



Ann M. Lipton

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So this is a follow up lawsuit, filed in the wake of a Florida court sustaining a similar complaint, that was brought on behalf of a handful of individuals rather than as a class action.

www.law360.com/securities/a...



Fla. Police Pension Sues Target Over 'Woke Capitalism' Losses - Law360

A Florida police department's pension fund sued Target Corp. in federal court in a proposed class action over alleged securities violations, saying the company lost ...

www.law360.com

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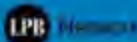


Ann M. Lipton @annmlipton.bsky.social · 10h

@benpedwards.bsky.social posted about that decision here, which, all I can say is, it represents an extreme departure from the ordinary manner in which securities fraud complaints are evaluated.

www.businesslawprofessors.com/2024/12/merc...

Merchandise Placement As Securities Fraud



Merchandise Placement As Securities Fraud

Yesterday, Judge Badalamenti denied Target's motion to dismiss a securities fraud claim against it arising out of its decision to run a pride campaign.

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1



1



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That case is currently bogged down in a fight where the individuals who brought it want to amend their case to make it a class action - and now a new filing beat them to the punch.



1



1



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The new complaint is by an established securities firm (unlike the original case, which reads like it was filed by people who are unfamiliar with the law in this area).

It is perhaps coincidence ... or perhaps not ... that the plaintiff they represent is a police pension fund.



2



4





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I don't know if this represents a new era in securities class action firms taking advantage of a new anti-woke environment to bring more cases, but. Typically, pension funds of all stripes serve as plaintiffs in these cases, and competition to represent them among firms is fierce.



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

The larger ones, like NYSCRF and Calpers, may not be on board with an anti-woke strategy and it will be interesting to see if they are comfortable with aligning with firms that are. Or if we'll see political segmentation in this market.



Toe Beans @v-ron.bsky.social · 6h

From an advertising campaign to securities fraud...?
How do you prove
"failed to disclose that it wasn't considering these risks"

It's like saying "I didn't tell you what I wasn't thinking about"



Jerry Edwards @jerryedwards.bsky.social · 4h

Sad that judges are encouraging these types of lawsuits. But it's unsurprising that this sort of behavior has made its way into securities law.



Ann M. Lipton @annmlipton.bsky.social · 4h

i got into this field because it allowed me to address politics only obliquely. really annoyed that it's right there on the surface now



I Love Dachshunds. @cefp.bsky.social · 3h

In the future, when there are no more pensions, it won't be an issue of who invested in what. Keep suing away.



Target is sued for defrauding shareholders about DEI

 [reuters.com/business/retail-consumer/target-is-sued-defrauding-shareholders-about-dei-2025-02-03](https://www.reuters.com/business/retail-consumer/target-is-sued-defrauding-shareholders-about-dei-2025-02-03)

Jonathan Stempel

The suit alleges it led to a backlash that caused customers to flee, and the company's

Lawsuit claims Target defrauded shareholders about DEI

Feb 3 (Reuters) - Target (TGT.N) , opens new tab has been sued for allegedly concealing the risks of its diversity and social initiatives, leading to a backlash that caused customers to flee and the stock price of the Minneapolis-based retailer to plummet.

In a proposed class action on Friday, shareholders led by the City of Riviera Beach Police Pension Fund in Florida said Target defrauded them into paying inflated prices for its stock and unknowingly supporting management's "misuse of investor funds to serve political and social goals."

The lawsuit said the retailer, CEO Brian Cornell and other officials failed to disclose the risk of consumer boycotts stemming from Target's Environmental, Social and Governance and Diversity, Equity and Inclusion initiatives.

It also said Target concealed backlash from its May 2023 Pride Month campaign, which led the retailer to remove some LGBTQ-themed merchandise after in-store confrontations led some employees to fear for their safety.

Target's share price fell 22% on Nov. 20, 2024, wiping out about \$15.7 billion of market value, after it forecast disappointing profit and holiday sales.

People shop on Black Friday near a Target and the Westfield Wheaton mall in Wheaton Maryland, U.S., November 29, 2024. REUTERS/Leah Millis/File Photo Purchase Licensing Rights , opens new tab

Shareholders said Target's underperformance stood "in stark contrast" to results at rival Walmart (WMT.N) , opens new tab, and reflected "continued backlash from its campaigns." Target did not immediately respond on Monday to requests for comment.

The lawsuit in the Fort Myers, Florida federal court seeks damages for Target shareholders from Aug. 26, 2022 to Nov. 19, 2024.

It was filed after Target said on Jan. 24 it would end DEI initiatives this year, including a program to support Black-owned businesses that it adopted following the 2020 murder of George Floyd by a Minneapolis police officer.

Target joined Walmart, Amazon.com (AMZN.O) , opens new tab and some other prominent companies to scale back such initiatives, which have been attacked by many conservatives

including U.S. President Donald Trump.

The case is City of Riviera Beach Police Pension Fund v Target Corp et al, U.S. District Court, Middle District of Florida, No. 25-00085.

Reporting by Jonathan Stempel in New York Editing by Marguerita Choy

Investor Says Top Mining Firm Misled Over Gold Production

By Quinn Wilson

- **COURT:** D. Colo.
- **TRACK DOCKET:** [No. 1:25-cv-00341](#)

Newmont Corp. materially misled investors ahead of “disappointing” quarterly results last year, a proposed securities class action lawsuit says.

James Karas, on behalf of himself and the proposed class, says Newmont and three of its officers violated the Exchange Act. The Jan. 31 complaint, filed in the US District Court for the District of Colorado, seeks class certification, damages, reasonable attorneys’ fees, and costs.

“Defendants provided these overwhelmingly positive statements to investors while, at the same time, disseminating materially false and misleading statements and/or concealing material adverse facts concerning Newmont’s ability to deliver increased gold production,” the complaint says.

“Newmont is the world’s leading gold mining company and producer of copper, silver, zinc and lead,” Karas alleges, with “operations and/or assets in the North America, Africa, Australia, Latin America and Caribbean, and Papua New Guinea.”

The proposed class is defined as all purchasers or acquirers of Newmont securities from February 22, 2024, through October 23, 2024, who were damaged when the company’s revealed poor quarterly earnings, the complaint also says.

Karas alleges that three of Newmont’s officers— CEO Thomas R. Palmer, COO Natascha Viljoen, and CFO Karyn F. Ovelmen—made statements during earnings calls projecting the company’s continued financial success through 2024. The optimistic statements continued throughout the year, which “touted” the company’s portfolio and its expectation to bring costs down.

But Newmont reported “disappointing” third quarter results on October 23, 2024, which included lower production guidance and an increase in its operating cost, Karas says. The revelations caused the company’s common stock to decline from \$57.74 to \$49.25 per share the following day, the complaint alleges.

The statutory safe harbor provided for forward-looking statements doesn't apply, Karas alleges.

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

Judge Daniel D. Domenico is assigned the case.

Levi & Korsinsky LLP represents Karas and the proposed class.

The case is Karas v. Newmont Corp. , D. Colo., No. 1:25-cv-00341, complaint 1/31/25 .

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Shanda Games Ex-Investors Get Suit Over Freeze-Out Revived (1)

By Martina Barash

- Projections undervalued company before merger, investors said
- Court splits on pleading reliance, cause of loss in takeovers

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 decision clarifies how minority investors who sue over “freeze-out” takeovers can plead their cases.

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 proposed class action 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.”

Shanda redeveloped its highly successful computer game, Mir II, for mobile devices after sales began to flag, lead investor David Monk alleged. A buyout effort by a group of shareholders came together just before the mobile version’s launch.

Shanda’s March 2015 financial projections accompanying the tender offer for its American depository shares were flawed, Monk said. The projected revenue allegedly was low, estimating that the new version, called MIIM, would generate only \$15 million in total revenue. By contrast, Mir II had brought in nearly \$2 billion, according to the complaint.

Further, the method used for the projections violated accepted accounting principles, Monk said.

Shanda's board, which included members of the buyer group, approved a merger with an ADS price of \$7.10. Initial proxies for the first shareholder meeting on the deal incorporated the flawed projections, the investor said.

The final proxy didn't disclose the discrepancy between the projections and the \$90 million per month flowing in from the new product, Monk said.

Monk and others accepted the \$7.10 per share price, but dissenters eventually obtained an appraisal awarding \$12.84 per ADS from the courts of the Cayman Islands, where Shanda was registered, according to the Second Circuit opinion.

The US District Court for the Southern District of New York dismissed the case and the Second Circuit reversed, saying the presumption of reliance applies in the freeze-out context. A minority shareholder deciding whether to tender or seek an appraisal "may be presumed to rely on the market price as an accurate measure of his stock's value," the appeals court said.

And Monk showed loss causation by alleging he lost the higher appraised value that he could have pursued, she said.

But that presumption isn't available, said dissenter Jacobs. "Unless the votes of minority shareholders (like Monk) are needed for approval of a proposed merger, they cannot as a matter of law establish a causal link between pre-merger proxy statements and the approval of the impending merger."

Judge Raymond J. Lohier Jr. concurred.

Labaton Keller Sucharow LLP and Pomerantz LLP represented Monk. O'Melveny & Myers LLP represented Shanda and the individual defendants.

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

(Updated with additional information and analysis from opinion throughout.)

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New Filing Details How Crooked Attorney Ann Oldfather and Kentucky Attorney General Russell Coleman Conspired to Sell Out Underwater Pension Funds and Taxpayers to the Tune of Hundreds of Millions, Even >\$1 Billion, in Lost Recoveries

 [nakedcapitalism.com/2025/02/new-filing-details-how-crooked-attorney-ann-oldfather-and-kentucky-attorney-general-russell-coleman-conspired-to-sell-out-underwater-pension-funds-and-taxpayers-to-the-tune-of-hundreds-of-millions-ev.html](https://www.nakedcapitalism.com/2025/02/new-filing-details-how-crooked-attorney-ann-oldfather-and-kentucky-attorney-general-russell-coleman-conspired-to-sell-out-underwater-pension-funds-and-taxpayers-to-the-tune-of-hundreds-of-millions-ev.html)

By Yves Smith

February 4, 2025

We wrote recently about the latest chapter in the long-running Kentucky Retirement Systems, now rebranded as Kentucky Public Pension Authority case, in *More Kentucky Dirty Dealings: Attorney General Schemes to Leave Hundreds of Millions in Pension Recovery on the Table, Give Sweetheart Payout to Attorneys, To Settle Claims Against Private Equity Kingpins KKR and Blackstone, Including Ones by Plaintiffs the AG Does Not Represent*. This post contains a summary of this long-running saga in the Background section.

In a recent article, the *Courier-Journal* provided a short recap but skips over the matter of how sleazy the conduct of attorney general's hired attorney, Ann Oldfather, has been:

The proposed settlement announced by Coleman on Jan. 8 would end all open lawsuits and mark the end of the legal dispute that started in 2017, when a group of eight retirees under Kentucky Public Pension Authority (then Kentucky Retirement Systems) sued several hedge funds over allegations the financial firms had mismanaged more than \$1 billion of assets in unreliable investments.

The state Supreme Court dismissed that case in 2020 after it found the plaintiffs had retirement plans with benefits that would not change based on the pension system investments' success or failure. But then-Attorney General Daniel Cameron intervened to take it over, and the proposed settlement would put it to an end.

The separate lawsuit that's still open was filed in 2021 by Lerach on behalf of several "Tier 3" state employees, whose retirement plans rely on the pension system's financial success.

She wants to ensure the settlement plaintiffs believe is inadequate doesn't shut the door on their pursuit for more money from the defendant hedge funds and their owners: KKR & Co., Prisma Capital Partners, The Blackstone Group and Pacific Alternative Asset Management.

The lawsuit's latest filing pokes several holes in the settlement, arguing it would only marginally benefit the state and its employees while giving an exit ramp to legal teams on both sides after years of litigation.

A key point is the contingency fees for the attorney general's outside legal team.

The deal Cameron's office signed with Louisville lawyer Ann Oldfather's office after the initial case was dismissed set terms for fees those attorneys could collect once the lawsuit was settled: 20% of the gross recovery's first \$250 million; 15% of the gross recovery between \$250 million to \$1 billion; and 10% of the gross recovery past \$1 billion.

If the gross recovery is \$227.5 million — a figure that includes the \$145 million Kentucky had given to KKR (one of the four hedge funds in the case) that has been withheld as the litigation moved forward — then attorney fees would rise to \$45.5 million, a higher sum than the \$37 million in new money the state would receive. If the gross recovery does not include that \$145 million, attorney fees would reach \$16.5 million, with \$66 million in new funds going to the state,

Oldfather's hiring followed passage of a budget bill in the 2021 General Assembly, which let the attorney general's office choose outside counsel to help with the complicated case. Gov. Andy Beshear vetoed that portion of the bill when it came to

his desk, citing “unprecedented authorization (which) provides no guardrails on how much the rate of payments will be,” but that veto was overridden by the House and Senate when the bill returned to the legislature.

To state it more plainly: this settlement is a huge gimmie to the hedge funds and their very famous kingpins, Henry Kravis, George Roberts, Steve Schwarzman, and Tomlinson Hill, who violated Kentucky’s strict fiduciary duty laws by among other things, grossly misrepresenting the risks and likely returns of customized hedge funds of funds.

And it looks to grotesquely and unjustifiably enrich the Attorney General’s privately-hired attorney, Ann Oldfather, by paying her fees, not on an actual settlement of damages, but on a total falsely claimed “settlement” of \$227 million. That figure includes at least \$137 million of assets that are the property of Kentucky Retirement Systems and have been effectively and illegally confiscated by KKR. Michelle Lerach, the attorney for the so-called Tier 3 plaintiffs, already has a claim in arguing that Kentucky Retirement System is owed interest as well as treble damage on the stolen funds. With the passage of additional time increasing the interest amount, that suit alone is worth \$807 million.

And that’s far from the only liability exposure here. There are other exposures for KKR, as well as for Blackstone and PAAMCO, a subsidiary of the famed Pacific Asset Management, as well as the big-name, very deep pocket principals of KKR and Blackstone.

A new filing, which we have embedded at the end of this post, provides more detail about the degree of sleazy dealing by the Kentucky Attorney General, Russell Coleman, and his stooge, attorney Ann Oldfather, who if the legal profession actually lived up to the standards it pretends to uphold, should have been disbarred. For a quick gander through the arguments, the table of contents provides a fine overview, although I encourage you to read the entire filing.

The issue is not just the outrage that it is probable that Oldfather is getting an egregious level of fees that will exceed the bona fide recovery for the long-suffering Kentucky pension funds and the taxpayers that ultimately backstop them. The amount Kentucky Retirement Systems (now KPPA) would get, ex their own monies that have been impermissibly held for years, is \$82.5 million. Oldfather’s fee, in a deal Governor Beshear vetoed but was overruled, allows her to collect a 20% fee on the pension fund’s own assets!

As the filing below argues:

There is no expert or independent valuation of the value of the Settlement offered by the Movants. The only valuation is given by unsworn statements of persons with a direct financial or political stake in the outcome of these litigations. The return of previously invested Trust monies, which have always been Trust assets, to KPPA is not a “monetary recovery.” KPPA just got back physical possession of what was already the Trust’s property, i.e., investment funds — just wrongfully withheld by KKR. As Anthony Gales, a certified public accountant, explains in his declaration, the “recovery” did not impact or improve KPPA’s or the Trusts’ financial condition/position or balance sheets by one cent. Ex. 22 ¶ 6. That fund of “previously invested” Trust funds is and always was a Trust asset. Id. Now it is simply being returned, without interest or penalty, despite its wrongful withholding by the Hedge Fund Sellers for years.

If Oldfather claims the entire \$227.5 million (as opposed to the \$82.5 million portion) as the “Gross Recovery,” the attorneys’ fees will be a staggering \$45.5 million, and the net recovery from the proposed Settlement will fall to \$37 million (\$82.5 million minus \$45.5 million). And even if she claims only the “fresh money” portion of \$82.5 million as the “gross recovery,” the attorneys’ fees will be \$16.5 million, and the net recovery will be \$66 million.

Before getting any further, the very fact that the Kentucky Retirement System got into super high fee hedge funds of funds already self-identified them as marks. But Oldfather’s conduct is beyond the pale

I have worked with the very top firms in the US (Sullivan & Cromwell, Cravath, Cleary Gottlieb, Fried Frank, Covington) as well as many reputable small firms. All are strict about clearing for conflicts of interest before working with a new client and obtaining a waiver from the older client there is a conflict and the prospective client still wants to proceed.

Oldfather worked for the original “Mayberry 8” plaintiffs, and after she was fired by them for incompetence and disloyalty, stole confidential information to work against them, via seeking a settlement on the cheap. We described earlier how the previous Attorney General Daniel Cameron suddenly entered (after the Attorney General’s office had decided to step aside and had praised the competence of the Lerach team), claiming he could “occupy the field” and settle claims on behalf of all plaintiffs. Note the Judge Thomas Wingate has ruled otherwise, that the claims and interests of the Tier 3 plaintiffs are distinct and the Attorney General cannot represent them (note that at the time, KRS also bleated that the Attorney General could not represent them unless KRS had engaged him, which they had not done).

Again, briefly, Cameron, who as a Mitch McConnell protege, was presumably trying to curry favor with KKR and Blackstone, strongly aligned with the Republican party, failed to get a deal. The financial kahunas apparently thought then that the odds of the Tier 3 plaintiffs prevailing were so low that they could hang tough.

But now that the case has advanced to the point that discovery was about to begin, the money men look to have changed their minds, resulting in a proposed settlement via the current Attorney General, Russell Coleman.

And Oldfather's conduct was as dirty and self-serving as could be imagined, even by the imaginative. From a press release by Oldfather's former client, Jeff Mayberry, that we have embedded at the end of this post:

Several years ago, I, along with the late Circuit Judge Brandy Brown and other state employees, started a lawsuit to recover damages for our public employee pension plan which had collapsed in a “death spiral” and was “virtually bankrupt.” Judge Brown and I retained our longtime friend and lawyer, Michelle Ciccarelli Lerach, who went to law school here in Kentucky and then went on to gain impressive achievements and experience in similar litigation, suing Wall Street Banks, like the Hedge Fund Sellers, Blackstone and KKR, and their top executives Stephen Schwarzman, Henry Kravis and George Roberts. Our lawsuit sought billions in compensatory and punitive damages. When it was ready to be filed, we located Ann Oldfather, a Louisville lawyer, as a possible local Counsel. After Oldfather signed a Confidentiality Agreement, she was hired as local counsel and our case was filed.

Oldfather proved impossible to work with. After several months Judge Brown, I and the other “Mayberry Five” terminated Oldfather for incompetence, failure to follow orders, deceitful practices and disloyalty. See attached September 3, 2019 letter of the Mayberry Five, which details Oldfather’s failures, her termination for cause. The letter specifically warned her to obey her duties as a terminated lawyer to her former clients i.e. to protect and preserve their confidences and work product of their lawyers who hired her.

After Oldfather was fired, she immediately sought to betray us. She went to former AG Cameron and got him to hire her – including getting special legislation to pay her a fee way beyond that legally allowed at that time. Oldfather then used the stolen work product and confidential information, which I understand a terminated lawyer is not allowed to do under Kentucky Supreme Court Rules, to file her case for AG Cameron. As Judge Shepherd said, the AG “copied” my original complaint. Cameron then took over the case Judge Brown, I and the others had filed, excluding us from any participation.

Governor Andy Beshear vetoed the special fee legislation that was enacted without a hearing or any competitive bidding process to give Oldfather an enhanced 20% contingent fee. Governor Beshear said “I am vetoing... because this provision permits the AG to bypass the Statutory Model Procurement Code to hire lawyers for a single case. This unprecedented authorization would allow a quid pro quo situation and provides no guard rails on how much the rate of payments will be, provides for no competition among qualified law firms and does not ensure accountability with Taxpayer dollars.” Absent that special legislation the most Oldfather would be entitled to is about \$7 million, computed on the \$82 million cash portion of the recovery – far less than the \$46 million I believe she is trying to secretly get.

Governor Beshear vetoed the special fee legislation because it reeked of corruption. But AG Cameron got the veto overridden. Oldfather, after having been fired for cause, was then allowed by AG Cameron to file a taxpayer suit using materials and information she stole from us and our lawyers. Now she is attempting to settle that case for pennies on the dollar, where KPPA ends up with only \$36 million in new money. This is underhanded, abusive and must be stopped.

I have seen Press Reports detailing how this settlement being attempted by Oldfather is a deceptive sham. The claimed settlement amount of \$227 million is false. \$145 million of that \$227 million is already KPPA trust funds that are merely being turned back over to the trust funds after having been wrongfully withheld for years by the Hedge Fund Sellers – and is the subject of a pending motion filed by my lawyer in the Tier 3 Trust Beneficiary case. The remaining \$82 million in cash is to be reduced by a secret \$46 million fee to the AGs private lawyer. This leaves just \$36 million in net new cash for KPPA. A \$36 million recovery on a claim the Hedge Fund Sellers repeatedly admitted was worth \$50 billion – a .00072 percent recovery.

I trust those of you with friends, family and contacts in Kentucky will send this post to them. Even with frothy financial markets, these pension funds remains seriously underfunded, with taxpayers on the hook to make up for shortfalls. So this financial and political grifting by Oldfather and Coleman is very much at Kentucky taxpayers' expense.

COMMONWEALTH OF KENTUCKY
COUNTY OF FRANKLIN CIRCUIT COURT
DIVISION II
CASE NOS. 20-CI-00590 & 24-CI-0354

COMMONWEALTH OF KENTUCKY

PLAINTIFF

vs. **Omnibus Objection to Proposed Settlement and Request to
(1) Strike the Affidavit of Layn R. Phillips; (2) Adjourn
Approval Hearing and Defer Consideration of
Proposed Settlement; and (3) Conduct
a *Potter* Hearing and Discovery**

KKR & CO. INC., *et al.*

DEFENDANTS

CB28B51C-2829-4D EC-B744-92 E6 A5 A47323 : 000001 of 000310

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February 3, 2025

PRESS RELEASE AND STATEMENT TO KENTUCKY MEDIA by Jeff Mayberry, Former Kentucky State Police Captain Regarding Attempted "Sell-Out" Settlement of KPPA Trust Fund Claims by Lawyer Fired for Incompetence and Disloyalty

I was a member of Kentucky law enforcement from 1986 to 2011 as a Kentucky State Police ("KSP") Trooper, Sergeant, Lieutenant, and Captain. During my career in law enforcement, I had a variety of assignments around the state. I conducted many investigations and as supervisor and commander led many specialized investigations including political corruption, white collar crime, money laundering and organized crime, as well as performing other specialized operational police functions. By the time I decided to retire, I had commanded Special Investigations and regional posts at Bowling Green, Richmond, Pikeville, and Special Operations twice.

After I left the KSP, as a US State Department direct hire I was director of operations for a police development program and mentored senior Iraqi police officials in specialized investigations, including police operations, anti-corruption and counterterrorism. I was later a contractor with US state department and served as a counterterrorism, anti-corruption mentor/advisor in Afghanistan to senior police and national security officials. I believe in law enforcement, and I certainly know right from wrong. What is going on here is very wrong.

Several years ago, I, along with the late Circuit Judge Brandy Brown and other state employees, started a lawsuit to recover damages for our public employee pension plan which had collapsed in a "death spiral" and was "virtually bankrupt." Judge Brown and I retained our longtime friend and lawyer, Michelle Ciccarelli Lerach, who went to law school here in Kentucky

and then went on to gain impressive achievements and experience in similar litigation, suing Wall Street Banks, like the Hedge Fund Sellers, Blackstone and KKR, and their top executives Stephen Schwarzman, Henry Kravis and George Roberts. Our lawsuit sought billions in compensatory and punitive damages. When it was ready to be filed, we located Ann Oldfather, a Louisville lawyer, as a possible local Counsel. After Oldfather signed a Confidentiality Agreement, she was hired as local counsel and our case was filed.

Oldfather proved impossible to work with. After several months Judge Brown, I and the other “Mayberry Five” terminated Oldfather for incompetence, failure to follow orders, deceitful practices and disloyalty. See attached September 3, 2019 letter of the Mayberry Five, which details Oldfather’s failures, her termination for cause. The letter specifically warned her to obey her duties as a **terminated** lawyer to her former clients *i.e.* to protect and preserve their confidences and work product of their lawyers who hired her.

After Oldfather was fired, she immediately sought to betray us. She went to former AG Cameron and got him to hire her – including getting special legislation to pay her a fee way beyond that legally allowed at that time. Oldfather then used the stolen work product and confidential information, which I understand a terminated lawyer is not allowed to do under Kentucky Supreme Court Rules, to file her case for AG Cameron. As Judge Shepherd said, the AG “copied” my original complaint. Cameron then took over the case Judge Brown, I and the others had filed, excluding us from any participation.

Governor Andy Beshear vetoed the special fee legislation that was enacted ***without a hearing or any competitive bidding process*** to give Oldfather an enhanced 20% contingent fee. Governor Beshear said “I am vetoing... because this provision permits the AG to bypass the

Statutory Model Procurement Code to hire lawyers for a single case. This unprecedented authorization would allow a quid pro quo situation and provides no guard rails on how much the rate of payments will be, provides for no competition among qualified law firms and does not ensure accountability with Taxpayer dollars.” Absent that special legislation the most Oldfather would be entitled to is about \$7 million, computed on the \$82 million cash portion of the recovery – far less than the \$46 million I believe she is trying to secretly get.

Governor Beshear vetoed the special fee legislation because it reeked of corruption. But AG Cameron got the veto overridden. Oldfather, after having been fired for cause, was then allowed by AG Cameron to file a taxpayer suit using materials and information she stole from us and our lawyers. Now she is attempting to settle that case for pennies on the dollar, where KPPA ends up with only \$36 million in new money. This is underhanded, abusive and must be stopped.

I have seen Press Reports detailing how this settlement being attempted by Oldfather is a deceptive sham. The claimed settlement amount of \$227 million is false. \$145 million of that \$227 million is already KPPA trust funds that are merely being turned back over to the trust funds after having been wrongfully withheld for years by the Hedge Fund Sellers – and is the subject of a pending motion filed by my lawyer in the Tier 3 Trust Beneficiary case. The remaining \$82 million in cash is to be reduced by a secret \$46 million fee to the AGs private lawyer. This leaves just \$36 million in net new cash for KPPA. A \$36 million recovery on a claim the Hedge Fund Sellers repeatedly admitted was worth \$50 billion – a .00072 percent recovery.

The Press is onto what is going on.

Battery Firm Stem's Leaders Should Get Suit Tossed, Judge Urges

By Martina Barash

Stem Inc. investors failed to plead securities claims against the company's blank-check merger sponsor and individual directors and executives with sufficient specificity, a judge said in recommending dismissal.

The derivative suit's allegations of a misleading proxy statement in connection with the deal that brought the company public amount to an impermissible "puzzle pleading," Magistrate Judge Christopher J. Burke said Jan. 31 in a report to the US District Court for the District of Delaware. A proposed class action over some of the same issues remains pending in the Northern District of California after a non-final dismissal ruling.

- The investors sued the company that sponsored the battery provider's merger with special purpose acquisition company Star Peak Energy Transition Corp. and the current and former Stem and Star Peak leaders
- The complaint "surely is a puzzle," Burke said in discussing the proxy misstatement allegations under the Securities Exchange Act
- There's no reason to retain state-law claims for breach of fiduciary duties, other improper management, and unjust enrichment, Burke said

Farnan LLP represents the investors. Freshfields Bruckhaus Deringer US LLP and Young Conaway Stargatt & Taylor LLP represent the defendants.

The case is *In re Stem, Inc. Derivative Litig.*, 2025 BL 32023, D. Del., No. 23-1011, report & recommendation 1/31/25.

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Securities Law

Feb. 4, 2025, 6:49 AM PST

Quantum Corridor Investor Drops Suit Over \$5 Million Investment

By Gillian R. Brassil

Midwest fiber-optic network executives are free from a lawsuit by an investor group that had alleged they pocketed \$5.2 million for personal gain rather than put it toward their company, Quantum Corridor Inc.

Plaintiff Quantum Leap Capital Partners, LLC dropped its shareholder derivative suit without prejudice or costs on Monday, just a few days after filing its complaint in the US District Court for the Southern District of Indiana.

- QLCP said Quantum Corridor leadership lured it into giving \$5.2 million without ever signing or filing necessary paperwork to officially fork over its 20% stake via Series A Preferred Stock
- Complaint alleged that the CEO's motive was "transparent": He and his co-founder would personally benefit if a Fortune 50 company they wooed injected capital into Quantum Corridor and they got QLCP's stock back
- QLCP had sought that the 2024 deal documents be executed, among other forms of relief, for the executives purportedly endangering Quantum Corridor and shareholders

Dickinson Wright PLLC represented the investor company. Neither QLCP's attorney nor Quantum Corridor immediately responded to requests for comment.

The case was Quantum Leap Cap. Partners, LLC v. Dakich , S.D. Ind., No. 1:25-cv-00200, notice of voluntary dismissal 2/3/25 .

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Cape Cod Healthcare Inks Deal in Retirement Plan Fee Lawsuit

By Jacklyn Wille

Former Cape Cod Healthcare Inc. employees negotiated a class settlement in their lawsuit challenging the fees and investment options in the Massachusetts medical provider's retirement plan.

The parties reached a deal following an in-person mediation session and plan to submit settlement paperwork for court approval by the end of February, they said in a joint status report filed Jan. 31 in the US District Court for the District of Massachusetts. Details about the proposed settlement weren't provided.

- The year-old lawsuit says Cape Cod's retirement plan pays excessive administrative fees and keeps nearly one-fourth of its assets in a stable value fund that paid paltry returns
- The deal is subject to approval from Judge Myong J. Joun, who ruled in 2024 that the case was viable
- Hundreds of lawsuits challenging retirement plan fees have been filed in federal courts over the past few years, and several health systems have agreed to class-wide settlements, including Henry Ford Health System for \$5 million, Bronson Healthcare Group Inc. for \$3 million, and Munson Healthcare for \$600,000, among others

Goodwin Procter LLP represents Cape Cod. Fair Work PC represents the workers

The case is *Somers v. Cape Cod Healthcare, Inc.*, D. Mass., No. 1:23-cv-12946, status report 1/31/25 .

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Russell, Royal Caribbean Defeat 401(k) Fund Swap Class Action

By Jacklyn Wille

- Suit says Russell swapped good funds for its own subpar ones
- Faulty comparisons, insufficient underperformance sink case

A class action challenging the Russell Investments Trust Co. funds in Royal Caribbean Cruises Ltd.'s 401(k) plan fell flat when a federal judge said the funds weren't objectively imprudent.

The plan participants didn't support their criticisms of the Russell target date funds with comparisons to sufficiently similar alternatives, Judge Robert N. Scola Jr. said in a Jan. 31 opinion awarding summary judgment to both companies. The participants said they would have done better with investments from Vanguard or American Funds, but those investments have different strategies, glide paths, and asset allocations than the investments challenged by their lawsuit, Scola said.

The participants defended their comparisons, saying they were measuring the Russell funds against the Vanguard investments they were swapped in for and the American Funds investments they were ultimately replaced with. There "may be some appeal" to this argument, the judge said, but it ultimately "falls apart" because it would deem any investment that underperforms its predecessor as imprudent without consideration of the relevant fiduciary process.

The 7,000-person class action says Russell carried out a "self-serving swap" of Royal Caribbean's 401(k) investment lineup shortly after being hired as the plan's investment manager. This allowed Russell to prop up its own funds as they lost outside investors, and it cost the plan's participants millions of dollars in lost investment returns, according to the lawsuit.

Scola, who sits in the US District Court for the Southern District of Florida, was similarly unpersuaded by allegations that the Russell funds underperformed the company's own custom benchmark. While this benchmark qualifies as a valid point of comparison, the underperformance it reflects isn't significant enough to show a potential violation of the Employee Retirement Income Security Act, he said.

Scola added that the claims against Russell failed for another reason: the “unambiguous terms” of its investment management agreement with Royal Caribbean blocks the company from qualifying as an ERISA fiduciary in connection with the conduct challenged by the lawsuit.

Wenzel Fenton Cabassa PA and Nichols Kaster PLLP represent the plaintiffs. Milbank LLP and Akerman LLP represent Russell. Groom Law Group and Ogletree, Deakins, Nash, Smoak & Stewart PC represent Royal Caribbean.

The case is Johnson v. Russell Invs. Tr. Co. , 2025 BL 32133, S.D. Fla., No. 1:22-cv-21735, 1/31/25 .

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FM Global Will Face Trimmed Suit Over 401(k) Fees, Investments

By Jacklyn Wille

- Judge declines to resolve fee dispute without discovery
- Challenge to plan's international growth fund dismissed

FM Global must defend the bulk of a proposed class action saying the Rhode Island-based insurance company mismanages its \$1.8 million 401(k) plan through high fees and poorly performing funds.

The company formally known as Factory Mutual Insurance Co., said the case was based on flawed calculations that incorrectly overstated the plan's fee levels. Judge Julia E. Kobick of the US District Court for the District of Massachusetts declined to dismiss the case on this basis, saying on Jan. 31 that "whether the plaintiffs accurately calculate the Plan's fees, as they allege, or inflate those fees, as the defendants contend, is a question of fact to be addressed after discovery."

FM also disputed the case's comparisons, saying the plaintiffs hadn't identified meaningful benchmarks of better-run retirement plans to support their claims that FM's fees were too high. Kobick again disagreed, explaining that the "meaningful benchmark" standard some courts have used to weed out 401(k) fee challenges at the pleadings stage hasn't been adopted by the US Court of Appeals for the First Circuit, which has authority over her Boston courtroom.

The plan participants also advanced claims challenging the plan's actively managed Fidelity target date funds, which they criticized as poor performers. Their complaint plausibly alleges that FM imprudently kept these Fidelity Freedom Funds in the plan despite their underperformance and news reports that investors had "lost confidence" in them, the judge said.

Several employers have been sued in recent years for offering these Fidelity Freedom Funds in their retirement plans, including Dish Network Corp., Prime Healthcare Services Inc., Boston Children's Hospital, and others. Decisions in these cases have been mixed.

Finally, the FM plan participants challenged an international growth fund offered by the plan, but Kobick dismissed this claim because it wasn't supported by allegations of an insufficient fiduciary process.

Walcheske & Luzi LLC and Jonathan M. Feigenbaum of Boston represent the plan participants. Groom Law Group and Donnelly, Conroy & Gelhaar LLP represent FM.

The case is Cure v. Factory Mut. Ins. Co. , 2025 BL 32048, D. Mass., No. 1:23-cv-12399, 1/31/25 .

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Lawyers seek \$754 million in new Blue Cross antitrust settlement

 [reuters.com/legal/legalindustry/lawyers-seek-754-million-new-blue-cross-antitrust-settlement-2025-02-03](https://www.reuters.com/legal/legalindustry/lawyers-seek-754-million-new-blue-cross-antitrust-settlement-2025-02-03)

David Thomas

By David Thomas

February 3, 2025 1:20 PM PST Updated an hour ago

U.S. hundred dollar bills are seen at an exchange booth in Tokyo November 8, 2010.

REUTERS/Issei Kato/File Photo Purchase Licensing Rights , opens new tab

Feb 3 (Reuters) - Plaintiffs' lawyers behind a pending \$2.8 billion class action antitrust settlement with Blue Cross Blue Shield on Sunday asked a federal judge in Alabama for more than \$754 million in legal fees and expenses for their work on the case, which has lasted for more than a decade.

The lawyers, led by Joe Whatley and Edith Kallas of Whatley Kallas, have requested , opens new tab \$657.1 million — or 23.47% of the \$2.8 billion settlement fund — in legal fees, as well as at least \$97 million in expenses.

Whatley and Kallas noted in a statement that 23.47% is the same percentage a different group of plaintiffs, led by Boies Schiller Flexner and Hauser LLP, received for their work in securing a similar settlement from Blue Cross worth \$2.7 billion in 2020.

"Provider Counsel have litigated against the Blues for more than 12 years and spent approximately \$100 million in expert and other out of pocket expenses," Whatley and Kallas said in a statement.

The plaintiffs' lawyers said in their fee request to U.S. District Judge R. David Proctor they have billed more than 373,000 hours in the case. The \$657.1 million fee request amounts to about \$1,760 an hour.

A spokesperson for Blue Cross did not immediately respond to a request for comment. The pending settlement between Blue Cross and the plaintiffs allows them to request up to 25% of the \$2.8 billion for their legal fees, not including expenses.

The pending settlement would resolve claims that Blue Cross and its affiliates divided the country into exclusive areas where they did not compete with each other. The lawsuit said the alleged conspiracy increased the cost of insurance and drove down reimbursements. The insurer denied wrongdoing.

Blue Cross also faced claims that it overcharged commercial and individual subscribers. Those claims were resolved with a \$2.7 billion settlement that was upheld by the U.S. Supreme Court last year, and included a \$667 million fee and expense award to a group of

law firms led by Boies Schiller and Hausfeld.

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Reporting by David Thomas

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



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Thomson Reuters

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NFL players, others who opted out of \$2.5B settlement re-sue NCAA

DJ [dailyjournal.com/articles/383209-nfl-players-others-who-opted-out-of-2-5b-settlement-re-sue-ncaa](https://www.dailyjournal.com/articles/383209-nfl-players-others-who-opted-out-of-2-5b-settlement-re-sue-ncaa)

Antitrust & Trade Reg.

Feb. 4, 2025

College athletes, including NFL players Brevin Jordan and Anthony Gould, sued the NCAA and five conferences for antitrust violations, claiming restrictions on compensation are anticompetitive, after opting out of a \$2.5 billion settlement.



A group of current and former college athletes, led by some NFL players, sued the NCAA and five major sports conferences for antitrust violations after they opted out of the \$2.5 billion antitrust settlement between the collegiate sports association and other athletes seeking compensation for use of their name, image and likeness.

The lawsuit, filed in the Northern District of California on Friday, accuses the NCAA and five of its conferences of continuing to violate antitrust laws despite amending its restrictions on athlete compensation from outside entities in recent years. The athletes claim that the caps placed on amounts players can get from licensing agreements, and other restrictions, amount to anticompetitive conduct.

Among the 67 plaintiffs in the latest case that opted out of the settlement are the following current NFL players: Brevin Jordan of the Houston Texans, formerly of the University of Miami; and Anthony Gould of the Indianapolis Colts, formerly of Oregon State University. *Hill et al. v. National Collegiate Athletic Association*, 4:25-cv-01011 (N.D. Cal. filed Jan. 31, 2025).

The plaintiffs were part of the settlement class in a consolidated action before U.S. District Judge Claudia Wilken that was settled by the NCAA in May for \$2.5 billion. *In re Collect Athlete NIL Litigation*, 4:20-cv-03919 (N.D. Cal. Filed June 15, 2020).

The NCAA and the five co-defendants in the case have routinely defended the settlement as fair in their filings in the consolidated action. Their media relations offices could not be reached for comment on Monday. The co-defendant conferences re: the Pac-12, the Big 10, the Atlantic Coast, the Big 12 and the Southeastern.

Wilken preliminarily approved the settlement on Oct. 7 but several objections from class members have followed.

One of the lead attorneys for the plaintiffs in the latest case -- Thomas F. DellaFera Jr. of Miller DellaFera PLC in Henrico, Virginia -- argued in the complaint that the policies adopted by the NCAA in light of the "new legal landscape" are still anticompetitive. He also claimed that the class counsel in the larger litigation approved of the new lawsuit.

"Plaintiffs' class counsel has given plaintiffs named herein until January 31, 2025 to 'opt-out' of the class, which right they have exercised and choose to proceed herein outside of the class," the complaint states. "As explained supra, defendants' restraints have anticompetitive effects in the relevant Division I labor markets. The purported procompetitive justifications, on the other hand, concern entirely separate and distinct output markets for Division I sports and are therefore legally irrelevant for antitrust analysis in this case."

After the U.S. Supreme Court ruled in June 2021 that the NCAA violated antitrust laws by not allowing players to be paid to preserve their amateur status, the association adopted new guidelines that allow players to enter contracts with outside entities in exchange for using their name, image and likeness.

DellaFera and the following attorneys serving as co-counsel in the case and could not be reached for comment on Monday: John Arthur Eaves Jr., Christopher Brady Eaves, and Sterling Overton Eaves of Eaves Law Firm LLC in Jackson, Mississippi.

#383209

Wisdom Howell

Daily Journal Staff Writer
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Weekend explosion may be added to class action against refinery

DJ [dailyjournal.com/articles/383204](https://www.dailyjournal.com/articles/383204)

Torts/Personal Injury,

Environmental & Energy

Feb. 4, 2025

A law firm involved in a class action against Martinez Refinery might include a recent explosion in its lawsuit, citing toxic emissions affecting 40,000 residents. Health and property damages are central to the claims.



A law firm currently handling a class action lawsuit against a refinery -- where an explosion over the weekend released plumes of toxic smoke -- stated that it may incorporate this latest incident into the ongoing litigation.

A fire at the Martinez Refinery in Contra Costa County on Saturday, which injured six people and prompted warnings for residents in the affected area to stay inside, was caused by a leak of hydrocarbon material, according to company officials.

Burlingame-based Cotchett, Pitre & McCarthy LLP filed a class action on behalf of Martinez residents against the refinery in November 2023, claiming similar incidents occurred over the past two years at least, when releases of petroleum coke dust, spent catalyst and other toxic chemicals were emitted into the surrounding community.

Blair Kittle, a Cotchett, Pitre & McCarthy senior associate in the ongoing Martinez Refinery case, said the firm was already in touch with members of the community about the latest incident. Some of them are plaintiffs in the ongoing lawsuit and are assessing whether to pursue further litigation.

"When something like this happens the contact with the community is immediate," Kittle said in a telephone interview Monday. "Some potentially good news is it seems to be raining in the area and that might help keep particulate matter out of the air, but the rain might also

carry the emissions into the Bay.

"It could be several months until a lawsuit is filed, if at all, but we first have to look at the facts and the evidence. The phrase, 'Where there's smoke, there's fire' is appropriate here," he said. "We have to hear people in the community and assess how it's impacted them, evaluate the scientific analysis and understand what the long-term effects are."

Kittle said the ongoing action against the refinery, alleged to have affected around 40,000 people in the city, was split three ways among different law firms.

Cotchett, Pitre & McCarthy's purview is the alleged health impacts of the multiple refinery fires, seeking compensation for damages and medical and environmental monitoring. Law firms Cutter Law PC and TorkLaw are assessing the damage to properties in the city, while Arias Sanguinetti, Wang & Team LLP and Liddle Sheets PC are pursuing personal injury claims. *Cruz et al v. PBF Energy, Inc., et al.*, 3:23-cv-06142 (N.D. Cal. filed Nov. 28, 2023).

PBF Energy, the parent company of Martinez Refinery, was dismissed from the original lawsuit in April 2024 and the litigation continues against the refinery itself.

Susan E. Smith, from Beveridge & Diamond PC, represents the defendants and said the firm would not be providing a comment on the incident or ongoing lawsuit. Smith is the San Francisco office managing principal.

Kittle added in his comments, "It's a massive industrial failure launching toxic chemicals into the sky. Last time there was a visible, palpable, filmic layer in the air which affected the entire community, leaving dust and ash on residents' cars and covering growing vegetables in the area. I'm not sure I would want to live next to the refinery."

The original lawsuit claimed that PBF Energy, the Martinez Refinery and others had created a public nuisance by releasing toxic chemicals, causing potentially severe medical harm. With PBF Energy dropped as a defendant, the lawsuit claims the refinery failed to prevent toxic chemical releases, and failed to properly notify residents, the government and other stakeholders when the releases occurred.

The lawsuit demands that the refinery pay for medical monitoring expenses for affected individuals to ensure that any potential negative health effects are identified and treated. The lawsuit claims that residents were advised not to eat locally grown fruits or vegetables exposed to the November 2022 incident only months after the chemical release. The FBI and other local and federal agencies are also investigating the incidents.

#383204

JBS to pay \$83.5 million in latest beef price-fixing settlement

 [reuters.com/legal/litigation/jbs-pay-835-million-latest-beef-price-fixing-settlement-2025-02-03](https://www.reuters.com/legal/litigation/jbs-pay-835-million-latest-beef-price-fixing-settlement-2025-02-03)

Mike Scarcella

By Mike Scarcella

February 3, 2025 8:19 AM PST Updated a day ago

Employees work at the assembly line of jerked beef at a plant of JBS S.A, the world's largest beef producer, in Santana de Parnaiba, Brazil December 19, 2017. REUTERS/Paulo Whitaker/File Photo Purchase Licensing Rights , opens new tab

Feb 3 (Reuters) - JBS (JBSS3.SA) , opens new tab has agreed to pay \$83.5 million to settle antitrust claims that it conspired with other meat-packing companies to curb supply in the U.S. beef market to artificially inflate prices.

Ranchers and other plaintiffs disclosed their proposed settlement , opens new tab with the Brazilian company and its U.S. units on Friday in federal court in Minnesota.

The settlement requires a judge's approval.

The lawsuit filed in 2019 alleged JBS and other meat producers conspired to fix beef prices, in violation of U.S. antitrust law. JBS denied any wrongdoing in agreeing to settle.

JBS in a statement called the claims "frivolous and without merit" and said settling was in the best interest of the company. The lead plaintiffs' attorneys declined to comment.

The proposed settlement would resolve claims from two groups: producers that sold cattle to JBS for slaughter between 2015 and 2020, and individuals and others who held certain positions in live cattle futures traded on the Chicago Mercantile Exchange.

The plaintiffs' lawyers estimated thousands of members in each of the two groups.

In their request for court approval, the plaintiffs called the settlement "substantively fair, providing substantial relief for all class members that submit valid claims."

The terms require JBS to cooperate with the plaintiffs as they pursue related claims against remaining defendants Tyson Foods, Cargill and National Beef.

The three defendants did not immediately respond to requests for comment.

The settlement is the third for JBS, which earlier agreed to pay a combined \$78 million to so-called direct purchasers and other buyers to settle their price-fixing claims in the litigation. The plaintiffs' attorneys said they would seek a legal fee award of up to \$27.8 million from the latest settlement fund.

The case is In Re Cattle and Beef Antitrust Litigation, U.S. District Court, District of Minnesota, No. 0:22-md-03031-JRT-JFD.

For plaintiffs: David Scott, Amanda Lawrence and Patrick McGahan of Scott + Scott Attorneys at Law; and Ellen Meriwether, Jennifer Sprengel and Daniel Herrera of Cafferty Clobes Meriwether & Sprengel

For JBS: Sami Rashid and Mike Bonano of Quinn Emanuel Urquhart & Sullivan

Read more:

Tyson, JBS to pay \$127 million to resolve workers' wage-fixing lawsuit

JBS to pay \$25 mln in latest beef price-fixing settlement in US court

JBS reaches 'icebreaker' settlement of beef price-fixing claims

Get a quick look at the days breaking legal news and analysis from The Afternoon Docket newsletter. Sign up here.

Over 700 Residents Near 2023 Derailment Sue Norfolk for More Damages

 [law.com/2025/02/03/over-700-residents-near-2023-derailment-sue-norfolk-for-more-damages](https://www.law.com/2025/02/03/over-700-residents-near-2023-derailment-sue-norfolk-for-more-damages)

Amanda Bronstad

What You Need to Know

- The suit was filed in Ohio's Franklin County Court of Common Pleas on the anniversary of the Feb. 3 derailment in East Palestine, Ohio.
- The suit names additional government defendants including the Village of East Palestine, Ohio, and school districts in East Palestine and Columbiana County.
- Lawyers who brought the suit also filed administrative claims under the Federal Tort Claims Act with the EPA and the CDC.

More than 700 current and former residents of Ohio and Pennsylvania sued Norfolk Southern Corp. and dozens of other businesses on Monday for failing to protect them from toxic chemical exposure in the two years since the train derailment.

The suit, filed in Ohio's Franklin County Court of Common Pleas on the anniversary of the Feb. 3 derailment in East Palestine, Ohio, comes four months after a federal judge finalized a \$600 million class action settlement with Norfolk but names additional government defendants including the Village of East Palestine, Ohio, and school districts in East Palestine and Columbiana County.

"The local authorities were not part of the original class action, and the local authorities were absolutely part of the mayhem that resulted in the derailment," Kristina Baehr, of Just Well Law in Austin, Texas, one of the lawyers who filed the complaint, told Law.com. "They didn't follow their own emergency procedures and warn people properly."

Baehr filed the suit along with Jedidiah Bressman and David Bressman, of Bressman Law in Dublin, Ohio; and Don Keenan and Mindy Bish, of the Keenan Law Firm in Miramar Beach, Florida.

The complaint seeks punitive damages, citing incidents before and after the derailment involving Norfolk Southern crashes, which increased 81% between 2013 and 2022. Litigants also note in the complaint that the original settlement, approved last year, equals only 18 days of revenues for Norfolk.

“There are two purposes of tort law: one is compensation, but the other, which is just as important, is deterrence to prevent the bad conduct in the future,” she said. “And you can’t have one without the other. The compensation was not nearly enough to have a deterrent effect to prevent them from doing it again. This was a drop in the bucket for them.”

Lawyers who brought the suit also filed administrative claims under the Federal Tort Claims Act with the U.S. Environmental Protection Agency and the U.S. Centers for Disease Control and Prevention, which “were negligent in their response, and didn’t follow their own safety rules,” Baehr said.

A Norfolk Southern spokesperson did not respond to a request for comment.

'It Simply Wasn't Enough'

On Sept. 25, U.S. District Judge Benita Pearson, of the Northern District of Ohio, granted final approval to the \$600 million class action settlement with Norfolk over the derailment, which occurred due to a rail car’s defective wheel bearing and was followed by a controlled burn of five cars containing vinyl chloride, a toxic chemical. The settlement was for largely economic damages, not medical monitoring, which Norfolk planned to provide as part of a \$310 million consent decree with the U.S. Department of Justice and the EPA.

A handful of objectors have threatened to appeal the settlement, and less than 1% of a potential class of 464,000 opted out of the deal.

Baehr said that the majority of those who opted out of the settlement are in the new suit, and are suing for additional damages. Dozens of others opted into the class action settlement but are pursuing claims against the additional government defendants.

The settlement, she said, ended up granting \$400,000 to 55,000 people.

“It simply wasn’t enough,” she said. “It’s not that the claims were not sufficient, it’s just that the compensation was nothing.”

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[Latest](#)

New San Diego law firm blends political, trial, and financial expertise

DJ [dailyjournal.com/articles/383208-new-san-diego-law-firm-blends-political-trial-and-financial-expertise](https://www.dailyjournal.com/articles/383208-new-san-diego-law-firm-blends-political-trial-and-financial-expertise)

Consumer Law

Feb. 4, 2025

Former U.S. Representative Lynn Schenk has partnered with her brother, veteran trial attorney Frederick Schenk, and his son, Benjamin Schenk, to launch the Schenk Law Firm. With backgrounds spanning government, litigation, and finance, the family-led practice aims to advocate for consumers and clients facing physical and financial harm.



A former member of the U.S. Congress has joined with two family members to launch a law firm in San Diego.

Lynn Schenk joined with her brother, plaintiffs' attorney Frederick Schenk, and his son, Benjamin to found the Schenk Law Firm.

"By combining our diverse experience and substantial resources, we're uniquely positioned to advocate for consumers and protect our clients' interests," Frederick Schenk said in a statement. "Our commitment lies in supporting those who have suffered physical injuries or financial harm through no fault of their own."

Lynn Schenk served one term in the U.S. House of Representatives, from 1993 to 1995. She represented California's 49th congressional district, which encompasses coastal areas including La Jolla and Del Mar.

Frederick Schenk was a trial lawyer at the plaintiffs' powerhouse CaseyGerry for 40 years.

While their family bonds form the foundation of the practice, the attorneys said their collective expertise sets them apart. Benjamin Schenk has a background in commercial real estate and hedge fund management in addition to a law degree.

Lynn Schenk served as chief of staff to Gov. Gray Davis after leaving Congress.

DeepSeek's AI Power Move: Will Lawyers Be the Next to Adapt?

 [law.com/therecorder/2025/01/31/deepseeks-ai-power-move-will-lawyers-be-the-next-to-adapt](https://www.law.com/therecorder/2025/01/31/deepseeks-ai-power-move-will-lawyers-be-the-next-to-adapt)

Caroline Byrne

A robot and AI; 3d illustration

Commentary

DeepSeek's AI has Silicon Valley on edge, leaving law firms scrambling to balance opportunity, privacy risks, and considering their own place in the AI race.

February 03, 2025 at 04:17 PM

By Caroline Byrne



The original version of this story was published on The American Lawyer

It's only been a week since DeepSeek's AI breakthrough shook Silicon Valley, rattled global markets, and rolled back the myth of the 'Magnificent Seven' tech giants. It has left lawyers to weigh the implications for data privacy, regulation, and their own competitive edge.

Law firms do not have a clear answer. Some see opportunities, while others worry about compliance, an inflated investment market, and the future of billable hours. The legal world isn't immune to upheaval, but rapid changes like this, which could have implications for their very survival, are a relatively new phenomenon.

Disruption is just another Monday for Daniel Glazer, though, the Wilson, Sonsini Goodrich & Rosati partner and go-to lawyer for tech 'bros'.

"I've been in this space since the late '90s and one of the things you learn, especially in the tech sector—especially the venture-backed tech sector—is that you don't get too worked up about the highs and the lows," Glazer said a couple of days after DeepSeek wiped \$1 trillion off of U.S. stocks and triggered Silicon Valley convulsions.

"Yesterday was interesting," Glazer said, a masterclass in understatement. He's seated on a sofa at Wilson Sonsini's London office, the 'New York Room' to be precise, an airy conference room filled with baseball paraphernalia and photos of sports legends and stadiums.

So what are his tech clients asking?

“Like most disruptive events, there were people who saw this as an opportunity and others who saw this as a big challenge, a potential challenge such as, ‘Hey, does this mean the valuations of AI companies are not what they should be? On the other hand, are there ways to use these new tools in a way that we can build our businesses even bigger?’ And this is not a surprise. Anything that can be that disruptive, there are going to be opportunities and challenges, depending on your perspective.”

Opportunities, challenges, and game changers.

DeepSeek Downloads

Chinese startup DeepSeek claims to have built an OpenAI rival in just two months for a mere \$5 million at a time when Silicon Valley is spending billions to accomplish the same thing. If true, DeepSeek could reshape the U.S. tech industry and the world. It is already the most downloaded free app in the U.S. and U.K.

Deepseek's model could also have an impact on Big Law. Some firms are also spending considerable amounts building their own AIs. Dechert has launched DechertMind.

Lowenstein Sandler launched Lowenstein AI Chatbox in April. CMS is building European Legal AI Noxtua. Cooley unveiled Gen AI Chatbox Cooley GOBot in August, and Wilson Sonsini brought Agentic AI to its self-service platform Neuron.

Many law firm partners remain in wait-and-see mode, however. Some, like Fox Rothschild, are even reportedly banning lawyers from using DeepSeek over privacy concerns.

“There is still lots of conservatism about AI, partly because of the type of people that become lawyers, partly because decision-making can take time in some of the larger, more democratic, partnerships, partly because it requires money to be invested and not distributed, and partly because if your business model is to sell human time by the hour you might approach AI with a degree of caution,” said KBW London investment banker Gareth Hunt who specialises in law firms and litigation funding.

DeepSeek or Deepfake?

Markus Hartung, former managing partner of Linklaters Germany and a consultant at Berlin's Chevalier, is doubtful about DeepSeek and notes only one law firm, CMS, has so far developed its own large language model (LLM) AI in Germany.

“All the other firms use existing ones and will look at the Chinese wonder child to check whether it is as good as promised. Hence, no drama expected,” Hartung said, adding that he isn't yet convinced the new Chinese LLM can walk on water. “It wouldn't be the first time for something which turned out to be fake.”

Crispin Passmore, co-founder of London's Stratify consultancy and a former legal regulator is also holding back, "I am always sceptical of big moves and pivot points."

The prospect of sharing information that will be stored in "secure servers" in China is a red flag for others. Beijing's national intelligence law mandates that all enterprises, organisations and citizens support and assist national intelligence initiatives.

Carlos Eduardo Coelho, innovation and knowledge director at leading Portuguese law firm Morais Leitão, Galvão Teles, Soares da Silva & Associados, tested DeepSeek just before the stock market upheaval.

"Given my experience living in Macau, China, I was curious to see how it would handle sensitive topics. As a test, I asked about the events in Tiananmen Square in 1989. Initially, an answer appeared, but as I was reading it, the response suddenly changed to: 'Sorry, that's beyond my current scope. Let's talk about something else.' At that moment, DeepSeek lost me," he said. "That said, I still consider the innovation DeepSeek introduced is amazing and it will likely be replicated by other AI players."

Highs and Lows

Pros like Daniel Glazer are taking DeepSeek in their stride, having lived through the frenzied IPO boom of the late '90s, the bust in the early 2000s, the tech resurgence in the 2000s, the long bull run from 2010 to 2021, the sharp rebound after the initial panic of the 2020 pandemic, and then the market slowdown of 2022-24.

"You learn that things may average out over time but on a day-to-day basis there are going to be a lot of highs and lows and you ride with it," Glazer said.

DeepSeek's 'Sputnik moment' may be a fleeting blip or a seismic shift for law firms. It's too early to know.

As a result, firms are having to find a balance. On the one hand, those who embrace AI are bound to find new efficiencies and competitive advantages, and those who resist risk falling behind. On the other hand, there are often second-mover advantages in tech and the adoption of AI into law is evolving in stages.

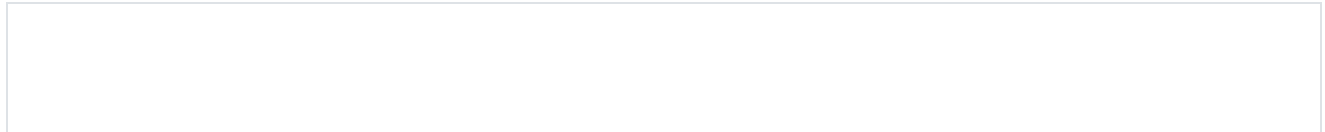
Those favouring a more cautious approach will be hoping the hysteria about DeepSeek is overblown, the latest point on a choppy line chart.

So how does the AI race compare to the feverish energy of 1999 at the peak of the Internet boom—an era so vividly described by author Michael Lewis in *The New New Thing: A Silicon Valley Story*?

Glazer, lost in the demands of a relentless week, stares out the window of the New York Room for a moment, almost wistfully remarking, "If only I had time to read books."

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How the Court of Public Opinion Should Factor Into Litigation Strategy

 [law.com/litigationdaily/2025/02/04/how-the-court-of-public-opinion-should-factor-into-litigation-strategy](https://www.law.com/litigationdaily/2025/02/04/how-the-court-of-public-opinion-should-factor-into-litigation-strategy)

Ross Todd

I've previously touched on the parallels between the type of storytelling you find in journalism and the work litigators do to build fact-based narratives to make the case that their clients are on the right side of the law. But the storytelling parallels run even closer between litigators and public relations professionals hired to work on high-profile legal disputes. Indeed, they might intersect at times.

That thought sprang to mind as I listened to the debut episode of "The Intersection," a podcast about crafting stories for the court of law and the court of public opinion co-hosted by Michael Sitrick, the founder and CEO of crisis management firm Sitrick and Company, and Sallie Hofmeister, a former journalist and senior partner at the firm. In their first episode, the pair sat down with **Matthew Schwartz**, who took on the role of chairman at **Boies Schiller Flexner** at the turn of the year.

My colleague Dan Roe sat down earlier this year for a wide-ranging discussion with Schwartz about his goals and vision for the firm during his first three-year term as chair. But in their hour-long interview, Sitrick and Hofmeister spent a good chunk of the time talking about how Schwartz has interacted with the media in his white-collar and complex litigation practice. In particular, they asked Schwartz, who handled financial fraud cases as an assistant U.S. attorney in the Southern District of New York earlier in his career, about the Bernie Madoff Ponzi scheme case he helped prosecute.

Schwartz said the policy in the office at the time was that line prosecutors didn't deal directly with the media. But during the six-month trial, he said prosecutors would help reporters who were in court following the case by pointing to things in the public record to help explain what had come up in testimony.

Schwartz said that he didn't know if there was much of a media strategy in the case other than "to identify the people that were responsible for the wrongdoing, to prosecute them and to prove that in court." But he said that the other people caught up in the investigation did have their own stories to tell. Much of the case, he said, came down to who knew what and when. "There were people who for 40 years every day ... showed up and ... processed paper in support of totally fake trades to help someone else commit a fraud. Some of them knew what they were doing. Some of them had no idea what they were doing," he said. "Figuring that out was our job as investigators and prosecutors. But communicating their story was certainly part of the defense strategy."

Schwartz said that in a case such as the Madoff case, where there's an enormous amount of pretrial media coverage, lawyers need to understand it's unlikely to find a potential juror who hasn't been exposed to at least some aspect of the story. "The question isn't to find someone who is untouched. It's to find someone who, despite what they have heard, can still be impartial and listen to what happens in the courtroom, can listen to the facts, can listen to the evidence, and can listen to the judge's instructions and, to the greatest extent possible, not bring any of that external noise into the courtroom," he said. "You don't want someone who is so ignorant that they don't know anything about one of the things that has been on the front page of the newspaper for the past several years, whether that's the fraud of the century or whether that's the prosecution of a former president."

The Court of Public Opinion

Sitrick said that he counsels clients who care about winning in the court of public opinion "to write a lawsuit in a way that tells the story." On the flipside, he said that when a client faces "horrible allegations" they have to do more than just "deny, deny, deny." He said, especially if a defendant settles without ever answering the claims in a lawsuit, "it looks like you bought your way out."

In response, Schwartz said that lawyers and clients now largely understand that media coverage is a critical part of almost every high-stakes lawsuit. He said in his white-collar practice, there is a sense that if you say nothing, the allegations against you live forever. "Even if someone is tried and acquitted and a jury finds them to be not guilty, the stories of their arrest and charges—sometimes even the press release from the government—live on the internet forever," he said. The fact that those allegations have been made can be incredibly damaging, he said, as potential employers or future counterparties come across that information. "If the other side of the story is not at least presented to contextualize the allegations, then it puts a client at a real disadvantage."

Being Ready Out of the Gate

Schwartz said that at the first sign that something may be a problem for a client, it's important to understand its scope and the "real facts." He said if and when things get messy, you want to be prepared to comment publicly "in a way that is forceful, credible and robust."

At the same time, he said, putting a forceful, factual denial into the public record before you know the facts can be "very dangerous."

"The careful lawyer will say, 'Well, let's wait. Let's understand what all the facts are. Let's understand what the record is before we speak publicly, because we don't want to get caught saying something that's not going to hold up 100%,'" Schwartz said. "You can do that,

but if you do that, sometimes you let a lot of opportunities go by. Public opinion can harden. Things will be out there without any response or rebuttal that are going to live out there forever.”

Schwartz said figuring out whether it’s possible to say something forcefully, quickly and with credibility is crucial early on in the coverage of a dispute. “It’s why it is important as a lawyer to get right on top of these allegations when they occur, and ideally before they are made publicly,” he said. He said that it’s very unusual in his experience for the first shots in a dispute to be “noisy” and made in public. “The problem is people, companies, clients often feel, when the first shot is more subtle, that they can just ignore it, that it will go away or that they can manage it, and that’s a missed opportunity,” he said.

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Trending

Litigation Surge - Tennessee | Novo Nordisk

Novo Nordisk filed a cluster of false advertising and trademark infringement lawsuits this past week in Tennessee Western District Court. At least three suits were filed against weight loss centers and medical spas; the suits are part of a wave of cases accusing companies of misappropriating the plaintiff’s trademarks for the type 2 diabetes and weight loss medications Ozempic, Wegovy and Rybelsus to sell semaglutide-based compounded drugs for weight loss without FDA approval. The suits are backed by Nashville boutique Riley & Jacobson.

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Securities Law

Feb. 3, 2025, 11:14 PM PST

Ex-Nissan Director Conviction Upheld Over Carlos Ghosn's Pay (1)

By Reed Stevenson and Tsuyoshi Inajima

- **Greg Kelly was arrested in 2018 on same day as former chairman**
- **Lawyers, prosecutors had appealed one-count conviction in 2022**

Former Nissan Motor Co. director **Greg Kelly**'s conviction on charges of helping former chairman **Carlos Ghosn** under-report his compensation was upheld by a three-judge panel.

The court also dismissed appeals by the defendant and the prosecution after hearing arguments and reviewing evidence following Kelly's conviction in March 2022. Tuesday's ruling, which was read out in court in less than an hour, main adjudicator repeatedly said the district court's decision wasn't unreasonable or erroneous.

The ruling effectively preserves the status quo for Kelly, and by proxy, Ghosn, and gives Japanese authorities a way to claim some form of prosecutorial victory against the former chairman and chief executive of Nissan and Renault SA. Ghosn, who was arrested in November 2018 on accusations of underreporting compensation, has denied the charges before and after he fled Japan in late 2019, smuggled in a box for audio equipment.

Prosecutors had also appealed the initial verdict, seeking to overturn the not-guilty rulings on other charges they brought against the former American executive. Yoichi Kitamura, Kelly's lawyer, said he will appeal Tuesday's decision to a higher court.

"There was no explanation as to why such a result was reached," Kitamura said of the court's arguments. "They don't make any sense."



Greg Kelly, second from left, arrives at the Tokyo District Court in March 2022.

Photographer: Toru Hanai/Bloomberg

When the lower court had found Kelly guilty on one count for a single fiscal year, it cleared the American of the majority of charges for other years and gave him a suspended sentence. The proceedings, which lasted 17 months, essentially served as a substitute trial against Ghosn. Kelly left Japan after the verdict and hasn't set foot in the country since.

Kelly's lawyers had [argued](#) that he lacked any motive to overpay Ghosn and wasn't privy to any plans, discussions or conspiracy to do so.

Prosecutors had asserted that Kelly should be found guilty on the other counts, saying that the testimony of Toshiaki Onuma, who ran the secretarial office for Nissan's executives, paints a picture of a coordinated effort to hide Ghosn's pay. Onuma, a key witness in the trial, testified for the prosecution in return for immunity.

Ghosn and Kelly were arrested on the same day in November 2018, setting off a dramatic chain of events that upended Nissan's alliance with longtime partner Renault. Nissan's profits slumped and the score-settling fueled an exodus of other top management.

The turmoil left the Japanese automaker in a weaker position as it seeks to navigate an industry that's being disrupted by electrification and autonomous driving. Nissan is now [in talks](#) with Honda Motor Co. for a combination under a holding company that would effectively bring it under control of a rival carmaker.

Kelly, who formerly oversaw human resources and legal affairs at Nissan, argued there wasn't an agreement to pay Ghosn, and said there was requirement to disclose any such compensation and that his former boss was never paid. Kelly was acquitted of charges related to Ghosn's pay before 2017 because he wasn't aware of the unreported remuneration, the chief judge determined at his trial.

The verdict from two years ago was a rare partial victory in a country where prosecutors win virtually all court cases. Kelly was left alone to defend himself after Ghosn staged a [spectacular escape](#) from Japan, making his way by private jet to Lebanon, where he now resides.

(Updates with lawyer's comments in fifth paragraph.)

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Matt Levine's Money Stuff: Texas Tempts Meta

By Matt Levine

Opinion

Meta to Texas

If you are a shareholder of a public company, how would you like that company to be run? Here are two options:

1. The chief executive officer of the company has to run the company in the interests of shareholders. There are rules in place to avoid even the appearance of a conflict of interest. If she takes the company jet to a morning business meeting and then spends the afternoon sightseeing, she has to reimburse the company for a ratable portion of the fuel she used. If she wants to acquire another company whose assistant treasurer's nephew once played on a Little League team with her first cousin once removed, the board of directors will have to set up a special committee to review the deal, and she will have to recuse herself from decisions about price to avoid the risk of personal favoritism.
- 2. The chief executive officer of the company can do whatever he wants. He can take stock away from public shareholders and give it to himself; he can take a month off work to do ketamine and party; he can pay a billion dollars of corporate money to acquire his child's lemonade stand; he can have the company build a giant glass palace to house a giant golden statue of himself. Not in a "he is technically allowed to do this but he's a good guy so he wouldn't" way, but in a "he's doing it now and we're fine with that" way. And not in a "we grudgingly allow our CEO to do this nonsense" way, but in a "if he didn't do this nonsense he wouldn't be the visionary business genius that he is, so we enthusiastically support the giant golden statue."

Which option is correct? I feel like the obvious answer is "it depends." If you find a ketamine-swilling self-dealing business genius with a radical long-term vision, one who, almost despite himself, makes zillions of dollars for his public shareholders, you might rationally (1) give him money, (2) give him complete creative freedom and (3) take the risk that he might hose you and keep all the profits for himself. That's a risky trade, for you, but you expect to be compensated for the risk. You trust his vision, and his money-making instincts, more than you trust those of other shareholders, so you'd rather give him total control than have him answer to shareholders.

But if you are an ordinary investor you will want to invest in a wide range of companies, some of whose CEOs are *not* world-historical business geniuses. So you might want a good set of rules in place to make sure that *most* of your CEOs are answerable to shareholders and doing a good job managing those companies on your behalf.

Ordinarily I default to feminine pronouns for my generic characters, but you might recognize that the CEO in the second option is a lightly fictionalized version of a real guy. Not this guy though:

First Mark Zuckerberg moved Meta's trust and safety workers to Texas. Now, he is exploring moving his social-media giant's legal residence to the Lone Star state.

Meta Platforms is discussing moving its incorporation from Delaware, where most big U.S. companies are legally housed, people familiar with the matter said. Texas has billed itself as a better destination for companies such as Meta with controlling shareholders like Zuckerberg. ...

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

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

Delaware, which works to balance the demands of investors and managers, isn't taking competition from Texas and other states lightly. Last year, Delaware's legislature made it easier for big shareholders to use stockholder agreements to assume powers normally held by a company's board.

Honestly if I ran the the Delaware legislature I would let companies just check a box : "Do you want to be governed by (1) normal time-tested Delaware rules of fiduciary duty, which give shareholders protection against managerial self-dealing, encourage shareholder confidence in the businesses in which they invest, and therefore tend to attract more investors and will get you a stock-price premium (maybe) or (2) anything-goes rules that might be fine for you if you're really good at this and/or if you have a devoted fan base of investors?" And then I'd require companies to disclose prominently what box they checked. It could be in the corporate name, or the punctuation: "Meta Platforms Inc." would mean a regular company; "Meta Platforms Inc!?" would mean a weird one.

And then I *think* most companies would want the regular rules, and some would want the anything-goes rules, and investors would know what they were getting into. And for most companies, electing the regular rules would get them a higher valuation and better access to capital markets, but for a few companies, electing the other rules would help. “We’d like to give this company our money, but we don’t want the CEO to be constrained by pesky rules about answering to shareholders and putting our interests first, so we’d pay more for the stock if he wasn’t,” investors might say, about *some* companies. (This is sometimes called “long-termism.”) “I like that you’re crazy, but you need to be crazier,” Masayoshi Son supposedly told Adam Neumann before flinging money at him, and I guess he was wrong in that instance, but you get the general idea.

By the way, one reason that it would be a good idea to offer this option — and to offer it in Delaware specifically — is that it promotes clarity and certainty. Moving to Texas doesn’t accomplish that! Texas is a black box! When Tesla Inc. moved to Texas, its board and lawyers could say, with straight-ish faces, that they did not anticipate any change in shareholders’ rights from the move. Maybe Texas’s new specialized business courts would be as skeptical as — or more skeptical than — Delaware courts about Elon Musk’s huge pay package. Who can say? They have few precedents:

“The Texas state government is trying to send out signals that the Texas state courts will be more friendly to businesses than the Delaware court has been,” said Stephen Bainbridge, a law professor at the University of California, Los Angeles. “But there’s no guarantee that that’s going to happen.”

I assume that eventually some retail investor with one share of Tesla stock is going to sue Tesla in Texas business courts over Elon Musk’s pay package or overall schtick. And then the funniest possible outcome would be for those courts to rule against Musk.

Bally’s

I am not sure that this actually works, but if I were still an investment banker, here is a trade that I might be pitching to gaming companies:

1. Strike a deal with a city to build a casino.
 - 2. As part of that deal, agree that at least 25% of the casino will be owned by women and minorities. You — the publicly traded gaming company — will own 75% of it, but the other 25% will be sold exclusively to women and minorities in a public offering.
 - 3. You do the public offering at a fixed price: You just decide how much the new casino is worth, and then offer it to the public — that is, to any women and minorities who want to buy — at that price.
 - 4. This is key: You set a high fixed price. The price that you ask people to pay to invest in your company is pretty aspirational, for you.
 - 5. You, and the city officials, go out and market the offering to women and minorities in the city, calling it a chance to “create generational wealth.”
 - 6. It is 2025, so you will obviously, immediately, get extremely sued by white men alleging that this is unconstitutional discrimination.

- 7. You settle by saying “okay fine, fine, fine, you win, we will reluctantly let you buy shares of this casino at the same fixed price we were offering to women and minorities.”
- 8. You fill up the order book with the people who sued you.

It feels like a sort of oblique Trump trade, doesn't it? In this political climate there is a lot of competition for Trump-aligned investor money: There are anti-woke investment funds, there are Trump-themed memecoins (and Trump-themed memecoin exchange-traded funds), there are right-wing social media companies. “We have a special investment opportunity that is only open to women and minorities” is a differentiated way to market to a similar audience, once you settle the lawsuit.

I once described Sam Altman's approach to his investors as “business negging,” and I suppose this is a different sort of business negging. Get people to invest in your stock offering out of a sense of grievance, at you. There are various problems with this approach, I cannot entirely recommend it, and I am like three-quarters kidding, but here you go:

Bally's Corp. and the City of Chicago were accused of discriminating against White men in a lawsuit by a conservative legal group challenging a \$1.7 billion casino project that offered a 25% ownership stake only to women and people of color.

The city violated the civil rights of Richard Fisher and Phillip Aronoff, who said they were unable to invest in the project because they're White men, according to the suit filed Wednesday in federal court by the American Alliance for Equal Rights.

“We're not trying to stop the casino, we're trying to stop the race discrimination,” Dan Lennington, a lawyer for the plaintiffs. “The minute they insert race-based qualifications into an investment, that's when it becomes illegal and invalid under federal law.” ...

Last month, Bally's announced the initial public offering of Class A shares that would provide a 25% equity stake only to women and minorities. But the suit alleges the limitations — which bar initial investors from reselling their shares to White males — are illegal.

Fisher and Aranoff “would like to be dealt in on this offering but are excluded from the table solely based on immutable characteristics,” according to the lawsuit. “In short, defendants have stacked the deck against them.”

Yes stacked the deck against *them*. From the lawsuit:

Bally's Chicago, Inc., a new corporate entity, has advertised an initial public offering to raise \$250 million. Through this “Class A Interests” offering, Bally's Chicago, Inc. (and its investors) will own 25% of the Casino.

Chicago leaders have touted this offering as a fantastic chance to “create generational wealth.” At an information session, Alderwoman Ronnie Mosley (21st Ward) said, “[t]onight is about a new opportunity on how to participate, about not just being a consumer but to be an owner.” One resident of the Auburn Gresham neighborhood called the offering a “no-brainer.”

We talked about this offering last month. ("Awkward timing," I called it.) There is some interesting structure on it: The shares cost \$25,000 each, but some are being sold for \$250, with a 99% non-recourse loan at 11% interest. (One rough way to think about that trade is: You've got about a 1% chance of getting a \$25,000 stake in a casino at a 99% discount, and about a 99% chance of giving Bally's your \$250 and never seeing it again. Not investment advice!)

But there is also just the fact that Bally's is out trying to raise \$250 million for the new casino at a fixed \$1 billion valuation, in an offering that seems to be marketed by Chicago city officials. Is that valuation right? Here's Patrick McKenzie:

The investment case implies that Bally's is intentionally giving takers something for nothing. That is, they must be sandbagging the valuation they assigned to this bundle of rights: it's not really worth \$1 billion, it is worth e.g. \$5 billion. Only you favored Chicagoans well-loved by your alderman are able to buy at the non-market price, leading to essentially free money. Not merely small amounts of it, either. Generational. Wealth. ...

Do I think sophisticated investors would agree with Bally's that this bundle of rights is worth \$1 billion? Reader, I do not. ...

If 25% of this bundle of rights is worth \$250 million, then 75% must be worth \$750 million, right? And if an entity owning 75% of the bundle, Bally's, also owns 14 other casinos, online gambling properties, and similar, then that entity must be worth a lot more than \$750 million, right?

The market does not agree with this assessment. The entire market capitalization of Bally's (NYSE: BALY) is, as of this writing, ~\$1.5 billion. What's the difference between the \$50 million average imputed value of the other casinos and the \$750 million imputed value of the Chicago casino? The \$750 million is *made up*, that's what.

I would probably be a bit kinder than that. Bally's (the parent company) really is putting in \$750 million in cash for its 75% equity interest in the Chicago casino, and doesn't seem to have too much in the way of senior claims, so that's sort of a check on the valuation. Also Bally's total enterprise value is about \$5.6 billion, so the \$1 billion valuation for one (not yet built) casino is not all that far out of line. Though here's a story citing the deal's investment banker saying "that investors should not expect to see any profit in the first five years of the casino's operations."

Anyway I have to assume that Fisher and Aranoff will quickly win or settle their lawsuit. How much of the stock will they buy when they do?

MicroStrategy

Huh:

MicroStrategy Inc. said it didn't buy any Bitcoin in the prior week, halting a string of 12 consecutive weekly purchases that began in late October.

The purchases had coincided with a record-breaking rally in the digital currency that had been driven in part by Donald Trump's embrace of digital assets and the subsequent industry-friendly agenda in the first weeks of his second presidential administration. MicroStrategy bought more than \$20 billion in Bitcoin during the period, increasing its overall holdings to around \$44.7 billion, or more than 2% of all the tokens that will ever be minted.

MicroStrategy had, for months, sold a bunch of stock every week and used the proceeds to buy Bitcoin. The company is at this point mostly a pot of Bitcoin, but the valuation of the company is roughly twice the value of its underlying Bitcoin. This means that it is extremely lucrative for MicroStrategy to keep selling more stock and buying more Bitcoin: Every \$1 of stock that it sells buys \$1 of Bitcoin, which makes its stock worth \$2 more. When MicroStrategy announced this plan in October, my analysis was: "If you run a company, and people are paying much more for your stock than it is worth, you should sell them as much of it as you can." MicroStrategy did. "A perpetual motion machine," I have called it. And then it stopped!

I don't know why. MicroStrategy currently has 471,107 Bitcoins, worth about \$47 billion at \$99,000 per Bitcoin; its market capitalization is still roughly double that. The premium is still robust, and the trade still looks extremely lucrative for MicroStrategy. The announcement in October was that MicroStrategy would sell \$21 billion of stock in at-the-market offerings (and another \$21 billion of fixed income) to buy Bitcoin "over the next 3 years," and there's still more than \$4 billion left on the stock portion. I suppose they paused it because they were distracted by issuing preferred stock?

MicroStrategy Inc. has raised \$563 million through a debt-like equity offering to help finance its purchase of more Bitcoin.

The perpetual strike preferred stock was sold for \$80 apiece, below the liquidation preference of \$100 per share, a sign that the deal was more investor friendly than when it was initially pitched to retail traders and institutions, according to a press release Friday. The stock will pay investors an 8% fixed coupon and carries a \$1,000 conversion price, which would require the stock to nearly triple from Thursday's close.

The deal raised more than double the initial target of \$250 million. MicroStrategy announced earlier this month that it could use perpetual preferred offerings to raise as much as \$2 billion in the first quarter.

The structure is a novel offering for Michael Saylor's company, which has used more traditional convertible debt and at-the-market share sales to raise cash to buy Bitcoin. The offering appeals to a wider range of investors, including those who are seeking a relatively high yield, particularly compared to its recent convertible notes that carried 0% coupons.

Here is the press release. I wrote last month that "perpetual preferred stock of a software company is not exactly a traditional product," though I guess this is really a convertible preferred (but with a very high conversion price). But, yes, you can buy it for \$80 and get an \$8 annual dividend, or a 10% yield. I suppose this is a way to market "Bitcoin exposure (from the conversion feature) with a high yield (from the coupon)" to the investors who want that sort of thing, and I suppose MicroStrategy has a lot of investors who want that sort of thing.

Why does MicroStrategy want it, though? MicroStrategy has about \$46 million of cash (in dollars) on hand, or roughly one year of preferred coupons; it had negative operating cash flow last quarter. The preferred dividends can be paid in cash or stock, but still: Why pay \$45 million a year to preferred investors to buy more Bitcoin, when common shareholders are begging to buy stock at a premium? I guess if you are a full-service Bitcoin treasury company you have to offer a lot of different products.

Bitcoin 529s

I don't know, man, my theory of college savings is that there is an economy, and the economy grows over time because of technological progress and demographic growth, and you invest your money now in a broad range of businesses, and those businesses use your money to make stuff and help the economy grow, as the economy grows those businesses mostly grow, and your investment gets more valuable. And if you put aside, uh, frankly kind of a lot of money every month, and if the economy (or, rather, the equity value of publicly traded companies) grows at a faster rate than college tuition does, then you will have enough money to pay for your kids' college educations.

This is not a particularly inspiring vision or anything. It requires (1) economic growth, (2) college tuition not outpacing growth by too much and also (3) you putting aside kind of a lot of money anyway, because college is expensive and stock market growth is not a magic cure for that. But it is a *sensible* vision. It links your ability to pay for college with some *use* of your money, some productive activity in the economy. "You invest in providing goods and services to others, and in exchange you get a service (college) for yourself." There is some basic economic trade.

Again, though, (1) not inspiring and (2) college is expensive. Obviously there are alternative theories of college savings, like "lottery tickets" or "maybe a YouTuber will randomly give me a million dollars" or something. Anyway this article stressed me out a lot:

Most parents typically worry about funding 529 college savings plans, brokerage accounts or high-yield savings vehicles for their kids. Now, a subset are eschewing the old ways, pushing instead to pile up enough Bitcoin to help their children in the years ahead.

Some say it's because stock gains aren't good enough. Others view it as reasonable diversification. Plenty are true believers — convinced that, despite a more than 500% gain since the depths of the last "crypto winter," Bitcoin's climb has only just begun. The world's biggest cryptocurrency surpassed the \$100,000 mark for the first time in December, having changed hands for less than \$16,000 in November 2022.

Still, these parents argue their children have long enough time horizons to stomach Bitcoin's intense volatility. ...

Some parents are turning to crypto to supercharge their college savings. Returns on traditional stocks just won't cut it, the thinking goes, when the price tag for a single year at a top private university is approaching \$100,000.

Travis Headley, a 43-year-old physician in Louisiana, first got into Bitcoin about four years ago and now converts his entire paycheck into the cryptocurrency. He decided to go all-in with his kids' college funds as well. After about ten years of saving via tax-advantaged 529 plans, he pulled the money out, took the tax penalty and put it all into Bitcoin. ...

Professional soccer player Alex Crognale feels similarly. When his first child was born last year, the 30-year-old knew he wanted to help secure her financial future. But the past returns of traditional 529 accounts left him underwhelmed, and he views Bitcoin as a more flexible source of wealth.

"The math is pretty clear to me that following the herd and doing this 529 plan will not put my child in the most opportunistic position in the future," he said.

There are a lot of reasons to invest in Bitcoin — "I think it's incredibly risky to have 0% exposure to Bitcoin," says one parent in the article, reasonably — but the least appealing is this "have fun staying poor," "returns on real economic activity are too low" approach. It might be the case — *it has* been the case — that the people who are early to magic internet money can get incredibly rich. But magic internet money cannot be a source of general prosperity. Not *everyone* can get rich by being early to crypto. Sometimes you have to work and save and invest in economic activity, or at least in casinos, to pay for goods and services.

Prediction markets

My Fifth Law of Insider Trading is: Don't insider trade by planting bombs at a company and shorting its stock. (These laws are not legal advice, but honestly I strongly recommend that you follow that one.) This is a law of insider trading because ... it could work? This is a real temptation? The law was originally inspired by someone who allegedly did it, shorting the stock of Borussia Dortmund GmbH, the soccer team, and then planting bombs by the route of the team bus. And we have talked about other speculative applications including hacking (hack a company, short its stock, announce the hack), terrorism (there was supposedly some short selling of Israeli stocks before the Oct. 7 Hamas attacks), or medical-device sabotage (hack a pacemaker, short the manufacturer's stock, kill some patients). Again, *don't* do these things.

In each case, what you are doing is arguably insider trading or market manipulation, but it is also separately some other crime: If you hack pacemakers to kill people to profit from a short position on a medical device manufacturer, the trouble you will get in for insider trading is not nearly as bad as the trouble you will get in for murder. Still, I regularly say around here that "everything is securities fraud," and that securities regulation is a form of meta-regulation that covers every sort of bad act, so I suppose one day someone will do a murder and be prosecuted for securities fraud. "Ladies and gentlemen of the jury, the defendant undermined the integrity of securities markets by killing all those people."

In the stock market, insider trading is frowned upon. In prediction markets, things are more nuanced: A lot of prediction-market theorists and advocates and executives *like* insider trading, because the social purpose of a prediction market is to make good predictions, and insiders might have better information — and so make better predictions — than outsiders. You, uh, see where this is going.

Prediction markets these days are still pretty small, so there is not a ton of temptation to buy a “terrorism will happen” event contract and then do terrorism for profit. But I am mentioning it here because (1) there’s a Wall Street Journal article about prediction markets on California wildfires and (2) as prediction markets get bigger and more mainstream, perhaps we will have occasion to revisit this point. From the Journal:

In January, as deadly wildfires ripped through Los Angeles, Polymarket allowed users to bet on when the Palisades fire would be fully contained, whether it would spread to Santa Monica within a given time, and other questions about the disaster.

A columnist for the Los Angeles Times slammed the wildfire contracts as ghoulish. Another observer—Molly White, an independent researcher who studies the crypto industry—argued that the contracts could encourage bettors to engage in arson for profit.

“It’s a grim reflection of society that there are people who see a wildfire and decide that they should try and make money on it,” White said.

Yeah I mean that’s more of a critique of society than it is of prediction markets. Also: There are famously already ways to engage in arson for profit, and there are laws against it that don’t involve prediction market regulation. (Arson is a crime!) But, yes, prediction markets offer the possibility of more complete markets: Whatever future event you might want to bet on, you can imagine a contract for it. And then you might be tempted to make the event happen.

Things happen

Vanguard’s Average Fee Is Now Just 0.07% After Biggest-Ever Cut. Corporate America cosies up to Elon Musk as billionaire deepens ties to Donald Trump. Musk Says DOGE Halting Treasury Payments to US Contractors. Musk’s X Adds Nestlé, Colgate, Shell, Other Brands to Ad-Boycott Suit. “Expensive nuclear plants financed in complicated ways offer a convenient way to conceal money moving for other reasons.” OpenAI Releases AI Agent Designed to Act Like a Research Analyst. Samsung chair cleared of fraud and stock manipulation. After Banker Dies, Jefferies Vows Support and Slams Online Venom. Sam Bankman-Fried’s Parents Explore Seeking Trump Pardon for Son. “It is a funny sort of nihilism that believes in nothing except belief itself.”

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- 1. You could check the box at the time of incorporation. If you wanted to do it later, after you already have outside shareholders, there’d have to be a shareholder vote and a series of vicious lawsuits. It’s still Delaware.

- 2. Actually a lot of it is in the form of canceling (at par) \$631 million of existing intercompany debt (see page 20 of the prospectus), but I assume that that debt was incurred mostly in exchange for Bally's actually paying the costs of development, so ultimately for Bally's cash. Also to be fair a lot of the cash is a "Post-IPO Capital Commitment by Bally's Chicago HoldCo to provide to Bally's Chicago OpCo up to \$369.0 million in additional funding" (page 167), so not cash *now*, but still.
- 3. Not *too* much. See pages 166 to 169 of the prospectus on related party transactions. My point here is that if Bally's loaned the Chicago casino entity \$500 million at 30% interest, and then had 75% of the equity, the loan economics would sort of swamp its (and the public's) equity interests. But that's not true here. There is a subordinated note for the \$250 discounted shares sold to some investors, and that does swamp *their* equity, but it's a fairly small fraction of the equity. There are also some management contracts with Bally's (page 166), a temporary one for \$5 million a month until the casino is up and running, and a permanent one for "general business support services" at cost plus 6%. So Bally's certainly has some economics that are senior to the equity, but from reading the prospectus they don't seem all that extreme.
- 4. That's from Bloomberg page BALY US Equity FA EV. In October, Bally's estimated "adjusted EBITDA" of \$555 million in 2024, \$615 million in 2025 and \$699 million in 2026.
- 5. In its most recent report of share sales, it reported 281.7 million diluted shares outstanding and 245.8 million basic shares as of Jan. 26. Using the diluted shares and today's price of around \$333 per share, you get a market cap of \$96 billion. (That's not the right math — you'd want to use the treasury stock method for the convertibles and options, which would get you a somewhat lower number — but it's close enough; the basic market cap is \$84 billion.) Since then it has sold some convertible preferred stock, so a slightly higher diluted market cap.
- 6. It has, again, \$47 billion of *Bitcoin* on hand, but selling that to pay dividends would defeat the whole purpose of all of this.
- 7. Maybe AI can be???
- 8. Arguably it isn't? You're trading on your own (bad) intentions? And you are not manipulating *the market*; you're manipulating reality? Still. I feel like if you did this and got caught, the US Securities and Exchange Commission would come after you for some sort of securities fraud theory.
- 9. *One* social purpose of a stock market is to produce accurate valuations of stocks, but there are others — to let people save for retirement, for instance — that cut against insider trading. But a lot of people think insider trading should be legal in stock markets too, to make prices more efficient.

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Litigation

Feb. 4, 2025, 6:00 AM PST

As Musk and Ackman Snub Delaware, Governor Looks Hard at Court

By Jef Feeley and Mike Leonard (Bloomberg Law)

Exclusive

- **Pershing Square, Meta and others consider moving legal homes**
- **Governor may propose changes to state's famed business court**

For more than a century Delaware has boasted the premier US business court, as legal home to most Fortune 500 companies and the nation's biggest corporate battles.

Now that status is increasingly being challenged after Elon Musk moved his companies' incorporation from the state and as Meta Platforms Inc., Dropbox Inc. and **Bill Ackman's** Pershing Square Capital Management do or consider doing the same. Delaware's new governor, Matt Meyer, says he is stepping in.

Meyer, a Democrat, said in an interview Monday that he is weighing changes to the way business disputes are handled in Delaware to improve the system. He said the possible changes are based on feedback from executives, corporate lawyers and people suing in the state's famed Chancery Court .

"My role as governor is to look at the system, make sure the corporate law is fair, make sure it's predictable, make sure it's clear and consistent, and make sure we're making whatever changes are necessary" to improve it, Meyer said. "We need to win the future."



Delaware Governor Matt Meyer

Photographer: Pamela Smith/AP Photo

Delaware has long been the preferred paper home for hundreds of thousands of corporations, LLCs and LPs. A major draw for the tiny state is the Court of Chancery, considered the world's pre-eminent business court.

But after decades of dominance, a few executives, led by Musk, have been complaining about the system. And other states are seeking to challenge its status, like Texas, where officials [launched their own version](#) last year.

The highest-profile exit so far has been Musk's. His move out of Delaware came after the court's chief judge, Chancellor Kathaleen St. J. McCormick, rejected his multibillion-dollar Tesla Inc. pay package after a shareholder sued over it.

Read More: [Musk's Multibillion-Dollar Tesla Payout Is Gutted by Judge](#)

Musk used his social media platform, X, to go after McCormick, the court and the state for not honoring the will of Tesla shareholders, who voted twice to approve his compensation award – the biggest ever. He urged other executives to move their companies as well, to states such as Texas and Nevada, where he said the laws were more amenable to management.

A representative for McCormick declined to comment.

Travel site Tripadvisor shifted its corporate home to Nevada. Meta is [considering multiple states](#) for a possible reincorporation, Bloomberg News reported last week. Dropbox is moving its legal home to Nevada because of Delaware's "increasingly litigious environment," according to a filing with the US Securities and Exchange Commission .

Delaware has spawned "less meritorious and costly litigation and has the potential to cause unnecessary distraction to the company's directors and management team," Dropbox added.

Meanwhile, Ackman said on X Saturday that Pershing Square was reincorporating its management company in Nevada, adding in another post that the firm hadn't yet made a final decision and was also considering Texas.

A Pershing Square representative had no comment on the posts.



Pershing Square's Bill Ackman

Photographer: Jeenah Moon/Bloomberg

Delaware's chancery judges have long been recognized as business law experts, who hear cases quickly and efficiently without a jury. But Meyer said he has heard from critics that they didn't always have a chance to appeal rulings against them at the trial level before they become final. The complaints weren't limited to any one judge, he said. He declined to say whether he has had direct discussions with Musk.

Meyer said some companies don't like the Chancery Court system in which subsequent cases involving a given litigant tend to be assigned to the same judge for efficiency, and judges are appointed by the governor rather than elected by voters.

"They know in some cases the judge has ruled against them in the past, and so they feel like the result of the case is a foregone conclusion," the governor said. Musk has complained about McCormick, who is presiding over other cases involving him.

Meyer said Delaware still has a commanding lead as corporate home to American big business, and that 81% of the US companies that launched initial public offerings last year incorporated in the First State.



Elon Musk

Photographer: Chip Somodevilla/Getty Images/Bloomberg

Despite its small size, Delaware is corporate home to more than 2 million businesses and more than 60% of Fortune 500 companies. Incorporation fees generated more than \$2 billion for the state in 2022, or about a fourth of its annual budget.

Meyer, a lawyer himself, worked at Simpson Thacher & Bartlett on merger and acquisition matters. He represented the private equity firm Carlyle Group, among others. He also served as a diplomat in Iraq under former President Joe Biden.

--With assistance from Jennifer Kay (Bloomberg Law) and **Crystal Tse**.

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Reposted by Ann M. Lipton



Anna Merlan @annamerlan.bsky.social · 23m

Now the whole country gets the experience of what it's like when private equity buys the place you work

30

760

2.5K

...



Ann M. Lipton @annmlipton.bsky.social · 3h
originalism



Dave Itzkoff @ditzkoff.bsky.social · 4h

Not to worry as it's only a tier 1 violation of the Constitution and, as everyone knows, it only really becomes a problem at tier 3 and above.

Some, like North Carolina Sen. Thom Tillis, even acknowledged that what Musk is doing is unconstitutional — but “nobody should bellyache about that.”

“That runs afoul of the Constitution in the strictest sense,” Tillis said. But “it’s not uncommon for presidents to flex a little bit on where they can spend and where they can stop spending.”

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18

...



Alison Frankel @alisonfrankel.bsky.social · 3h

Unions are represented by terrific public interest lawyers from [@publiccitizen.bsky.social](#)



Adam Gurri @adamgurri.liberalcurrents.com · 3h

For all the shit public sector unions have been given over the years I am so grateful right now that the federal government is among the most organized workforce we have
www.huffpost.com/entry/unions...



Unions Sue Treasury Department Over Giving Musk's 'DOGE' Access To Payment System

Giving Elon Musk's team access to Treasury's payment systems amounts to a "massive and unprecedented" privacy intrusion, the complaint states.

[@ www.huffpost.com](#)



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15



Reposted by Alison Frankel



Josh Gerstein @joshgerstein.bsky.social · 20h

BREAKING: 2 federal employee unions, AFGE & SEIU, file suit seeking to block DOGE access to Treasury Department payment database. Doc: [storage.courtlistener.com/recap/gov.us...](https://storage.courtlistener.com/recap/gov.uscourts.dcd.277055/gov.uscourts.dcd.277055.1.0.pdf)

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2.8K



10.1K



Turning Over U.S. Attorney's Office To Conspiracy Theorist Working Out As Expected

A abovethelaw.com/2025/02/turning-over-u-s-attorneys-office-to-conspiracy-theorist-working-out-as-expected

February 3, 2025



From left, Rep. Ralph Norman, R-S.C., Ed Martin, and Jeffrey Clark, former Acting Assistant Attorney General. (Bill Clark/CQ-Roll Call, Inc via Getty Images)

Conspiracy theorist-cum-interim U.S. Attorney Ed Martin is having a ball with his newfound position. Back in 2021, he was out there leading “Stop the Steal” chants, hyping up the crowd that would storm the Capitol the next day. Now as the top federal prosecutor in Washington D.C. he gets to fire all the career prosecutors involved in enforcing the nation’s general prohibition against taking a dump in the Rotunda.

He’s also having fun writing letters setting out legal gibberish for social media consumption. *As one does.*

Earlier today, Martin shared a MASH note he wrote to shadow president Elon Musk promising to use the full force of his office (assuming he still has any FBI agents that haven’t been loyalty purged) to go after anyone getting in the way of DOGE’s mission. Which mostly seems to be sending high school interns on field trips to seize everyone’s social security numbers.

Dear @elon, Please see this important letter. We will not tolerate threats against DOGE workers or law-breaking by the disgruntled. All the best. Ed Martin
pic.twitter.com/jlgMPVbPT5

— Ed Martin (@EagleEdMartin) February 3, 2025

“SENT VIA X.” This is truly the dumbest timeline. Look, DOGE is clearly a real entity because in that place where a serious letter would put an address it says “United States Government.” Cannot argue with that!

The “threats, confrontations, or other actions” alluded to seem little more than people *identifying* the adolescent Keystone Kops working for Musk and government security guards and senior officials doing their jobs as *actual government employees* and trying to prevent DOGE from busting into government offices. Martin notes that these actions “may break numerous laws.”

Which is code for *does not break any laws but I need to sound tough*. When something actually breaks the law, prosecutors get specific — usually citing a violation similar to but far in excess of what allegedly happened for maximum intimidation value. When they write “I dunno, but that don’t seem legal,” they’re telling you that they have nothing.



No they have not.

It is not illegal just to name a (quasi) government employee. Musk must be asking his AI for legal advice again. Nor is it illegal for security to secure federal buildings from people who aren't authorized to be there. In fact, if Martin could cite any law being broken it would be a tortured reading of the laws against trespassing on government property or corruptly obstructing an official proceeding — laws that would remind everybody of the time he played cheerleader for a bunch of guys who turned around and busted into Nancy Pelosi's office. Best not shine a light on the elements of those offenses.

And while Martin's making up laws for Elon, he also took some time to concoct this goofy threat against Senator Chuck Schumer.



U.S. Department of Justice

Edward R. Martin, Jr.
United States Attorney

District of Columbia

*Patrick Henry Building
601 D Street, N.W.
Washington, D.C. 20530*

January 21, 2025

The Honorable Chuck Schumer
U.S. Senator
322 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Schumer,

As United States Attorney for the District of Columbia, I receive requests for information and clarification. I take these requests seriously and act on them with letters like this one you are receiving.

At this time, I respectfully request that you clarify your comments from March 4, 2020. Your comments were at a private rally off the campus of the U.S. Capitol. You made them clearly and in a way that many found threatening. Your exact words were:

"I want to tell you Gorsuch. I want to tell you Kavanaugh. You have released the whirlwind and you will pay the price. You won't know what hit you if you go forward with these awful decisions." Link here: <https://www.cnn.com/videos/politics/2020/03/04/schumer-gorsuch-kavanaugh-supreme-court-abortion-lead-vpx.cnn>

We take threats against public officials very seriously. I look forward to your cooperation with my letter of inquiry after request. Should you have further questions regarding this matter, please do not hesitate to call my office or schedule a time to meet in person.

Thank you.

All the best.

Sincerely,


Edward R. Martin, Jr.
United States Attorney

Schumer's remarks were a rhetorical callback to Kavanaugh's own statement "I fear that the whole country will reap the whirlwind," when Kavanaugh bemoaned the possibility that America might actually scrutinize guys like him. And the price Schumer referred to was the shellacking Republicans took at the polls after the Supreme Court took to playing Mad Libs with constitutional law. A whirlwind that Trump just now managed to overcome.

This is not a serious law enforcement inquiry, but trying to bully a sitting Senator can score some social media buzz. Schumer, of course, remembers when public officials were *actually* threatened by the Capitol rioters that Martin spent the last few years trying to release. On the spectrum of threats against public officials, telling a bloodthirsty audience to "fight like hell" — as Trump did on January 6 — comes much closer to the mark than any of this stuff.

Again, Martin has no interest in pulling that thread.

This isn't enforcing "law" so much as prosecutorial cosplay. His tenure as interim U.S. Attorney is a taxpayer-funded performance piece. Unfortunately it's one we're going to be stuck with for a while.



Joe Patrice is a senior editor at Above the Law and co-host of Thinking Like A Lawyer. Feel free to email any tips, questions, or comments. Follow him on Twitter or Bluesky if you're interested in law, politics, and a healthy dose of college sports news. Joe also serves as a Managing Director at RPN Executive Search.

Resistance to Musk's government team likely broke the law, US prosecutor says

 [reuters.com/legal/us-prosecutor-warns-legal-risk-anyone-hindering-musks-efficiency-effort-2025-02-03](https://www.reuters.com/legal/us-prosecutor-warns-legal-risk-anyone-hindering-musks-efficiency-effort-2025-02-03)

Andrew Goudsward

By Andrew Goudsward

February 3, 2025 5:10 PM PST Updated 15 hours ago

Nov 16, 2024; New York, NY, USA; President-elect Donald Trump talks with Elon Musk (right) during UFC 309 at Madison Square Garden. Mandatory Credit: Brad Penner-Imagn Images/File Photo Purchase Licensing Rights  , opens new tab

- Companies
- Prosecutor says law enforcement 'moving rapidly' on probe
- Musk solicited for information on 'questionable conduct'
- Musk staff reportedly blocked from accessing sensitive information probes

WASHINGTON, Feb 3 (Reuters) - A federal prosecutor appointed by President Donald Trump said on Monday the FBI was investigating the "targeting" of staff involved in Elon Musk's effort to slash the size of the U.S. government.

Career government officials have reportedly sought to counter efforts by Musk aides working with his Department of Government Efficiency to gain access to troves of classified information without proper authorization.

DOGE was announced as an ambitious effort to cut the federal workforce and slash billions in government spending, but critics say it is being used to target agencies and government programs viewed as out of step with Trump's conservative and more isolationist "America First" agenda.

The statement by Edward Martin, the acting U.S. attorney in Washington, was the first evidence that resistance to Musk's effort could carry legal consequences, potentially chilling opposition by public workers concerned about what they see as overreach by DOGE.

"Our initial review of the evidence presented to us indicates that certain individuals and/or groups have committed acts that appear to violate the law in targeting DOGE employees," Martin said in a statement.

Martin said the FBI and other law enforcement agencies were preparing to "proceed rapidly."

The statement came after Martin publicly shared a letter he wrote to Musk on Monday seeking information on anyone who sought to threaten or impede people working with Musk.

Musk posted a thank you in response to Martin's message.

It is unclear whom prosecutors believe may have violated the law or what charges they could face. It is unusual for a prosecutor to discuss an active investigation before bringing charges in court.

The Trump administration removed two top security officials at the U.S. Agency for International Development, a top Musk target, after they tried to stop DOGE representatives from gaining access to secure parts of the building. The security personnel were confronted by members of the U.S. Marshals Service, Reuters reported.

The New York Times reported that a career Treasury Department official unsuccessfully resisted efforts by the DOGE team to gain access to the agency's payment system.

Musk, the world's richest person and the chief executive of Tesla (TSLA.O) , opens new tab and SpaceX as well as owner of X, is leading an effort to dramatically cut the U.S. government. He has already offered sweeping buyouts to the federal workforce.

Martin, as interim U.S. attorney, oversaw the dismissal of all pending criminal cases tied to the Jan. 6, 2021, attack on the U.S. Capitol following a directive from Trump.

He has made several public statements supporting Trump and denigrating his political opponents, breaking with tradition for U.S. attorneys, who typically avoid any statement that could be perceived as political.

Reporting by Andrew Goudsward in Washington; Editing by Scott Malone, Ross Colvin and Matthew Lewis

Unions sue Treasury over granting Musk, 'DOGE' agents access to sensitive financial data

 [courthousenews.com/unions-sue-treasury-over-granting-musk-doge-agents-access-to-sensitive-financial-data](https://www.courthousenews.com/unions-sue-treasury-over-granting-musk-doge-agents-access-to-sensitive-financial-data)

Ryan Knappenberger

The lawsuit comes after the Trump administration pushed out a top Treasury Department official who refused to grant Musk and individuals from the non-governmental Department of Government Efficiency access to the systems.

FILE - Elon Musk reacts as President-elect Donald Trump speaks at a rally ahead of the 60th Presidential Inauguration, Jan. 19, 2025, in Washington. (AP Photo/Alex Brandon, File)

WASHINGTON (CN) — Several unions representing federal employees sued the Treasury Department on Monday for granting Elon Musk and non-government agents of his Department of Government Efficiency access to a sensitive system containing personal and financial information of millions of Americans.

The lawsuit comes after Treasury Secretary Scott Bessent ousted the official in charge of the Bureau of the Fiscal Service over the weekend, the agency in charge of the systems that control the flow of over \$6 trillion in the U.S. each year.

Tens of millions of Americans rely on those systems, which govern Social Security and Medicare benefits, salaries for federal personnel, payments to government contractors and grant recipients, tax refunds and thousands of other functions.

“The scale of the intrusion into individuals’ privacy is massive and unprecedented,” the unions said. “People who must share information with the federal government should not be forced to share information with Musk or his ‘DOGE.’”

The Alliance for Retired Americans, with the American Federation of Government Employees and the Service Employees International Union, brought the suit in the U.S. District Court for the District of Columbia.

The unions said that by granting Musk’s “DOGE” agents such access, Bessent violated federal laws that protect sensitive personal and financial information from “improper disclosure and misuse,” which includes a bar on disclosure to anyone without a “lawful or legitimate need” for the information.

David Lebryk, who was acting Treasury Secretary before Bessent’s confirmation and served in nonpolitical roles at the Treasury for decades, had refused to grant access to Musk’s advocates before being placed on administrative leave and ultimately retiring on Friday.

The unions are asking the federal court to declare Bessent's actions illegal, enjoin any continued access to the systems and require that any future disclosure adhere to the Privacy Act, the Internal Revenue Code and provide prior notice.

Everett Kelley, national president of the American Federation of Government Employees, said in a statement that the lawsuit was an effort to protect the privacy rights of all Americans.

"It is disgraceful that the Trump administration has allowed unelected billionaires and their lackeys unfettered access to the personal and financial information of Americans," Kelley said.

The unions said that Musk's complete access to the disbursement systems and his suggestions that he has the authority to control disbursements at the Bureau are problematic, considering their members' reliance on the systems and lack of other options to avoid such improper disclosures.

Monday's lawsuit comes as Trump, at Musk's suggestion, moved to dissolve the U.S. Agency for International Development, the agency responsible for providing billions of dollars in humanitarian aid overseas, after calling it a "criminal organization" on X, formerly Twitter, over the weekend.

The Trump administration removed two top security officials, John Voorhees and his deputy, on Saturday after they also refused to grant DOGE representatives access to restricted agencies at USAID.

USAID staffers were told in an email Sunday night that the agency's headquarters in Washington would be closed Monday, sparking protests outside the building, which were attended by Democratic lawmakers such as Senators Chris Van Hollen and Brian Schatz, as well as Representatives Jamie Raskin and Ilhan Omar.

Musk's quick and sweeping efforts to exert control over wide swaths of the federal government and its spending have been implemented in part via a team of non-governmental employees. Journalists, such as Wired Magazine, are working to identify members of Musk's "DOGE team," and they identified six individuals serving in key roles on Saturday.

The men — Akash Bobba, Edward Coristine, Luke Farritor, Gautier Cole Killian, Gavin Kliger and Ethan Shaoiran — all aged between 19 and 24, are each young software engineers with little to no governmental experience, but they previously worked for Musk or other technology companies.

The unmasking efforts led acting U.S. Attorney for D.C. Edward Martin to offer his office's support for Musk and "DOGE," vowing in a post on X to "pursue any and all legal action against anyone who impedes your work or threatens your people."

Martin, who has radically overhauled the U.S. Attorney's Office in D.C. to adhere to Trump's agenda — such as investigating prosecutors involved in the Jan. 6, 2021, cases — said that he and his office would protect "DOGE" workers "no matter what."

"I recognize that some of the staff at 'DOGE' has been targeted publicly," Martin wrote in the letter to Musk. "At this time, I ask that you utilize me and my staff to assist in protecting the 'DOGE' work and the 'DOGE' workers. Any threats, confrontations or other actions in any way that impact their work may break numerous laws."

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Litigation

Feb. 3, 2025, 6:49 PM PST

Trump's Buyout Plan Comes With a Catch: Don't Sue the Government

By Jennifer A. Dlouhy

President Donald Trump's bid to encourage mass resignations by federal employees comes with a critical caveat: They must abandon any right to sue the US government.

The condition is included at the bottom of a sample contract shared with some federal employees on Monday, ahead of Thursday's deadline for government workers to accept the deferred resignation offer. A copy of the template was seen by Bloomberg.

Employees that sign the contract, as drafted by the Office of Personnel Management, are committing to "forever waive" any judicial, administrative or other action against the government agency where they now work.

They also must agree to unconditionally release that agency – including its current and former employees – from "any and all liability." The waiver is wide in scope, applying not just to disputes around the deferred resignation program, but anything "based on, arising from or relating to the matters that" the employee "may have against them, including any and all claims that were or could have been brought."

Read: [Trump's Federal Worker Buyout Is Actually Deferred Resignation](#)

The drafted contract appears to be a bid to entice more sign-ups and potentially resolve questions about the deal that may be deterring enrollment. Unions and state attorneys general have warned government workers that the offers aren't guaranteed.

"Union leaders and politicians telling federal workers to reject this offer are doing them a serious disservice," said McLaurine Pinover, a spokesperson for the Office of Personnel Management. "This is a rare, generous opportunity – one that was thoroughly vetted and intentionally designed to support employees through restructuring."

The deferred resignation offer mimics a move Trump adviser Elon Musk used to cull workers at the social media platform now known as X. In this case, it's being used to pare staff across the sprawling, 2.3-million-strong civilian government workforce.

Employees who agree to resign by Feb. 6 have a chance to keep their paychecks and benefits through the end of September, according to OPM. In the meantime, they'd also avoid return-to-office mandates, potential relocations and reductions in force, the office promised in its initial Jan. 28 documents outlining the plan.

However, the sample contract still leaves open the door to some work between March 1 and Sept. 30: Employees who sign on are agreeing to continue working through Feb. 28 – “an effort to ensure a smooth transition” – and are warned they could be summoned to do more afterward. “The employee shall not be expected to work during the deferred resignation period except in rare circumstances as determined by” their agency.

Read: [Trump's Federal Worker Buyout Plan May Fail to Spur Resignations](#)

The example contract is designed to “provide binding assurance to employees who accept” the offer that they won’t be subject to reductions in force, nor expected to return to in-person work, and “that their pay will be protected even if there is a lapse” in government funding,” according to an OPM email describing the effort.

But time to accept the deal is short, the personnel office warns. The offer expires on Feb. 6, the office says, adding: “This is a firm deadline.”

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

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Musk's Moves on Treasury Risk Debate Over a Payments Default (1)

By Gregory Korte and Liz Capo McCormick

- Trump backs Musk efforts, saying he's doing good job
- Former Treasury official says much depends on details

Outside of occasions when the US Treasury is running down its cash pile while awaiting congressional action to raise the debt limit, bond market participants don't typically pay much attention to the department's payments-processing division.

But that may be about to change in light of efforts by the government efficiency initiative being run with President Donald Trump's imprimatur by billionaire Elon Musk. Musk said in social media posts over the weekend that his "DOGE team" of enforcers is shutting down some payments, claiming that "corruption and waste is being rooted out in real-time."

If the Musk team veered into legally legitimate transfers, that could spark debate over whether the federal government is following through on its obligations. Former Treasury Secretary Janet Yellen said repeatedly — during debt-limit standoffs — that even prioritizing some payments ahead of others amounted to "default by another name." Trump's first Treasury chief, Steven Mnuchin, said in 2017 that "the government should honor all of its obligations."

The newly installed Treasury chief, Scott Bessent, hasn't publicly commented on Musk's claims, and the Treasury Department didn't respond to a request for comment. Asked about the potential credit-quality implications of any move by DOGE to halt some payments through the Treasury's systems, Moody's Investors Service declined to comment. S&P Global Ratings and Fitch Ratings didn't respond to requests for comment.

"It's a really complex situation," said **John Fagan**, who ran the Treasury's markets monitoring group from 2014 to 2018 and is now a principal at Markets Policy Partners. "What it means legally and administratively depends a lot on how it's done and what is done to whom."

Musk's Role

For now, financial markets are focused on Trump's tariff threats, rather than anything related to the Treasury — which has a major announcement looming on Wednesday about its debt-issuance plans. Ten-year Treasury yields were little changed on the session as of 4:31 p.m. in New York, at 4.54%.

Read more: Bessent Takes the Helm on US Debt Sales After Blasting Yellen

Musk, in a post Monday, said “the only way to stop fraud and waste of taxpayer money is to follow the payment flows and pause suspicious transactions for review.” Trump said later Monday that “Elon can't do and won't do anything without our approval — and we'll give him the approval where appropriate,” speaking to reporters in the Oval Office. “He has some very good ideas,” Trump also said.

Read more: Trump Says Musk Sees Treasury Payments But Can't Stop Them Alone

Democratic lawmakers have blasted the DOGE access, and Senate Minority Leader Chuck Schumer said at a briefing Monday that he and House Minority Leader Hakeem Jeffries will introduce legislation to bar tampering with Treasury payments data. “DOGE is not a real government agency” and has no authority to stop payments, Schumer said.

But any such legislation would require Republican support, given the GOP's control of both chambers of Congress. Schumer also called, on Bessent to revoke DOGE's access to the payments data immediately, speaking on the Senate floor.

Fraud Detection

The Treasury already has a Do-Not-Pay system in place designed to prevent fraudulent payments. In October, the department announced that its fraud-detection services had prevented and recovered over \$4 billion in the 2024 fiscal year.

Treasury officials have long maintained that its role is to serve as the federal government's checkbook — and that the decision about whether to approve or deny payment belongs to individual agencies based on funds appropriated by Congress.

Amid the efforts by Musk's group to access the Treasury's payment system, the department's most senior career official, who oversaw that part of the Treasury, departed last week. **David Lebryk**, the Treasury's fiscal assistant secretary for more than a decade, had served as acting Treasury secretary before Bessent took the helm last week.

“The government makes a jillion payments a year — some of those payments being held up or having delayed government payments isn't necessarily a default,” said Fagan, the former Treasury official. “What is the legal or otherwise administrative basis for nonpayment? How is the nonpayment communicated? It all starts getting into the weeds very quickly.”

(Updates with Schumer comments starting in third paragraph after 'Trump's Role' subheadline.)

Judge Denies Trump Bid to Toss Out Suit Over Funding Freeze (2)

By Erik Larson

- Court also put in place a new temporary restraining order
- Judge says funding freeze could have been handled differently

The Trump administration offered “no rationale” for cutting off potentially trillions of dollars in federal funding of grants, loans and other financial assistance to recipients nationwide with less than 24 hours notice to conduct an ideological review, a judge said.

US District Judge **Loren AliKhan** in Washington on Monday denied a request by the White House Office of Management and Budget to dismiss a suit filed by a national group of nonprofits challenging the funding freeze. She also granted the group’s request for a temporary restraining order against the freeze, the second such ruling in less than a week.

AliKhan, an appointee of former President Joe Biden, said in a 30-page written ruling that if OMB intended to conduct an “exhaustive review” of what programs should or shouldn’t be funded, it could be carried out “without depriving millions of Americans access to vital resources.”

“As defendants themselves admit, the memorandum implicated as much as \$3 trillion in financial assistance,” the judge said. “That is a breathtakingly large sum of money to suspend practically overnight.”

AliKhan previously blocked the funding freeze with a brief administrative stay until she could rule on the TRO, which itself will only last until she decides whether to issue an injunction that would remain in place until the case is resolved. A similar TRO was granted just days ago by a federal judge in Rhode Island in a suit brought by Democrat-led states.

In both cases, the judges said that the plaintiffs are likely to succeed in their suits restricting the flow of funds. AliKhan said in her ruling that organizations nationwide may be at risk of “irreparable harm” from the rollout of the Trump’s administration’s pause in financing.

The White House didn’t immediately respond to a message seeking comment on the ruling.

Trump defended the move during a White House event on Jan. 29, casting the freeze as one that would allow his administration to review discretionary spending programs and “quickly look at the scams, dishonesty, waste, abuse that’s taking place in our government for too long.”

Surprise Memo

Diane Yentel, chief executive officer of the National Council of Nonprofits, which filed the lawsuit on behalf of thousands of members across the US, said in a statement that nonprofits had been “left in limbo” by the spending freeze.

“We are determined to continue to do all we can to prevent this administration’s reckless attempt to halt funding that would put people’s lives and safety at risk, from pausing research on cures for childhood cancer to halting food assistance, safety from domestic violence and closing suicide hotlines,” Yentel said in the statement.

The suits were filed last month after OMB issued a surprise memo telling federal agencies to pause all financial assistance to ensure it’s aligned with Trump’s recent slew of executive orders. Those orders include banning the use of funds for diversity programs, abortion and other policies opposed by the new administration.

The OMB had said a pause was needed for agencies to review spending on “financial assistance for foreign aid, nongovernmental organizations, DEI, woke gender ideology, and the green new deal.” But the groups allege the plan violates federal law because it was rolled out in an “arbitrary and capricious” manner and violates the the First Amendment.

Trump rescinded the memo within days, in what appeared to be a major reversal amid confusion and concern about the impact of the spending freeze nationwide. In both suits, the Trump administration said the TROs should be denied because the memo had been withdrawn, but the judges in both cases said the risk of harm remained.

In the Washington case, AliKhan pointed a White House statement issued after the OMB memo was rescinded that said the move was “NOT a rescission of the federal funding freeze.” The judge said it “strains credulity” for OMB to “innocently claim” that the memo was rescinded simply to end confusion after she issued her earlier administrative stay.

“The rescission, if it can be called that, appears to be nothing more than a thinly veiled attempt to prevent this court from granting relief,” the judge said.

AliKhan also rejected the government’s argument that the pause in funding would be too brief to cause “lasting damage.” She said the directive in the OMB memo “is effectively indefinite with no clear parameters for when it will end.”

'Sweeping Freezes'

Before the ruling was handed down, Justice Department attorney Daniel Schwei urged the court to reject the order, saying the plaintiffs were essentially asking the court "to superintend the entire executive branch's disbursement of funds." Such a move would be an "extraordinary intrusion" by the courts, he said.

Prior to the hearing, a small West Virginia organization that belongs to the National Council of Nonprofits filed a brief outlining what they describe as a concrete example of the impact of the freeze. The nonprofit, whose name is redacted in the filing, said it was forced to lay off some staff and may go out of business altogether as a result of the funding freeze, and that its clients who seek to live at home with disabilities may be forced into more expensive nursing homes or "wind up homeless on the streets."

(Updates with comment from the National Council of Nonprofits.)

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Crypto.com, Kalshi's Super Bowl Wagers Probed by CFTC (2)

By Lydia Beyoud

- CFTC has been grappling with legality of sports derivatives
- Robinhood announced sports contracts via Kalshi on Monday

The Commodity Futures Trading Commission is asking Crypto.com and Kalshi Inc. to explain how their recently launched Super Bowl event contracts comply with derivatives regulations.

The agency is allowed by statute to request additional information from companies that “self-certify” their financial products, including demonstrating that they aren’t readily susceptible to manipulation and meet other regulatory requirements. It can evaluate the responses and decide whether to take any enforcement actions or begin drafting a new rule.

“We are continuing to review the contracts in accordance with our regulations,” a CFTC spokesman said in an email. The agency announced last week that it would hold public roundtables on emerging issues in derivatives markets — including event contracts.

Crypto.com expressed confidence in its products and said it will respond to the agency.

“We firmly believe in the legality of our events contracts and believe the CFTC is the appropriate regulator to bring federally regulated market integrity, manipulation controls and product availability in all 50 states,” it said in a statement from a spokesperson. “We will continue to offer these contracts while we work with the CFTC.”

The regulator voted in January to put Crypto.com’s sports contracts under a special regulatory review to determine if they qualified as gaming, one of the categories that draw additional scrutiny over whether certain contracts are in the public interest. Crypto.com recently withdrew the two filings under review, and self-certified a new contract related to spectator sports and related industries, according to public agency filings.

It isn’t clear if the agency will continue its original review of the initial sports contracts.

Kalshi's contracts, launched three days after President Donald Trump's inauguration, weren't put under a similar review.

A representative for Kalshi declined to comment.

Caught Off Guard

Late last year, Crypto.com started offering sports-related event contracts, a type of derivatives contract that lets traders wager on a yes-or-no outcome on questions such as whether the Kansas City Chiefs or the Philadelphia Eagles will win the Super Bowl. The CFTC was caught off guard by the Dec. 23 launch.

The agency's new inquiry comes as Robinhood Markets Inc. announced Monday it was debuting its own sports trading, via Kalshi's exchange, for its Robinhood Derivatives clients.

"With an emerging asset class like event contracts, we recognize an opportunity to better serve our customers as their interests converge across the markets, news, sports and entertainment," the company said in a statement Monday.

Read more: Robinhood Launches Super Bowl Event Contracts for Retail Traders

(Updates to add Crypto.com's response from the fourth paragraph. An earlier version corrected details about the status of certain Crypto.com contracts.)

--With assistance from **David Scheer**.

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Bessent Freezes Most CFPB Work Upon Taking Control of Agency (1)

By Evan Weinberger

Exclusive

- Trump fired Rohit Chopra, who served as Biden's CFPB chief
- Treasury Secretary Scott Bessent took temporary control

Treasury Secretary Scott Bessent has shut down a wide variety of operations inside the Consumer Financial Protection Bureau in his new role as acting director.

Bessent ordered the CFPB to stop all rulemaking, communications, litigation, and other activities, according to a Monday email to staff obtained by Bloomberg Law.

Bessent took over the CFPB as acting director after President Donald Trump fired Biden-era Director Rohit Chopra.

"As Acting Director, Secretary Bessent is committed to appropriately stewarding the agency pending new leadership," the email said.

Essentially all activities at the bureau are on hold to "promote consistency with the goals of the Administration," the email said. Only activities authorized by Bessent or required by law can move forward, it said.

A source inside the bureau who asked to remain anonymous said the order appeared to shut down the CFPB altogether, for the time being.

It comes as Elon Musk's Department of Government Efficiency has moved to shutter the US Agency for International Development despite the funding being mandated by Congress. Musk has also called to "Delete CFPB" on his X social media platform.

Rules, Guidance

Bessent's email called on the CFPB to "suspend the effective dates" for all final rules that haven't taken effect. Among the rules affected are the agency's ban on including medical debt on consumer credit reports, which was set to take effect March 17, and a \$5 cap on overdraft fees.

The email also ordered the CFPB "not to approve or issue" any proposed or final rules or formal and informal guidance.

All pending litigation was paused as well, with attorneys instructed they were only empowered to seek continuances of existing cases.

The CFPB was set to appear in two cases before the US Court of Appeals for the Fifth Circuit on Monday.

In one, originally scheduled for 9 a.m. New Orleans time, the CFPB was set to defend a March 2021 update to its examination manual that would've determined that discrimination was an unfair act or practice.

"As a result for the change in leadership just this morning, I was told that we're just allowed to ask for continuance to allow the new leadership to review the litigation," CFPB attorney Justin Sandberg told the three-judge panel on Monday.

In the second case, the American Bankers Association and other banking trade groups were attempting to overturn a Texas federal judge's decision allowing the CFPB's small business demographic data rule to move forward.

Enforcement, Communications

Bessent said the CFPB couldn't open any new enforcement investigations or continue existing ones.

The order also said the CFPB couldn't enter into enforcement settlements.

The CFPB was ordered to cease all public communications, including the publication of research papers, and to stop any "material agreements, including related to employee matters or contractors."

The CFPB didn't immediately respond to requests for comment.

The CFPB also has the power to directly supervise the companies it regulates. Bessent's all-staff email didn't mention any restrictions on supervision.

The CFPB's legal department is reviewing the memo to determine its full impact, multiple sources said.

(Updates with additional reporting throughout.)

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'Every MAGA Will Buy It.' Elon Musk Featured in Miami Crypto Lawsuit

 [law.com/therecorder/2025/01/31/crypto-artist-sues-over-alleged-fraud-in-5-million-elon-musk-scheme](https://www.law.com/therecorder/2025/01/31/crypto-artist-sues-over-alleged-fraud-in-5-million-elon-musk-scheme)

Michael A. Mora

Miami-Dade Circuit courthouse. Photo: Raychel Lean/ALM

The case is backed by Lara T. Gatz, a partner, Daniel A. Sox, of counsel, and Conor D. Cassidy, an associate, at Reed Smith in the Am Law 50 firm's Miami office.

January 31, 2025 at 05:33 PM

By Michael A. Mora



The original version of this story was published on Daily Business Review

Digital artist Jayson "Mr. Black" Winer has sued First Apex Ventures LLC and its affiliates, including a once high-flying real estate investor-turned-Justice Department "serial informant," in the Miami-Dade Circuit Court over a fraudulent scheme involving promises of celebrity endorsements and access to billionaire Elon Musk.

The case is backed by Lara T. Gatz, a partner, Daniel A. Sox, of counsel, and Conor D. Cassidy, an associate, at Reed Smith in the Am Law 50 firm's Miami office, whose client, Winer, was inspired in November 2023 to create and develop a digital art collection, which consists of 21,000 unique ordinal pieces inscribed on Bitcoin.

"The complaint speaks for itself, including as to the damage done by Jona Rechnitz and his co-conspirators to Mr. Winer's innovative, timely, and meaningful digital art collection entitled, "The Eyes Are Always Watching," Gatz alleged. "Mr. Winer looks forward to vindicating his rights in court."

Noam Biale, a partner at Sher Tremonte in New York, represents Rechnitz.

"This complaint is ludicrous, filled with fabrications, and my client intends to pursue all legal remedies against the plaintiff and his counsel," Biale alleged. "Mr. Rechnitz is especially surprised that Reed Smith would file this lawsuit, given its prior dealings with him and its relationship with a material witness in the case."

Around late April or early May, Winer launched a marketing campaign to coincide with President Donald Trump's New York criminal trial, employing trucks adorned with images from the Eyes Collection and QR codes that directed viewers to the plaintiff's X account.

However, Winer claimed that soon after, he received a message from X that his account was “shadow-banned.”

This was a problem because an auction to sell the art was scheduled to commence Sept. 16 and last for seven days, with each of the 21,000 pieces starting at .7 Bitcoin—the equivalent of approximately \$100,000 per piece, court records show. The price of each unsold piece would decrease by .1 Bitcoin each day until the price reached 0 Bitcoin at the auction’s end.

At the heart of the case is a defendant, Rechnitz, a Los Angeles-based financier with a history of legal entanglements. Rechnitz, in 2016, admitted to bribing the former president of the New York corrections union in exchange for investing union funds in a hedge fund that later collapsed. His sentence was vacated in 2023 after the U.S. Court of Appeals for the Second Circuit ruled the trial judge should have recused himself in the case. Rechnitz is set to be resentenced in June.

Winer alleged in the complaint that to help promote the auction as a result of the shadow ban, he was manipulated into transferring large sums of money and valuable assets under the guise of securing promotional efforts from boxing legend Floyd Mayweather and Elon Musk as part of a scheme Rechnitz orchestrated with co-defendants Ayal Frist and Yitzi Frid.

In exchange for a \$5 million payment, Winer was allegedly told that Mayweather could set up a FaceTime call between Winer and Musk. When Winer balked at the price tag, Rechnitz and his co-defendants allegedly agreed to receive payment in cash and Winer’s watches, a Patek Philippe and an Audemars Piguet, under the alleged pretense of securing the deal.

In response, Rechnitz is alleged to have relayed a message from Musk in which he advised Winer to take the auction offline and reschedule it after obtaining other celebrity endorsements, which Rechnitz promised that he could provide, per the complaint.

“Rechnitz further claimed that Musk said that the Eyes Collection was ‘powerful’ and that ‘every MAGA will buy it,’” Winer alleged in the complaint. “Rechnitz also claimed that Musk ‘said he may want to buy [the] entire collection.’”

Ultimately, Winer could not stop the auction from going forward and, as a result, Rechnitz allegedly refused to arrange the call between Winer and Musk from taking place, even though there was still time to promote the Eyes Collection before it would automatically become free, per the complaint.

Winer sued for eight counts, including fraud, conspiracy to commit fraud, conversion, aiding and abetting conversion, and civil theft.

He alleged, “Over the following months, Winer sought to address with Rechnitz the wrongful conduct and conspiracy directed against him. In response, Rechnitz reacted with hostility, issuing threats against Winer and his family.”

Trump Coin ETFs Are Exactly What SEC Should Prevent: Aaron Brown

By Aaron Brown

Opinion

Like many cryptophiles, I have been optimistic the Trump administration will make progress passing legislation that brings legal clarity to the industry. Over the past couple of years, a centrist consensus has been emerging in Washington, as embodied in the Financial Innovation and Technology for the 21st Century Act, passed by the House in May. While FIT21 is not perfect, it is a major improvement over the current unsettled state of crypto regulation, and it lays the foundation for a productive future.

Legislative progress was stalled by the 2024 election, and the bill faced Senate opposition from both progressives, who preferred Securities and Exchange Commission Chair Gary Gensler's more confrontational approach, and conservatives suspicious of new technologies. But Trump's election sent Gensler back to the Massachusetts Institute of Technology, and brought some prominent crypto true believers into the administration coalition. So the way seemed clear for a sensible regulatory regime to support legitimate innovation of real economic value, while protecting ordinary investors from fraud and delusional optimism, and the financial system from criminal disruption.

That was then, this is now. Three days before the inauguration, President Donald Trump unveiled his and hers memecoins — crypto with no underlying economics — \$Trump and \$Melania. Ten days later an application was filed with the SEC to issue leveraged exchange-traded funds on the coins. This is precisely what sensible regulation should prevent, letting insubstantial projects into the regulated financial system to extract money from bubble-chasing speculators. People who want to gamble should do it without the false flag of SEC protection; people with real economic projects should raise capital from informed investors with full disclosure.

We can hope that productive crypto regulation will move forward ignoring the ignoble opportunism of the president, but I fear there will be pressure to carve out exemptions to keep \$Trump and \$Melania legal and embedded in traditional financial markets. Another possibility is that this hardens resistance among both progressives and conservatives to any crypto legislation and we will continue with unclear rules that harass innovators but fail to protect anyone.

The key to good progress is to focus not on policing — a state trooper handing out speeding tickets — but on the much larger and more important job of making rules clear — the lane markers, curve warnings, one-way street signs and the agreement to drive on the right side of the road.

For example, I hate to drive, so I bought a self-driving Tesla as soon as they were available. My car is a much better driver than I am, but I have noticed it often fails to observe construction speed limits. One solution — and the one the SEC pursued before this year — is to hire more state troopers to give out tickets to Teslas in construction zones, until their drivers learn to turn off autopilot in those places. But the better solution is for highway departments to work with self-driving car makers to fix the issue.

Like crypto, self-driving cars are an innovation that existing regulation did not consider. The important job is to rethink regulation, working with both innovators and regulators, to make good new rules. The alternative of twisting old regulations to punish innovators is counterproductive. Worse, it results in long fights, often with ambiguous outcomes. This not only keeps the rules unclear but means they're years out of date by the time cases are settled. In fast-moving sectors such as crypto, that's a fatal objection.

So what can the SEC do about Trump's Tesla zooming through a construction zone at 90 miles per hour? It probably cannot give a ticket for the memecoins, but it certainly can deny the leveraged ETF applications. What's more important is to issue new rules — probably requiring congressional action — to fence in future non-substantial crypto projects and keep them far away from regulated financial institutions.

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MicroStrategy Ends Bitcoin Purchase Streak After Dozen Weeks (1)

By Monique Mulima

MicroStrategy Inc. said it didn't buy any Bitcoin in the prior week, halting a string of 12 consecutive weekly purchases that began in late October.

The purchases had coincided with a record-breaking rally in the digital currency that had been driven in part by Donald Trump's embrace of digital assets and the subsequent industry-friendly agenda in the first weeks of his second presidential administration. MicroStrategy bought more than \$20 billion in Bitcoin during the period, increasing its overall holdings to around \$44.7 billion, or more than 2% of all the tokens that will ever be minted.

The Tysons Corner, Virginia-based enterprise software company turned leveraged Bitcoin proxy led by **Michael Saylor** is aiming to raise \$42 billion of capital through 2027. MicroStrategy sold \$563 million of perpetual strike preferred stock last week and has been using at-the-market stock sales and convertible debt offerings to raise funds.

Hedge funds have been helping to drive the demand as they seek out MicroStrategy for convertible arbitrage strategies by buying the bonds and selling the shares short, essentially betting on the underlying stock's volatility.

MicroStrategy shares have surged more than 2,200% since the end of 2022. The stock was down around 5% to \$318.19 on Monday.

Donald Trump's moves to impose tariffs on major US trading partners sparked a selloff in cryptocurrency markets. Bitcoin was down around 1% to \$95,920.

Saylor told Bloomberg Television in December that the company planned to focus more on fixed-income securities in the first quarter of the year.

The self-described Bitcoin treasury company is expected to address the types of issuances it plans to use during its call with analysts after reporting earnings on Wednesday, according to Benchmark analyst **Mark Palmer**, who has a “buy” rating on the stock.

“It has been much more aggressive in terms of issuing capital and using the proceeds to buy Bitcoin than had been originally outlined back when the company first talked about this in conjunction with its third quarter earnings call,” said Palmer. “So now the question is, will the company revise that plan one way or the other?”

(Updates the share price of MicroStrategy.)

--With assistance from **Tom Contiliano**.

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Securities Law

Feb. 4, 2025, 7:09 AM PST

MicroStrategy's Financial Gambit Hits a Bump With New Stock Deal

By Yiqin Shen, Bailey Lipschultz and Monique Mulima

- **Bitcoin proxy sold preferreds at big discount to pump interest**
- **10% yield shows firm's maneuver to open a new funding avenue**

MicroStrategy Inc.'s seemingly limitless moves to raise capital for its Bitcoin purchases have run into their first obstacle.

The self-styled Bitcoin treasury company sold preferred stock units – rare, debt-like securities [dangling](#) an 8% coupon – last week, but it had to cater to price-sensitive buyers by pricing them [at a sizable discount](#). The shares were sold for \$80 apiece, 20% below their marketed price, effectively pushing the yield to 10% for buyers – a steep concession to finalize the deal.

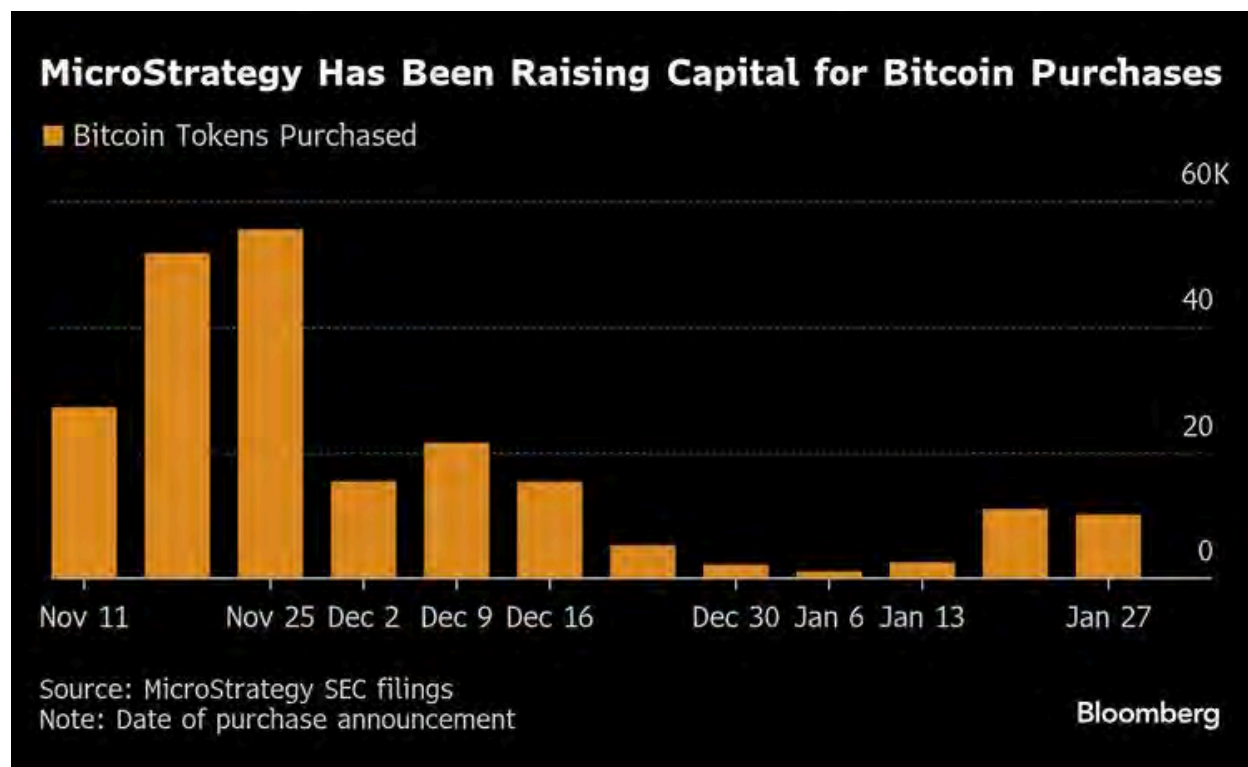
"I can't remember the last time I saw something priced this low," said **James Dinsmore**, a portfolio manager focused on convertible securities at Gabelli Funds Inc. "Obviously there was some pushback on the initial pricing."

Still, the deal's investor-friendly terms enabled the Tysons Corner, Virginia-based company to [raise](#) \$563 million – more than double the initial target – as co-founder and Chairman **Michael Saylor** explores multiple slices of capital structure to support his Bitcoin-buying strategy. The demand shows the market's interest in this asset class, which the company said it could use to raise as much as \$2 billion this quarter, despite it being more expensive than the ultra-low coupon convertible bonds and at-the-money shares it has issued previously.

MicroStrategy didn't return requests for comment.

"A 10% yield is not cheap capital, but given the company's profile, I think it's appropriate," said **David Clott**, a portfolio manager at Wellesley Asset Management. "And they're not diluting existing investors as they had done so with the previous convertible offerings. It's a good result for them, as they've opened up a new market for funding."

This initiative is part of the company's broader plan to secure \$42 billion over three years via a combination of equity and fixed-income securities, with a shift toward the latter expected this quarter. That's partly because the company has raised nearly \$17 billion through its share sale program and a far smaller amount through convertible debt. The company now owns about \$47 billion of Bitcoin – over 2% of all the tokens that will ever exist.



Bloomberg

New Funding Tool

The so-called perpetual strike preferred stock will pay investors a quarterly dividend and has a cumulative feature, ensuring that any missed payouts must eventually be made. Its conversion price is set at \$1,000 – roughly 200% above its latest closing price – a lofty threshold that lowers the odds of conversion to common stock in the near term, effectively delaying dilution that would otherwise affect existing shareholders.

The preferred stock was pitched to income-focused funds, preferred investors and retail buyers – a different pool from convertible bond buyers. Those deals, which offer little to no coupon, drew hedge funds deploying an [arbitrage play](#) to capitalize on the stock's surging volatility.

Read more: [Hedge Funds Make MicroStrategy Wall Street's Hottest Trade](#)

To institutional investors, part of the appeal of MicroStrategy's preferred stock lies in the "very attractive yield," which is among the highest in the market, according to Dinsmore. By contrast, JPMorgan Chase & Co. marketed 6.5% coupon in a [recent deal](#) which drew an eager reception. "The risk you're taking on MicroStrategy is clearly different than JPMorgan, but some premium is warranted," he said.

Given the lucrative coupon for MicroStrategy's offering, retail buyers are expected to be a big source of demand once the preferred units list on the exchange under ticker STRK.

Another area of scrutiny is how MicroStrategy intends to pay dividends, since the company can use either cash or stock for payment. That could pose tax complications for some funds, because each method may be treated differently – as income or capital gains – affecting the ultimate profit, said **Yan Jin**, a senior portfolio manager of Columbia Threadneedle Investments.

MicroStrategy is scheduled to report earnings Wednesday after the bell. Analysts are expecting a net loss of around \$23 million, according to data compiled by Bloomberg. This would mark a fourth consecutive quarter of losses for the company, as the underlying business has seen declining revenue annually since 2021.

And above all, the challenge of analyzing MicroStrategy's credit profile and business model persists for any investors holding a piece of the company through its sprawling asset classes. The preferred units are junior to the convertible bonds but senior to common stock.

Complicating matters further are wild fluctuations of Bitcoin price, which rallied over 120% last year. On top of that, MicroStrategy trades at a more than 200% premium to the value of the Bitcoin it owns, a level that can change rapidly.

"If you're earning 10% into perpetuity, as long as you don't feel there's much risk to the capital structure, it's a good deal," Clott said. "But if Bitcoin suffers, all bets are off – that's the caveat."

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[Securities Law](#)

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Patel's \$800,000 Trump Media Award Raises New Conflict Questions

By Annie Massa and Bill Allison

- Patel got late windfall from Trump's social media company
- FBI nominee didn't detail plans for stock award in disclosures

Kash Patel, President Donald Trump's pick to lead the Federal Bureau of Investigation, received a stock award last week from Truth Social's parent company worth more than \$800,000.

But the grant of restricted shares in Trump Media & Technology Group Corp. didn't appear on Patel's financial disclosure or ethics agreement, which detail how federal appointees will handle potential conflicts of interest.

The award and the lack of an explanation of how Patel would handle it comes as senators weigh whether he should be confirmed to lead the country's top law enforcement agency. Disclosures around the new grant fall into a gray area given its timing, according to experts who study how the government handles such conflicts.

If Patel were to hold on to the restricted shares while running the FBI, "it gives him a financial incentive not to take any actions that would undermine the value of Trump Media," said Kathleen Clark, a professor at Washington University in St. Louis School of Law, who specializes in government ethics. "That would include investigations."

A spokesperson for Patel did not respond to a request for comment.



Kash Patel

Photographer: Daniel Heuer/Bloomberg

A Trump loyalist who has criticized the “deep state” and championed limits to the FBI’s authority, Patel was questioned in a combative Senate confirmation hearing last week about his lack of law enforcement experience compared with previous FBI leaders and whether he would use the agency to target political enemies.

Trump Media awarded Patel restricted shares on Jan. 28 that will be released through March 2027, corporate filings show. Patel is on the company’s board, a position he would give up if confirmed to lead the FBI. It’s typical for members of companies to receive shares of companies they help oversee.

Trump transferred his majority stake in Trump Media to a trust controlled by his son **Donald Trump Jr.**

Read More: [Trump Media Gives Stock Awards to Two of President’s Nominees](#)

Still, Clark said Congress should demand Patel update his disclosures and ethics agreement to be more explicit about his plans for the stock award, even if there’s not a clear rule that he do so.

“An \$800,000 gift to the incoming FBI director before he takes office – that’s problematic in and of itself,” she said.

The disclosures also revealed that Patel plans to hold on to a stake worth at least \$1 million from the parent company of fast fashion brand Shein, even as the retailer faces legal challenges the US.

Patel also disclosed investments in Apple Inc., Nvidia Corp., Palantir Technologies Inc. and an exchange-traded fund that invests in Bitcoin, all of which he would divest within 90 days of confirmation. His assets were worth at least \$4.5 million. Nominees disclose values in broad ranges.

Elite Depot

Patel’s biggest holding was in restricted stock from Elite Depot Ltd., the Cayman Islands-based corporate umbrella for Shein. The online fashion retailer founded in China and headquartered in Singapore has been wrapped up in controversy over its labor practices and alleged intellectual property theft, including in the US.

Three designers filed a lawsuit in California against Shein Distribution Corp., accusing the retailer of ripping off their copyrighted patterns and designs. In November a judge denied Shein’s attempt to dismiss the case, which claims it violated the Racketeer Influenced and Corrupt Organizations Act.

Patel wrote in his ethics agreement that matters involving Elite Depot might cross his desk at the FBI, though the possibility was remote. He agreed to recuse himself from any matter involving the firm.

Through his tariff on China, Trump targeted companies like Shein by closing an exemption for packages worth less than \$800. Products below that dollar amount have been able to avoid tariffs – a boon for China’s e-commerce retailers who ship often cheaper wares directly to consumers in the US.

Revised Pledges

Others with financial ties to Trump Media have indicated they would sever them to avoid conflicts of interest.



Pam Bondi

Photographer: Kent Nishimura/Bloomberg

Attorney General-designate Pam Bondi agreed to divest shares worth almost \$3 million that she was awarded in the company. Her shares were payment for consulting she did for Digital World Acquisition Corp., the blank-check company that launched Trump Media.

Patel's consulting work also led to potential conflicts. His firm Trishul LLC, through which he shared his national security, defense and intelligence expertise, generated \$2.1 million in business income over the previous two years. He provided consulting services for the Embassy of Qatar until November 2024, and will have to recuse himself from matters involving the country for a year after that date or obtain a written waiver from government ethics officials to participate.

The disclosures don't say what Patel did for Qatar. He didn't register with the Justice Department as a foreign agent, required for individuals who lobby for foreign governments.

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The Roberts court and the imperial presidency

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Kelsey Reichmann

President Donald Trump signs an executive order withdrawing the U.S. from the World Health Organization in the Oval Office of the White House, Monday, Jan. 20, 2025, in Washington. (AP Photo/Evan Vucci)

WASHINGTON (CN) — President Donald Trump’s retribution agenda is setting up Supreme Court showdowns that could redefine the American presidency.

Instead of laboring through tedious federal agency rulemaking procedures or flexing his dealmaking skills to advance congressional legislation, Trump is using unilateral executive orders to implement key policy goals.

Legal experts suspect Trump will use the dozens of lawsuits challenging his executive orders to legislate through the courts.

“I get the sense that they are operating legal test balloons that animate a lot of these executive orders,” said Andrea Katz, a law professor at Washington University School of Law in St. Louis.

Trump’s test balloons overturned birthright citizenship, stripped civil-service protections from federal workers, handed a billionaire access to government operations without oversight, and ordered an immediate pause on congressionally allocated funding.

States, advocacy groups, federal employees, and others say the orders violate the Constitution, duly enacted legislation, and Supreme Court precedent. Adam Winkler, a constitutional law professor at UCLA, said Trump’s executive actions could be intentionally broad, pushing the court to extend presidential power.

“The way he does that is by making these bold and aggressive executive actions and daring people to challenge them in court, with the idea being that, yeah, maybe the courts will strike some of them down, but the courts have really been expanding executive power in recent years, especially the Roberts court,” Winkler said.

Under Chief Justice John Roberts, the Supreme Court has embraced the unitary executive theory — giving the president broad Article II authority over federal government operations. In 2010, the court ruled that Congress unlawfully protected a financial oversight board from presidential removal in *Free Enterprise Fund v. Public Co. Accounting Oversight Board*.

Roberts said for-cause removal protections insulated the board members from presidential oversight, preventing the president from faithfully executing his oath of office. A decade later in *Seila Law LLC v. Consumer Financial Protection Bureau*, Roberts cemented a legal rule barring any statute that limits the president's ability to oversee the executive branch.

Katz said increasing the president's power limits the authority of the federal bureaucracy. Presidents can't unilaterally shut down federal agencies. Congress would need to repeal the agency by statute.

"But if you don't have numbers to do that in Congress, what you can do is use the president's power to — and we're seeing this from Trump — silence civil servants," Katz said.

Trump has ordered massive changes to federal work policies and pressured employees to resign voluntarily. He also tried to freeze agency funding, preventing many civil servants from doing their jobs.

"This is all sort of how you can push presidential power to really kneecap the bureaucracy," Katz said.

At the same time, the Supreme Court curtailed federal agency authority, attempting to rein in their ability to operate with any autonomy. In June, the conservative majority overturned Chevron deference — a 40-year-old precedent giving agencies control to interpret statutes.

Winkler said the justices think agencies have a certain independence and authority distinct from presidential power. While Trump is taking advantage of expanded executive authority, his actions conflict with the justices' theory that agencies are not accountable.

"By taking power away from these agencies and investing it in courts who will get the final word on agency regulation, the court has actually put the power in the hands of unaccountable judges," Winkler said. "So in the name of enhancing accountability, we've taken power away from accountable administrative agencies whose policies change with each new presidential election and given that power to judges where there's no accountability."

Legal experts will closely watch for inconsistencies in how the justices rule between the Biden and Trump administrations. President Joe Biden's policies on student debt forgiveness, immigration, and vaccine mandates were all overturned by the justices for being outside of his executive authority.

Winkler said the hallmark of the Roberts court has been to overturn longstanding precedents so it's hard to predict how the justices will rule on even seemingly easy cases. Birthright citizenship is protected by the 14th Amendment, supported by decades of Supreme Court

precedent and written into federal law, but it's impossible to be certain how the justices will rule on an issue until they do.

"It's hard to have faith that the Roberts court is going to adhere to long-standing precedent and understandings of the Constitution when its hallmark is to depart from those long-standing understandings of the Constitution," Winkler said.

Thanks to the Roberts court, Trump's expanded executive authority includes criminal immunity. While the conservatives maintain that the president needs unencumbered power to faithfully execute the country's laws, their liberal colleagues have lamented that the court has made presidents kings above the law.

Those ideological divides will play a key role in whether or not executive authority extends to unilateral policymaking.

"The Supreme Court has definitely opened the door for presidents to be much more aggressive and less concerned with the law, including the criminal law, in pursuit of their agenda, and that is a fundamentally different kind of system than the one we've always had," Winkler said.

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Securities Law

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ADM Weighing Asset Divestitures in Push for Leaner Portfolio

By Gerson Freitas Jr.

Archer-Daniels-Midland Co. is weighing asset divestitures as part of a plan to slash costs as the crop trading giant faces a downturn in profits.

The Chicago-based company is looking at businesses that are seeing deteriorating demand and excess capacity for potential closures and deals, Chief Executive Officer **Juan Luciano** said during an earnings call Tuesday with analysts.

"We are considering a phased approach to areas of potential simplification," Luciano said. The company has identified nearly \$2 billion in "portfolio opportunities," he added.

ADM also said in a [statement](#) that it would cut between 600 and 700 jobs globally this year as part of a plan to achieve up to \$750 million in cost savings over the next three to five years. It's targeting as much as \$300 million in savings for 2025.

The move, which [follows](#) job cuts at larger rival Cargill Inc., comes after a second straight year of profit declines as a rebound in grain inventories and mounting biofuel policy uncertainty weighed on prices and reduced traders' negotiating power. ADM has also struggled with a crisis of its own, which includes an accounting investigation that has wiped billions of dollars in market value.

"The external environment continues to pose uncertainties and challenges," Luciano said.

ADM shares slumped as much as 5.1% in New York before trimming some of the losses.

The push for cost savings comes as profits are expected to decline again this year. ADM projects full-year adjusted earnings per share in the range of \$4 to \$4.75 a share for 2025. The midpoint guidance is down from \$4.74 a share in 2024 and also trails the average analyst projection of \$4.66 a share.

Adjusted earnings were \$1.14 a share for the three months ended December, down 16% from a year earlier. While that was in line with the average of analyst estimates compiled by Bloomberg, it's the lowest fourth-quarter result since 2018.

(Updates with changes throughout.)

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Jeff Sutherland

Forvis Mazars Dinged for Widespread Financial Sector Audit Flaws

By Amanda Iacone

Forvis Mazars LLP struggled with auditing financial sector clients, failing to meet basic US standards in 90% of audits picked for review, according to its latest regulatory inspection results.

The firm failed to meet basic standards in nine out of 10 audits pulled for inspection, according to a report from the US Public Company Accounting Oversight Board. The results cover audits for 2022 financial statements that predate Forvis' 2024 merger with Mazars' US arm, and were included in a batch of 17 inspection reports the board published on Monday.

Forvis Mazars is committed to "upholding the highest quality standards," the mid-tier firm said in a statement, adding it would rely on the board's feedback to better meet the needs of investors.

The firm's results reflect a rise in overall inspection findings, which grew for the third year to 46% of all audits picked for review in 2023 containing at least one violation, according to PCAOB figures.

The board increased the number of audits picked for inspections since the start of Erica Williams' tenure as chair in 2022. The Trump administration is expected to shuffle the leadership at the board, which could result in scaling back its routine reviews of auditors' work.

Inspectors cited problems in six financial sector audits conducted by Forvis Mazars, including not probing whether assumptions used to calculate allowances for loan and credit losses were reasonable. The firm also didn't consider the materiality of an accounting error for certain available-for-sale investment securities, among other shortfalls.

Forvis closed on its transaction to acquire Mazars in June 2024 as part of a wider deal that also created a Forvis Mazars global partnership. Firm leaders said the combination would create a \$5 billion international network.

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Baby Sock Co. Inks \$3.5M Deal In Investor's FDA Approval Suit

By **Sydney Price**

Law360 (February 3, 2025, 7:46 PM EST) -- Investors suing digital baby monitoring device manufacturer Owlet Inc. have asked a California federal court to preliminarily approve a \$3.5 million deal to settle claims the company misled investors about approvals required from the U.S. Food and Drug Administration to sell its "smart socks."

The proposed settlement, which is subject to court approval, provides "a significant, near-term benefit to the settlement class, especially in light of the costs, risks and delay posed by continued litigation," Friday's motion states.

Lead counsel for the investors intend to request one-third of the settlement fund, or approximately \$1.2 million, in fees, and up to \$180,000 in expenses.

According to the motion, the parties reached an agreement to settle following a full-day in-person mediation session in November.

The suit, which was most recently amended in December 2023, alleges Owlet's share price fell 23% on Oct. 4, 2021, after the company revealed to investors that the FDA had corresponded with Owlet since 2016 regarding the qualification of its "smart sock" — which monitors an infant's heart rate and oxygen levels — as a medical device. The FDA requested that Owlet cease commercial distribution of the product.

Because Owlet had known the FDA's position on its product for years, the company was sufficiently on notice that the FDA expected Owlet to obtain agency approval prior to the sale and distribution of the socks, the suit alleges.

U.S. District Judge Fernando Aenlle-Rocha refused to dismiss the suit in an **order in August**. He said at the time that the complaint sufficiently pled that Owlet was adequately notified that the FDA expected it to distribute its socks in a certain way, and that the defendants misrepresented they never received written communication from the FDA alleging noncompliance.

Additionally, the investors have shown the Owlet defendants acted with scienter, Judge Aenlle-Rocha said. The complaint claims Owlet could not secure the level of funding necessary to obtain FDA clearance without selling the socks to the public at large, which shows that Owlet may have attempted improperly to market the sock to avoid costs associated with obtaining clearance and maintain profitability, Judge Aenlle-Rocha said.

After the defendants filed a motion for reconsideration later that month, the court partially granted the request, dismissing without leave to amend claims based upon statements made prior to the merger between Owlet and blank-check company Sandbridge Acquisition Corp.

The Sandbridge defendants had previously been allowed to escape the suit's claims. The complaint does not allege the Sandbridge defendants knew about the FDA's 2016 letter to Owlet, Judge Aenlle-Rocha said.

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

The investors are represented by Jennifer L. Joost of Kessler Topaz Meltzer & Check LLP, Debra J.

Wyman, Ashley M. Price and Justin Gary Oetting of Robbins Geller Rudman & Dowd LLP and Brian Schall of The Schall Law Firm.

The defendants are represented by Colleen C. Smith, Meryn C. N. Grant and Michele D. Johnson of Latham & Watkins LLP and Anne Johnson Palmer, Peter Welsh and Mark S. Gaioni of Ropes & Gray LLP.

The case is Michael J. Butala v. Owlet Inc. et al., case number 2:21-cv-09016, in the U.S. District Court for the Central District of California.

--Editing by Jay Jackson Jr.

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Fla. Police Pension Sues Target Over 'Woke Capitalism' Losses

By **David Minsky**

Law360 (February 3, 2025, 7:14 PM EST) -- A Florida police department's pension fund sued Target Corp. in federal court in a proposed class action over alleged securities violations, saying the company lost billions of dollars in value after experiencing a sustained backlash from customers due to "woke capitalism" initiatives meant to promote sustainable business practices and diversity.

The City of Riviera Beach Police Pension fund sued Target and its senior executives Friday in the U.S. District Court for the Middle District of Florida, alleging violations of the Securities Exchange Act over billions of dollars in stock value decline stemming from the company's alleged false and misleading statements about its environmental, social and governance, or ESG, and diversity, equity and inclusion, or DEI, initiatives.

The lawsuit cited a published interview with Target CEO Brian Cornell, who allegedly was aware that "woke capitalism" was stirring a backlash since at least May 2023.

"Target has long cultivated a classic, all-American image, and sells itself as the favorite retailer of middle class American families," the lawsuit said. "But for years, Target's board and management wasted Target's financial and reputational capital pursuing the board's and management's personal ESG/DEI interests, while falsely and misleadingly portraying the risks of this strategy to Target's shareholders in order to artificially inflate Target's stock price and secure the board's reelection."

The proposed class period runs from Aug. 26, 2022, to Nov. 19, 2024, when the pension fund said the securities violations took place, and includes entities or people who acquired Target common stock within that period.

In May 2023, the pension fund claimed, Target's LGBT-themed marketing and sales campaign prompted a "strong adverse reaction" from the company's customer base because the products were directed at children, and sales efforts led to a culture war.

Misrepresentations were allegedly reflected in Target's financial statements, which failed to disclose the risks that the company would be exposed to for promoting social justice initiatives such as ESG and DEI. As a result of the misleading information, investors reelected Target's board, approved executive compensation tied to DEI programs such as the LGBT-Pride campaign and declined to reform the board's risk oversight functions, according to the suit.

The pension fund claimed Target should have known better, saying the company experienced a boycott in 2016 after it published an "antagonistic response" to a transgender bathroom law in North Carolina.

Starting in May 2023, as the negative results from the DEI and ESG initiatives became apparent, Target's stock began experiencing "precipitous declines" and has never recovered, according to the suit, which added that the company's stock lost \$16 billion in market capitalization on a single day in November.

"The election of the directors to the Target board, coupled with the unauthorized payment of executive compensation, damaged investors by causing further stock price declines," the pension fund's lawsuit said. "The payment by Target of such unauthorized and excess sums harmed Target shareholders, including plaintiff, by interfering in Target's proper corporate governance, wasting

corporate assets, and incentivizing value-destroying behavior by Target's executives."

On Nov. 20, Target announced its 2024 third quarter financial results, which reflected "comparable sales growth driven entirely by traffic and strength in the digital channel."

In the announcement, Cornell said the company saw a nearly 11% growth "in the digital channel" and a 2.4% increase in traffic, but the company "encountered some unique challenges and cost pressures that impacted our bottom-line performance."

"Looking ahead, our team is energized and ready to deliver the unique combination of newness and value that holiday shoppers can only find at Target, and we remain confident in the underlying strength and fundamentals of our business, and our ability to deliver on our longer-term financial goals," Cornell said.

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

The City of Riviera Beach Police Pension Fund is represented by Joshua E. Dubin of Josh Dubin PA and Jay W. Eisenhofer, Caitlin M. Moyna and Vincent J. Pontrello of Grant & Eisenhofer PA.

Counsel information for Target was not immediately available Monday.

The case is City of Riviera Beach Police Pension Fund v. Target Corp. et al., case number 2:25-cv-00085, in the U.S. District Court for the Middle District of Florida.

--Editing by Stephen Berg.

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Boeing Slams Funds' Bid To Bump 737 Max Fraud Suit To Va.

By **Linda Chiem**

Law360 (February 3, 2025, 9:09 PM EST) -- Boeing has told an Illinois federal judge that equity funds suing the American aerospace giant for allegedly defrauding investors by downplaying the 737 Max jets' safety flaws following a pair of deadly crashes in 2018 and 2019 shouldn't be allowed to forum-shop by moving their suit to Virginia.

The Boeing Co. on Friday **fired back** at a motion from plaintiffs College Retirement Equities Fund, TIAA-CREF Funds, Nuveen Investment Funds Inc. and other affiliates seeking to have their securities fraud case transferred from Chicago to Arlington, Va. Boeing had previously been based in Chicago before moving its headquarters to Arlington in 2022.

The funds first filed suit in July 2022, following up with a second amended complaint and motion to transfer in December. Boeing claims the funds are trying to take advantage of a Virginia federal judge's "sweeping **bench decision** denying Boeing's motion to dismiss in an unrelated securities class action, which involved different issues, statements and time periods." The Virginia case involves pension funds **suing** Boeing over the January 2024 **midair blowout** incident aboard a 737 Max 9 jet operated by Alaska Airlines.

"The motion is transparently animated by forum shopping and runs contrary to justice," Boeing said in an opposition brief. "Plaintiffs' sudden decision to seek a transfer occurred only after a federal court in Virginia rendered a more favorable decision in an unrelated class action."

Boeing urged U.S. District Judge Manish S. Shah to reject the equity fund plaintiffs' "gamesmanship" in the instant Chicago case. The equity funds have alleged that Boeing's top brass repeatedly **misrepresented** the 737 Max jets' safety and reliability, regulatory compliance, production rate and backlog, and the true nature of an automated flight-control software feature that was unique to the jets. The equity funds have pinpointed various alleged misstatements that Boeing made in the aftermath of the October 2018 crash of Lion Air Flight 610 in the Java Sea that killed 189 people and the March 2019 crash of Ethiopian Airlines Flight 302 that killed 157 people.

Boeing argued the equity funds' lawsuit should remain in Chicago, where four other securities fraud suits related to the 737 Max crashes are already pending over the same issues.

Meanwhile, the equity fund plaintiffs had argued in its Dec. 20 motion that since they filed their initial suit, "significant new information has emerged regarding the nature and extent of defendants' fraud."

Their second amended complaint provides additional new details about Boeing's "broken corporate culture and disregard for safety and quality controls in the years following the 737 Max crashes and that culminated in the Alaska Airlines accident on January 5, 2024," they argued.

"Plaintiffs' claims now go further than 'misrepresentations regarding Boeing's 737 Max airliner,' as in the 737 Max class action, and have been expanded to include Boeing's broader (and broken) corporate culture, disregard for safety and quality controls, and regulatory non-compliance, all of which are front and center in the Alaska Airlines class action," the equity funds asserted in their motion to transfer.

Additionally, the Eastern District of Virginia is "significantly less burdened than the Northern District of Illinois and is one of the speediest districts to progress a case from filing to trial," the equity funds

said.

Rolnick Kramer Sadighi LLP partner Lawrence M. Rolnick, an attorney for the equity fund plaintiffs, flatly rejected Boeing's forum-shopping arguments.

"The idea of forum shopping is to try to avoid the defendant's home court," Rolnick said in a Monday statement to Law360. "Here, Boeing moved its headquarters to Virginia after we filed suit, so it literally chose the forum and can hardly complain that its executives will somehow be inconvenienced from transferring proceedings to their home forum."

Judge Shah in 2023 determined that the equity funds **can only pursue claims** based on certain statements Boeing and top executives had made after the Ethiopian Airlines Flight 302 crash in March 2019, but **none before that**. There were sufficient allegations suggesting that Boeing's top brass was "recklessly indifferent" when it came to making full disclosures about pilots' ability to safely fly the 737 Max 8 after the second crash in March 2019, the judge noted.

The 737 Max 8 jets, which were **grounded globally** for 20 months after the two crashes in 2018 and 2019, were outfitted with a unique automated feature called the Maneuvering Characteristics Augmentation System, which affected the plane's flight control system. Accident investigators and other official review panels have since determined the MCAS was vulnerable to faulty sensor readings that could inadvertently trigger the system and push the plane to nosedive.

The equity fund plaintiffs are represented by Lawrence M. Rolnick, Marc B. Kramer, Michael J. Hampson and Nicole T. Castiglione of Rolnick Kramer Sadighi LLP and Jordan A. Finfer of Patzik Frank & Samotny Ltd.

The Boeing defendants are represented by John F. Hartmann, Brenton Rogers, Craig S. Primis, Katherine R. Katz and Kenneth P. Monroe of Kirkland & Ellis LLP.

The case is College Retirement Equities Fund et al. v. The Boeing Co. et al., case number 1:22-cv-03845, in the U.S. District Court for the Northern District of Illinois.

--Editing by Janice Carter Brown.

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Credit Suisse Gets Investor Suit Over Collapse Booted To NY

By **Emilie Ruscoe**

Law360 (February 3, 2025, 10:23 PM EST) -- Credit Suisse can fight a proposed investor class action in New York, instead of New Jersey, alongside similar litigation related to its rapid deterioration and subsequent takeover in March 2023, a Garden State magistrate judge has determined.

In a Friday **order**, U.S. Magistrate Judge Jose R. Almonte granted Credit Suisse's bid to see the investor claims transferred to Manhattan, finding, among other things, that related allegations playing out in the Empire State weighed in favor of moving the case there.

"Considering the substantial overlap of the legal and factual nature of these cases, the high risk of inconsistent rulings, and the undoubtedly enormous amount of judicial effort already expended, coupled with the fact that this matter is in its early stages, the practical considerations here strongly tilt in favor of transferring this action" to the Southern District of New York, the magistrate judge said Friday.

Plaintiffs Appaloosa LP, Azteca Partners LLC, and Palomino Master Ltd. brought the suit in April, claiming that in a single week of March 2023, they purchased certain bonds issued by Credit Suisse that they soon saw written down to zero on the order of the Swiss Financial Market Supervisory Authority as it facilitated the emergency merger of Credit Suisse and UBS Group AG as Credit Suisse suffered a liquidity crisis and bank run.

The investors claimed they'd "been lied to for a week" by Credit Suisse and its former board Chairman Axel P. Lehmann and its former CEO Ulrich Körner, citing statements to the press such as Körner's claim, "hours" before the bank accepted an emergency backstop, that its liquidity basis was "very, very strong."

"Defendants have since publicly admitted that they knew Credit Suisse was suffering serious liquidity issues at the beginning of the week of March 13, 2023, and that their statements to investors during that week were false," the investors said.

Credit Suisse moved to transfer the suit in June, arguing that since a number of suits making claims related to its meltdown are playing out in New York, "judicial efficiency would indisputably be served by transferring this action to the S.D.N.Y."

For one thing, Credit Suisse argued, "overlapping witnesses would only need to provide testimony once and defendants would not need to make similar or identical motions or seek other relief in two different courts."

On Friday, Judge Almonte sided with Credit Suisse, referencing a September opinion in one of the New York matters and asserting that it showed how U.S. District Judge Colleen McMahon, who presides over the New York litigation, "has already expended significant time, effort, and resources in becoming familiarized with these cases' highly complex factual background involving Credit Suisse's merger with UBS."

"If this court were to accept plaintiffs' arguments [in favor of keeping the case in New Jersey] it would be forced to ignore and reject the immense time and effort Judge McMahon has already expended to become painstakingly familiar with Credit Suisse and its financial downfall in March 2023, causing significant duplicative judicial efforts and risking the potential for inconsistent

findings," the magistrate judge said.

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

The plaintiffs are represented by Lawrence M. Rolnick, Marc B. Kramer, Michael J. Hampson and Richard A. Bodnar of Rolnick Kramer Sadighi LLP.

The defendants are represented by Jose L. Linares and Mark M. Makhail of McCarter & English LLP and Herbert S. Washer, Jason M. Hall and Elizabeth D. Wiseman of Cahill Gordon & Reindel LLP.

The case is Palomino Master Ltd et al. v. Credit Suisse Group AG et al., case number 2:24-cv-05539, in the U.S. District Court for the District of New Jersey.

--Editing by Linda Voorhis.

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Del. Justices Uphold \$10.4B Anaplan Inc.'s Thoma Bravo Sale

By **Jeff Montgomery**

Law360 (February 3, 2025, 6:06 PM EST) -- Agreeing that a fully informed "Corwin cleansing" vote washed away stockholder objections to a post-signing \$400 million trimming of a \$10.7 billion deal, Delaware's Supreme Court on Monday dismissed a challenge to Thoma Bravo's acquisition of software-as-a-service company Anaplan Inc. in June 2022.

The full five-member appellate court's decision upheld Vice Chancellor Nathan A. Cook's **dismissal** of the suit in June 2024 without elaboration, in a finding led by Justice Karen L. Valihura.

Lead plaintiffs Pentwater Capital Management LP and Brotherhood of Locomotive Engineers and Trainmen Long Island Pension Fund **sued** Anaplan's former top brass in 2022, asserting breach of fiduciary claims in connection with the merger agreement and post-signing approval of equity awards to new and current employees.

The suit alleged that directors "either were recklessly indifferent to or deliberately ignored" restrictions under the merger deal, issuing "significant equity awards well above the cap to both current employees and new hires."

Acknowledging that the suit raised "fascinating questions of fiduciary law," the vice chancellor shut down the complaint with a finding that "stockholders, via an informed and uncoerced vote, overwhelmingly approved the renegotiated transaction."

Central to the decision, Vice Chancellor Cook indicated, was the Delaware Supreme Court's 2015 precedent in *Corwin v. KKR Financial Holdings LLC*, which held that approval of the merger by a fully informed, disinterested stockholder majority invoked the business judgment rule standard of review, making more plaintiff-friendly "enhanced scrutiny unavailable."

"Boiled down, plaintiff's theory is that Anaplan's stockholders were entitled to \$66.00 per share upon consummation of the merger under the original merger agreement, \$2.25 per share of which defendants evaporated due to their bad faith or grossly negligent misconduct," Vice Chancellor Cook wrote in 2024.

But Anaplan's directors disclosed the dispute "immediately up front" in a supplemental proxy, the vice chancellor wrote, clearly stating that a dispute had arisen with Thoma Bravo despite the belief of the company and its directors that they "acted in good faith and in compliance with the merger deal."

Rather than risk the entire deal, Vice Chancellor Cook concluded, directors "made the business judgment that it was in the best interests of Anaplan and its stockholders to agree to a price reduction in return for securing the still premium transaction and enhanced closing certainty."

In a Supreme Court brief on appeal, Pentwater Capital and the Brotherhood argued that the suit raised a "pure legal" question: "Whether a stockholder vote in favor of a merger releases claims that do not challenge the economic merits of the merger and that exist independent" of a finding that the merger is fair.

"In adopting defendants' view that the Corwin doctrine is broader than all other ratification doctrines — so broad, in fact, that it releases claims not even challenging the economic merits of the merger that stockholders approved — the trial court extended the Corwin doctrine beyond any precedential

application," the stockholders asserted.

Attorneys for Anaplan argued that the stockholders were seeking a "redo" and asking the court to weaken Corwin's application.

The opposing claim, the company argued, "boils down to an argument that the revised merger agreement offered too good a deal to stockholders and that Corwin can never apply any time a merger agreement is modified. That is not Delaware law."

Edward B. Micheletti of Skadden Arps Slate Meagher & Flom LLP, counsel to Anaplan's former directors and officers, said "We are very pleased with the Delaware Supreme Court's decision to affirm the well-reasoned opinion by Vice Chancellor Cook."

Pentwater Capital Management LP is represented by Gregory V. Varallo, Andrew E. Blumberg and Daniel E. Myer of Bernstein Litowitz Berger & Grossman LLP and Ned Weinberger, Mark Richardson, David Schwartz and John Vielandi of Labaton Keller Sucharow LP.

The Brotherhood of Locomotive Engineers and Trainmen Long Island Pension Fund is represented by Gregory V. Varallo, Andrew E. Blumberg, Daniel E. Myer of Bernstein Litowitz Berger & Grossman LLP and Aaron T. Morris, Leonid Kandinov and Andrew W. Robertson of Morris Kandinov LLP.

Robert Beauchamp, Susan Bostrom, Frank Calderoni, Vikas Mehta, Gary Spiegel and Suresh Vasudevan are represented by Edward B. Micheletti, Eric M. Holleran, Taylor Brocka and Amr Razzak of Skadden Arps Slate Meagher & Flom LLP.

The case is In re: Anaplan Inc. Stockholders Litigation, case number 284,2024, in the Court of Chancery of the State of Delaware.

The Court of Chancery case, under the same caption, is 2022-1073.

--Editing by Peter Rozovsky.

Update: This story has been updated with a comment from counsel to Anaplan's former directors and officers.



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Steel Workers Seek Class Cert. In \$60M Inflated Stock Suit

By **Carolyn Muyskens**

Law360 (February 3, 2025, 4:28 PM EST) -- A Michigan federal judge has been asked to certify a class of steel company employees in a suit claiming the trustee of the company's employee stock ownership plan allowed the plan to buy \$60 million in company stock at an inflated price.

Richard N. Bonds filed a **motion** Friday to certify a class of more than 400 participants in the Flat Rock Metal and Bar Processing Stock Ownership Plan and their beneficiaries, saying the claims Bonds has lodged against the plan's trustee and the selling shareholders are "tailor-made for class certification."

The requirements for class certification are "easily met as to all claims," Bonds said, because "the questions of fact and law surrounding the trustee's conduct are the same for all class members; the questions of fact and law surrounding the selling shareholders' conduct and knowledge are also the same for all class members; plaintiff's claims are typical of the class; and plaintiff and his counsel will adequately represent the class."

Bonds' August 2023 complaint stemmed from a November 2020 stock transaction in which the ESOP, guided by trustee Richard Heeter and Capital Trustees LLC, purchased all outstanding shares in SAC Ventures Inc., a holding company for several steel processing companies, including Flat Rock. The plan purchased one million SAC shares for \$60 million, according to the complaint.

The SAC stock was sold by SAC President Peter F. Shields and SAC Treasurer Paul J. Lanzon II, who are named as defendants in the suit along with Capital Trustees and Marianna F. Heeter, the administrator of Heeter's estate, who was recently substituted for Heeter as a defendant following Heeter's death.

According to Bonds, Heeter and Capital Trustees failed to diligently investigate the deal or negotiate a fair price on behalf of the plan, resulting in the ESOP paying more than the stock was worth. Bonds said although the plan paid \$60 million for the shares, the shares were valued at \$3.6 million one month after the transaction and \$17.1 million as of Dec. 31, 2021.

The stock purchase was financed by a loan from SAC, which Bonds has claimed made it a prohibited transaction under the Employee Retirement Income Security Act.

Bonds said the case is appropriate for class certification because all the plan participants' claims are based on common questions about whether the plan trustee and the selling shareholders caused the plan to overpay for the stock and whether they breached their fiduciary duties to the plan.

"Proof on each of these issues will necessarily be proof for the entire class because the proof goes to the trustee's fiduciary obligations to the plan and to prohibited transactions involving the plan, not to individual class members," Bonds said in the motion to certify a class.

Bonds has asked the court to appoint Gregory Y. Porter, Ryan Jenny, Patrick Muench and Laura Babiak of Bailey & Glasser LLP as class counsel, telling the court the attorneys are experienced in ERISA class actions and ESOP litigation.

U.S. District Judge George Caram Steeh largely **denied** the trustee and selling shareholders' motions to dismiss the complaint in May.

In July, Judge Steeh recused himself from the case, and U.S. District Judge Mark A. Goldsmith took over the docket.

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

Bonds is represented by Gregory Y. Porter, Ryan T. Jenny, Patrick Muench and Laura Babiak of Bailey & Glasser LLP and Perrin Rynders and Aaron M. Phelps of Varnum LLP.

Capital Trustees LLC is represented by Michael L. Scheier, Jacob D. Rhode, Brian P. Muething and Carson E. Miller of Keating Muething & Klekamp PLL.

Shields and Lanzon are represented by Chelsea McCarthy, Rachel Agius, Todd D. Wozniak and Maxwell Hansen of Holland & Knight LLP and by Katherine Musbach of Gordon Rees Scully Mansukhani LLP.

The case is Bonds v. Heeter et al., case number 2:23-cv-12045, in U.S. District Court for the Eastern District of Michigan.

--Additional reporting by Grace Elletson. Editing by Kelly Duncan.

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Visa Brass Hit With Derivative Suit Over DOJ Claims

By **Sydney Price**

Law360 (February 3, 2025, 6:33 PM EST) -- Visa's executives and directors were hit with a shareholder derivative suit in California federal court accusing them of allowing the company to understate the regulatory risk it faced by engaging in anticompetitive actions that forced would-be competitors in debit card transaction processing into unfavorable contracts, which are currently the center of a lawsuit brought by the U.S. Department of Justice last year.

In the derivative complaint filed Friday, shareholder Manh Ho alleges that Visa downplayed the risk of being subject to antitrust investigations from federal regulators. The company's anticompetitive misconduct came to light when the DOJ **issued its complaint** against Visa in September, Ho alleges. In its complaint, the DOJ said Visa prefers to partner with "emerging players" before they become "disruptors," therefore cementing its market share and depriving competitors of the opportunity to release products that would threaten Visa's market dominance, Ho's suit states.

"For example, in its issuing contract with JPMorgan Chase, Visa explicitly made the requirement that 90% of Visa-branded debit cards issued by the bank can have only one unaffiliated PIN network," the suit states, referring to smaller outfits that process debit card transactions. "By doing this, the Company has made it almost impossible for smaller networks such as PIN networks to win any additional market share."

The DOJ alleged Visa uses its monopoly power to entice issuers to enter into agreements that limit the amount of rival networks on Visa-branded debit cards, therefore limiting the choices available to merchants, the derivative complaint states.

The suit's relevant period begins Nov. 16, 2023, the day after Visa filed its annual report for the 2023 fiscal year. Ho alleges the filing contained only "generic risk disclosures that did not fully reveal the company's risk of investigation and litigation to investors." For example, Visa said regarding its compliance with business regulations that it is "subject to complex and evolving global regulations that could harm our business and financial results."

For several months, Visa continued to make similar public statements that did not reveal that it was actually engaging in anticompetitive behavior and was at heightened risk for the legal action that it vaguely warned investors of, Ho says.

In addition to nominal defendant Visa, the suit's individual defendants include Visa CEO Ryan McInerney, Chief Financial Officer Chris Suh and several other company executives and directors. Together, the individual defendants netted \$12.6 million in personal profits by insider trading during the relevant period, the suit alleges.

Additionally, the derivative suit claims the individual defendants breached their fiduciary duties by allowing the company to overpay for repurchases of its own stock.

The truth did not emerge, the suit alleges, until Sept. 23, 2024, when media outlets reported the DOJ was planning to file a lawsuit alleging antitrust violations. When the suit was filed the following day, Visa shares fell \$15.85 each, or about 15%, to close at \$272.78, according to the complaint.

The suit accuses the defendants of unjust enrichment, gross mismanagement, wasting corporate assets and violations of the Exchange Act.

Additionally, the complaint notes that Visa is facing a securities class action in California federal court

over the allegedly false and misleading statements it made regarding its anticompetitive behavior.

Counsel for Ho and a representative of Visa did not immediately respond to requests for comment on Monday.

Ho is represented by Robert C. Moest and Timothy Brown of The Brown Law Firm PC.

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

The case is Ho v. McInerney et al., case number 3:25-cv-01052, in the U.S. District Court for the Northern District of California.

--Editing by Alex Hubbard.

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Law Firm Involved In Talc Fee Fight Seeks To Arbitrate Claim

By **Rose Krebs**

Law360 (February 3, 2025, 3:28 PM EST) -- The Smith Law Firm PLLC is urging an Alabama federal judge to compel arbitration of a cross-claim that Porter Malouf brought against it amid a lawsuit over an agreement the two firms and the Beasley Allen Law Firm entered to represent plaintiffs in litigation over Johnson & Johnson's tainted talcum powder.

In a Thursday filing, counsel for The Smith Law Firm PLLC and the firm's founder, R. Allen Smith Jr., asked the judge to send Porter Malouf PA's claims against Smith Law to arbitration, saying the two firms "previously agreed such claims would be finally resolved by arbitration."

The two firms are defendants in a lawsuit **filed in September** by Beasley Allen Crow Methvin Portis & Miles PC alleging they breached a joint venture agreement signed by the three firms to represent cancer victims pursuing claims against Johnson & Johnson related to its sale of talc-based powder.

In its suit, Beasley Allen claims Smith Law sold out its own clients for a quick payday by supporting a controversial \$9 billion settlement offer by Johnson & Johnson in order to pay off "litigation funding loans perhaps as high as \$240 million."

In a filing on Jan. 9, Porter Malouf lodged a cross-claim against Smith Law saying "Smith Law purchased all of Porter Malouf's rights, title and interest in the talcum powder litigation" per an agreement the two firms signed in 2021.

The joint venture agreement "had anticipated that Beasley Allen and Smith Law/Porter Malouf would equally divide the work and expenses associated with the talcum powder litigation, with Beasley Allen responsible for 50% and Smith Law/Porter Malouf responsible for 50%," according to the filing.

But under the 2021 agreement, "Smith Law assumed any obligations Porter Malouf owed under the JV agreement, including but not limited to any obligation to reimburse Beasley Allen for expenses associated with the talcum powder litigation," the filing said.

Smith Law also "agreed to indemnify, hold harmless and defend Porter Malouf" from claims arising out of its obligations under the joint venture agreement, according to Porter Malouf.

In its filing, Porter Malouf also accuses Smith Law of failing to disclose some talcum powder clients. Beasley Allen has made the same claim, the filing says.

Porter Malouf is seeking damages and attorney fees from Smith Law.

In its motion Thursday, Smith Law said the cross-claim filed by Porter Malouf creates a dispute between the two firms.

"The cross-claim states three claims for damages under theories of breach of contract, fraudulent suppression and contractual indemnification," the filing said. "Porter and the Smith Firm previously agreed such claims would be finally resolved by arbitration, and Porter's agreement to do so applies to its claims against Allen Smith."

Smith Law and its founder asked the court "to enter an order compelling the cross-claim to arbitration."

On Friday, U.S. District Judge R. Austin Huffaker Jr. asked Smith Law to submit information to clarify "whether the motion is unopposed."

Earlier this month, Judge Huffaker **shot down** Smith Law's request that he recuse himself from the case because of his previous representation of Beasley Allen.

In his order, the judge said it's been more than five years since he represented Beasley Allen as a malpractice and disciplinary defense attorney at Rushton Stakely Johnston & Garrett PA, and he's not especially close with anyone at the firm.

Beasley Allen and Smith Law are engaged in **a bitter rift** over their joint representation of plaintiffs in the J&J talcum litigation. Just days after Beasley Allen filed its Alabama suit, Smith Law hit back with its Mississippi federal court lawsuit asserting defamation claims over the "patently false" accusations in Beasley Allen's complaint.

Beasley Allen **has moved** to dismiss Smith Law's suit or have it transferred to Alabama federal court.

Counsel for the parties didn't immediately respond Monday to requests for comment.

Beasley Allen is represented by Robert D. Segall and J. David Martin of Copeland Franco Screws & Gill PA.

Porter Malouf PA is represented by Bruce F. Rogers and Elizabeth N. Terenzi of Bainbridge Mims Rogers & Smith LLP.

Smith Law and Allen Smith are represented by Joel D. Connally of Strength & Connally LLC and Gary Bufkin of Carroll Bufkin PLLC.

The case is Beasley Allen Crow Methvin Portis & Miles PC v. The Smith Law Firm PLLC et al., case number 2:24-cv-00582, in the U.S. District Court for the Middle District of Alabama.

--Additional reporting by Ryan Boysen. Editing by Janice Carter Brown.

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NCAA Hit With New Suits As NIL Settlement Trudges Ahead

By **Alex Lawson**

Law360 (February 3, 2025, 3:10 PM EST) -- At least 100 current and former college athletes filed a fresh round of lawsuits against the NCAA over its compensation restrictions as critics continue to pillory a proposed \$2.78 billion class action settlement aimed at quelling many of the same concerns.

Complaints filed in California and Kentucky federal court took the NCAA to task for continuing to restrict athletes' ability to monetize their name, image and likenesses even as an interim policy has loosened those rules, while also continuing to prohibit the direct compensation of student athletes for their labor.

"The NCAA has utilized the disparity in bargaining power it has to coerce student-athletes into providing their highly valued athletic services without being fully compensated for such, to give up their publicity rights not only while they are college athletes but also well beyond the end of their college careers," the athletes bringing the Kentucky suit wrote.

The 67 athletes filing in California explicitly stated that they were opting out of the settlement in the class action led by former college swimmer Grant House still pending approval in that court. The athletes bringing the Kentucky case did not explicitly include an opt-out declaration in their filing, but both suits were filed on Friday, which U.S. District Judge Claudia Wilken set as the deadline for class members to back the **settlement** or go their own way against the NCAA.

In a statement, an NCAA spokesperson stressed that the plaintiffs behind the new suits represent "a very small minority" of athletes who could have participated in the settlement process.

"We will explore all options as to these new lawsuits, but they do not present an obstacle to approval of the settlement, which will provide landmark new benefits to student athletes and is consistent with antitrust law," the spokesperson said.

Attorneys for the athletes did not immediately respond to requests for comment Monday.

Some athletes have **criticized** the House settlement as simply perpetuating a different kind of price fixing and revenue capping, while others say the money pledged by the NCAA, while significant, does not do enough to address the harms caused by years of restrictive NCAA policies.

The new cases in California and Kentucky resurface many of the same arguments pursued in the House case, with the NCAA's NIL rules front and center. The association has since 2021 relaxed its rules by allowing athletes to profit off their own likenesses through merchandising and advertising deals, but most athletes behind the new cases played in college before that rule change and are seeking to recoup their losses.

But the athletes also noted that the NCAA has framed its rule change as an "interim" policy, with the bylaws banning NIL compensation still technically on the books. Even under the new policy, challenges still remain by virtue of the NCAA's tortured efforts to keep NIL revenue streams from being contingent upon enrollment at a certain school or based on athletic performance.

"That is an onerous restriction, as a sponsor could otherwise have language in an endorsement deal that ties payment to being actively playing the sport, achieving an athletic accomplishment (such as playing in or winning a Bowl game) or playing the sport at a particular school," the athletes in the

California case wrote. "A sponsor may refuse to enter into an endorsement deal if it is not able to put this language in a contract."

The Kentucky plaintiffs are represented by Robert R. Sparks of Strauss Troy Co. LPA and R. Christian Macke.

The California plaintiffs are represented by John Arthur Eaves Jr., Christopher Brady Eaves and Sterling Overton Eaves of Eaves Law Firm LLC and Thomas F. DellaFera Jr. of Miller DellaFera PLC.

Counsel information for the NCAA was not immediately available Monday.

The Kentucky case is Allen et al. v. National Collegiate Athletic Association, case number 2:25-cv-00014, in the U.S. District Court for the Eastern District of Kentucky. The California case is Hill et al. v. National Collegiate Athletic Association et al., case number 4:25-cv-01011, in the U.S. District Court for the Northern District of California.

--Editing by Alex Hubbard.

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