in Nevada.

According to the Delaware Secretary of State, 1.4 million companies, including 68 percent of the Fortune 500, are incorporated in Delaware.

Judges on the Delaware Chancery Court, which handles all commercial litigation in the state, are McCormick, J. Travis Laster, Morgan T. Zurn, Paul A. Fioravanti, Jr., Lori W. Will, Nathan A. Cook and Bonnie W. David.

Citizens for Judicial Fairness was founded by employees of TransPerfect Global in 2016. The group says it has more than 5,000 members nationally.

Meta Discusses Reincorporating Its Business Outside Delaware (1)

By Kurt Wagner and Madlin Mekelburg

- Company will not move headquarters out of California
- Meta has been incorporated in Delaware since mid-2004

Meta Platforms Inc. is discussing reincorporating its business outside of Delaware, where the company has been legally incorporated since its founding in 2004, according to a person familiar with the conversations.

Meta executives are considering multiple states for a possible reincorporation, said the person, who spoke on the condition of anonymity to discuss non-public information. One of the states being considered is Texas, according to The Wall Street Journal, which first reported the news. Meta has two data centers in Texas and recently announced that it was moving some of its content moderation work to the state.

Meta has no plans to move its corporate headquarters out of California, a company spokesperson said, declining to comment further.

As of Friday afternoon, Meta had not filed any paperwork with the Secretary of State's office in Texas. A spokesperson for the governor did not immediately respond to a request for comment.

The vast majority of major US companies are incorporated in Delaware, although Elon Musk shifted Tesla Inc.'s incorporation to Texas following a shareholder vote in June. He also announced plans to move the headquarters for his social media network X and his rocket company, Space Exploration Technologies Corp., to Texas. Musk also moved the incorporation of his brain implant company Neuralink Corp. from Delaware to Nevada. Travel review and booking site TripAdvisor Inc. also reincorporated in Nevada last year.

Musk made the Tesla decision after a Delaware judge voided his roughly \$56 billion compensation package, the largest ever given to a US corporate executive.

Meta has also had run-ins with Delaware judges in the past. The company is being sued over its handling of the Cambridge Analytica privacy scandal, where Chief Executive Officer Mark Zuckerberg has been fighting with the court about whether he needs to provide a full deposition, and for how long. The company is also fighting a human trafficking lawsuit in Delaware Chancery Court.

If Meta does choose to reincorporate, it should be an easier process than what Musk had to go through: Zuckerberg has voting control at Meta through a dual-class stock structure that gives him super voting shares.

(Updates with TripAdvisor, Meta legal issues in Delaware starting in paragraph 7)

--With assistance from Jef Feeley.

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As Elon Musk Begins Shutting Down Payments to Federal Contractors, a Strange Money Trail Emerges to His Operatives Inside the U.S. Treasury's Payment System

 wallstreetonparade.com/2025/02/as-elon-musk-begins-shutting-down-payments-to-federal-contractors-a-strange-money-trail-emerges-to-his-operatives-inside-the-u-s-treasurys-payment-system

By Pam Martens and Russ Martens: February 3, 2025 ~

Elon Musk is the billionaire CEO of the publicly-traded EV company, Tesla. As such, under corporate law, he owes a Duty of Loyalty to Tesla. Notwithstanding this well-established law, Musk is engaged in an array of other corporate endeavors outside of Tesla, including being the CEO of SpaceX, a private rocket company.



Elon Musk

SpaceX is a major federal contractor to NASA and the Department of Defense. See our report: [The U.S. Government Is Plowing Billions into SpaceX, Overlooking Drug Use, Sex Parties, and Elon Musk's Coziness with Putin.](#)

Now, the New York Times, Wall Street Journal, Bloomberg News, and a host of other media outlets are reporting that Musk has used his 2-week old position as the head of a Donald Trump faux agency – the Department of Government Efficiency (DOGE) – which Trump created out of thin air last month by Executive Order, to have his DOGE operatives gain access to the U.S. Treasury's \$6 trillion payment system and snoop on its payments. This means that Musk's DOGE hires could potentially access confidential information on government contract payments made to Musk's competitors as well as highly confidential payments related to national security.

There are media reports this morning that Musk has begun to cancel payments to some federal contractors.

One of the individuals engaged in this snooping on behalf of Musk, according to reporting at the New York Times, is Tom Krause, the CEO of Cloud Software Group, which describes itself as "Developer of enterprise infrastructure software" whose platform encompasses, among other things, "business intelligence."

Krause is still listed at the website of Cloud Software Group as its current CEO, as well as using that same title on his personal LinkedIn page. So how, exactly, did he gain security clearance to snoop on this vast U.S. government payment system. Why is the Board of

Directors of Cloud Software Group allowing him to engage in this legally dubious undertaking?

Cloud Software Group's major owners include Vista Equity Partners and Elliott Investment Management, according to an interview with Krause at SpencerStuart.

The founder, Chairman and CEO of Vista Equity Partners is billionaire Robert F. Smith, whose net worth is pegged at \$10.8 billion according to Forbes. In 2020, during the first Trump administration, Smith was charged by the U.S. Department of Justice with engaging in a massive 15-year international tax fraud scheme. Smith was given a non-prosecution agreement and settled the matter for \$139 million after cooperating with prosecutors.

The other major co-owner of Krause's firm, Elliott Investment Management, is the giant hedge fund founded by billionaire Paul Singer, who remains at Elliott as President, Co-Chief Executive Officer, and Co-Chief Investment Officer. Singer gave the Trump-supporting Make America Great Again Inc. PAC \$5 million in one check in August of last year.

In addition, *and notably*, Singer is also Chairman of the Manhattan Institute for Policy Research, a right-wing think tank. William Barr, one of Donald Trump's Attorneys General during his first term as President, is a member of the Board of Trustees of the Manhattan Institute. Megadonors to Trump and Republicans, including hedge fund titan John Paulson and former Education Secretary Betsy DeVos in Trump's first term, also serve on the Manhattan Institute's Board of Trustees.

Senator Ron Wyden, the Ranking Member of the Senate Finance Committee has sent a letter to Trump's recently confirmed U.S. Treasury Secretary, Scott Bessent, raising national security concerns about the snooping by DOGE inside the Treasury's payment system and demanding answers in short order.

Lawyers for Musk, Republican campaigns form new Washington firm

 [reuters.com/world/us/lawyers-musk-republican-campaigns-form-new-washington-firm-2025-01-31](https://www.reuters.com/world/us/lawyers-musk-republican-campaigns-form-new-washington-firm-2025-01-31)

David Thomas, Mike Scarcella

An attendee holds a sign as Tesla CEO and X owner Elon Musk (not pictured) who supports Republican presidential nominee former U.S. President Donald Trump, speaks about voting during an America PAC Town Hall in Folsom, Pennsylvania, U.S., October 17, 2024.

REUTERS/Rachel Wisniewski/File Photo Purchase Licensing Rights , opens new tab

Jan 31 (Reuters) - A lawyer for billionaire Tesla (TSLA.O) , opens new tab CEO Elon Musk's political action committee is launching a new law firm along with two attorneys whose clients include Republicans U.S. House Speaker Mike Johnson and one-time presidential candidate Vivek Ramaswamy.

The firm, Lex Politica, expands an ecosystem of small conservative law firms that have gained prominence since Republican President Donald Trump's first term and strengthened their ties to Trump and his allies since his reelection.

The new firm said in a statement it will represent "candidates, campaigns, and causes at the forefront of the conservative and center-right movement."

Its founder is Chris Gober, a lawyer for Musk's America PAC who also served as its former treasurer.

He is teaming up with Steve Roberts and Jessica Furst Johnson, who left their law firm Holtzman Vogel to join Gober as partners, the trio said on Friday.

Gober was not immediately available for comment. He told the New York Times, which reported the firm's launch early on Friday, that he wanted Lex Politica to become "synonymous with the conservative movement."

Roberts and Johnson's clients also include U.S. Senator Rick Scott of Florida, the National Republican Congressional Committee and the National Republican Senatorial Committee, the firm said.

Musk and spokespersons for Johnson, Scott and Ramaswamy did not immediately respond to requests for comment.

Other conservative law firms with ties to Trump's inner circle include Dhillon Law Group. Trump named founder Harmeet Dhillon to head the Justice Department's civil rights division and partner David Warrington as his White House counsel.

Another is Schaerr Jaffe, which Musk has tapped to represent X users in free speech cases. Trump appointed Schaerr Jaffe partner Mark Paoletta as general counsel to the U.S. Office of Management and Budget, a key agency in the drive to shrink the federal government.

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Reporting by David Thomas; Editing by David Bario and Cynthia Osterman

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Trump's Tech Buddies Won't Escape US Scrutiny, Texas Ally Warns

By Josh Sisco

- CEOs' charm offensive has won Trump support in clashes with EU
- Texas Attorney General Ken Paxton says US probes won't stop

The tech bosses who've lined up to pay homage to Donald Trump may have found a common enemy in the European Union, but that won't save them from legal enforcement on their home ground, according to one of the new president's key allies.

Texas Attorney General **Ken Paxton** said in an interview with Bloomberg News that technology giants can't expect a free pass in the US — even though cozying up to Trump at his swearing in ceremony and at Mar-a-Lago appeared to pay off last week when the president told the World Economic Forum in Davos that he sees the EU's frequent fines against Silicon Valley as “a form of taxation.”



Ken Paxton outside of the US Supreme Court in 2021.

Source: Bloomberg

Read more: [Trump Blasts EU Regulators for Targeting Apple, Google, Meta](#)

"Trump realizes they are a big part of our economy. How they perform matters," Paxton said in the interview on the sidelines of a conference in Brussels Thursday. "However, I don't think that means we are just going to turn a blind eye to inappropriate activity by them, whether it's antitrust, whether it's censorship."

Paxton gained a national reputation during the Biden Administration when he sued the White House over a variety of policies including immigration and abortion, as well as leading a case to overturn the results of the 2020 presidential election. He also gained prominence in progressive circles through his antitrust and privacy cases against companies including Alphabet Inc.'s Google and Meta Platforms Inc.

Read more: [Google Illegal Deal With Facebook Alleged in Monopoly Suit](#)

Paxton pointed to the rival social media platform supported by Trump, which he formed in 2022 after he was banned from Facebook and Twitter following the Jan. 6, 2021 attack on the US Capitol. "He's sensitive to that because it happened to him and that's why Truth Social was birthed" he said.

"I think he'll take advantage of the tech companies all of a sudden having interest in having some participation," Paxton said speaking on a panel earlier Thursday. "They are only interested because they saw the writing on the wall."

Trump criticized the big tech platforms during his first term for suppressing conservative viewpoints and moved to crack down on them. His antitrust enforcers sued Google and Meta over their search and social media businesses. They also opened investigations of Amazon.com Inc. and Apple Inc. that led to lawsuits under former President Joe Biden.

Trump's recent coziness with the tech CEOs has raised questions whether Biden's aggressive enforcement agenda will continue under Trump.



Mark Zuckerberg, from left, Lauren Sanchez, Jeff Bezos, Sundar Pichai, and Elon Musk during the 60th presidential inauguration on Jan 20.

Photographer: Julia Demaree Nikhinson/AP Photo/Bloomberg

"What really matters are what are his actions, and we don't know what those actions are yet," Paxton said. "We can look back at his record, and it wasn't as if he ever stopped the DOJ from looking into actions against big companies."

Trump Appointee

Trump's current appointee to head up the Justice Department's antitrust division, **Gail Slater**, indicates that he won't be soft on tech this time around either, said Roger Alford, a Notre Dame law professor who served in the first Trump DOJ, during the panel.

Regulators in Europe, though view Trump's recent Davos comments with alarm.

The European Commission has fined Google, Apple, Meta and others billions of dollars in a slew of antitrust cases and is also investigating the companies for violations of its Digital Markets Act. Concerns were raised by conference attendees that Trump could retaliate against the bloc through tariffs or even pulling out of alliances such as NATO.

"There are of course concerns," **Benoit Coeuré**, head of France's competition enforcement agency said at the same conference, which was hosted by economist **Cristina Caffarra**. Caffarra has also consulted on Paxton's antitrust case to break up Google's advertising technology business.

Coeuré said Europe should avoid "having some kind of negotiation with the Trump administration case by case, one after another. Because if we fall in that trap, Europe will be stuck like a rabbit in the headlights."

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Hedge funds bet billions on market crash in Trump's America

 [telegraph.co.uk/business/2025/01/31/hedge-funds-bet-billions-against-trumps-america](https://www.telegraph.co.uk/business/2025/01/31/hedge-funds-bet-billions-against-trumps-america)

Louis Goss



'Trump trades' fuelled market growth in the wake of the US election in November Credit: Alex Brandon/AP

Goldman Sachs reports a surge in short bets against US stocks

Hedge funds have bet billions of dollars against Donald Trump's America amid fears of a market crash.

Data from Goldman Sachs show there has been a surge in "short" bets against US stocks, meaning traders will make money when they fall in value, in a sign of growing concerns about the market.

In January, investors have placed 10 times more bets on US stocks falling than equivalent bets that shares in leading American companies would rise, the investment bank said. It suggests many traders are sitting on huge profits from the chaos earlier this week, when shares in big tech stocks slumped following a panic over the success of rival Chinese AI DeepSeek.

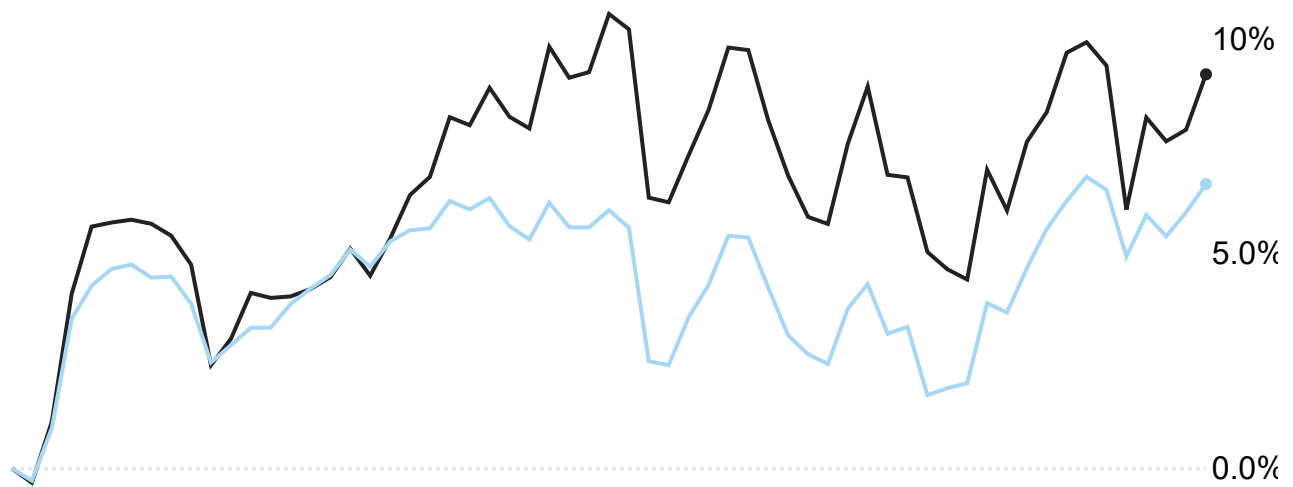
The increase in short bets marks a major turnaround in sentiment from November, when hedge funds piled into long bets on US stocks, predicting they would rise.

Hedge funds ploughed billions into so-called "Trump trades" in the immediate wake of the US election in November, on expectations the new president's tax cuts and tariff policies would boost America's economy.

A surge in clients giving their money to the funds in the wake of Mr Trump's victory helped lift the amount of money managed by the industry to all-time highs of over \$4.5 trillion (£3.6 trillion).

Trump's election win boosted US stock markets

From 31 Oct '24 to 30 Jan 16:56:12



● NASDAQ Composite: 18239.9 → 19917.49.2%

● S&P 500: 5728.8 → 6109.16.6%

Mr Trump has also received significant support from high profile fund chiefs, including Bill Ackman, who has become a major opponent to diversity, equity and inclusion (DEI) initiatives since the Oct 7 2023 attacks on Israel.

In the run-up to the elections, Mr Ackman, who founded Pershing Square Capital Management in 2004, publicly endorsed Mr Trump. The billionaire hedge fund manager had previously donated millions to Super PAC organisations supportive of the Democratic Party.

Mr Trump subsequently appointed hedge fund manager and Republican Party donor Scott Bessent as his treasury secretary. Mr Bessent started his career at George Soros's hedge fund in the 1990s before launching his own investment fund Key Square Group in 2015.

Ken Griffin, who founded Citadel in 1990, later also came out in support of Mr Trump in December, having held back from financially supporting the Republican candidate's campaign. Mr Griffin, who has donated millions to various Republican candidates and political, had earlier described Mr Trump as a "three-time loser."

Speaking at the DealBook summit in December, Mr Griffin said Trump's victory posed an opportunity to end the "regulatory and litigation-induced paralysis" of the Biden era and "bring America back to a nation of principles, of strength, of prosperity and possibility," according to Politico.

'Uncertainties persist about Trump'

Individual hedge funds do not typically make their positions public, so it is not known if any of the above are shorting the US market.

Bruno Schneller, managing partner at asset manager Erlen Capital Management, said the increase in short bets against US stocks likely reflect concerns about "macroeconomic uncertainty."

Analysts at Swiss bank UBS, led by Karim Cherif, head of alternative investments, said: "As the new year unfolds, uncertainties persist regarding Trump's policies, the global economic trajectory, and central bank actions."

Separately, Elliott Management, which controls more than \$70bn worth of investments, this week warned that Mr Trump's presidency was fuelling speculative bubbles in markets that threaten to "wreak havoc" if markets crash, according to the Financial Times.

The concerns come as the "magnificent seven" tech companies – Alphabet, Amazon, Apple, Meta, Microsoft, Nvidia and Tesla – have seen their stock prices surge over the past two years on excitement surrounding artificial intelligence (AI).

Investors have become increasingly concerned about over-investment in leading technology companies. The launch of DeepSeek's new chatbot earlier this month has heightened those concerns.

This week, concerns surrounding DeepSeek led a major sell-off of stocks in top American tech companies, including computer chip maker Nvidia, which saw almost \$600bn knocked off its valuation.

DeepSeek itself is owned by Chinese hedge fund High Flyer, which uses algorithmic trading techniques to place bets on market movements. Liang Wenfeng, High Flyer's chief executive, is also DeepSeek's chief executive.

After Banker Dies, Jefferies Vows Support and Slams Online Venom

By Todd Gillespie and Katherine Doherty

- CEO Rich Handler encourages junior bankers to ask for help
- Memo follows death of 28-year-old banker Carter McIntosh

Jefferies Financial Group Inc. Chief Executive Officer **Rich Handler** assured junior bankers in a weekend memo that bosses will support them if they need help after the death of a 28-year-old investment banker.

Handler said he went to Dallas to be with junior employees after their coworker, Carter McIntosh, died in an apartment earlier this week. The CEO emphasized that bankers should reach out to managers for support if they are struggling with the tragedy or feeling overloaded with work, and he encouraged colleagues to respect the contributions from junior bankers.

"We must appreciate our juniors and do as much for them as they do every single day," Handler wrote. "We respect and value all of you and our goal has always been to be here for you."

Handler's intervention comes after a wave of discussion on the internet following the incident, with some expressing outrage about the hours clocked by trainees and the potential impact on their health and mental wellbeing. Across Wall Street, workloads have crept up over the past year amid a rebound in dealmaking.

Handler, who also posted a message online, condemned what he called mostly anonymous "venom being spewed on social media," including threats. "This is a sad reality of the world today, but we cannot let that negativity win the day," he said.



Rich Handler

Photographer: Peter Foley/Bloomberg

Read More: Jefferies 28-Year-Old Technology Banker Carter McIntosh Dies

A spokesperson for Jefferies declined to comment beyond the memo. McIntosh's death remains under investigation by the Dallas police department.

Handler also reiterated his condolences to McIntosh's family and colleagues in his messages.

"It is clear what a well-liked and respected professional Carter was and how his loss has deeply impacted the office," he wrote. "If any of you need help, we are both a phone call away," he noted, referring to himself and the company's president, **Brian Friedman**.

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David Scheer, Michael J. Moore

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Samsung Billionaire Cleared of All Charges in Big Legal Win (1)

By Shinhye Kang and Yoolim Lee

- Seoul court upholds Jay Y. Lee's earlier victory on appeal
- The Samsung scion can now focus on turning around the firm

Samsung Electronics Co. Executive Chairman **Jay Y. Lee** won a court decision clearing him of charges of fraud and stock-rigging, allowing the head of Korea's most influential firm to focus on turning around a struggling electronics business.

The Seoul High Court on Monday upheld an earlier decision clearing Lee, which prosecutors appealed last November. In the original ruling, lower court judges declared that the prosecution failed to prove beyond a reasonable doubt that Samsung or Lee had misled shareholders.

Monday's decision marks a major victory for Samsung, helping dispel much of the uncertainty dogging the billionaire heir to the world's largest electronics empire. While the prosecution can appeal the latest decision at the Supreme Court, legal experts view such an effort unlikely to succeed given the nation's highest court won't be hearing new arguments.

"It has been a very long time in the investigation and trial of this case," Kim You Jin, a lawyer representing Samsung, said in a statement. "We hope that with this verdict, the defendants can now focus on their work."

Read More: Samsung's Chip Division Underwhelms in Costly AI Memory Race



Jay Y. Lee arrives at the Seoul High Court on Feb. 3.

Photographer: Seongjoon Cho/Bloomberg

Lee has battled allegations of graft in court since around 2017. South Korean prosecutors first indicted Lee that year on charges of corruption, alleging that Samsung provided horses and other payments to a confidante of the former president to win support for his succession. The case inflamed opinion against the country's powerful conglomerates, or chaebol, and triggered the impeachment of then-President **Park Geun-hye**.

He was eventually pardoned. The separate case in Monday's ruling involved a controversial merger between two of Samsung Group's units in 2015. Prosecutors accused Lee of manipulating that deal for improper benefit.

With the high court's affirmation, the executive is now free to focus on turning around a conglomerate that's ceding share in key markets.

Suwon-based Samsung has fallen behind archrival SK Hynix Inc. in making the best memory chips for artificial intelligence, hampering its chipmaking profit and posing questions about long-term growth. At the same time, the Trump administration's aggressive moves on tariffs threatens to up-end global electronics supply chains, ratcheting up uncertainty over Samsung's mobile and consumer businesses.

Lee, who has consistently denied wrongdoing, had faced a five-year prison sentence along with a 500 million won (\$341,000) fine before Monday's decision.

In his final argument in November, he pleaded for a chance to lead Samsung at a time of heightened geopolitical risks and technological disruption.

Read more: S. Korean Prosecutors Appeal Against Acquittal of Samsung's Lee

(Updates with Samsung's statement from the fourth paragraph.)

--With assistance from **Denny Thomas**.

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Samsung Group**Samsung chair cleared of fraud and stock manipulation**

Decision by appeals court allows Lee Jae-yong to focus on turning around troubled conglomerate



Samsung chair Lee Jae-yong, centre, leaves Seoul High Court after it cleared him of long-running charges on Monday © AFP via Getty Images

Song Jung-a in Seoul 7 HOURS AGO



Samsung chair Lee Jae-yong has secured a major legal victory with an appeals court clearing him of long-running accounting fraud and stock manipulation charges, allowing him to focus on turning around the group's struggling chip business.

The billionaire heir to South Korea's biggest conglomerate has been dogged by legal troubles for a decade, since his father and the former chair Lee Kun-hee suffered a heart attack in 2014 and died in 2020. But Monday's ruling by the Seoul High Court to uphold [an earlier decision](#) by a lower court removes long-standing legal risks stemming from the controversial 2015 merger of two Samsung units.

Prosecutors had been [seeking a five-year jail term](#) for Lee, accusing him of manipulating the stock price of Samsung C&T and Cheil Industries to facilitate the merger, seen as a crucial move to cement his control of the group's crown jewel [Samsung Electronics](#). He was also accused of orchestrating a \$3.9bn accounting fraud at the group's biopharmaceutical unit to manipulate the merger ratio to his benefit.

But Seoul High Court on Monday rejected prosecutors' allegations, saying the merger was done for business purposes and there was no intentional accounting fraud at Samsung Biologics. A final appeal by prosecutors to the Supreme Court is seen as unlikely.

[Lee](#)'s legal representatives welcomed the verdict. "It has been a very long time since the investigation and trial of the case began," said lawyer Kim You-jin. "We hope that, with this verdict, the defendants can now focus on their work."

The ruling comes at a critical time for [Samsung](#), which has been under pressure over its underperformance in advanced memory chips. Its shares have lost more than a third of their value over the past six months as the company has admitted to losing its technological edge in semiconductors. It has lagged behind smaller rivals SK Hynix and Micron Technology in high-bandwidth memory chips used in artificial intelligence hardware. Samsung is yet to supply advanced HBM chips to the leading AI player Nvidia.

The company's operating profit fell about 30 per cent in the October-December quarter compared with the previous quarter as commodity chip prices continued to decline. But SK Hynix [reported record earnings](#) in the fourth quarter, thanks to its large exposure to high-margin HBM.

Samsung and Lee's advocates have said his legal problems are partly behind the group's weakening competitiveness and failure to make large acquisitions.

In his final legal hearing in late November, Lee pleaded for a chance to "overcome the current difficulties Samsung is facing and take a step forward", citing growing concern over Samsung's future amid growing geopolitical risks and tech challenges.

Samsung has been sitting on a cash pile of more than \$100bn, avoiding major deals since its [\\$8bn takeover](#) of US auto tech group Harman in 2016, despite growing pressure to find new growth drivers beyond chips and smartphones.

Sangin Park, economics professor at Seoul National University, said Lee's ability now to refocus on management after being cleared by the court was unlikely to lead to any rapid turnaround.

"The court verdict seems to have been affected by the general economic and social atmosphere," he said. "The economy is bad and Samsung seems in crisis, with growing concern over US tariffs. It is time for Samsung to reinvent itself, shaking off its past business practices. But Lee doesn't seem to be able to overcome the current crisis, regardless of his legal trouble."

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Resolute Mining chief Terry Holohan resigns following Mali detention

Anglo-Australian gold miner paid \$160mn last year to settle dispute with country's military government



Terry Holohan had taken leave of absence after being held in Mali with two other Resolute employees © Resolute

Camilla Hodgson in London 9 HOURS AGO



The chief executive of Anglo-Australian gold miner Resolute Mining, who was temporarily detained in Mali last year, has resigned, the company said on Monday.

Terry Holohan and two other Resolute employees were detained in Bamako, Mali's capital, late last year following talks with the country's military government about the terms of their operations there.

Resolute [agreed to pay \\$160mn](#) to settle the dispute, with Holohan taking a temporary leave of absence from his role at the company in December.

On Monday, [Resolute](#) said Holohan had resigned as chief executive and managing director "with immediate effect".

Interim chief Chris Eger, former chief financial officer, would take on the role, the company said.



Mali's government demanded renegotiations over the Syama mine, Resolute's biggest asset © Resolute Mining

Shares in Resolute plummeted in November when the detentions were announced and have yet to recover.

The Malian government had demanded the payment of back taxes and the renegotiation of the terms of Resolute's Syama gold mine operation, its biggest asset.

Mali, Burkina Faso and Niger, part of Africa's so-called "coup belt" ruled by military regimes, are taking a firmer stance against international mining companies in a campaign [described as "terrifying" by industry insiders](#). Mali has revised its mining law to increase local participation in mining projects to 35 per cent, up from 20 per cent, and is demanding a greater share of revenue from mining groups.

Canadian miner Barrick Gold is embroiled in a stand-off with Malian authorities and [last month suspended operations](#) in the west African country after gold was seized from its Loulo-Gouunkoto mining complex.

Eger said last week that the episode in [Mali](#) was "the most challenging [time] the company has ever faced".

The settlement agreement was part of “paving a path forward”, he said. Resolute had tried “very hard” to continue to engage with the government since then but officials had been “consumed with discussions with other mining companies, so we have not really engaged with the government as would like”, he added.

On Monday, Resolute’s non-executive chair Andrew Wray said Holohan had “played an important role in the team that has improved operational performance across our business, particularly at Syama, which is now positioned to deliver on its significant potential”.

The company said it was discussing the terms of a settlement with Holohan.

Eger, who joined Resolute in 2023, previously held roles at companies including miner Chaarat Gold, trading house Trafigura and Bank of America.

Resolute’s shares were down 5 per cent in early morning trading in London.

Additional reporting by Aanu Adeoye in Lagos

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Investors Say Walgreens Misled Over Prescription Misuse

By Celeste Bott

Law360 (January 31, 2025, 5:39 PM EST) -- A putative class of Walgreens shareholders has sued the retail giant in Illinois federal court, claiming it made false statements about its regulatory compliance and that stock prices fell in the wake of the federal government's allegations that Walgreens knowingly filled millions of invalid prescriptions for opioids and other controlled substances.

Investors led by named plaintiff Steve Klein asserted Thursday that Walgreens failed to disclose that despite the company's purported commitment to that compliance after it had already been the subject of multiple legal proceedings in connection with its contributions to the U.S. opioid epidemic, it continued to engage in "widespread violations of federal law."

Citing multiple earnings reports and U.S. Securities and Exchange Commission filings as well as public statements pledging a commitment to prescription misuse prevention, the shareholders claim those remarks and reports allowed the company to maintain artificially inflated prices for Walgreens' common stock. Ultimately, the shareholders say, they were proved misleading when the U.S. Department of Justice **intervened earlier this month** in cases brought by four whistleblowers in Illinois federal court.

The government accused Walgreen Co., Duane Reade and other subsidiaries of Walgreens Boots Alliance of ignoring "red flags" signaling that prescriptions were not legitimate or valid and filling them anyway, and then seeking reimbursement from Medicare and other federal health care programs.

Among the millions of unlawful prescriptions that Walgreens has allegedly filled since August 2012 are prescriptions for excessive quantities or early refills of opioids and a commonly abused combination of drugs known as the "trinity" — an opioid, benzodiazepine and a muscle relaxant — the DOJ's complaint said.

The Jan. 16 complaint also alleged Walgreens, which has more than 8,000 pharmacies across the country, systematically pressured its pharmacists to quickly fill prescriptions without taking the time to confirm their validity. And it allegedly refused to implement a system for blocking Walgreens pharmacies from filling prescriptions written by practitioners that Walgreens knew regularly wrote illegal opioid prescriptions.

The shareholders say that in the wake of those revelations, Walgreens stock fell \$1.56 per share, or roughly 12%, over the following two trading sessions.

"As a result of defendants' wrongful acts and omissions, and the precipitous decline in the market value of the company's common stock, plaintiff and other class members have suffered significant losses and damages," the investors said.

While disseminating false and misleading statements about the company's operations and finances, some executives also named as defendants in the shareholders' suit reaped profits, according to the **complaint**.

Former CEO Rosalind Brewer enriched herself by selling nearly \$2.4 million in shares of Walgreens stock, and former CFO James Kehoe made \$4.3 million selling his shares, they claim.

The proposed class includes anyone who purchased Walgreens common stock between April 2, 2020, and Jan. 16, 2025, and the suit alleges violations of the Securities Exchange Act against both the company and individual defendants, which include both current and former Walgreens executives.

Four whistleblower plaintiffs who previously worked for Walgreens in different parts of the country initiated actions against the company under the False Claims Act, which allows private parties to sue on behalf of the U.S. and share in any recovery. The Justice Department's case consolidates those four matters, and claims violations of the FCA and the Controlled Substances Act, payment by mistake of fact, and unjust enrichment.

Representatives of the parties could not be immediately reached for comment Friday.

The shareholders are represented by J. Alexander Hood and Jeremy A. Lieberman of Pomerantz LLP.

Counsel information for Walgreens could not be immediately determined Friday.

The case is Klein et al. v. Walgreens Boots Alliance Inc. et al., case number 1:25-cv-01058, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Lauren Berg. Editing by Linda Voorhis.

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Red States Back Trump Against 'Distracting' Truth Social Suit

By **Jessica Corso**

Law360 (January 31, 2025, 8:00 PM EST) -- Fifteen Republican-led states have joined President Donald Trump's fight against a lawsuit filed by early investors in his social media platform, with the states on Friday urging a Delaware state court to dismiss the case so as not to "distract" Trump from his presidential duties.

Iowa led the charge in filing a friend-of-the-court brief in Delaware Chancery Court, arguing that the states have an interest in ending the lawsuit because "the potential distraction of our nation's Chief Executive will affect the citizens of every state."

United Atlantic Ventures LLC, owned by former "Apprentice" reality show contestants Andy Litinsky and Wes Moss, filed the lawsuit before Trump was reelected in November.

They were earlier investors in Trump's social media platform Truth Social and claim that the now-president and his co-defendants tried to dilute their shares in the company before **taking it public** through a merger with a special purpose acquisition company last year. The co-defendants include Devin Nunes, CEO of Trump Media & Technology Group Corp., and the president's son, Donald Trump Jr.

The states argued on Friday that the case should be dismissed without prejudice or at least stayed until the president completes his four-year term, **echoing arguments** that Trump Media made in court earlier this month.

While noting that the U.S. Supreme Court in 1997 declined to dismiss civil litigation filed against then-President Bill Clinton arising out of actions that allegedly took place prior to Clinton becoming president, the states said that the situation faced by Trump is different.

"In the present context of a president uniquely challenged by burdensome litigation, the distraction of civil litigation risks forcing the president to prioritize his focus on litigating rather than the vital issues facing the country," according to the states.

They highlighted the concurrence written by former Justice Stephen Breyer in that 1997 ruling, **Clinton v. Jones** , in which he worried that the majority underplayed the threat of future civil lawsuits against sitting presidents given that, at the time, only three such lawsuits had ever been filed.

"[Breyer] presciently warned that more lawsuits could 'pose a significant threat to the president's official functions,'" the states said. "That prediction came to pass with President Trump, who has been the recipient of more targeted lawsuits, including personal-capacity civil suits, than any other president or presidential candidate to date."

Aside from the United Atlantic case, Trump is also **battling to overturn** a \$5 million verdict issued against him after a jury found that he sexually abused writer E. Jean Carroll and a nearly \$500 million **civil fraud judgment** in a case brought by the New York Attorney General's Office.

United Atlantic **told the chancery court** in December that presidential immunity doesn't extend to unofficial conduct and, even if it did, that immunity definitely doesn't extend to Trump's co-defendants.

Vice Chancellor Morgan Zurn has ordered further briefing on the immunity question and said on Jan. 27 that the issue will be discussed at a hearing, although a date for that hearing hadn't been scheduled as of Friday evening.

The states are represented by Brenda Bird and Eric Wessan of the Office of the Attorney General of Iowa, Reed Rubinstein, Daniel Epstein and Ryan Giannetti of the America First Legal Foundation and Anthony Rickey of Margrave Law LLC.

UAV is represented by Richard Jones, David Anthony and Harry Shenton of Berger McDermott LLP.

The defendants are represented by Caryn Schechtman, Josh Halpern, M. David Josefovits, John Reed and Ronald Brown of DLA Piper and Theodore Kittila, M. Jane Brady, William Green and John Harris of Halloran Farkas & Kittila LLP.

The case is United Atlantic Ventures LLC v. TMTG Sub Inc. et al., case number 2024-0184, in the Court of Chancery of the State of Delaware.

--Editing by Jay Jackson Jr.

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Chancery Pushes Air Transport SPAC Suit Toward Trial

By **Jeff Montgomery**

Law360 (January 31, 2025, 5:33 PM EST) -- Stockholders who sued for damages after the take-public merger of an air taxi and medical transport company on Friday beat a dismissal motion filed by the company's principals in Delaware's Court of Chancery, sending the case to discovery and toward trial.

Vice Chancellor Bonnie M. David kept alive breach of fiduciary duty and unjust enrichment claims against those behind Experience Investment Corp. — a special purpose acquisition company — during a telephone ruling on a motion to dismiss the suit filed by investors in Blade Air Mobility Inc. The company operates in the U.S., Canada and Europe with an additional venture in India, and was named Blade Urban Air Mobility prior to going public.

During the hearing on Friday, the vice chancellor found the deal was the product of a conflicted transaction involving an investor control group facing a choice between a bad deal for public investors and a liquidation that could have left insiders and SPAC founding investors facing a wipe-out of much or all of their stake.

"The sponsors' interests diverged from public stockholders', with the insiders having to choose between a bad deal and a liquidation," the vice chancellor ruled. "Here it is particularly acute" because the company's charter barred extension of the deal deadline.

As a result, the controllers and others behind the transaction "had an interest in minimizing redemptions" by stockholders wanting to cash out their investment in the SPAC before closing on the merger. As a result, the sponsor and controller's interests diverged, the court found.

Identified as control group parties were KSL Capital Partners Management V LLC, EIC chairman Eric Affeldt, and Martin Newburger, a KSL partner and director of numerous KSL portfolio companies.

Those who sued in February 2024 raised numerous theories focused on disclosure failures, Vice Chancellor David said, including failures to reveal that, despite projections that stockholders could expect at least \$10 per share for their investment, actual value proved to be less than \$7.50 per share — a "material omission," the vice chancellor said.

Attorneys for those named argued the disclosure failures were not material and pointed to proxy disclaimers, including warnings that valuation ascribed to Blade's business "may not be indicative of the price that will prevail in trading after the transaction."

Those disclaimers "did not satisfy defendants' obligation to inform stockholders of the actual value of the shares they were being asked to contribute to the merger," the vice chancellor said.

Blade Air, founded in 2014, focuses on the booking of vertical and fixed-wing aircraft for passengers and organ transplant support in congested urban areas in the U.S., Canada and Europe, with an additional venture in India. Its most recent quarterly report in November marked its first quarter of positive free cash flow.

Shares of the company traded as high as \$18.40 in the weeks leading up to completion of its May 2021 combination with Nasdaq-listed Experience, with a roughly 60% drop between mid-February 2021 and just after closing in mid-May 2021.

Shares of the company have traded as low as just above \$2 in late 2023 and remained below \$4 this week.

Blade has reported it neither owns nor operates aircraft and mainly relies on leased helicopter and amphibious aircraft seats and services for passenger routes, while also ranking as one of the largest organs-for-transplant transporters in the world.

It has described its emphasis on "asset-light," lease-focused operations and exclusive passenger terminals as aiming to produce a "seamless" transition to electric-powered vertical takeoff aircraft, according to the company.

Vice Chancellor David said the complaint adequately alleged a breach of fiduciary duty through omission of material information in a proxy.

"The same facts support an inference that defendants unjustly enriched themselves by disloyal conduct," the vice chancellor noted.

"While plaintiff cannot obtain a double recovery," the vice chancellor said, "one can imagine factual circumstances in which proofs for breach of fiduciary duty claims and unjust enrichment claims are not identical, so there is no bar to bringing both claims against the defendants."

Attorneys for those sued argued in briefs before the ruling that the complaint should have been dismissed based on a less stringent business judgment standard" rather than the more plaintiff-focused entire fairness view.

The stockholders who sued, however, argued Blade's July 2024 enterprise value was \$143.72 million, or about 40% of the venture's value at the time of the merger.

In filings prior to Friday's hearing, attorneys for those sued argued that lack of net-cash-per-share disclosures were not material, pointing to proxy disclaimers warning that values ascribed to the new company and its Class A shares might fluctuate.

In addition, attorneys for the defense argued investors were advised that dilution could occur and they should not assume \$10 per share.

"Those disclaimers did not satisfy defendant's obligation to inform stockholders of the actual value of the EIC shares they were being asked to contribute to the merger," the vice chancellor said.

Vice Chancellor David cited a now-extensive line of SPAC suits and findings, observing that when cash per share proves far less than \$10 per share after accounting for dilution, "failure to disclose net cash is a material omission."

The parties did not comment after the ruling.

The stockholders are represented by Michael J. Barry, Kelly L. Tucker and David Wissbroecker of Grant & Eisenhofer PA and Donald J. Enright and Brian D. Stewart of Levi & Korsinsky LLP.

Eric L. Affeldt, Martin Newburger, Experience Sponsor LLC and others named in the suit are represented by Kevin M. Gallagher and Andrew L. Milam of Richards Layton & Finger PA and Stephen P. Blake and Pierce A. MacConaghy of Simpson Thacher & Bartlett LLP.

The case is Dean William Drulias and Dominic McFee et al. v. Eric L. Affeldt et al., case number 2024-0161, in the Court of Chancery of the State of Delaware.

--Editing by Philip Shea.



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Del. Justices Uphold \$33M-Plus Award In Software Co. Suit

By **Jeff Montgomery**

Law360 (January 31, 2025, 8:48 PM EST) -- Delaware's Supreme Court shot down on Friday a higher education software company founder's appeal from a \$33 million-and-growing Court of Chancery award favoring shareholders who claimed they were kept in the dark when millions in stock purchase warrants were allowed to expire without notice.

The full five-member appellate court upheld without elaboration a Nov. 1, 2022 decision by Vice Chancellor Lori W. Will that awarded \$25.5 million — since grown with interest — to co-investors in Jenzabar Inc. after a finding that they had been kept in the dark about follow-on investment rights when stock purchase warrants expired in 2012.

Rejection of Jenzabar founder Edward A. Maginn's appeal came two days after the justices heard arguments in a case with ties to multiple complaints dating to 2009. As late as Tuesday, the vice chancellor denied a post-judgment temporary restraining order sought by investors who, among other positions, argued that more than \$80 million in additional damages claims remain at issue.

In the court's earlier decision, Vice Chancellor Will said Maginn breached his duty of loyalty by usurping a business opportunity from New Media involving warrants to purchase Jenzabar common stock.

The case included "unique circumstances," the vice chancellor found, among them uncertainty over New Media's rightful manager. Since Maginn could hold that title, the decision said, a New Media recovery "could disproportionately benefit him, leading to further deceit and inequity."

The alleged scheme was said by the vice chancellor to have been supported by "obscure and obfuscatory" transactions aimed at foiling access to the new securities by others, under terms that were described as amounting to an "involuntary cash-out."

Maginn claimed investors failed to lodge their claims before a challenge deadline.

Over the course of a decade, the investors alleged, Maginn "orchestrated a series of subtle, value-dissipating transactions" that diminished the value of one group of Jenzabar securities while simultaneously increasing his own holdings.

"He churned millions of dollars from his members to himself," a brief filed on behalf of the investors said, ultimately using the same Jenzabar fund to purchase a warrant for himself, the investors said in a Supreme Court brief.

"The statute of limitations unfortunately provides him redoubt for a decade of clandestine self-dealing through churning" Jenzabar securities "and thwarting the exercise of a valuable warrant," the brief for the justices said.

Among other arguments, counsel for Maginn argued that the investors failed to address that the vice chancellor's decision restoring the status quo before the alleged acts "afforded merely an opportunity to invest, and therefore the court erred in awarding derivative damages" by presuming that all the investors involved would have chosen to reinvest their final redemptions.

In addition, Maginn's brief for the Supreme Court argued that the vice chancellor's decision on the

shares "obligates Maginn to monetize and 'disgorge' the theoretical value of shares that he has not received and may never receive."

Maginn allegedly discouraged the exercise of the warrants in order to prevent dilution of his own shares in Jenzabar, while also concealing details about the conflict and valuation of the warrants. In addition, he was accused of concealing or destroying records associated with the dispute.

The parties did not immediately respond to requests for comment.

The investors are represented by David H. Holloway, Colin R. Hagan and David J. Shlansky of Shlansky Law Group LLP.

Maginn is represented by Jody C. Barillare, Amy M. Dudash and Michael D. Blanchard of Morgan Lewis & Bockius LLP.

The case is Robert A. Maginn Jr. and New Media Investors II-C-LLC v. Edward Deane et al., case number 288,2024, in the Supreme Court of the State of Delaware.

The case under appeal is Deane et al. v. Maginn Jr. et al., case number 2017-0346, in the Court of Chancery of the State of Delaware.

--Editing by Peter Rozovsky.

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Understanding Risks Of Celebrities 'Hawking' Crypto Tokens

By **James Gatto and Maxwell Earp-Thomas** (January 31, 2025, 4:08 PM EST)

Yet another "celebrity"-backed token has become the subject of a lawsuit alleging that the tokens were unregistered securities.[1]

On Dec. 19, a group of plaintiffs **sued** over the promotion and sale of the Hawk Tuah cryptocurrency memecoin, known as the "\$HAWK" token. The token is touted as seeking to leverage a "cultural movement" by utilizing the fame of newly minted celebrity Haliey Welch, a prominent social media personality known as the "Hawk Tuah Girl."

This is the latest in a string of lawsuits relating to celebrity-endorsed crypto tokens.

The primary legal issue in the case, Albouni v. Schultz in the U.S. District Court for the Eastern District of New York, is whether the \$HAWK token qualifies as an unregistered security under the Howey test, derived from the U.S. Supreme Court's 1946 decision in U.S. Securities and Exchange Commission v. W. J. Howey Co. The test is met if there is an investment of money in a common enterprise with an expectation of profits primarily from the efforts of others.

According to the complaint, the defendants leveraged the popularity and extensive social media following of the Hawk Tuah Girl to market the token as a groundbreaking cryptocurrency project.

After aggressive promotional campaigns and promises of future growth, the token's value spiked and then crashed. The complaint alleges that the token launched with a market capitalization of \$16.69 million and surged to \$491 million within hours, but soon after, its price plummeted more than 90%.

The complaint further alleges the project hawked the token as more than a "speculative asset," portraying it as a cultural movement with significant growth potential. The complaint alleges that the project's marketing campaign touted Welch's involvement and her reputation as a trusted public figure to convince potential investors that the project was poised for success. Yet, according to the plaintiffs, the token's success depended entirely on the entrepreneurial and managerial efforts of Welch and her project team.

The plaintiffs also allege that by presenting the token as a convergence of culture, technology and community, the messaging encouraged investors to view \$HAWK as a transformative project with substantial financial upside. They assert that these statements created a compelling narrative that tied the success of \$HAWK to its widespread adoption, innovative features and Welch's influence, leading investors to form a reasonable expectation of profits from the efforts of others.

According to the plaintiffs, these facts — if proven — indicate that the token was an unregistered security. The investors paid money and expected profits, there was a common enterprise, and the profits were dependent on the entrepreneurial and managerial efforts of Welch and her project team. If true, these facts arguably meet the elements of the Howey test.



James Gatto



Maxwell Earp-Thomas

According to the complaint, a smart contract associated with the token is programmed to collect a 15% transaction fee that is sent to a wallet controlled by one of the defendants, the Tuah the Moon Foundation.

The plaintiffs acknowledge that Welch's team launched a presale campaign that included free or discounted token distributions through airdrops and whitelists. These efforts allowed select investors to receive free tokens and priority access to the project.

The use of whitelists conveyed exclusivity and allegedly incentivized early participation, fostering a sense of urgency among Welch's followers and the cryptocurrency community at large. These activities were promoted by the defendants and suggested that the token would go "Tuah the Moon," insinuating that it would experience significant price appreciation as subsequent purchasers paid higher sums.

Welch's credibility as a public figure and her direct involvement with the project allegedly amplified the impact of the project's presale and postsale marketing efforts.

Celebrity Endorsements

The \$HAWK token lawsuit highlights the importance of celebrities understanding the legal implications of endorsing crypto tokens. Celebrities must exercise caution, conduct due diligence and ensure compliance with securities laws, advertising regulations, and other legal issues to avoid legal liabilities and reputational damage.

This is the latest in a string of celebrity-backed memecoins or crypto token projects that have crashed and burned and resulted in a lawsuit. A number of high-profile celebrities have been ensnared in legal issues based on their endorsement of crypto tokens.

For example, Post Malone, Madonna, Jimmy Fallon, Paris Hilton, Justin Bieber, Kevin Hart, Gwyneth Paltrow, Serena Williams, Snoop Dogg, The Weeknd and Stephen Curry were **sued** in December 2022 for promoting one of the most high-profile nonfungible token projects — the Bored Ape Yacht Club NFTs and the associated ApeCoin token.

Legendary quarterback Tom Brady appeared in commercials endorsing crypto exchange FTX, which experienced a spectacular collapse and the fall from grace of its founder, Sam Bankman-Fried, who was **sentenced** on March 28, 2024, to 25 years in prison for his fraud. In November 2022, Brady, Gisele Bündchen, Larry David, Stephen Curry, Shaquille O'Neal and Naomi Osaka were **named** in lawsuits related to the FTX debacle, which the suit claimed was operated like a Ponzi scheme.

On Nov. 18, 2024, O'Neal **reached** an \$11 million settlement in a class action stemming from his involvement with the Solana-based Astrals Project, a collection of NFTs that plummeted in value following their 2022 launch.

Kim Kardashian and Floyd Mayweather Jr. were **sued** in January 2022 for promoting EthereumMax, or EMAX, and accused of misleading investors by inflating the value of the EMAX token. Kardashian **settled** related charges with the SEC stemming from her failure to disclose the \$250,000 payment she received for the promotion. She agreed to settle the charges; pay \$1.26 million in penalties, disgorgement and interest; and cooperate with the commission's ongoing investigation.

The SEC's order^[2] found that Kardashian failed to disclose that she was paid to publish a post on her Instagram account touting the EMAX tokens. Her post contained a link to the EthereumMax website, which provided instructions for potential investors to purchase EMAX tokens.

When announcing the settlement, the SEC cautioned that "Ms. Kardashian's case also serves as a reminder to celebrities and others that the law requires them to disclose to the public when and how much they are paid to promote investing in securities."^[3]

It added that the federal securities laws are clear that any celebrity or other individual who promotes a crypto-asset security must disclose the nature, source and amount of compensation they received in exchange for the promotion. It also stressed that investors are entitled to know whether the publicity of a security is unbiased, and Kardashian failed to disclose this information.

These issues are not new. Back in 2017, the SEC **issued** guidance,[4] urging caution around celebrity-backed initial coin offerings.

Due Diligence Is Key

Not all tokens are securities. However, it is critical for token projects to ensure they structure tokens in a way that does not subject them to enforcement for securities law violations. Securities law issues are just one of the potential legal issues.

One of the key takeaways for celebrities is that they need to conduct their own due diligence on a token project and its developers before lending their name and credibility.

This should be completed to ensure that the project has a legal business model and is not a fraudulent scheme disguised as a token offering. This involves analyzing all of the relevant legal issues, including securities issues, to verify they are not jumping into a legal mess with a token that is in fact a security. If they decide to jump in, celebrities should take steps to ensure they have properly made the required SEC disclosures.

The range of legal considerations for any crypto project depends on the project's specifics. Thus, the due diligence for each project needs to be tailored to the facts of the project. This requires understanding the scope of the legal issues that may be implicated by the project.

For example, in addition to the issues outlined above, celebrities should consider the following additional factors as applicable.

FTC Disclosure Requirements

The Federal Trade Commission has expressed concern that some crypto projects do not accurately advertise the project, including its risks. It recognizes that endorsements are an important tool for advertisers, and that they can be persuasive to consumers.

However, the law is clear that disclosures must also be truthful and not misleading, as addressed in the FTC's "Guides Concerning the Use of Endorsements and Testimonials in Advertising." [5] These requirements apply, but are not limited, to crypto endorsements, as well as truthful advertising regarding any endorsement.

Among other things, celebrities should ensure all promotional statements are accurate and not misleading. They should also avoid making promises of guaranteed returns, significant growth or price appreciation.

Intellectual Property Issues

Some projects, particularly those involving NFTs, are used to distribute digital assets. If the assets include art or other creative content, it is important to ensure the project has the right to use that IP to avoid the potential for IP infringement claims.

Additionally, the project and token name should be evaluated to ensure that there is no trademark infringement or misuse of any other celebrity's name, image or likeness.

Ongoing monitoring of the token project and related marketing is also advisable, as projects and their marketing often evolve.

Final Word

One final point to consider is understanding why the project wants to use a celebrity to endorse the project. In some cases, the project relates in some way to the celebrity and their fame. In that case, it may make sense to involve the celebrity.

But if the token itself does not relate to the celebrity, this may be a red flag. If a crypto project is well-thought-out and valuable on its own, it may be fair to ask why the project even needs a celebrity

endorsement. In many cases, a celebrity does not have specialized knowledge that would make their endorsement substantively meaningful.

According to "The Effect of Celebrity Endorsements on Crypto," a recent study by two former SEC economists, Joshua T. White and Sean Wilkoff, "celebrity-endorsed ICOs are associated with a 23-26 percentage point increase in scams through September 2019 and a 39-40 percentage point increase in fraudulent ICOs through April 2023." [6] Another key finding was that celebrity endorsements are more likely to be a scam when the celebrity's profession does not match the ICO product.

Many token projects have been successful and can be lucrative for celebrities who are involved. But not every token project goes "Tuah the Moon." Without careful consideration and legal diligence, celebrities may be risking more than they can gain.

James Gatto is a partner, co-leader of the artificial intelligence team and the blockchain and fintech team, and leader of the open source team at Sheppard Mullin Richter & Hampton LLP.

Maxwell Earp-Thomas is an associate at the firm.

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Amazon Must Give Up Docs In Consumer Class Antitrust Suits

By **Rachel Riley**

Law360 (January 31, 2025, 8:35 PM EST) -- A Washington federal judge said Friday he would order Amazon to hand over documents it's flagged as confidential to consumers bringing a trio of proposed antitrust class actions, saying he's "suspicious" of the e-commerce giant's privilege-logging practices.

Ruling from the bench in Seattle, U.S. District Judge John H. Chun granted the consumers' motion to compel production of records that Amazon.com Inc. has marked as privileged during joint discovery of the three related cases, though he's yet to issue a written order detailing the nature of those records. The judge also stopped short of buying the plaintiffs' claims of a corporate "privilege-cloaking scheme." He declined the plaintiffs' request for a court finding that the company acted in bad faith by falsely marking documents as confidential to conceal them, saying he needed more evidence to reach that conclusion.

"At this point, I'm just not ready to go there yet. I want more before making a finding like that, so I am denying that request," the judge said. "However, in all honesty, I am suspicious. And I'm wondering if discovery issues continue to persist in this matter, what's the best way to get to the heart of the issue."

In two of the suits, Virginia resident Deborah Frame-Wilson and Maryland resident Elizabeth De Coster **claim** Amazon illegally stifled competition and inflated prices for consumers by barring or strongly discouraging sellers from offering their products at a lower cost elsewhere. The alleged pricing parity policies are also at issue in the Federal Trade Commission's **landmark case** against Amazon; though, the parallel putative class actions predate the commission's case.

The third **proposed class suit**, first filed in July 2022 by California resident Christopher Brown and other Amazon Prime members from the Golden State and Maryland, targets Amazon's alleged "minimum margin agreements" with its suppliers. According to the lawsuit, the agreements require suppliers to guarantee the company's ability to sell products at a competitive price point at least 95% of the time and pay the company a minimum margin on each sale, regardless of price.

In a status report filed in advance of Friday's hearing, the plaintiffs said Amazon initially provided them with privilege logs that had been prepared for the FTC investigation and ongoing litigation with the California Attorney General's Office, encompassing more than 132,000 claims of privilege. But after a re-review, Amazon "downgraded" at least 61,000 of those privilege claims, producing full documents or redacted versions, the plaintiffs say.

"The underlying problem was that Amazon appeared to have a policy or goal to instruct employees to falsely mark documents as privileged, to put attorneys on distribution lists to make documents appear privileged, to provide fake requests for legal advice — and then those documents got withheld in litigation," Jessica Beringer of Keller Postman LLC, representing the consumers, told the judge on Friday morning.

Counsel for Amazon had tried unsuccessfully to postpone the hearing, saying an updated privilege log was provided to the plaintiffs just yesterday as part of Amazon's voluntary re-review. While the company insists it's been proactive about addressing the issues raised by the plaintiffs, the consumers' attorney maintained that court intervention was needed to solve the issue.

Karen Dunn of Paul Weiss Rifkind Wharton & Garrison LLP emphasized that Amazon is "entirely

committed to doing this right and properly," noting a team of 80 lawyers have been working on the re-review for the e-commerce giant, clocking more than 14,000 hours. The best course of action would be for the parties to continue to work issues out themselves before rushing to the court, Dunn told the judge.

"The plaintiffs do not want to take yes as an answer. And, frankly, at this point, it's been a pattern throughout, and it is exactly what is happening here today," Dunn said. "They want the court to do the work the parties should do, because they wanted the opportunity to come in here and say 'privilege cloaking' and say 'scheme' and say things that are completely untrue on this record."

"All they have right now is generalized suspicion," she added.

After denying a motion to compel by the consumers last fall, Judge Chun told the parties on Friday he would grant the plaintiffs' more recent, renewed motion to compel production of documents from Amazon's privilege log and instructed the plaintiffs to draft an updated proposed order for him to sign. He also agreed to an in-camera review of some of the documents to vet them for privileged information, and said afterward he would decide whether to award the consumers the fees and costs of bringing the motion.

Those motions are sealed, and the judge also agreed to temporarily seal the courtroom at two points during Friday's hearing to allow for discussions about the nature of some of the records Amazon has marked as privileged. During the public parts of the hearing, however, Beringer said the plaintiffs sought three categories of records: documents involving in-house counsel, unless Amazon has shown the record constitutes work product tied to specific litigation or investigation, or the document is written by an attorney; documents not accompanied by a privilege-log description stating the basis for their confidentiality; and employee communications with attorneys that either don't involve legal advice or are primarily related to other areas of business, such as strategy, public relations, operations, marketing or regulatory compliance.

"We're concerned about the information that's going to be withheld from the productions being made to the FTC that will get reproduced to us in significant part, and we're really worried about this practice that appears to be a fraudulent privilege-cloaking scheme that's going on at Amazon," Beringer said. "It's designed to hide relevant evidence from litigation for forever, or as long as possible."

The consumers are represented by Steve Berman, Barbara Mahoney and Anne F. Johnson of Hagens Berman Sobol Shapiro LLP, Zina G. Bash, Jessica Beringer, Shane Kelly, Alex Dravillas and Roseann R. Romano of Keller Postman LLC, and Alicia Cobb, Steig D. Olson, David D. LeRay, Nic V. Siebert, Maxwell P. Deabler-Meadows, Elle Mahdavi and Adam B. Wolfson of Quinn Emanuel Urquhart & Sullivan LLP.

Amazon is represented by John A. Goldmark and MaryAnn Almeida of Davis Wright Tremaine LLP, Karen L. Dunn, William A. Isaacson, Amy J. Mauser, Martha L. Goodman, Kyle Smith, Meredith Dearborn, Yotam Barkai and Mark Weiner of Paul Weiss Rifkind Wharton & Garrison LLP, and Robert D. Keeling of Redgrave LLP.

The cases are Frame-Wilson et al. v. Amazon.com Inc., case number 2:20-cv-00424, De Coster et al. v. Amazon.com Inc., case number 2:21-cv-00693, and Brown et al. v. Amazon.com Inc., case number 2:22-cv-00965, in the U.S. District Court for the Western District of Washington.

--Additional reporting by Matthew Perlman and Bryan Koenig. Editing by Melissa Treolo.

Clarification: This article has been updated to clarify certain aspects of the judge's ruling.



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LinkedIn Member Scraps Claims Over Use Of Data To Train AI

By **Allison Grande**

Law360 (January 31, 2025, 9:57 PM EST) -- A LinkedIn subscriber has dropped his recently filed proposed class action accusing the company of unlawfully sharing the sensitive contents of paid users' private messages with third parties to train generative artificial intelligence models, a practice that the company has asserted it "never did."

Less than two weeks after filing his suit in California federal court **on Jan. 21**, plaintiff Alessandro De La Torre on Thursday lodged a notice of voluntary dismissal of all his claims without prejudice to the allegations potentially being resurrected in a separate matter at a future date.

The notice did not provide a reason for the abrupt end to the suit, which accused Microsoft-owned LinkedIn of breaching the enhanced privacy promises it makes to its millions of Premium subscribers and violating the federal Stored Communications Act and California's Unfair Competition Law by "quietly" rolling out a feature last year that allegedly opted users into a program that allowed the company and its "affiliates" to harness users' personal data to fuel generative AI models.

However, in a statement provided to Law360 Friday, Edelson PC global managing partner Eli Wade-Scott, whose firm is representing De La Torre, said that LinkedIn had "shown us evidence that it did not use [paid subscribers'] private messages" for AI training purposes.

"As companies run to train AI models, they're often feeding user data first and asking questions later," Wade-Scott said, noting that the "belated disclosures" that LinkedIn is accused of making about how it was handling this data had "left consumers rightly concerned and confused about what was being used to train AI."

"We appreciate the professionalism of LinkedIn's team," Wade-Scott added.

In a post on LinkedIn late Thursday, the company's vice president, Sarah Wight, welcomed the "good news" of the withdrawal of the "baseless lawsuit" against LinkedIn.

"[The lawsuit] falsely alleged that LinkedIn shared private member messages with third parties for AI training purposes," Wright wrote. "We never did that. It is important to always set the record straight."

The lawsuit against LinkedIn was launched amid **growing scrutiny** not only from private litigants but also from regulators and policymakers around the globe over the potential data privacy and security risks presented by rapidly growing AI technologies, including concerns about companies using vast quantities of consumer data to fuel these models.

De La Torre's claims centered on a privacy setting he alleged LinkedIn "quietly" introduced in August that gave LinkedIn and its unidentified "affiliates" the ability to use for AI training purposes the private messages that LinkedIn's millions of Premium subscribers are able to send to other members who are not connected with them.

Given the nature of the platform, these communications often contain "incredibly sensitive and potentially life-altering information about employment, intellectual property, compensation, and other personal matters," the complaint asserted.

While LinkedIn swiftly and "discreetly" moved to modify some of its terms to account for the data sharing after media outlets reported on this new setting in mid-September, "the damage was already done," with these subscribers' data having been "permanently embedded in AI systems without their consent" and LinkedIn offering no assurances that it would either delete that data from existing models or retrain them to eliminate their reliance on the disclosed information, the complaint alleged.

These data disclosures were "especially egregious" since LinkedIn Premium members agree to an additional contract when buying a subscription that "promises Premium customers enhanced privacy protections compared to the user agreement and privacy policy," the suit said.

That contract includes a broad restriction on the disclosure of subscribers' confidential information to third parties, a provision that De La Torre alleged LinkedIn breached when it shared these users' private messages with "affiliates" within its corporate structure for model training. Given the "extensive reach" of the ecosystem operated by its parent company, Microsoft, this unauthorized sharing, even within its own corporate structure, is still highly "problematic," De La Torre asserted.

"Private data could surface across Microsoft's AI product suite, such as confidential job searches appearing in Word suggestions, business strategies in Teams chat completions, or salary discussions in Microsoft 365 features," the complaint alleged. "Each AI product represents a potential point for data leakage, posing the harm of potential privacy breaches."

De La Torre also framed his claims in the broader context of the evolving AI ecosystem, asserting that LinkedIn's alleged conduct was illustrative of a wider and "growing issue in the tech industry" related to the use and disclosure of the vast quantities of personal data that these companies are amassing to support rapidly emerging technologies.

"If left unchecked, such unauthorized use of customers' personal data for training generative AI models could lead to widespread misuse of personal information, fueling discrimination, identity theft, and erosion of public trust," the plaintiff alleged. "This case underscores the urgent need for companies to implement robust and transparent systems to protect privacy and ensure ethical AI development and use."

De La Torre, a California resident, was seeking to represent a nationwide class of LinkedIn Premium customers who sent or received InMail messages and whose private communications were disclosed by LinkedIn to other entities, including other Microsoft affiliates, for training purposes before the Sept. 18 policy changes.

The now-scrapped complaint also requested an array of damages as well as an injunction requiring algorithmic disgorgement in the form of LinkedIn being forced to "delete or destroy all models and algorithms trained using" Premium customers' private messages without their permission.

De La Torre is represented by Rafey Balabanian and Jared Lucky of Edelson PC.

Counsel information for LinkedIn was not available.

The case is De La Torre v. LinkedIn Corp., case number 5:25-cv-00709, in the U.S. District Court for the Northern District of California.

--Editing by Vaqas Asghar.



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SpaceX Likely To Beat Sanctions Bid In Pay Equity Case

By **Rachel Scharf**

Law360, Los Angeles (January 31, 2025, 9:19 PM EST) -- A California state judge said Friday that he probably won't sanction SpaceX for supposedly missing a deadline to pay an arbitration retainer tied to a proposed class action accusing Elon Musk's aerospace company of underpaying women and minorities.

Los Angeles Superior Court Judge Robert B. Broadbelt III issued a tentative ruling saying he'll likely deny the sanctions motion lodged by Noor Abbas and Ashley Foltz, two engineers who allege SpaceX engages in **systematic pay discrimination**.

SpaceX has sought to move both Abbas and Foltz's claims outside of court, citing arbitration agreements in their employment contracts. The company filed arbitration demands against both women — but according to plaintiffs, it missed a key deadline to pay a JAMS retainer fee for Abbas' case.

The plaintiffs argued that this blunder means SpaceX has waived any rights to arbitrate the claims against Abbas, and the company should be sanctioned more than \$7,000.

But Judge Broadbelt seemed unconvinced. The judge's tentative ruling that he'll likely deny the motion because Abbas' contract is governed by the Federal Arbitration Act, not the California state law that imposes sanctions for late arbitration fees.

An attorney for the plaintiffs, Erum Siddiqui of King & Siegel LLP, tried to change Judge Broadbelt's mind during oral arguments Friday. Siddiqui said that while the FAA does apply to Abbas' contract, so do JAMS' own rules — which in turn incorporate the California Code of Civil Procedure's payment deadlines.

"There is no conflict between the FAA and the California law," Siddiqui argued. "And there is no intent for the FAA to occupy the entire field of arbitration."

Counsel for SpaceX, Alex Hernaez of Fox Rothschild LLP, countered that sanctions would not be appropriate even if the JAMS rules did govern. That's because these regulations create penalties only for late arbitration filing fees, not retainer payments, according to Hernaez.

"They make a distinction between costs and fees and the retainer," Hernaez told Judge Broadbelt.

The judge ultimately took the matter under submission, saying a final ruling would be forthcoming.

In a comment to Law360 later on Friday, Siddiqui said SpaceX is "trying to shield unfair pay practices from public scrutiny by forcing this case into arbitration."

"This is a textbook case of a corporation using secrecy to avoid accountability, and we look forward to holding SpaceX accountable for its equal pay violations, regardless of the forum," Siddiqui added.

SpaceX's counsel did not respond to a request for comment.

The proposed class is represented by Elliot J. Siegel, Julian Burns King and Erum Siddiqui of King & Siegel LLP.

SpaceX is represented by Alexander Hernaez, Ketul D. Patel and Jonathan Pearce of Fox Rothschild LLP.

The case is Ashley Foltz et al. v. Space Exploration Technologies Corp. et al., case number 23STCV24097, in the Superior Court of the State of California, County of Los Angeles.

--Editing by Rich Mills.

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Bank Wants Investment Co.'s \$60M RICO Suit Tossed

By **Katryna Perera**

Law360 (January 31, 2025, 8:52 PM EST) -- Western Alliance Bank is seeking the dismissal of a \$60 million suit filed by an investment management firm alleging the bank played a role in a mortgage loan sale scheme to steam the firm's property rights in the loans and their proceeds, saying the complaint "attempts to recast a series of secured lending transactions as a vast racketeering conspiracy."

Western Alliance filed a dismissal **motion** on Thursday in Washington federal court, claiming the complaint includes "sensationalized allegations" that cannot obscure the suit's "fatal defects."

The suit, filed by AHP Capital Management LLC, as administrator of American Homeowner Preservation Trust Series 2015A+ and American Homeowner Preservation Trust Series AHP Servicing, focuses on a Mortgage Loan Sale Agreement with Repurchase Obligation, or MLSA, between the AHP Trusts and a third party, named Cymbidium Restoration Trust. Cymbidium is also a named defendant in the suit.

According to the complaint, the mortgage loans were sold by the AHP Trusts to Cymbidium and under the terms of the MLSA, the loans were pledged as collateral. The complaint states that only 22 of the mortgage loans were actually sold and transferred to Cymbidium without an eventual contemplated transfer of all rights back to the AHP Trusts.

However, AHP Capital alleges that defendant Magerick LLC, an affiliate of Cymbidium, along with the other named defendants, fraudulently pledged the mortgage loans to Western Alliance as collateral for a line of credit. The complaint also states that another defendant named William Weinstein double-pledge at least 231 of the same mortgage loans as collateral for a separate line of credit.

Now that the AHP Trusts have satisfied the terms of the MLSA, they are entitled to the return of the mortgage loans, its proceeds and the loan files, but Western Alliance currently holds the loan filed and is refusing to return them, according to the complaint.

However, Western Alliance argued on Thursday that the MLSA "effectuated a true sale" of a certain portion of the mortgage loans, and Cymbidium was free to transfer them or pledge them without any restrictions.

"Cymbidium and its affiliates did just that, pledging the loans to Western Alliance as collateral for a credit facility," the motion states. "The bank's alleged 'participation' in any scheme consists of nothing more than engaging in standard banking practices to protect its interests as a secured creditor."

Western Alliance says AHP Capital is trying to "escape the clear language of the agreement it signed," but its allegations fail since the complaint does not identify any provision in the MLSA that restricted Cymbidium from transferring or pledging the loans.

"Had the parties intended to restrict transfers, they could have easily included such a provision. They did not," the motion states. "Instead, the complaint relies on the fact that upon repayment of the Cymbidium loan, 'all of [Cymbidium's] rights, title and interests in such mortgage loans shall revert to the [the AHP Trusts] as of the repurchase date.' But this future repurchase right does not restrict Cymbidium's ability to transfer or pledge the loans in the interim."

Additionally, the motion states that nothing about Western Alliance's "routine secured lending

activities" can be viewed as a violation of the Racketeer Influenced and Corrupt Organizations Act, as the plaintiffs suggest.

Western Alliance argues that nothing in the complaint plausibly suggests that the bank joined a fraudulent enterprise or worked to further a scheme, and the allegations regarding the bank's knowledge of any fraud are "entirely conclusory."

"The complaint's most specific allegations regarding Western Alliance relate to communications in early 2024 regarding missing loan documentation. But these allegations actually undermine plaintiff's fraud claims, as they show Western Alliance appropriately requesting and tracking required loan documentation — standard banking practices that do not evidence participation in any fraudulent scheme," the motion states.

Western Alliance also argues that the suit fails to allege proximate causation and concrete financial loss and that the claims asserted under California statutes do not apply to the bank's conduct.

In a statement to Law360 on Friday, Craig Solomon Ganz of Ballard Spahr LLP, counsel for Western Alliance, said: "The motion to dismiss clearly demonstrates the weaknesses of AHP's complaint and how the flimsy case is designed to harass even nominal defendants like our client."

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

AHP Capital is represented by Brian J. Benoit of KMA Zuckert LLP, Christopher P. Katers and Bryen Hill of Katers & Granitz LLC, and Brodie H. Smith of Lanza & Smith.

Western Alliance Bank is represented by Taylor Washburn, Craig Solomon Ganz, Mitchell Lee Turbenson and Helen Hitz of Ballard Spahr.

The other defendants are represented by Bradley S. Keller and M. Victoria Molina of Byrnes Keller Cromwell LLP.

The case is AHP Capital Management LLC v. Oak Harbor Capital LLC et al., case number 2:25-cv-00007, in the U.S. District Court for the Western District of Washington.

--Editing by Vaqas Asghar.



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Litigation Funding Disclosure Debate: Strategy Considerations

By **Andrew Stulce and Marc Cavan** (January 31, 2025, 6:24 PM EST)

With new legislative proposals, an important court order solidifying a body of case law and the U.S. Judicial Conference's Advisory Committee on Civil Rules all entering the discussion, 2024 was a busy year for the litigation finance disclosure debate.

But ongoing arguments over whether parties should be required to disclose funding often overlook a different consideration: Should funded parties consider voluntary disclosure?

Regardless of whether future rule changes eventually add disclosure requirements, funded parties should consider whether certain voluntary disclosures could be to their advantage.



Andrew Stulce

Policy Considerations in the Mandatory Disclosure Debate

For years, opponents of litigation funding have advocated for mandates requiring funded parties to disclose information about their funding arrangements. The argument typically asserts that litigation funding is purportedly tying up courts and harming defendants with meritless claims. Opponents also often raise the specter that funded parties might cede control over litigation decisions to litigation finance firms.



Marc Cavan

On the other hand, proponents of litigation funding, and funded parties themselves, frequently counter that disclosure should not be required because information about funding is irrelevant to the merits of the case. From a policy standpoint, they also argue that funders focus their investments on meritorious claims, as funders would not gain from supporting the pursuit of meritless claims.

Recently, some pro-disclosure reforms have been enacted through the legislative process. At the state level, numerous proposals requiring various forms of disclosure have been introduced in recent years. Some appear to have fizzled, such as those in Florida and Kansas, while West Virginia, Louisiana and Indiana **enacted** various litigation-funding disclosure reform bills.[1]

Similar congressional proposals stalled in committee, though lawmakers are still trying — including via a **refreshed proposal** that Rep. Darrell Issa, R-Calif., introduced in October.[2]

October also saw another significant development: The U.S. Judicial Conference's Advisory Committee on Civil Rules decided to formally study the disclosure issue in the context of whether a new rule should be implemented.[3]

Committee members — individuals familiar with the federal courts and focused on the efficient administration of the civil justice system writ large — should approach the issue objectively, and take into account **arguments** on both sides of the debate in determining how to address disclosure, if at all.

Courts Weighing in on the Scope of Disclosure

Within the disclosure debate, one key question is how much disclosure should be required. Opponents and proponents hold a range of positions, from "parties should have to disclose every aspect of funding, including the amount of funding and detailed due diligence findings, plus all communications with the funder," to "no one should disclose even the presence of funding because it's completely irrelevant."

Notable case law from 2024 analyzes the scope issue. For the first time, a U.S. federal appeals court judge, sitting by designation in the U.S. District Court for the District of Delaware, weighed in on the matter in *Design with Friends Inc. v. Target Corp.*

In his September opinion,[4] U.S. District Judge Stephanos Bibas **rejected** a discovery motion into third-party litigation funding, finding that litigation funding documents — including presuit due diligence documents — are protected by the attorney work-product doctrine.

The order explained that opening such documents to discovery would significantly undermine the doctrine, potentially jeopardizing free and open collaboration between counsel and their clients.

Judge Bibas' order also found the burden imposed by requests for funding documents disproportionate to the value of the proposed discovery. This finding lines up with case law over the last decade, beginning with the U.S. District Court for the Northern District of Illinois' 2014 decision in *Miller UK Ltd. v. Caterpillar Inc.*,[5] which has generally found that litigation funding documents fail to meet the relevance standard embedded into the discovery rules.

Limited Funding Disclosure as a Legal Strategy

Although most courts considering discovery disputes have coalesced around nondisclosure as the general rule in recent years, the practical and strategic reasons for why each side in those disputes might want disclosure have received less attention to date.

On the one hand, it is not difficult to conceive of one reason why defendants desire more disclosure: Knowing the size and structure of a plaintiff's finances can affect litigation strategy. For example, a plaintiff that lacks resources might struggle to pursue litigation through trial if the defendant were to employ extensive discovery and motion practice, as financial pressure can lead a plaintiff to compromise, or even abandon, meritorious claims.

On the other hand, funded plaintiffs might decide that disclosing certain information about funding may inure to their benefit. For example, disclosing that the party has funding may send two messages.

First, choosing to voluntarily disclose that a case is funded could signal to the opponent that an "outspend and outlast" strategy will not be effective.

Second, voluntary disclosure could indirectly telegraph to the opponent, and potentially to the judge or arbitrator overseeing the case, that the case has merit.

After all, an independent, professional third-party funder has typically performed extensive diligence, and not infrequently hired outside attorneys with subject matter expertise to perform additional evaluation. At the end of that diligence process, the funder has elected to commit significant sums, recoverable only if the case resolves successfully.

And in the paradigmatic modern funding arrangement, the funder commits funds without having control over litigation strategy or settlement decisions.

Of course, plaintiffs considering whether to make voluntary disclosures should be aware of the potential drawbacks. For example, although disclosing that the case is funded should not change the legal analysis regarding whether funding documents — e.g., the funding agreement and communications with the funder — are discoverable, defendants may take the disclosure as an opportunity to issue additional discovery related to funding.

One tactic to limit the risks and costs associated with additional discovery would be to disclose only the name of the funder and, if the defendant raises the control issue, excerpts from the funding

agreement confirming that the funder does not control the litigation.

Conclusion

Although parties should always be cognizant of court rules or local legislation to the contrary, current requirements in many jurisdictions generally do not obligate funded parties to make affirmative disclosures about funding.

Regardless, as the debate over required disclosure continues, funded parties should weigh the pros and cons of limited disclosure with their attorneys and decide what is best for their specific case.

Andrew A. Stulce and Marc A. Cavan are directors at Longford Capital Management LP.

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[1] <https://news.bloomberglaw.com/business-and-practice/fortress-billions-quietly-power-americas-biggest-legal-fights>.

[2] <https://www.congress.gov/bill/118th-congress/house-bill/9922?s=1&r=1>.

[3] <https://www.reuters.com/legal/government/us-judicial-panel-examine-litigation-finance-disclosure-2024-10-10/>.

[4] https://www.ded.uscourts.gov/sites/ded/files/opinions/21-1376_0.pdf.

[5] *Miller UK Ltd. v. Caterpillar, Inc.* , 17 F. Supp. 3d 711 (N.D. Ill. 2014).

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\$577M In Virus Fraud Cases At Risk Unless Congress Acts: IG

By **Jon Hill**

Law360 (January 31, 2025, 10:16 PM EST) -- The federal government's top pandemic relief watchdog has issued an urgent plea for Congress to save his agency from imminent closure, warning that hundreds of millions of dollars in ongoing fraud investigations hang in the balance.

In his latest — and potentially last — report to Congress, Special Inspector Brian D. Miller, head of the Office of the Special Inspector General for Pandemic Recovery, pressed his case Thursday for a five-year extension to his agency's authorities, which are currently slated to expire at the end of March.

Without such an extension, Miller told lawmakers, SIGPR will have to shut down soon and leave behind its "significant number" of active investigations. That would imperil cases covering \$577 million in potential fraud and up to 130 potential defendants, he said.

They "will more than likely never be prosecuted if SIGPR sunsets," Miller wrote in a preface to the report, which outlines the agency's recent activities. "It would be unwise not to extend SIGPR in order for us to continue our mission."

SIGPR was established to help police potential misuse of the massive torrent of relief money that Congress unleashed in the Coronavirus Aid, Relief and Economic Security Act, the \$2.2 trillion stimulus bill passed at the outset of the COVID-19 pandemic in 2020.

In the five years since, SIGPR's work has been credited with helping bring to light numerous cases of fraud in the Paycheck Protection Program, Main Street Lending Program and other pandemic-focused programs that were set up to channel taxpayer-financed aid.

In the process, according to SIGPR figures, the agency's investigations have led to the repayment of nearly \$37 million in pandemic funds and spawned dozens of prosecutions that, so far, have generated roughly \$150 million in court-ordered relief.

These investigations have been almost entirely self-developed, Miller told lawmakers. And compared to the agency's relatively slim budget, their financial results work out to a more than 300% return for the government on its investment in SIGPR, he said.

"For this work to continue, we are asking for a five-year extension beyond our March 2025 sunset date," he wrote. "We need this time to see our investigations through to completion and program audits to conclusion."

Miller also noted that SIGPR's impending expiration is arriving at a critical moment for the Main Street Lending Program, one of the key pandemic-era creations under the agency's oversight.

The program sought to head off a credit crunch for small and midsize businesses, allowing them to take out roughly \$17.5 billion in loans that the Federal Reserve, with backing from the U.S. Treasury Department, ultimately bought most of the participation rights to.

Borrowers were to repay the loans on a phased-in, five-year schedule that culminated in a final 70% balloon payment. When those big payments start coming due in July, more losses are likely to materialize on top of the \$1.36 billion already reported by the Fed.

But on its current trajectory, SIGPR will have closed by that point and won't be able to investigate. "Without an extension, SIGPR will sunset just when it is most needed," Miller told lawmakers.

Miller, a Trump appointee, has headed up SIGPR since it opened in 2020. Over the years, he has repeatedly lobbied Congress to put more time on his agency's clock and give it more resources, but despite interest from lawmakers of both parties, legislative efforts to do more than freshen up its budget have petered out thus far.

In recent weeks, U.S. Sen. Joni Ernst, R-Iowa, and five other Republican senators have launched another attempt, proposing to extend SIGPR's mission into 2030 as part of a bill dubbed the "Complete COVID Collections Act."

The bill, which has been referred to the Ernst-chaired U.S. Senate Committee on Small Business and Entrepreneurship, would also expand the agency's jurisdiction to include more pandemic-related relief programs, among other provisions.

Still, whether it can gain enough support and speed to move through Congress in time to beat SIGPR's deadline — its sunset date is March 27 — remains to be seen. With just weeks to go, the agency has already had to begin packing up its office equipment and furniture, a spokesperson told Law360 on Friday.

"With a return on investment of 300%, award-winning investigations that have punished criminals who stole from the government, and over a billion dollars in loan losses, extending the Special IG for Pandemic Recovery makes sense," Miller said in a Friday statement to Law360.

"In order to protect the taxpayer from further fraud and to finish our investigations, which have a potential for the prosecution of 130 defendants, SIGPR needs Congress to act quickly," he added.

--Editing by Janice Carter Brown.

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Goldstein Case Raises The Stakes For A DOJ Office In Tumult

By **Phillip Bantz**

Law360 (January 31, 2025, 4:56 PM EST) -- The bombshell tax-crimes case of U.S. Supreme Court lawyer Tom Goldstein landed at a U.S. Department of Justice outpost in Maryland that has been plagued in recent years by botched cases and internal strife — pitting a beleaguered U.S. attorney against a pair of former Donald Trump attorneys itching for a fight.



The prosecution of SCOTUSblog publisher Tom Goldstein puts the office of U.S. Attorney Erik Barron, center, in the national spotlight. (Barbara Haddock Taylor/The Baltimore Sun via AP)

The U.S. Attorney's Office for the District of Maryland, which has bases in Baltimore and suburban Greenbelt near the DOJ's headquarters in Washington, D.C., includes nearly 100 line prosecutors and more than 70 administrative and support staff. It handles the occasional high-profile case, including the ongoing investigation of the Francis Scott Key Bridge disaster.

But the Greenbelt office's indictment of Goldstein, a renowned appellate attorney who has argued more than 40 top court cases and co-publishes the popular SCOTUSblog, puts the Maryland district back in the national spotlight. Goldstein's legal team includes Trump's former attorneys John Lauro and Christopher Kise, known for aggressively defending clients in the courtroom and the press.

U.S. Attorney Erik Barron, an appointee of former President Joe Biden, took the helm of the Maryland office in October 2021, in the midst of the COVID-19 pandemic. Interviews with prosecutors, defense

attorneys and others who know the office well portray a tumultuous tenure.

Barron's critics, which include some of his former senior prosecutors, fault him for a lack of communication and proper oversight, which they say motivated some attorneys to exit the office.

Michael Cunningham told Law360 that Barron's "seriously deficient and defective" management style accelerated his decision to retire last year after 27 years at the office. He acknowledged that the pandemic initially complicated Barron's ability to connect with office staff but asserted that Barron "simply did not communicate."

"We had migrated to a lot of Zoom meetings and frequently Barron would be late for these things, or he'd appear on a blacked-out screen," Cunningham said. "He just was not a present person."

Relations with the defense bar have also been strained following the office's prosecution of two prominent local attorneys, though sources said Barron has made strides to smooth things over.

Meanwhile, Barron, Maryland's first Black top federal law enforcement officer, faces the prospect of being ousted any day now as the new Trump administration pursues a vast shakeup at all levels of the DOJ.

Barron declined to respond to criticism from individuals, which he described as "personnel matters," but he defended his job performance during an interview with Law360. He asserted, in part, that his "office ensures that each investigation and each case adheres to the law, the regulations, the justice manual and office policy."

He added, "I meet regularly with stakeholders throughout the district, including the defense bar, public defender, law enforcement partners and community partners, to ensure that the office is effectively meeting its mission."

That mission, he said, "is to uphold the rule of law, protect public safety and protect taxpayer money."

Turning the page on an era of 'bad feelings'

When Barron was confirmed to his post in fall 2021, tensions between his office and the Maryland defense bar were already strained, primarily as a result of the office's controversial criminal investigation and prosecution of defense attorneys **Joshua Treem and Kenneth Ravenell**. The probe involved the federal raid of Ravenell and Treem's law offices and the seizure of thousands of documents.

Ravenell hired Treem to represent him in a racketeering investigation. Treem and a private investigator were subsequently charged and later acquitted on obstruction of justice charges. Ravenell was convicted of money laundering.

"Before Erek came in, there were a number of investigations and prosecutions of members of the defense bar, and the Fourth Circuit reversed the office for how it conducted a search warrant of a law firm," longtime Maryland federal public defender James Wyda told Law360.

The Fourth Circuit determined that the search of Treem and Ravenell's law offices and the government's use of a filter team to inspect seized documents for privileged attorney-client information had exceeded the scope of the investigation.

"A profound amount of harm was done," Wyda added, referring to the Treem case.

But Barron moved to improve relations, in part by putting checks on investigations involving defense attorneys "to make sure that it's respectful of privileged materials and the U.S. attorney himself has to sign off on it," according to Wyda.

James Ulwick and Andrew Graham, a pair of well-regarded trial lawyers who worked as federal prosecutors in the Maryland office in the 1970s and '80s, added that Barron worked to restore communication between prosecutors and defense attorneys after taking office.

"He listened to us. He asked questions. We felt that we had been heard," Ulwick said. "The fact that he has been willing to talk with us has, I think, gone a long way to healing some of the bad feelings that came out of the Treem case."

He also has pushed for cultural changes within the office, moving to "rein in" some entrenched senior level prosecutors who had come to believe that they had a certain level of autonomy, "such that they were not subject to any particular supervision by anybody — including the U.S. attorney," according to Ulwick.

The changes that Barron brought likely spurred some of the turnover within the office, Barron's supporters say. But his detractors say it illustrates dysfunction and low morale under Barron's watch.

Internal government data obtained by Law360 shows the attrition rate for Maryland federal prosecutors during fiscal year 2023 was 9.4%, the second highest in the Fourth Circuit, with the first — West Virginia's Southern District — being more than 18%. Eight attorneys left the Maryland office during that period.

The average attrition rate across the DOJ nationally for that same period was 5.3%, according to the data, which was as of April 2023.

But looking at the previous full fiscal years, Maryland's attrition rate appears similar to national averages across the DOJ, which reported an overall attorney attrition rate of 12% in fiscal 2022 and 10% in 2021.

The same data shows that 20 attorneys exited the Maryland office in fiscal 2020, five in 2021 and one in 2022. The office also lost 16 support staff in 2020, another 16 in 2021 and nine in 2022.

A veteran prosecutor's 'final straw'

Some district court judges have also taken the office to task for slow-playing prosecutions and failing to turn over key evidence.

Last year, at least seven of the Maryland office's criminal cases were thrown out over speedy trial violations and two were dismissed with prejudice, meaning they cannot be retried. Judges cited patterns of neglect in several of the tossed cases.

Cunningham, the retired federal prosecutor, was involved in two of the cases dismissed last year due to speedy trial violations. One was against machine-gun business owner Robert Krop — dismissed without prejudice — and the other involved a novel case against U.S. Army physician Jamie Lee Henry and her wife, Anna Gabrielian, also a doctor.

U.S. District Judge Stephanie Gallagher **dismissed** with prejudice charges in May alleging the couple tried to leak military patients' medical records to Russia.

The judge found that prosecutors "badly misconstrued" their obligations under the Classified Information Procedures Act, acted as "judge and jury" in determining whether certain records were relevant to the defense, and withheld their decision about not turning over the records from the court for more than two months.

Before their case was tossed, Gabrielian and Henry had gone to a trial that resulted in a hung jury. Henry's attorney, David Schoen, told Law360 that "any reasonable prosecutorial office would have dropped the case" after the mistrial.

But he applauded Barron's office's decision to ultimately abandon its appeal of the dismissal order.

"I wondered at the time whether there was some issue about supervisory permission to take the appeal, because it was very odd," he said. "They filed a notice of appeal in the case, but the case was never docketed in the court of appeals. I've been practicing in the Fourth Circuit for a long time. I've never seen that before."

Cunningham, the now-retired federal prosecutor who filed the notice of appeal in the case, said he learned about the decision to drop it during a conference call with two supervisors from the Maryland office, but Barron wasn't on the line. That was the "final straw" for Cunningham, he told Law360.

"He [Barron] never had the professional courage or backbone to even speak to us about this decision," Cunningham said. "However you want to cut this, it just shows the incompetence."

Barron told Law360 that "decisions on cases, including whether to appeal, are based on an assessment of whether there's a reasonable basis on the facts in the law, without fear or favor. After review and recommendations, the office and main justice decided not to appeal."

In late August, during a pretrial conference in the Maryland office's ongoing healthcare fraud case against Akbar Masood and his co-defendants, the government admitted that it failed to review more than 400,000 documents and files pulled from seized computers and other electronic devices for potentially exculpatory or impeaching information and evidence that would have to be shared with the defense.

U.S. District Judge Paula Xinis told Maryland federal prosecutor Ranganath Manthripragada during the hearing, "I mean, frankly, I got such concerns about how this case was managed and supervised," according to a transcript.

"And I tell you, Mr. Manthripragada, if you take this back to your office, every criminal trial I have right now has some problem with it," the judge added.

On a collision course for trial

Under Barron's supervision, the Maryland office has also notched some notable wins. It secured convictions against a **Baltimore attorney** in a \$25 million hospital extortion scheme, two biotech CEOs in a securities fraud scheme, and former Baltimore State's Attorney Marilyn Mosby on **perjury and mortgage fraud** charges.

His prosecutors also are in the midst of a high-profile trial against a neo-Nazi group leader accused of plotting to destroy the Baltimore-area power grid, and the office is investigating the deadly collapse of the Francis Scott Key Bridge after a cargo ship struck it in March.

The Goldstein case could be another feather in the office's cap — and a test of whether Barron has truly turned things around at the office or created more problems, as his critics argue, assuming he holds onto his position.

A federal grand jury **indicted Goldstein** on Jan. 16 on 22 counts alleging he schemed to dodge paying taxes on more than \$5.3 million he won in high-stakes poker games, funneled money from his boutique law firm to pay off gambling debts, and set up women he was intimately involved with or pursuing romantically with bogus jobs at the firm. He has pled not guilty to the charges.

His lawyers said the government charged Goldstein "in a rush to judgment without understanding all of the important facts."

"Our client intends to vigorously contest these charges, and we expect he will be exonerated at trial," Lauro and Kise said after the indictment was announced.

Maryland federal prosecutor Patrick Kibbe is heading Goldstein's prosecution on a team with three DOJ tax division attorneys. Kibbe is a 2016 Harvard Law graduate who joined the Maryland office with Barron in October 2021.

"He's highly experienced. He's well-trained. Trial tested," Barron said of Kibbe. "He's been exposed to the whole range of criminal matters that come to the office."

Goldstein's attorneys declined to comment for this story. His initial scheduling conference is set for Feb. 6.

Goldstein is represented in a limited capacity by John Lauro of Lauro & Singer, Stuart A. Berman of Lerch Early & Brewer and Christopher Kise of Continental PLLC.

The government is represented by Patrick David Kibbe of the U.S. Attorney's Office for the District of Maryland and Stanley Okula Jr., Hayter L. Whitman and Sean Emerson Gordon-Marvin of the U.S. Department of Justice's Tax Division.

The case is U.S. v. Goldstein, case number 8:25-cr-00006, in the U.S. District Court for the District of Maryland.

--Additional reporting by Lauren Berg, Craig Clough and Ali Sullivan. Editing by Janice Carter Brown.