

Is a \$10 Billion Year for Securities Settlements on the Horizon?

 [law.com/litigationdaily/2025/02/12/is-a-10-billion-year-for-securities-settlements-on-the-horizon](https://www.law.com/litigationdaily/2025/02/12/is-a-10-billion-year-for-securities-settlements-on-the-horizon)

Ross Todd

Securities class action settlement activity topped more than \$5 billion globally last year, according to the latest report from financial technology company Broadridge. And **Steve Ciri****ami**, who heads the class actions team at Broadridge, pointed out that that number—though substantial—came in a year that lacked the sort of billion-dollar-plus settlements that typically drive the market to new heights.

“As we start seeing more of these cases play out in Europe and Asia, on top of the growth that you’re seeing in the U.S. and Canada and Australia, I think you will continue to see those numbers going up,” said Ciri**ami**, who was formerly a litigator at **King & Spalding** and **Clifford Chance**. “I wouldn’t be surprised if we hit a \$10 billion-dollar year in the near future.”

Litigation Daily dug into the latest Broadridge report, which ranks the top 10 securities settlements based on how complex the recovery process is for claimants, with Ciri**ami** earlier this week.

The following has been edited for length and clarity.

Lit Daily: You and I have been having these conversations for a few years now. From my perspective, the trend seems to be toward more complex security settlements. Do I have that right?

Steve Ciri**ami**: You do. We’ve been reporting on that generally over the years as we’ve been doing these reports. We’re just seeing more complexity for various reasons. It used to be that out of the 130-plus cases that settle a year, you’d have a handful that we’d consider as the 10 most complicated. Now there’s plenty to choose from in terms of which ones we want to feature in the report.

So what’s behind that? Is it the nature of the securities? Does it say something about the market or the way that people are litigating these cases?

It’s really all of the above. It’s a variety of things, including how people invest globally now and cross-border. That’s a big thing. Expanding laws across countries that sometimes have different requirements is changing things. It used to be all you heard about in the investment at the retail level was equities. Then it was equities and derivatives and debt. And then, once in a while, you started seeing sort of these weird types of securities. But now you’re seeing them fairly frequently.

You're seeing cryptocurrency cases and you're seeing a few NFT settlements. And all of these things are not only new and novel, but the way that institutions, custodians and clearing firms even record the data can be very different.

When you're talking about new jurisdictions, then you have cross-jurisdictional issues. You have companies that trade on multiple exchanges, and some settlements allow for you to have traded on one exchange, and some on other exchanges and some on all exchanges. Then you've got to match the claims and the documentation. Again, you go back to the way custodians and clearing firms keep their data. It may or may not be easy to tell.

Then, just looking at the last two years, we've had a record number of antitrust cases that settled involving publicly traded securities. There were nine last year, which was a record, and nine again this year. And antitrust cases are almost always more complicated. They always have bespoke claim-filing requirements. You have weird and novel and different securities. Often you don't have easily identified security identifiers to find the transactions. And we're also starting to see documentation requirements across cases more and more. It used to be that individuals who maybe had two or three transactions had to get their documentation from a broker. But you would be able to rely on the books and records of the custodian. Even when you're filing, in some cases, millions of transactions, the requirements are for you to provide individual confirmation slips or statements for every one of those transactions.

Let's discuss the report's analysis of the Supreme Court's *Jarkesy* decision. That decision would seem to route more SEC litigation to federal court and away from administrative proceedings. Your analysis indicates that *Jarkesy* is unlikely to materially affect the agency's recoveries as part of its Fair Funds program. What's behind that conclusion?

There's been a lot of writing from a legal perspective on what this opinion means and how this will affect litigation and the law. We don't really look at it from that perspective. This is a practical report, where we're looking for investors who may not be legally trained. How do they recover money when they had an investment that went wrong? And so from a practical standpoint, as we look at it, we're not thinking that this changes the number of Fair Funds that happen each year. It fluctuates from five to 10 on average a year. Some of them will be in administrative proceedings and some of them will be in federal court. More might get pushed from the administrative hearings to federal court, but we would still expect the same number of Fair Funds to result from it. Other things affect it from year to year, including who is in the administration. But we're not thinking this decision will affect the overall total.

We haven't really looked at whether administrative proceedings versus federal court proceedings result in more recoveries. For that, you would probably need to do more statistical analysis over time. So, that's not something we're opining on.

Let's look at the Fair Fund distribution that made it into your top 10. The BP Deepwater Horizon spill Fair Fund distribution made it onto this year's list at number seven. Walk me through what made that one so complicated from the claimant's side.

It's a good one to talk about, because we just talked about all the things that are making these cases more complicated. This hits on almost every one of those. Here you're looking at a very old class period. Literally, the class period is one month while the oil was still gushing in the Gulf. From last year, that was 14 years in the past. You had to have all of your trades and transactions. The financial services industry has a seven-year mandate on look-backs. Going back beyond that, just pulling the transactions can be complicated. Even if you can get them, they may be archived. Again, pulling the data from the data provider is one thing. But here, like in many Fair Funds we're seeing these days, we have a documentation requirement. So you need to not only have all of your data from 14, 15 years ago, but you have to go back and get confirmations or statements. If you don't have them on hand—which there's no requirement to hold on to them—you have to try to see if your broker has them. And there's no requirement for them to hold on to them. So you have the age of the class period. That's a big one.

Here they already settled the [American Depositary Receipts] case. So these are ordinary shares traded on foreign exchanges. Getting data from that and getting documentation from that is obviously more complicated. There was no real residency requirement, which you sometimes get. So, it's anybody in the world that bought on either the Frankfurt or the London exchange. And the fact that you've got two international exchanges that are implicated here further complicates it. So, when you look at all of those things, you've got a pretty aged class documentation requirement and multiple exchanges; that puts this easily in our top 10, but only as number seven. We still have six that are more complicated, despite all of that.

Well, let's look at the most complicated one, the half-a-billion-dollar stock loan antitrust settlement. Cohen Milstein and Quinn Emanuel were our Litigators of the Week back when this settlement was announced. So what are the difficulties for investors making claims in that case at the back end of it?

So obviously, those are two terrific firms. They have had a lot of historic settlements in the antitrust space.

If you take all the things I said about the BP Fair Fund, and you add on top of it that it's an antitrust case about very complicated securities, which are very hard to find, you get the number one most complicated case of the year. It's a large settlement, obviously, as most antitrust securities cases are. You've got hundreds and hundreds of different kinds of stock loans that are implicated here. Identifying them is complicated.

You're going back 16 years for this class period, back to 2009. It's not a one-month period like the BP Fair Fund. It's a 13-year period. So any and all transactions over a 13-year period dating back to 2009. You know, right out of the box, it's hard to get what you need. You have the same kind of documentation requirements. When they originally rolled out this claims process, they were looking for daily transactions. Many of these are traded frequently and at a high volume. And so claimants could have hundreds, thousands or tens of thousands of transactions. They wanted daily transactions, which are very, very hard to go back and get at all, let alone in a 15, 16 year old class period. It was so complicated that they actually rebooted the claims process and said, "Hey, if you can get us monthly or quarterly, we'll take that too." They did a new claim form because they realized that this was going to be really, really complicated, both for the administrator to handle and for class members to actually file complete and valid claims. So you've got complicated securities wound around this antitrust case, a bespoke claims process that you don't see in equity cases.

So on your end, how is managing this sort of work in an antitrust settlement different from your more typical securities work that you do?

In a lot of ways, the claim preparation portion is a lot more complicated. It requires a lot of manual work for the team to get the data in the right format that the claims administrator is looking for, which, again, is a bespoke process. It's not like you push a button and get the same things that you need in every case. But before that, it's even a bigger issue for our clients. So we have roughly 1,000 different clients, and they roughly have 160 million-plus different accounts. So we have a pretty significant-sized user base. We filed over eight million claims in 2024 for all of our clients. And when you talk about stock loan transactions, that might not be a trade that we have. We function as a back-end data warehouse for our clients. We have all of their equities trading anywhere around the world. We have their books and records. So we know what the requirements are for equities, and we have them right on hand. We can pull all the files without going to our clients.

In almost every antitrust case, you've got a unique security. In these cases, where you have many securities, we could actually reach out to our 1,000 clients and say, "Hey, you've got to go find these securities." We try to give them the parameters that they need and we try to work with them from the minute the case is settled and announced, if not before that. If they have big positions and it's being litigated, but they don't always put it together until there's an actual material claims process, then we have three months to do it all.

How do you decide when it's worth it or not?

Most of these antitrust settlements are large. You don't see too many \$5 or \$10 million settlements. And we view our job as getting every penny that our clients are owed. So we don't have a filter. We reach out on every one. We push hard on every single one. That's why we do the things that we do on the back end and check the claims administration work as

well. Our clients may feel differently. They might say, "Hey, we have very small positions. It's 15-, 16-years old. We're not going to bother." We'll talk to them about what that looks like and what their recoveries could potentially be so they know if there's juice in the squeeze or not. But our job is to make sure they know of every opportunity. We try to get them what they're owed in every single case.

Class Action

Feb. 12, 2025, 8:35 AM PST

AI Provider Elastic Made Sales Changes Too Fast, Investor Says

By [Martina Barash](#)

- **COURT:** E.D.N.Y.
- **TRACK DOCKET:** [No. 1:25-cv-00785](#) (Bloomberg Law subscription)

Elastic NV misrepresented the effect of sales strategy changes, surprising the market with slashed revenue guidance for fiscal year 2025, an investor alleges in a proposed class action.

The artificial intelligence search company's stock price dove 26% to close at \$76.19 per share on Aug. 30, 2024, the largest selloff in its history, according to data compiled by Bloomberg.

In May 2024, Elastic projected "revenue of \$1.468 billion to \$1.48 billion, representing 16% year-over-year growth at the midpoint," according to the complaint, filed Tuesday in the US District Court for the Eastern District of New York by the Lucid Alternative Fund LP, a shareholder.

But after the markets closed on Aug. 29, the company announced lowered FY 2025 revenue guidance of "\$1.436 billion to \$1.444 billion, representing 14% year-over-year growth at the midpoint," the fund says. The company attributed the slackening growth to changes in its sales strategy and teams for the Americas, saying they had implemented the changes too quickly, according to the complaint.

The announcement caused the next day's stock drop, the fund says.



The proposed class consists of hundreds or thousands of members, according to the complaint.

The fund seeks damages on its securities fraud claims.

Elastic didn't immediately respond to an emailed request for comment.

Pomerantz LLP and Jacob Sabo, who practices in Tel Aviv, Israel, represent Lucid Alternative Fund.

The case is Lucid Alt. Fund, LP v. Elastic N.V. , E.D.N.Y., No. 1:25-cv-00785, 2/11/25 .

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Class Action

Feb. 12, 2025, 7:14AM PST

Intellia Sued by Investor Over Research Halt, 15% Stock Tumble

By Gillian R. Brassil

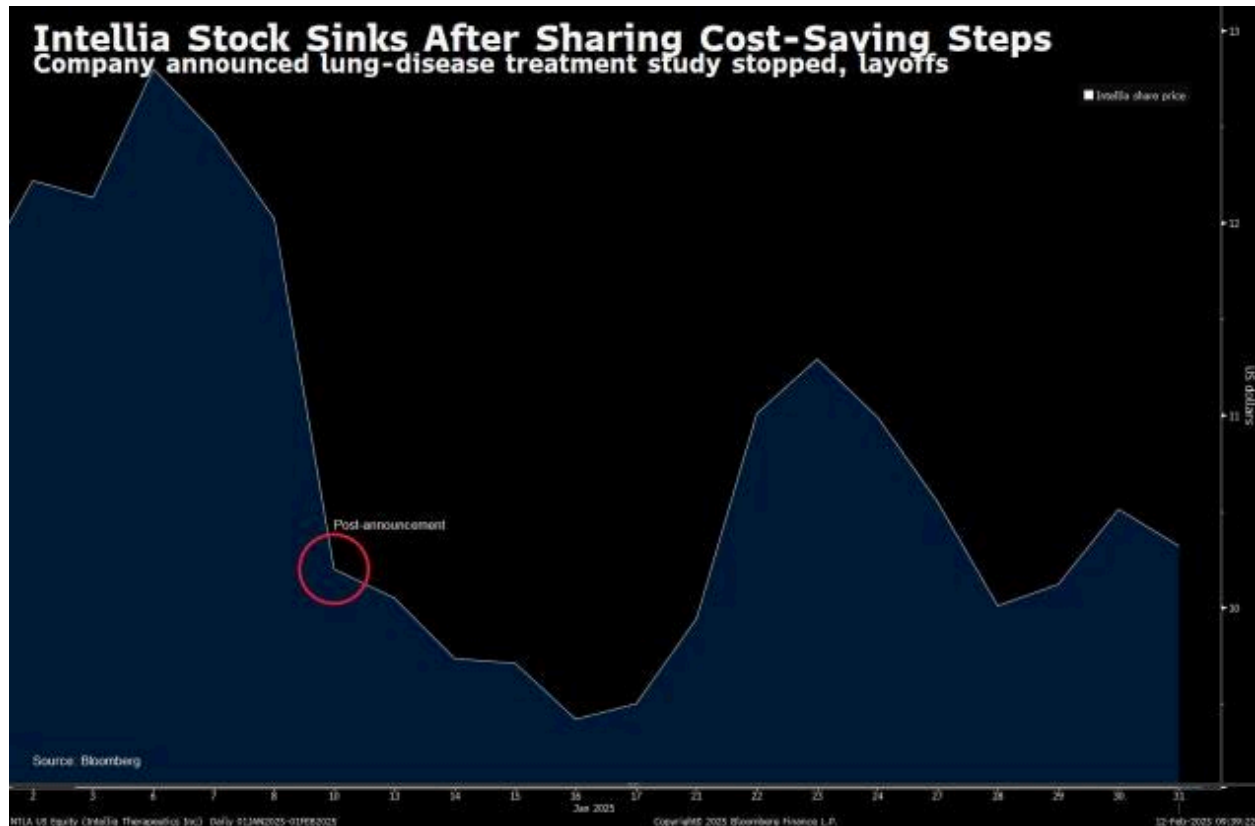
- **COURT:** D. Mass.
- **TRACK DOCKET:** No. [1:25-cv-10353](#) (Bloomberg Law subscription)

Intellia Therapeutics Inc. overhyped its lung-disease therapy study despite inefficiencies and costliness of such viral-editing treatments, sending share prices down 15%, a proposed class action says.

The stock slipped on this and the gene-editing company's Jan. 9 announcement about slashing its workforce by 27% in 2025, says investor Marcos Gonzalez in his complaint filed in the US District Court for the District of Massachusetts on Tuesday.

Intellia issued from mid-to-late 2024 lofty expectations of launching its Phase 1/2 study for treating lung disease associated with a rare genetic disorder—including that the company expected to dose its first patient by the end of 2024—which artificially inflated its stock price, the complaint said. Meanwhile the broader scientific research community was refocusing on non-viral delivery methods that were more efficient and cost-effective, Gonzalez said.

Then Intellia announced the reorganization to save costs, including that it would halt researching and developing this gene-insertion treatment and cut jobs. Share prices closed 15% lower the following session on Jan. 10. It was the stock's biggest selloff in 11 weeks, according to data compiled by Bloomberg.



The proposed class would include investors who bought shares from July 30, 2024 through Jan. 8, 2025.

Levi & Korsinsky LLP represents Gonzalez, who seeks damages for alleged federal securities laws violations. Gonzalez sued the company, CEO John Leonard, and former chief scientific officer Laura Sepp-Lorenzino.

Intellia didn't immediately respond to an email seeking comment.

The case is Gonzalez v. Intellia Therapeutics, Inc. , D. Mass., No. 1:25-cv-10353, complaint filed 2/11/25 .

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Xponential Fitness Leaders Sued Over Franchise Failures (1)

By Martina Barash

- **COURT:** C.D. Cal.
- **TRACK DOCKET:** [No. 8:25-cv-00258](#) (Bloomberg Law subscription)

Xponential Fitness Inc. executives and directors made blatantly false statements about the success of franchised studios and pressured franchisees to keep locations open, an investor alleges on behalf of the company.

Former CEO Anthony Geisler “personally monitored franchisee Facebook groups to track and suppress any signs of dissent,” Stefanie Nelson says. She filed the shareholder derivative suit Monday in the US District Court for the Central District of California.

After Fuzzy Panda Research published a short-seller report in June 2023, Xponential “was forced to take charges of \$13.8 million to dispose of failing studios and expected additional charges of up to \$27 million in 2024,” Nelson says.

Investigations by federal prosecutors, the Securities and Exchange Commission, and state legislators followed, Nelson says. The company also faces potential liability from lawsuits brought by franchisees and from a consolidated securities class action, she says.

Xponential said in an email Tuesday—responding to a request for comment on behalf of the company and the individual defendants—that Geisler resigned as CEO in May 2024, following his suspension by the board. “While the Company cannot comment on pending litigation, Xponential Fitness named Mark King as CEO in June 2024, an accomplished leader with a proven track record of supporting franchisees,” the company said. “We are confident in the future of the business under his leadership.”

Geisler couldn’t be reached for comment.

Plaintiffs in the investor class suit allege the revelation of misrepresentations, including in a secondary public offering, caused stock selloffs of 37%, 26%, and 31%.



Nelson brings claims for breach of fiduciary duties, securities law violations, contribution, unjust enrichment, and insider selling. She seeks damages, disgorgement, and injunctions.

Bragar Eigel & Squire PC represents Nelson.

The case is Nelson v. Geisler , C.D. Cal., No. 8:25-cv-00258, complaint 2/10/25 .

(Updated with comment from company in fifth paragraph.)

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Edison Sued by Investor Over Stock Hit from LA Fire Accusation

By Gillian R. Brassil

- **COURT:** C.D. Cal.
- **TRACK DOCKET:** [No. 2:25-cv-01154](#) (Bloomberg Law subscription)

Edison International Inc. misled investors about implementing the power company's wildfire-mitigation measures in the lead up to the Eaton fire that devastated the area north of Los Angeles, a proposed class action filed Tuesday says.

The complaint, filed by investor Felipe Antillon in the US District Court for the Central District of California, appears to be the first shareholder suit filed over the Eaton fire against Edison. The electric utility company is the parent of Southern California Edison Company, which is still under state and local investigation for a potential connection between its power lines and a pair of Los Angeles County fires.

The Eaton fire killed at least 17 people and destroyed over 9,000 buildings, according to data from the state's firefighting agency, making it California's fifth deadliest and second most destructive. More than 50 lawsuits have been filed against SCE concerning its purported link to the spark, according to data compiled from Bloomberg Law.

Edison stock slid almost 12% in one trading day, Antillon said, after a lawsuit filed in the Superior Court of the State of California for the County of Los Angeles Jan. 13 alleged that SCE equipment spurred the Eaton fire. The suit included eyewitness accounts and photographs, the complaint said.

Before this, Antillon said, Edison had claimed SCE used a program to de-energize power lines to mitigate the risk of wildfires from extreme weather, including in the lead up to the Eaton fire. But SCE said in a preliminary analysis on Jan. 12 that there weren't interruptions or electrical anomalies in the 12 hours before the fire's reported ignition time, the complaint said.

Antillon said prior statements that SCE proactively de-energized power lines weren't true, and that not doing so heightened fire and the company's legal risk.

Edison share prices slid another 2% on Feb. 6 after the Wall Street Journal reported SCE had sent letters to the California Public Utilities Commission, Antillon said. The article said it was about SCE's ongoing analysis of the Eaton and Hurst wildfires, "saying it believes its equipment may be associated with the start of the Hurst fire," according to the lawsuit.

SCE said Feb. 6 that as videos of the Eaton fire's origins have come to light that suggest a possible link to its equipment, "SCE has not identified typical or obvious indications that would support this association, such as broken conductors, fresh arc marks in the preliminary origin area, or evidence of faults on the energized lines running through that area." It is still investigating, it said.

The proposed class includes those who invested in Edison's stock from Feb. 25, 2021 through Feb. 6, 2025. Antillon seeks damages for alleged violations of the Securities Exchange Act of 1934 against the company and two top executives.

The Rosen Law Firm, PA represents Antillon. Edison said it would review the allegations in response to a request for comment.

The case is Antillon v. Edison International , C.D. Cal., No. 2:25-cv-01154, complaint filed 2/11/25 .

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Edison utility faces shareholder lawsuit over LA wildfires

 [reuters.com/legal/edison-utility-faces-shareholder-lawsuit-over-la-wildfires-2025-02-11](https://www.reuters.com/legal/edison-utility-faces-shareholder-lawsuit-over-la-wildfires-2025-02-11)

Jonathan Stempel

Vehicles and a house burn as powerful winds fueling devastating wildfires in the Los Angeles area force people to evacuate, at the Eaton Fire in Altadena, California, U.S. January 8, 2025. REUTERS/David Swanson/File Photo Purchase Licensing Rights  , opens new tab

Feb 11 (Reuters) - The parent company of Southern California Edison has been sued for allegedly defrauding shareholders before the recent Los Angeles-area wildfires by assuring them it could shut down power lines to reduce the risk of catastrophic damage.

Tuesday's proposed class action against Edison International (EIX.N)  , opens new tab appeared to be the first shareholder lawsuit stemming from the Eaton fire, which broke out on January 7 east of Los Angeles in Altadena, California during a Santa Ana windstorm.

The fire burned more than 14,000 acres, destroyed more than 9,400 structures and killed 17 people.

Edison had no immediate comment, saying it will review the complaint.

Shareholders led by Felipe Antillon said Edison made materially false and misleading statements over nearly four years before the fire, in assuring that its utility unit used a power shutoff program to "proactively de-energize power lines" to reduce wildfire risks during "extreme weather events."

The shareholders said the truth began to emerge amid reports that Edison had not de-energized nearby power lines, while lawsuits blamed the company's electrical equipment for starting the Eaton fire, which has since been contained.

Edison's share price has fallen 34% since the fire broke out.

The lawsuit seeks unspecified damages for shareholders from February 25, 2021 through February 6, 2025.

On the latter date, Edison said it received information suggesting a possible link between its equipment and the Eaton fire, and that it believed its equipment may be associated with the ignition of the Hurst fire, which burned 799 acres.

Other defendants include Edison's Chief Executive Pedro Pizarro and Chief Financial Officer Maria Rigatti. Edison is based in Rosemead, California.

Shareholders often sue companies for alleged misleading disclosures or omissions after unexpected events cause stock prices to fall.

The several Los Angeles-area wildfires last month may prove the most expensive natural disaster in U.S. history.

The case is Antillon v Edison International Inc, U.S. District Court, Central District of California, No. 25-01154.

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Reporting by Jonathan Stempel in New York; Editing by Cynthia Osterman

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- Suggested Topics:
- Boards, Policy & Regulation

Critical Mass With Law.com's Amanda Bronstad: 3M Earplug Judge to Oversee Growing Depo-Provera Litigation, Special Master Recommends \$0 Fees for Roundup Lead Counsel

[law.com/2025/02/12/critical-mass-with-lawcoms-amanda-bronstad-3m-earplug-judge-to-oversee-growing-depo-provera-litigation-special-master-recommends-0-fees-for-roundup-lead-counsel](https://www.law.com/2025/02/12/critical-mass-with-lawcoms-amanda-bronstad-3m-earplug-judge-to-oversee-growing-depo-provera-litigation-special-master-recommends-0-fees-for-roundup-lead-counsel)

Amanda Bronstad

Credit: Depo-Provera/Adobe Stock

February 12, 2025 at 11:34 AM

🕒 7 minute read



By Amanda Bronstad

staff reporter



Welcome to **Law.com Class Actions: Critical Mass**, a weekly briefing for class action and mass tort attorneys.

This week: The **U.S. Judicial Panel on Multidistrict Litigation** sent the **Depo-Provera** lawsuits to Florida. A report concluded that lead counsel in the **Roundup** multidistrict litigation should not receive any of a \$24 million common benefit fund. Find out who represents **Allstate** in growing privacy class actions.

I'm **Amanda Bronstad**. Feel free to reach out to me with your input. My email is abronstad@alm.com. Follow me on LinkedIn or X: [@abronstadlaw](#).

U.S. District Judge Casey Rodgers, of the Northern District of Florida.

'Exceptional Experience Presiding Over Large Products Liability MDLs'

The **U.S. Judicial Panel on Multidistrict Litigation** on Feb. 7 sent nearly 70 lawsuits over

the injectable birth control **Depo-Provera** to **U.S. District Judge M. Casey Rodgers**, of the **Northern District of Florida**.

Rodgers oversaw the massive multidistrict litigation against **3M** over allegedly defective combat earplugs, at one time reaching 320,000 lawsuits, the largest mass tort in the country. After 16 bellwether trials and a failed bankruptcy of its subsidiary, 3M agreed to pay \$6 billion in 2023 to settle the litigation.

In the Depo-Provera litigation, lawyers are predicting hundreds, possibly thousands, of lawsuits against **Pfizer** and the manufacturers of the generic brands, alleging a link to a brain tumor called intracranial meningioma.

The panel, in choosing Rodgers, praised her “exceptional experience presiding over large products liability MDLs.” Although many plaintiffs’ lawyers supported sending the Depo-Provera cases to California or Massachusetts, Chris Seeger (**Seeger Weiss**) and Bryan Aylstock (**Aylstock Witkin**), who served in lead roles in the 3M earplug multidistrict litigation, had argued for Rodgers.

The panel, which met on Jan. 30, granted coordination in only two other cases, both patent matters. In denying transfer of cases involving **L’Oréal**’s acne medication alleged to contain unsafe levels of benzene, the panel noted that it declined to centralize similar lawsuits last year against more than a dozen defendants to give them time to coordinate on their own. Its Feb. 7 order concluded:

“That process is still playing out for the litigation against L’Oréal, and we see no need to disrupt it.”

Aimee Wagstaff of Wagstaff Law Firm.

Roundup Lead Counsel Calls Fee Report ‘Insulting’

A special master in the multidistrict litigation over **Monsanto’s Roundup** pesticide has recommended that lead counsel get none of the estimated \$24.4 million in common benefit fees. All three lead counsel – Aimee Wagstaff (**Wagstaff Law Firm**), Robin Greenwald (**Weitz & Luxenberg**) and David Dickens (**The Miller Firm**) – called the recommendation “insulting” and rife with “inaccuracies.”

Here’s my report on the latest fee fight in the Roundup multidistrict litigation, which began four years ago when **U.S. District Judge Vince Chhabria** significantly reduced lead counsel’s initial ask for an \$800 million fund. In a Jan. 15 report, special master William Foster found that the 8% common benefit assessment on other lawyers with Roundup cases was arbitrary and unfair, especially since most pursued their cases on their own, rather than rely on lead counsel in the multidistrict litigation.

Most of the lawyers have Roundup cases in state courts, where juries in the past four years delivered nine defense verdicts in a row in California, Illinois, Oregon and Missouri until a 2023 award of \$1.25 million for plaintiff John Durnell, who was diagnosed with non-Hodgkin lymphoma at age 67.

On Tuesday: a **Missouri Court of Appeals** decision rejected Monsanto's argument that the **Federal Insecticide, Fungicide, and Rodenticide Act** preempted Durnell's failure-to-warn claims, as cited by the **U.S. Court of Appeals for the Third Circuit** in its 2024 holding in *Schaffner v. Monsanto*. The Missouri court held:

"While the decisions of federal intermediate appellate courts and other state courts do not bind this court, we do not find Schaffner persuasive and choose to follow the weight of the authority in holding that plaintiff's failure to warn claim is not expressly preempted federal law."

Ian M. Ross of Sidley Austin. Courtesy photo

Who Got the Work?

Sidley Austin partners David Gordon and Ian Ross stepped in to represent **Allstate** in lawsuits alleging the insurance company and its data analytics subsidiary paid mobile app developers to embed its software development kit that collects information about driver habits. The suits allege that they use the information to raise rates and sell the data to third parties, including other automobile insurers. **Law.com Radar** has identified at least eight lawsuits filed last month in federal district courts in California and Illinois.

Here's what else is happening:

PCB Appeal: The **Washington Supreme Court** heard oral arguments on Tuesday in a case that could reverse hundreds of millions of dollars in verdicts against **Monsanto** over **PCB** exposure at a school near Seattle. Last year, a **Washington Court of Appeals** decision reversed a \$185 million verdict, the first of an initial \$1.6 billion in jury awards in the past four years for the teachers, children and parents at the school, who allege neurological problems. The appellate court found that Washington's Product Liability Act, which limits claims against manufacturers for harms done after 12 years, should have applied to the trial, and that the jury should not have been allowed to award punitive damages for failure to warn past that period. Lauren Goldman (**Gibson Dunn**) represented Monsanto, now owned by Bayer, and Deepak Gupta (**Gupta Wessler**) argued for the plaintiffs, three teachers.

Wildfire Sanctions? Plaintiffs' firm **Edelson** is seeking potential sanctions against **Southern California Edison** and its lawyers at **Hueston Hennigan** for allegedly failing to preserve evidence relating to one of last month's wildfires in Los Angeles. Edelson, which plans to raise the issue at a Feb. 18 hearing, claims Southern California Edison told the

California Public Utilities Commission that it re-energized some transmission lines last month. A Southern California Edison representative called the accusations “disheartening” and “false narratives.” More than 50 lawsuits so far have been filed against Southern California Edison over the Eaton fire, which destroyed about 10,000 structures and killed 17 people.

Girardi Delays: Convicted plaintiffs’ attorney **Tom Girardi** will have to spend several more weeks in a **Bureau of Prisons** facility in North Carolina after his court-ordered mental evaluation was delayed. On Feb. 6, **U.S. District Judge Josephine Staton** ordered that the neurologist at the federal medical center have another 15 days after Girardi’s federal public defender blamed the New Year holiday, technical problems and last month’s wildfires in Los Angeles for his delay in proving records. Under the new order, Girardi, 85, who was transported to North Carolina on Jan. 7 after being convicted of stealing millions of dollars from his clients, is scheduled to return to Los Angeles on Feb. 20 to face sentencing.

Thanks for reading Critical Mass! I’ll be back next week.

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February 12, 2025

Asbestos

Jere Beasley | beasleyallen.com

HOUSTON - Johnson & Johnson takes aim at plaintiffs attorneys opposing its massive settlement of cancer claims related to Baby Powder, basically calling them hypocrites whose lone standard is how much money they will make for themselves.

J&J is trying to use a spinoff company, Red River Talc, to absorb the company's liabilities in cases alleging its Baby Powder contained asbestos and caused ovarian cancer in tens of thousands of individuals. Rather than fight each case individually in various courts nationwide, J&J hopes to streamline the process through a \$9 billion bankruptcy.

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

The Coalition of Counsel for Justice for Talc Claimants is a group of two firms including Beasley Allen hoping to block the plan. It was also a vocal critic of J&J's repeated attempts to use the bankruptcy system to stay out of civil court, considering how much money the company has. The move to Texas bankruptcy court has been dubbed the "Texas Two-Step."

It called J&J's strategy an "existential" threat to bankruptcy law.

"(A)pparently all those concerns go away if (Red River) and J&J agree to pay more money," Red River's lawyers wrote Feb. 10. "In its recent objection to the Debtor's request to extend exclusivity, the Coalition for the first time states that it is not opposed to the bankruptcy if the Debtor agrees to 'reasonable' terms, which include a demand for more money.

"The Coalition's newly found position on this case belies the credibility of almost the entirety of its objection."

Red River will be funded with \$9 billion for the settlement, an amount that will give the average claimant more than twice what their claim would be worth in court, J&J says. It would be the largest asbestos settlement in U.S. history.

But the Coalition has opposed it, even after an extra \$1 billion was added to it last year. Beasley Allen has accused one firm whose clients changed their minds of being motivated by a need to repay loans it took out to fund its search for clients and their cases and is deposing lawyers at firms supporting the plan.

J&J says Beasley Allen's motivations are similarly self-serving. It serves as lead counsel in a federal multidistrict litigation proceeding, which would ordinarily entitle it to at least 8% of a common fund. Should these cases be resolved out of the MDL, Beasley could lose its share in hundreds of millions of dollars.

J&J has agreed to supply an extra \$650 million for common benefit fees that would have been due if the settlement was reached in the MDL. That money would go to all plaintiffs lawyers, even those opposing the bankruptcy plan, and not keep them from recovering the contingency fees they charge their clients.

Beasley Allen was once joined by several firms in its Coalition, though only Golomb Legal is still with it now.

"These firms and, in particular, Beasley Allen have employed a variety of 'scorched earth' tactics to derail a consensual bankruptcy resolution since the first bankruptcy filing, including misleading media blitzes, frivolous lawsuits and repeated mischaracterizations of the terms of the plan," J&J wrote.

"They have done so notwithstanding that none of these firms has ever secured any recovery for their clients outside of bankruptcy, either through a successful verdict or by settlement."

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

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

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

But J&J says the 11,000 votes Beasley Allen's clients cast against the plan were on an invalid master ballot. There is evidence Beasley Allen lawyer Andy Birchfield cast negative votes for clients who approved the plan, J&J says.

Included were 5,500 gynecological cancer claimants rejecting the plan, even though Birchfield testified their claims had no value in the tort system.

"They have not - they have not sustained a legally cognizable injury that would allow us to file a claim in the tort system," he said at a deposition.

J&J said more irregularities made themselves known, including clients whose claims had been dismissed in civil courts who nevertheless chose to reject money from the Red River bankruptcy.

"Other claimants identified on the ballot were deceased, with no appointed estate representative," J&J wrote.

"Yet Mr. Birchfield certified he had collected and recorded their affirmative vote to reject the initial plan. Eventually, in discovery, Mr. Birchfield would admit that he had actually collected and recorded the votes of fewer than 3,000 of the more than 11,000 claimants identified on his master ballot."

Judge Christopher Lopez will begin a trial on the proposed plan on Feb. 18.

ORGANIZATIONS IN THIS STORY

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

RAM truck makers can't dodge class action over devices designed to cheat federal emissions tests

 [courthousenews.com/ram-truck-makers-cant-dodge-class-action-over-devices-designed-to-cheat-federal-emissions-tests](https://www.courthousenews.com/ram-truck-makers-cant-dodge-class-action-over-devices-designed-to-cheat-federal-emissions-tests)

Matt Simons

A blue Dodge Ram 2500 sits in front of its trailer. (Photo by Guillaume Vachey, CC0, via Flickr)

SAN FRANCISCO (CN) — A federal judge issued a mixed-bag ruling Tuesday in a class action accusing FCA US, formerly known as Chrysler, and their engine manufacturer Cummins of misrepresenting their products after the companies installed so-called “defeat devices” in more than 630,000 RAM pickup trucks.

U.S. District Judge Jacqueline Scott Corley allowed roughly half of the plaintiffs’ 11 claims to survive a motion to dismiss, largely upholding claims related to consumer protection laws while tossing civil RICO claims and those related to breaches of warranty.

“Drawing all reasonable inferences in favor of the non-movant, plaintiffs have plausibly alleged FCA’s and Cummins’ knowledge of the defeat device prior to selling the Class Trucks to consumers,” the Joe Biden appointee said.

The judge also granted the plaintiff’s leave to amend most of the dismissed claims, save for the civil RICO claims.

FCA US, which changed its name from Chrysler in 2014, is one of the “Big Three” automobile manufacturers in the U.S. In partnership with its long-time collaborator Cummins, the company sold 1.3 million vehicles in 2024 alone.

But the two companies have found themselves in massive legal trouble in recent years. In December 2023, the Department of Justice reached an agreement with Cummins to settle claims the company unlawfully altered hundreds of thousands of RAM 2500 and 3500 engines using “defeat devices” to bypass emissions tests in violation of the Clean Air Act.

A “defeat device” or “auxiliary emission control devices,” is a component installed on vehicle’s engine that can bypass or alter the operation of the car’s emissions control system, allowing the vehicle to meet rigorous emission standards during certification testing in the lab, before the car is released and sold to the public.

The company was ordered to pay \$1.675 billion, the largest civil penalty ever secured under the Clean Air Act, and what Attorney General Merrick Garland at the time called “the second largest environmental penalty ever secured.”

The plaintiffs brought this class action in 2023, shortly after the DOJ's announcement, claiming they were not informed that their RAM 2500 and 3500 trucks contained the defeat devices and that FCA materially misrepresented the trucks' performance, since it could only be achieved by emitting greater pollution levels than a reasonable consumer would expect for a diesel vehicle.

Many of the consumers claim they never would have purchased the trucks if they knew of their true specifications.

The plaintiffs are seeking an order preventing the companies from continuing their unlawful conduct, as well as damages to be decided at trial.

In her 33-page order, Corley said many of the plaintiffs' claims were fit to proceed, especially those related to state consumer protection laws.

The judge also upheld claims that the companies violated the California Consumers Legal Remedies Act, California Unfair Competition Law and California False Advertising Law. The judge examined all these related claims in conjunction, saying they "rise or fall" together, and allowed them to survive.

"Defendants raise five arguments in favor of dismissal—none is persuasive," Corley said.

In their defense, FCA and Cummins generally countered that the plaintiffs failed to demonstrate they made their purchases based on the companies' specific advertisements touting their trucks' performance, or otherwise that claims they knew about the defeat devices before sale were inadequate. The judge disagreed.

However, Corley was not so warm to the plaintiffs' "breach of warranty" claims, striking down several, because they didn't meet certain requirements under the California Commercial Code and Song-Beverly Act, one of which being that they try to repair their trucks multiple times through FCA. She similarly didn't buy the argument that FCA's repair attempts would be "futile," noting that some plaintiffs didn't even bring their vehicles in for repair.

"But even if there were an exception, plaintiffs have not plausibly alleged futility," she said.

The plaintiffs will have 30 days to file an amended complaint, if they choose to do so.

FCA US and Cummins moved to dismiss the lawsuit in early October 2024. Oral arguments took place at a hearing on Jan. 16.

Representatives for the plaintiffs and defendants could not immediately be reached for comment Tuesday evening.

Categories / Business, Consumers, Courts, Energy, Environment, Technology

Plaintiffs Firm Wants Sanctions Against SoCal Edison Over Wildfire Evidence

 [law.com/therecorder/2025/02/11/plaintiffs-firm-wants-sanctions-against-socal-edison-over-wildfire-evidence](https://www.law.com/therecorder/2025/02/11/plaintiffs-firm-wants-sanctions-against-socal-edison-over-wildfire-evidence)

Amanda Bronstad

What You Need to Know

- A Southern California Edison representative responded, 'It's disheartening to see these accusations and false narratives being spread.'
- Attorney J. Eli Wade-Scott said his firm, Edelson, learned about the re-energized lines in a Feb. 6 letter Southern California Edison wrote to the California Public Utilities Commission.
- On Feb. 7, Edelson, along with attorneys at Keller Rohrbach and Stoll Berne, won a \$32.1 million verdict on behalf of seven individuals affected by wildfires in 2020 in Oregon..

Plaintiffs' firm Edelson PC has threatened sanctions against Southern California Edison and its lawyers for re-energizing transmission lines despite assurances of preserving evidence relating to one of last month's wildfires.

The Monday filing comes as the cause of the Eaton fire in Altadena, an unincorporated area of Pasadena, California, remains under investigation. But Southern California Edison, represented by Los Angeles-based Hueston Hennigan, faces more than 50 lawsuits pitting the blame on the local utility and its parent company, Edison International.

Attorney J. Eli Wade-Scott said his firm, Edelson, learned about the re-energized lines in a Feb. 6 letter Southern California Edison wrote to the California Public Utilities Commission. On Jan. 19, Southern California Edison "secretly" de-energized four transmission lines in Eaton Canyon, states Edelson's filing.



J. Eli Wade-Scott of Edelson. Courtesy photo

"That could permanently alter the evidence," Wade-Scott told Law.com. "It creates a situation where we now have to unwind, as we've dealt with so often in these cases, what the original state of the lines was."

Edelson plans to ask Los Angeles Superior Court Judge Ashfaq Chowdhury for potential briefing on sanctions at the next hearing, on Feb. 18.

A Southern California Edison representative responded, "It's disheartening to see these accusations and false narratives being spread. They only serve to confuse and mislead the public. Southern California Edison's investigation is still in the early stages. We have been and we will continue to preserve relevant, electronic and physical evidence."

Hueston Hennigan partner Douglas Dixon called the allegations "baseless."

"On January 17, 2025, SCE informed plaintiffs' counsel that SCE would be re-energizing the transmission lines as soon as possible," Dixon wrote. "No one objected. We look forward to ensuring the record is accurate and complete should this issue arise at an upcoming hearing."

Edelson brought up the sanctions in its reply supporting a preliminary injunction to replace a temporary restraining order the judge issued on Jan. 27 to preserve evidence, such as electrical equipment.

In an opposition to that motion, Southern California Edison attorney John Hueston, of Hueston Hennigan, insisted that Edelson's demands have been overbroad and unnecessary given its continued participation with Los Angeles County Fire Department investigators and other plaintiffs' firms, none of whom has made similar requests. He accused Edelson of attempting to obtain early discovery, rather than preserve evidence.

"This case should soon be consolidated with the scores of others that have been filed, and coordinated discovery will soon commence," he wrote. "Counsel can work with other plaintiffs' counsel to serve discovery requests in the normal course."

Edelson is one of dozens of law firms that have sued Southern California Edison over the Eaton fire, which destroyed 12,000 structures and killed 17 people. The suits allege Edison's failure to clear vegetation and de-energize transmission towers caused the wildfire, which ignited on Jan. 7 amid damaging Santa Ana winds, destroying homes, businesses and schools. Several other wildfires burned through other areas of Los Angeles, including one in the Pacific Palisades, over which the City of Los Angeles and the Los Angeles Department of Water & Power face a handful of lawsuits.

Another plaintiffs' attorney, Gerald Singleton, of San Diego's Singleton Schreiber, at a Feb. 4 town hall about the Eaton fire, said the cases could end up consolidated before Los Angeles Superior Court Judge Laura Seigle, a former intellectual property partner at Irell & Manella who was appointed to the bench in 2015. She handles complex litigation in the downtown Los Angeles courthouse.

Singleton, who has filed several cases against Southern California Edison over the Eaton fire, called Seigle a "tough, no nonsense-type judge."

"We want these cases to move along as quickly as possible," he said at the town hall. "The defense will do everything they can to delay."

\$32M Wildfire Verdict in Oregon

Wade-Scott, defending the idea of potential sanctions, stating that the actions of Southern California Edison are "eerily" similar to "what we dealt with by PacifiCorp."



John Hueston of Hueston Hennigan.
Courtesy photo

PacifiCorp, also represented by Hueston Hennigan, faces lawsuits over wildfires in Oregon in 2020. Edelson, which has filed many of those cases, obtained sanctions in the form of an instruction to the jury about destroying evidence, Wade-Scott said.

On Feb. 7, Edelson, along with attorneys at Keller Rohrbach and Stoll Berne, won a \$32.1 million verdict on behalf of seven individuals who lost homes, and the owner of several rental properties. The jury's award, which was all for non-economic damages, is the fourth against Berkshire Hathaway-owned PacifiCorp, the parent company of Pacific Power.

The trial against PacifiCorp is part of a class action brought on behalf of 5,000 wildfire survivors in Oregon. All the trials have been held before Judge Steffan Alexander in Multnomah Circuit Court.

Friday's verdict, which brings the total jury awards against PacifiCorp to \$270 million, could increase to almost \$50 million after automatically doubling nearly \$3.6 million in stipulated economic damages under Oregon law and adding a 0.25 punitive damages multiplier to the non-economic damages that a prior jury had calculated.

Eight more trials are scheduled this year, with the next one set to begin March 24.

Last year, PacifiCorp agreed to a \$178 million settlement involving 400 wildfire victims.

“PacifiCorp has settled more than 2,000 wildfire-related claims since 2020,” PacifiCorp said in a statement. “These settlements were the result of negotiations culminating in meaningful compensation to help those affected by the fires recover, rebuild, and move forward. PacifiCorp remains committed to settling all reasonable claims.”

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

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[Latest](#)

Trending

New Suit - Trademark

Tick Corp. filed a trademark infringement lawsuit on Feb. 11 in Florida Southern District Court over the alleged sale of counterfeit goods. The partially redacted complaint, filed by SRIPLaw, pursues claims against unidentified e-commerce operators. The case is 1:25-cv-20633, Tick Corporation v. The Individuals, Partnerships and Unincorporated Associations Identified On Schedule A.

[Read More](#)

New Suit - Patent

Amazon.com was slapped with a patent infringement lawsuit on Feb. 11 in Washington Western District Court. The suit was filed by Dorsey & Whitney on behalf of Trade Associates, a maker of automobile refinishing and restoration products, which asserts four patents related to hand-held conformable sanding blocks. Counsel have not yet appeared for the defendant. The case is 2:25-cv-00272, Trade Associates, Inc. v. Amazon Logistics, Inc.

[Read More](#)

Class Action

Feb. 12, 2025, 2:00 AM PST

Out-of-State Workers Endure Uphill Split Over Collective Fitness

By Jennifer Bennett

Deep Dive

- **Third, Sixth, Seventh, Eighth circuits arrayed against First**
- **High court might weigh in if split causes 'systemic' issues**

Workers banding together to recover unpaid wages face a narrowing number of forums where out-of-state employees can join these collective suits, as a circuit split tees up the issue for US Supreme Court resolution.

The Fair Labor Standards Act allows workers to join existing wage suits against their employer, sometimes on a nationwide basis. But as federal appeals judges have repeatedly applied a high court ruling limiting geographical options for bringing certain suits to the FLSA context over the past decade, there's a shrinking pool of courts where out-of-state workers can become collective members.

In *Bristol-Myers Squibb Co. v. Superior Court*, the Supreme Court restricted state-court, state-law claims by out-of-state mass action members whose claims didn't arise in the forum state. The US appellate courts for the Third, Sixth, Seventh, and Eighth circuits—in rulings siding with employers—applied the justices' 2017 opinion to all potential members of collective actions, which, unlike class cases, require workers to affirmatively opt in.

So far, the First Circuit alone has decided *Bristol-Myers* doesn't apply to opt-in members of FLSA collectives. But a case argued before the Ninth Circuit last week could deepen the split and give the Supreme Court, which has declined to review earlier rulings, another chance to step in.

Workers who want a judge to rule on their wage claims must sue in a court that has the power to hear cases against their employer. If the West Coast-based appellate court adopts the majority approach, out-of-state workers will have to look elsewhere for collectives to join and may face multiple hurdles in pursuing their claims individually, while employers may also come to regret such an outcome as it could lead to more litigation.

Employers usually adopt pay practices "on a companywide basis," said Alan B. Morrison, an associate dean at the George Washington University Law School. In FLSA suits challenging those practices, "an employee working in one state would like to be able to bring in employees from every other state, which is what the statute says they can do," he added.

Workers could pursue wage claims in multiple states, "but that means getting a lawyer who is willing to take on many smaller cases, which is much less likely," said Morrison, who filed friend-of-the-court briefs before the Seventh and Ninth circuits as part of a group of civil procedure professors.

But letting opt-in plaintiffs skip jurisdictional requirements can allow their lawyers to “forum shop,” said Larissa Whittingham of the Retail Litigation Center. In the Sixth Circuit case—where the RLC supported the employer—nearly 2,600 workers fell within the collective, but less than 100 of those actually “worked in the state where the suit was brought,” she said.

Personal Jurisdiction

Courts can hear claims against a defendant only if there’s a sufficient tie between the lawsuit and the forum.

“Outside the collective action context, if that connection doesn’t exist, courts often find that it is fundamentally unfair for a defendant to have to defend itself in a forum unrelated to the dispute,” said Nicole S. LeFave of Littler Mendelson PC. But FLSA collectives can be “more complicated” because they often involve “some opt-in plaintiffs whose alleged injuries occurred in the forum state and others whose alleged injuries occurred somewhere else,” she added.

If opt-in plaintiffs don’t live or work in the forum state, and the employer isn’t at home there, then under *Bristol-Myers*, the “necessary connection with the forum doesn’t exist” and exercising jurisdiction over the defendant for those workers’ claims is “fundamentally unfair,” said LeFave, who defends employers in wage cases.

Making each person who opts in establish personal jurisdiction “effectively decreases the possibility of true collective action, undermining the efficiency and deterrent effects of the FLSA,” said Harini Srinivasan, a Cohen Milstein Sellers & Toll PLLC partner who represents employees.

In circuits that block out-of-state workers from joining collective actions against employers based elsewhere, excluded employees still have options. Those workers can sue “in the state in which their alleged injuries occurred or in the state where the defendant resides,” LeFave said.

But “most workers are unlikely to file standalone lawsuits, especially if their claims are relatively small,” Srinivasan said. If they did sue in each affected state, it “would lead to a proliferation of duplicative litigation, clogging courts with parallel cases, increasing costs, and risking creating inconsistent rulings,” she added.

Lopsided Circuit Split

The Sixth Circuit was the first to apply *Bristol-Myers* to FLSA collectives in 2021. The Eighth Circuit followed one day later. The First Circuit broke with those courts in early 2022. The Third and Seventh circuits widened the split to 4-1. The losing parties at the First, Third, and Sixth circuits all unsuccessfully sought Supreme Court review.

The Ninth Circuit could be the next to weigh in. The proper approach to *Bristol-Myers* is one of several questions before the court in a dispute between Cracker Barrel Old Country Store Inc. and workers who say the restaurant chain underpaid them.

The split's lopsided nature "shows the uphill battle proponents of this argument" against applying *Bristol-Myers* face, Whittingham said.

The "weight of authority" at the circuit court level supports applying *Bristol-Myers* to collectives, and "I suspect that will continue to be the case," LeFave said. But even if the Ninth Circuit takes the opposite approach, some of the remaining circuits might have to rule "before the Supreme Court thinks this issue is worth addressing," she added.

The justices might be more likely to act if there's "clear evidence that the split is causing systemic litigation problems," such as "significant differences in how wage claims are pursued based on geography," Srinivasan said. "If the current split results in a patchwork of litigation strategies that complicate national wage-and-hour compliance, some employers may prefer a definitive ruling—even if the outcome isn't in their favor."

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Litigation

Feb. 11, 2025, 11:20 AM PST; Updated: Feb. 12, 2025, 6:06 AM PST

Amazon Sued in First 'My Health, My Data' Privacy Dispute (2)

By [Tonya Riley](#)

COURT: W.D. Wash.

TRACK DOCKET: No. [2:25-cv-00261](#)(Bloomberg Law subscription)

Amazon.com Inc. was accused of violating federal wiretap and Washington state privacy laws by harvesting location data of tens of millions of unsuspecting Americans by licensing its software development tools to a variety of apps.

Amazon tracked users' location data without their consent, using it for targeted advertising and other means of enriching its business, according to a complaint filed by an Amazon app user Monday in the US District Court Western District of Washington.

Information collected by these apps also included "biometric data and precise location information that could reasonably indicate a consumer's attempt to acquire or receive health services or supplies," putting it in violation of Washington's My Health My Data Act, the complaint said.

Amazon denied the allegations. "These claims are not accurate, and we look forward to explaining this in court," an Amazon spokesperson wrote in an email.

The company prohibits publishers from sending it precise location and biometric data, the spokesperson said.

My Health My Data prohibits covered entities from collecting or selling health data that can be tied to an individual without that person's express consent. The law, which went into effect in March 2024, allows individuals to bring suit against alleged violators seeking as much as \$25,000 per plaintiff in damages. The complaint against Amazon is the first under the law passed in response to concerns about reproductive health data privacy.

Plaintiffs' My Health My Data claims are just one among seven made in the dispute targeting Amazon's profits off mobile data collection. Among the litany, it's unclear if these claims "which make only cursory allegations of harm" will survive Amazon's motion to dismiss, said Felicity Slater, an associate at Hintze Law PLLC.

My Health My Data remains an untested ground for privacy litigation, and plaintiffs' ability to stave off a motion to dismiss could open a "flood" of complaints, similar to the surge in California Invasion of Privacy Act claims related to health data, Slater said.

Amazon software development kits were used by “thousands of developers,” according to the complaint. SDKs are prepackaged software development kits used to easily add certain functions to an app. The Amazon Ads SDK “perform various advertising-related functions such as mediation, measurement, attribution,” according to the complaint.

Plaintiff Cassandra Maxwell is a Washington resident who used two apps known to include Amazon ad tracking software, OfferUp and Weather Channel. While users including Maxwell may have consented to individual apps tracking their data, they had no idea “Amazon will have equal access to sensitive geolocation data that it can then exfiltrate and monetize,” the complaint states.

Amazon is also accused of violating the Stored Communications Act and Computer Fraud and Abuse Act.

Maxwell and the proposed class are seeking that the court grant permanent injunctive relief to prohibit Amazon from continuing to collect data from its SDKs without consent, damages, and disgorgement of Amazon profits related to unlawful behavior.

Amazon did not immediately respond to a request for comment.

Maxwell is represented by Keller Rohrback LLP.

The case is Maxwell v. Amazon.com, Inc. , W.D. Wash., No. 2:25-cv-00261, Complaint filed 2/10/25 .

(Updated to include comment from Amazon in the third paragraph.)

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Hotel Manager Ashford to Pay \$470,000 to Settle Data Breach Suit

By Christopher Brown

Ashford Inc. would pay \$470,000 to settle allegations it negligently failed to protect the personal information of nearly 46,000 people in a 2023 data breach, under a proposed deal a federal court has initially approved.

Class members would be eligible for a pro rata share of the net settlement fund, reimbursement for up to \$2,500 in out-of-pocket losses, and three years of credit-monitoring services, according to the plaintiffs' motion for preliminary settlement approval filed in the US District Court for the Northern District of Texas. Judge Ed Kinkeade granted the motion Feb. 11.

- The deal comes a month after Ashford agreed to pay more than \$115,000 to the government to settle a Securities and Exchange Commission enforcement action alleging the company made misleading disclosures related to the breach
- Plaintiffs alleged Ashford, which provides asset-management services for the hotel sector, breached its duties under common law, the Federal Trade Commission Act, and the Gramm-Leach-Bliley Act to implement reasonable and adequate data-security measures
- A final approval hearing has been set for Aug. 27

Kendall Law Group PLLC, Milberg Coleman Bryson Phillips Grossman PLLC, and Laukaitis Law LLC represent the plaintiffs and the proposed class. Holland & Knight LLP represents Ashford.

The case is *Mooney v. Ashford Inc.*, N.D. Tex., No. 3:24-cv-00279, 2/11/25.

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Litigation

Feb. 11, 2025, 1:44 PM PST

California Federal Judge Tosses Renewed Youth Climate Lawsuit

By Jennifer Hijazi

- **Our Children's Trust case dismissed with prejudice**
- **Case is one of several US youth constitutional cases**

A judge at the US District Court for the Central District of California scrapped another major youth climate case on Tuesday, citing a failure to prove that injuries are connected to EPA policies.

Young plaintiffs in *Genesis v. EPA* accuse the Environmental Protection Agency of undervaluing the lives of children in cost-benefit analyses, despite knowing how climate change disproportionately affects young people. They sued in 2023, claiming the agency violated their right to life under the constitution, and adjusted their claims in 2024 to seek an injunction.

Judge Michael W. Fitzgerald dismissed the case on Tuesday for lack of standing, writing that beyond the technical argument of standing, unelected judges are not the right actors to make fundamental economic decisions.

"These climate related harms will be experienced relatively equally by all people—both in the United States and around the world—who are alive at the time of their impacts," according to the opinion. "Present-day children will age and become adults, and new children will be born. Indeed, much of the harm that will allegedly befall the Plaintiffs will occur when they are adults"

The case is one of numerous constitutional climate lawsuits filed by youth plaintiffs and led by legal non-profit Our Children's Trust.

Landmark youth case *Juliana v. US* was dismissed in May 2024 by the US Court of Appeals for the Ninth Circuit, and recently was denied a bid for a writ of mandamus by the US Supreme Court.

The case is *Genesis v. EPA* , C.D. Cal., No. 2:23-cv-10345, Order 2/11/25

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Greenpeace files lawsuit against US pipeline company Energy Transfer

 [reuters.com/business/energy/greenpeace-files-suit-against-us-pipeline-company-energy-transfer-2025-02-11](https://www.reuters.com/business/energy/greenpeace-files-suit-against-us-pipeline-company-energy-transfer-2025-02-11)

Reuters

Activists of environmental group Greenpeace display a poster to protest against the financing of the Dakota-Access oil pipeline ahead of Swiss bank Credit Suisse's annual shareholder meeting in Zurich, Switzerland April 28, 2017. REUTERS/Arnd Wiegmann/File Photo Purchase Licensing Rights , opens new tab

AMSTERDAM, Feb 11 (Reuters) - Greenpeace International has filed a lawsuit against U.S. pipeline company Energy Transfer (ET.N) , opens new tab in a Dutch court, the environmental group said on Tuesday, adding it was the first test of a new European law aimed at curbing lawsuits intended to silence rights activists.

Energy Transfer has been pressing lawsuits in the United States against Greenpeace USA, Greenpeace International, and other environmental groups since 2017, seeking \$300 million in damages for activists' attempts to block the Dakota Access Pipeline project.

Greenpeace International said in a statement it would seek to recover "all damages and costs it has suffered as a result of ET's back-to-back, meritless lawsuits."

In 2024 the European Union passed rules aimed at helping journalists, rights activists and public watchdogs defend themselves against lawsuits intended to harass or silence them, including by tying them up in expensive litigation.

Amsterdam-based Greenpeace International said it had filed the suit with the District Court of Amsterdam. It was not immediately clear whether EU and Dutch law would be applicable in the case against Energy Transfer.

Energy Transfer could not immediately be reached for comment.

The Reuters Power Up newsletter provides everything you need to know about the global energy industry. Sign up here.

Reporting by Toby Sterling, Writing by Charlotte Van Campenhout; Editing by Alison Williams and Nia Williams

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Loper Bright Could Be Legal Weapon for Environmental Groups, Attorneys Say

 [law.com/nationallawjournal/2025/02/11/loper-bright-could-be-legal-weapon-for-environmental-groups-attorneys-say](https://www.law.com/nationallawjournal/2025/02/11/loper-bright-could-be-legal-weapon-for-environmental-groups-attorneys-say)

Dan Novak

The U.S. Supreme Court's striking down of the *Chevron* doctrine in *Loper Bright Enterprises v. Raimondo* last year was widely seen as a conservative victory as courts would no longer defer to agencies' broad interpretations of ambiguous statutes, especially with respect to environmental regulation.

But with an executive branch seemingly antagonistic toward its own agencies, environmental groups may now look to the judiciary to help block President Donald Trump's deregulatory agenda. To protect against deregulation at the Environmental Protection Agency, the groups may cite *Loper Bright* to say the agency has not regulated strongly enough to comply with its statutory mandates for clean air and water.

"I can foresee invoking *Loper Bright* if and when [the EPA] starts revoking standards or asserting that it has less authority than it does," said David Doniger, an attorney for the Natural Resources Defense Council.

Loper Bright has already been invoked in cases where conservation groups thought former President Joe Biden's administration had not taken environmental law far enough. In July, the Sierra Club cited *Loper Bright* in a lawsuit against the Biden EPA in arguing the agency was in violation of the Clean Air Act.

"[*Loper Bright*] is the new standard of review," said Renie Boudreau, an environmental attorney with Ballard Spahr. "And so any case has to address and acknowledge and apply the standard of review."

Boudreau called the new standard another strategy for environmental groups to block a deregulatory agenda.

"It's going to be an obstacle [to deregulation]" she said. "It's going to be a new challenge for rescinding regulations when one of the reasons to do that is the change in administration."

The 1984 Supreme Court case *Chevron v. NRDC*, which established the doctrine of judicial deference to agencies, was also seen as a conservative victory at the time, said Columbia University environmental law professor Camille Pannu.

Back then, the Reagan administration was trying to undo many of the environmental protections put in place during the Carter years. Instead of listening to expert opinion from both sides every time there was a dispute about a regulation, courts decided to give

agencies the benefit of the doubt so the administration could implement its political mandate. The *Chevron* ruling alleviated the burden on courts to be subject matter experts and instead defer to the agencies, Pannu said.

With the end of the *Chevron* doctrine, “we’re asking [courts] to become experts in every field,” she added.

Over time, the political balance changed and agency deference came to be more favored among liberals. It is too early to say how viable an argument invoking *Loper Bright* will be, said Doniger, who argued on behalf of NRDC in the 1984 case.

“We don’t know the difference in outcomes *Loper Bright* is yet going to make,” he said.

During the first Trump administration—with the *Chevron* doctrine still in place—courts did not necessarily defer to agency interpretations when courts felt the regulations departed from science, Pannu said.

“There’s a lot of hooks for how you challenge a case even with *Chevron* deference,” she said.

University of Michigan School of Law professor Daniel Deacon said he expects the Trump administration to invoke *Loper Bright* to deregulate, as well.

For example, Trump could rescind a Biden-era regulation by arguing it did not reflect the best interpretation of the statute. An environmental group could sue the EPA and argue the opposite—that the regulation does reflect the best interpretation of the law.

The administration would invite the court to agree with its interpretation.

“Ideology may play some role in these cases,” Deacon said. “The Trump administration would probably be banking on, ultimately, the Supreme Court agreeing with them that the best interpretation of the statute didn’t support the Biden administration.”

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[Latest](#)

Lawsuits Surge Against Allstate Insurance

 [law.com/nationallawjournal/2025/02/11/lawsuits-surge-against-allstate-insurance](https://www.law.com/nationallawjournal/2025/02/11/lawsuits-surge-against-allstate-insurance)

Emily Cousins

The Texas attorney general accused Allstate Insurance Co. of surveilling consumers on their mobile devices, selling the data and ultimately using that information to raise insurance rates.

Now, at least eight class actions have been filed against Allstate.

The class actions claim Allstate collected the data by developing software for third-party apps that watch an individual's driving behavior. In addition, this data was also allegedly marketed and sold.

This litigation surge surfaced on Law.com Radar.

The majority of the lawsuits were filed in the Northern District of Illinois, where Allstate is based, but one lawsuit is in the Northern District of California.

The surge of litigation sparked after Texas Attorney General Ken Paxton sued Allstate and its subsidiary Arity LLC on Jan. 13 in the District Court of Montgomery County, Texas.

This action followed an investigation, which Paxton claimed exposed that Allstate and Arity "paid millions of dollars to install Allstate's tracking software. The personal data of millions of Americans was sold to insurance companies without their knowledge or consent in violation of the law."

According to the lawsuits, data from more than 45 million Americans was farmed to create the "world's largest driving behavior database."

Morgan & Morgan and Clifford Law Offices quickly stepped in and hit Allstate and Arity with a consumer class action the next day.

Denial of Wrongdoing

Sidley Austin attorneys David Andrew Gordon, Hussin Javier Kordi and Ian M. Ross filed appearances on behalf of the Allstate defendants.

While counsel for the defendants did not respond to a request for comment, Allstate has denied the allegations.

"Arity helps consumers get the most accurate auto insurance price after they consent in a simple and transparent way that fully complies with all laws and regulations," Allstate said in a statement.

While the data collected was allegedly used to create a driving profile of individuals, the California class action pointed out the data was likely not accurate because the software installed in the third-party apps cannot differentiate between a passenger and a driver.

"Defendants used this personal data to make insurance coverage decisions for consumers who sought vehicle insurance with them," the California class action claimed. "They would also sell this data to other insurers, enabling those insurers to make their own coverage decisions about individual consumers."

The class actions similarly alleged the Allstate defendants violated the Federal Wiretap Act, which bans intentionally intercepting an individual's "wire oral or electronic communication."

In addition, most of the proposed classes claimed violations of the Stored Communications Act and the Computer Fraud and Abuse Act.

"The putative class is comprised of millions of Americans who were not informed of, did not consent to, and suffered harms as a result of Defendants' ongoing collection, use, and sale of their personal data," the California complaint alleged. "Plaintiffs and class members seek compensatory, consequential, statutory, punitive, general, and nominal damages, disgorgement and restitution, and injunctive relief on behalf of all consumers whose data was captured, collected, stored, and sold by Defendants without their knowledge and consent."

This action was surfaced by Law.com Radar, which delivers AI-enhanced case summaries and daily case reports from more than 2,600 state and federal courts. [Click here](#) to get started and be first to act on opportunities in your region, practice area or client sector.

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Latest

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<https://www.wsj.com/business/forever-chemicals-fight-heats-up-in-kitchens-71555653>

BUSINESS

'Forever Chemicals' Fight Heats Up in Kitchens

Minnesota becomes first state to prohibit the sale of cookware that contains PFAS; industry giants say their products are safe

By [John Keilman](#) [Follow](#) | Photography by Jenn Ackerman for WSJ

Feb. 12, 2025 9:00 am ET



Items on display at Nordic Ware headquarters in St. Louis Park, Minn.

A fight over nonstick pans has moved to the front burner in Minnesota.

The state last month became the first to ban the sale of cookware containing the so-called “forever chemicals” known as PFAS. The move is part of a wider effort across the country to crack down on the synthetic compounds, some of which have been linked to cancer, liver damage and fertility issues.

The ban has thinned the variety of cookware available in Minnesota stores and surprised some consumers. Sara Bohjanen, whose dishwashing stints had inspired her and her fiancé to put a nonstick pot on their wedding registry,

switched to a stainless steel model after learning their first choice could no longer be sold in the state.

“If I have to go back to soaking the eggs off I guess that’s what I have to do,” said Bohjanen, a 26-year-old medical student who lives in Woodbury, Minn.

The Cookware Sustainability Alliance, which represents the makers of brands such as T-fal, Circulon and All-Clad, is suing the state over the ban. It said the most common type of PFAS used in nonstick pots and pans—PTFE, best known by the brand name Teflon—has been deemed safe by the Food and Drug Administration.

Minnesota’s prohibition doesn’t stop with cookware. It covers 11 categories of consumer goods that contain PFAS, including dental floss, carpets and children’s products. Power sports dealers, who have stopped selling kid-size motorcycles and ATVs, have also criticized the law’s broad reach.

Pots, pans and pushback



Woks are sprayed with ceramic nonstick coating made without PFAS at the Nordic Ware factory.

PFAS chemicals have concerned government officials for years because the compounds can pollute soil and water and potentially sicken people. Minnesota-based 3M and other chemical manufacturers have settled PFAS-related litigation for billions of dollars.

Some cookware companies said Minnesota lawmakers are unfairly targeting their products. Steve Burns, president of the alliance, said pots and pans with a

Teflon-like coating last longer and have superior nonstick properties than alternative products, which typically have a ceramic finish.

Burns said the nonstick properties allow people to cook without using oil or butter, and keeps cookware out of the trash. “What we’re trying to say to the rest of the country is don’t follow this,” he said.

Three states—Colorado, Maine and Vermont—have bans similar to Minnesota’s that are due to take effect next year. Rhode Island is set to follow in 2027 and Connecticut the year after that.

More than \$4 billion of cookware is sold in the U.S. each year, and pots and pans with Teflon-like coatings account for nearly two-thirds of sales. Burns said the three companies named in the lawsuit—California-based Meyer, French multinational Groupe SEB and Brazil-headquartered Tramontina—sold nearly \$22 million of nonstick products annually in Minnesota before the ban.

Bundt pans at the Nordic Ware factory.

PFAS-free.

Store shelves show the aftermath. A Target in Bloomington, Minn., displayed seven cookware brands on a recent afternoon, while a Target just over the Wisconsin state line offered 11. In the aisle of the Wisconsin store, a nonstick frying pan that contained PFAS hung next to a nearly identical ceramic model that touted being

Minnesota state Sen. Judy Seeberger, an early backer of the ban, said she has “not heard one word” from consumers upset about the unavailability of nonstick pots and pans in the state.

Supporters of Minnesota’s ban said PTFE, a type of PFAS used in nonstick coatings, isn’t as benign as the industry contends. The chemicals can get into drinking water after pots and pans are discarded in a landfill, according to Anna Reade and Katie Pelch, scientists from the Natural Resources Defense Council.

The cookware industry disputes the claim, saying PTFE molecules aren't water-soluble under normal use.

Reade and Pelch said PTFE can create fumes if a pan overheats, sickening people with a respiratory ailment nicknamed "the Teflon flu." Chemours, the maker of Teflon, warns on a website that pet birds should be kept out of the kitchen lest they be sickened or killed by the particles, though it says they have "little to no effect on people."

The cookware alliance has asked a federal judge to stop enforcement of the law, but Minnesota Attorney General Keith Ellison responded in a court filing that the state was entitled to prohibit the sale of products. He said scientists know relatively little about the potential toxicity of PTFE, and that "the jury, so to speak, is out" about its safety.

Made in Minnesota

Baking sheets are packaged at the Nordic Ware factory.

For most U.S. consumers searching for nonstick pots and pans, the two main choices are products with PTFE or a ceramic coating. Nordic Ware, which has a factory in the Minneapolis suburb of St. Louis Park, last year switched to the latter.

On a recent morning, the factory's production line sent metal woks beneath nozzles that sprayed them with liquid ceramic as they spun. A second station

applied silicone oil that combined with the ceramic to form a hard, nonstick surface.

The companies suing Minnesota say they can't easily make a similar change. They typically roll nonstick chemicals onto metal disks before pressing them into pots and pans. It's an efficient technique but won't work with ceramics, which are so hard that metal can't be shaped after the coating is applied.

"These big companies that are in this suit, they've got some huge technological hurdles," said David Dalquist, Nordic Ware's chief executive. "They've got to reconfigure their factories."

The cookware companies allege the ban has tilted the state's market in favor of Nordic Ware. Dalquist said the company won new retail customers in Minnesota after the ban reduced inventory on store shelves, and he expects further sales to follow as consumers grow wary of Teflon-like coatings.

The companies in the lawsuit also make ceramic pots and pans, though they say it is a minor part of their business.

In some cases, their marketing materials contradicted the lawsuit's claim that products with PTFE are safe. Tramontina's website had said one of its ceramic-coated fry pans is "made without harmful chemicals like PTFE" and offered "a healthier way to cook."

The company didn't respond to requests for comment, but following an inquiry from The Wall Street Journal, that passage disappeared from the pan's online product description.

Write to John Keilman at john.keilman@wsj.com

Videos

Thomson Reuters wins AI copyright 'fair use' ruling against one-time competitor

 [reuters.com/legal/thomson-reuters-wins-ai-copyright-fair-use-ruling-against-one-time-competitor-2025-02-11](https://www.reuters.com/legal/thomson-reuters-wins-ai-copyright-fair-use-ruling-against-one-time-competitor-2025-02-11)

Blake Brittain

General views inside and outside of Thomson Reuters offices at 30 South Colonnade in Canary Wharf, London, Britain August 1, 2019. REUTERS/Toby Melville/File Photo Purchase Licensing Rights , opens new tab

Feb 11 (Reuters) - A federal judge in Delaware on Tuesday said that a former competitor of Thomson Reuters (TRI.TO) , opens new tab was not permitted by U.S. copyright law to copy the information and technology company's content to build a competing artificial intelligence-based legal platform.

U.S. Circuit Judge Stephanos Bibas' decision , opens new tab against defunct legal-research firm Ross Intelligence marks the first U.S. ruling on the closely watched question of fair use in AI-related copyright litigation.

Fair use is a principle that allows the unauthorized use of copyright-protected works under certain circumstances. The legal theory represents a key defense for tech companies including OpenAI, Microsoft (MSFT.O) , opens new tab and Meta Platforms (META.O) , opens new tab in a series of copyright cases brought by authors, record labels, visual artists and others over the use of their material to train AI systems.

Tech companies argue that generative AI systems make fair use of copyrighted material by studying it to learn to create new content, while copyright owners say the companies use their work to generate competing content that threatens their livelihoods.

A Thomson Reuters spokesperson welcomed the decision. "We are pleased that the court granted summary judgment in our favor and concluded that Westlaw's editorial content, created and maintained by our attorney editors, is protected by copyright and cannot be used without our consent. The copying of our content was not 'fair use,'" the company said in a statement.

Thomson Reuters is the parent company of Reuters News.

Attorneys and spokespeople for Ross did not immediately respond to requests for comment.

Bibas reconsidered his previous decision that determining fair use should be left to a jury at a trial on Thomson Reuters' copyright infringement claims against Ross.

"I studied the case materials more closely and realized that my prior summary-judgment ruling had not gone far enough," Bibas said on Tuesday.

The judge determined that a jury should still consider the underlying case.

Sega Suits Claim Consovoy McCarthy Drummed Up 19K Mass Arbitration, Running Up \$39M JAMS Bill

 [law.com/therecorder/2025/02/11/sega-suits-claim-consovoy-mccarthy-drummed-up-19k-mass-arbitration-running-up-39m-jams-bill](https://www.law.com/therecorder/2025/02/11/sega-suits-claim-consovoy-mccarthy-drummed-up-19k-mass-arbitration-running-up-39m-jams-bill)

Guy DeMarco

Sega of America sued Consovoy McCarthy on Monday, alleging that the boutique law firm and New York-based Troxel Law partnered to amass thousands of claimants through a mass advertising campaign on social media that "dangled the possibility of hundreds of dollars to anyone who claimed they had played a Sega game."

According to the complaint surfaced by Law.com Radar, Consovoy then filed a consolidated petition for an order compelling arbitration on behalf of the almost 20,000 claimants in violation of Sega's end user license agreement, which prohibits users of Sega's published mobile games from participating in collective or consolidated actions.

The court action, which was filed in the U.S. District Court for the Eastern District of Virginia by attorneys from Sheppard Mullin, alleges that each individual claim, aside from the claimant's identifying information, was identical: the claimant "(1) played a Sega mobile game in the last year, (2) seen 10 or more ads while playing a Sega mobile game, and (3) objected to receiving discriminatory advertising." The Consovoy-filed claims accuse Sega of violating California's Unruh Civil Rights Act by engaging in age- and gender-based discriminatory advertising.

Sega's suit also alleges that a number of these claimants are fraudulent, contending that some of the claimants' names are fictitious, thousands of the claimants have never played a Sega mobile game, and, according to Sega's hired data analytics expert, roughly 8% of the claimants don't exist, have had their identities stolen or fabricated their contact information.

As a result of the 19,541 claims filed by Consovoy, JAMS issued a single \$39 million invoice against Sega resulting in Sega suing the arbitration services company on Jan. 27 for breach-of-contract. This underlying court action accused JAMS of invoicing Sega for services "it cannot provide" as well as shifting the filing fees from the claimants to Sega and sought a declaration that Sega did not have to pay the \$39 million invoice to JAMS.

According to the Feb. 10 suit against Consovoy, Consovoy avoided its claimants paying the filing fee by submitting declarations, without further proof, to JAMS that each of the 19,541 claimants were earning less than 300% above the poverty line, therefore exempting them from having to pay arbitration fees under California law.

The complaint alleges two counts of tortious interference with contractual relations, one between Sega and the claimants and the other between Sega and JAMS. The court action contends that Consovoy McCarthy induced both the claimants and JAMS, as Sega's arbitration provider, to breach their end user license agreement with Sega. Sega seeks unnumbered monetary damages, attorney fees, and the company's cost of the suit.

Sheppard Mullin partner Craig Cardon said in an email that the team looks forward to proving the cases in court. Sega is also represented by Sheppard Mullin partners Paul Werner and Jay Ramsey.

Representatives from Sega of America, Sheppard Mullin, Consovoy McCarthy and JAMS did not immediately return messages seeking comment on the suit.

Law.com Radar

This action was surfaced by Law.com Radar, which delivers AI-enhanced case summaries and daily case reports from more than 2,600 state and federal courts. Click here to get started and be first to act on opportunities in your region, practice area or client sector.

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Latest

Trending

New Suit - Copyright, Trademark

Mercis B.V. filed a copyright and trademark infringement lawsuit on Feb. 12 in Illinois Northern District Court over the alleged sale of counterfeit goods. The suit, filed by Hughes Socol Piers Resnick & Dym, pursues claims against unidentified online retailers. The case is 1:25-cv-01473, Mercis B.V. v. The Individuals, Corporations, Limited Liability Companies, Partnerships, and Unincorporated Associations Identified on Schedule A Hereto.

Tom Goldstein Is Now In Jail, Because Of Course He Is

 abovethelaw.com/2025/02/tom-goldstein-is-now-in-jail-because-of-course-he-is

February 11, 2025

Well, that didn't take long.

Tom Goldstein, revered Supreme Court litigator turned cautionary tale, has officially traded his D.C. home — the one prosecutors say he secured by lying to mortgage lenders — for a spot in the Chesapeake Detention Facility in Baltimore. The move comes after authorities arrested the SCOTUSBlog co-founder claiming he posed a “significant flight risk,” which tends to happen when you fail to disclose millions in cryptocurrency transactions while simultaneously crying poor in court.

Honestly, the only thing shocking about this case is that Goldstein didn't try to settle the whole matter double-or-nothing heads up Hold 'Em.

The charges against Goldstein — tax evasion, mortgage fraud, and the general financial shenanigans — allegedly stem from a lifestyle that makes *The Wolf of Wall Street* look like an HR compliance video fueled by high-stakes poker and, (they say) multiple mistresses. Winning and ultimately losing millions all while routinely arguing before the Supreme Court.

Folks, I give you peak performance personified.

After initially lawyering up with some of Trump's legal team — arguably one of his better decisions (we're grading on a heavy curve) — Goldstein abruptly decided to represent himself. They say the lawyer representing themselves has a fool for a client, but if the coverage of Goldstein's decision is anything to go by, the strategy might've been to play up his financial woes while arguing that it violated his Sixth Amendment rights if he couldn't access his home to pay for legal counsel.



Of course his plea of poverty hit a snag when the federal government called his bluff, claiming that Goldstein had received \$8 million in crypto and transferred \$6 million of it.

Unsurprisingly, Chief U.S. Magistrate Judge Timothy J. Sullivan was not amused by these allegations, revoking Goldstein's bond, sending him straight to Baltimore's maximum-security correctional facility.

Do Not Pass Go. Do Not Collect \$200.

Or 4 DOGECOIN as the case may be.

Judge Orders Indicted SCOTUSblog Co-Founder Tom Goldstein Detained Without Bond
[National Law Journal]

Earlier: SCOTUSblog Founder Indicted In Wild Poker-Fueled Tax Case

Tom Goldstein Hires Trump's Lawyers In First Good Bet In Years

SCOTUSblog Founder Interfered With Witness, Poses A Flight Risk, According To
Prosecutors

BREAKING: Tom Goldstein Arrested AGAIN. Feds Claim SCOTUSblog Founder Made
Secret Crypto Transactions

Litigation

Feb. 12, 2025, 7:05 AM PST

Prosecutors Call Tom Goldstein a Flight Risk, 'Financial Danger'

By Holly Barker

-
- **Goldstein denies engaging in prohibited financial activity**
 - **Government concedes he may not formally own accounts**

Federal prosecutors urged a federal court in Maryland not to release lawyer Tom Goldstein from custody pending trial, saying his recent emergency motion to revoke the court's detention order "raises more questions than answers."

The government's opposition, filed late Tuesday in the US District Court for the District of Maryland, argues that Goldstein remains a flight risk and "financial danger to the community."

Goldstein was arrested and ordered detained Feb. 10 after initially being released on bond. Prosecutors said he violated the terms of his release by "failing to disclose his interest in and transactions using undisclosed cryptocurrency accounts."

In his emergency motion, Goldstein denied owning the cryptocurrency wallets used for the allegedly prohibited transactions.

He attached text messages, which he says show the cryptocurrency accounts are owned by third parties. Goldstein also said there's no evidence that he engaged in the recent cryptocurrency transactions the government identified.

The government in response conceded that the newly produced text messages may cast doubt on Goldstein's "formal ownership" of the cryptocurrency wallets at issue. But his argument fails to "negate the core evidence" indicating that he didn't disclose cryptocurrency assets and activity to both the court and pretrial services, it said.

The evidence shows that Goldstein used the cryptocurrency wallets in the past to conduct financial transactions, and "at least implicitly represented to third parties that he had control of or access to the wallets," the government said.

It also says the encrypted texts—sent on WhatsApp—weren't previously available to it. The exchanges are "presumably excerpts of longer conversations that may shed further light on or answer the necessary questions," but there's no way of knowing given the limited scope of what was provided, the opposition said.

Goldstein was given the green light to represent himself Monday after he told the court he couldn't afford to retain the counsel of his choice. But lawyers from Munger, Tolles & Olson LLP have since appeared on his behalf.

One of those lawyers, Jonathan Kravis, is a former federal prosecutor and led the prosecution of President Donald Trump's adviser Roger Stone. He resigned in 2020 after after his sentencing recommendation for Stone was overruled by then-US Attorney General William Barr.

The case is United States v. Goldstein , D. Md., No. 8:25-cr-00006, opposition filed 2/11/25 .

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Even Superstar Supreme Court Litigators Can't Win Them All

By David Lat

Column

Columnist David Lat reviews a study finding that US Supreme Court litigators experienced in arguing before the court don't prevail in their cases as often as one might think.

I confess to a competitive streak, which I trace back to my days in high-school speech and debate. I went from being a nerdy kid, always picked last in gym class, to someone who won—a lot. And winning is fun (as my seven-year-old son, who leads our Monopoly series 10-5, can attest).

When I was a practicing litigator, it frustrated me that I couldn't always win, even when I felt I was a better advocate than my opponent. To my great annoyance, the "law" or the "facts" kept getting in the way. When they weren't on my side, I'd often lose—regardless of how I or my opposing counsel did.

It's a testament to the quality of our nation's judicial system, including our judges, that the side that deserves to win on the merits usually does. But as a super-competitive, Type-A lawyer, this reality made litigating less fun for me.

I was reminded of this while reading a fascinating new paper, "The SCOTUS Tournament: Winning Isn't Everything," coauthored by three law professors who are leading scholars of the legal profession: Tracey George of Vanderbilt University, Albert Yoon of the University of Toronto, and Mitu Gulati of the University of Virginia.

Reviewing US Supreme Court arguments and outcomes from 1970 to 2023, the authors evaluated the win rates of the 4,599 lawyers who argued before the court in 7,077 cases as advocates for private parties (as opposed to government ones). The professors found that although "lawyers with more experience win more," it's "not that much more than those with some but less experience."

This type of study needs to have baselines. As the paper explains, unlike at “the intermediate appellate level, where the presumption is affirmance of the lower court (since all cases can be appealed), the presumption is reversal” once a case reaches the Supreme Court. The data reflects this: Over the study period, petitioners—parties seeking reversal—won around 60% of the time, meaning that respondents won around 40% of the time.

The professors divided the advocates into four categories, based on experience arguing before the court: “rookies (showing up for the first time), veterans (those with between two and five appearances), stars (between five and ten appearances); and superstars (more than ten appearances).” They then looked at the win rates of the different groups, considering whether the attorney represented the petitioner or respondent.

What did they learn? Rookies won 55.1% of the time when on the petitioner side. And while that’s below the average win rate of 61.2% on the petitioner side, it didn’t seem dramatically lower to me.

The authors also looked at win rates of the different groups relative to each other. Rookies going up against other rookies won 55.2% of the time when on the petitioner side. But rookies on the petitioner side going up against superstars won 51.8% of the time.

This is striking—very different from my experience in high-school or college forensics, where a seasoned competitor would almost always prevail against a newbie. Or to take the professors’ preferred comparison, “Advocacy before the Court differs from what we observe in tennis, where Roger Federer or Serena Williams in their prime almost never lost in the early rounds of Wimbledon to unseeded players.”

So why do clients pay so much money, north of \$2,000 an hour, for top Supreme Court advocates, to gain only a slight edge?

“When the stakes are so high, you don’t want to be cheap,” Yoon told me. “In many of these cases, the advocacy cost is ‘couch change’ relative to the stakes. So the clients will be risk-averse and say, ‘Let’s just hire the former solicitor general.’”

Speaking of US solicitor general’s office alumni, two lawyers did jump out to the professors for remarkably high win rates. Lisa Blatt, who has argued more Supreme Court cases than any woman in history, prevailed 88.9% of the time (regardless of which side she represented). In second was former US Solicitor General Paul Clement, who won 75.8% of the time.

Among the top 15 lawyers ranked by number of oral arguments before the Supreme Court, only two others had win rates north of 60%. And like Clement, both are former US solicitors general: Donald Verrilli (62.5%) and the late Ted Olson (63.2%).

As a self-professed devotee of the Supreme Court bar, I’m a huge fanboy of this foursome. But I can’t help wondering if they are that much better than similarly celebrated peers with lower win rates. Is it possible that lawyers with higher-than-average win rates are picking their oral arguments selectively, taking winnability into account?

"We didn't see that in the data," Yoon said. "But we did interview Supreme Court advocates as part of our research, and while most said that they're just happy to be at that podium, one lawyer told us that for certain other members of the Supreme Court bar, winning is really important."

"I think of lawyers as super-competitive," George told me. So it wouldn't be shocking to learn that lawyers consider the likelihood of prevailing in a case when picking which cases to argue.

At the same time, George added, winnability is only one possible consideration among many. She identified others as economic incentives, the importance of the issue or cause to the advocate, and the ability to build one's brand through media exposure, if the case is a high-profile one.

To quote the title of the paper, "Winning isn't everything." Even Blatt, the SCOTUS superstar with the highest win rate, would agree with that sentiment.

When I interviewed her for my podcast in 2022, I asked about her hobby of coaching high-school debate—and whether she gets very competitive about it, as I did back in my salad days.

"I don't think it's about winning," she told me. "And that's one of the things you have to teach kids, because they just want a trophy. So much in life when it comes to competition and jobs is arbitrary and capricious."

"One of the things that is so important for us to understand, even as adults, is that some stuff is out of our control."

David Lat, a lawyer turned writer, publishes Original Jurisdiction. He founded Above the Law and Underneath Their Robes, and is author of the novel "Supreme Ambitions."

Read More Exclusive Jurisdiction

To contact the editors responsible for this story: Daniel Xu at dxu@bloombergindustry.com; Jessie Kokrda Kamens at jkamens@bloomberglaw.com

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Commissioners counter FirstEnergy rate increases

B [toledoblade.com/business/energy/2025/02/11/commissioners-counter-firstenergy-rate-increases/stories/20250211106](https://www.toledoblade.com/business/energy/2025/02/11/commissioners-counter-firstenergy-rate-increases/stories/20250211106)

ALEX BRACKEN

The Blade

abracken@theblade.com

Feb 11, 2025

2:37 PM

Lucas County commissioners condemned a proposed rate increase by FirstEnergy, saying they won't "reward the criminals" and plan to lobby the public's support against the effort.

The \$190 million rate increase is not tied to electricity supply, but the electric distribution service provided by FirstEnergy Corp.

The company's two million customers in Ohio could see bill increases between \$1.56 per month for Toledo Edison customers, to just over \$13 per month for customers of the Illuminating Co., according to the Office of the Ohio Consumers' Counsel.

"This base increase is an increase at a time that record profits are still being made," Commissioner Pete Gerken said. "They have money for criminal activity, ... and they don't need any more money from us."

The commissioners referenced an ongoing corruption scandal that FirstEnergy resolved with \$350 million in settlements, after admitting it was part of a \$61 million bribery scheme. Federal prosecutors say the company bankrolled a \$1.6 billion nuclear plant bailout law through a plot to elect representatives to appoint Larry Householder as speaker of the house.

Householder and former state Republican Party Chairman Matt Borges were convicted, two FirstEnergy executives have been charged, two other participants pleaded guilty and await sentencing, and two others killed themselves before facing trial.

"These payoffs and these settlements should not be on the backs of the ratepayers. They have paid enough, and unfortunately they're being asked to pay off part of the \$61 million scam" that was run by FirstEnergy, Commissioner Lisa Sobecki said.

The commissioners said they will be publishing information about upcoming public hearings scheduled by the Public Utility Commission of Ohio. The Ohio Consumers' Counsel said FirstEnergy has expressed openness toward virtual meetings, but details have not yet been

finalized.

“It’s been very painful for the state of Ohio to have to see this level of corruption, and we are going to do everything possible to make sure every seat is filled in all these hearings,” Commissioner Anita Lopez said.

According to the consumers’ counsel, FirstEnergy is already looking at other increases. A pending case could update the company’s electric security plan and increase or add riders — additional fees on each bill. Mr. Gerken said the increases, while small, are “the start of the battle.”

“When they quit acting like a criminal enterprise, maybe they can get some fair rate increases,” Mr. Gerken said.

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Alex Bracken

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Matt Levine's Money Stuff: Sure Elon Musk Might Buy OpenAI

By Matt Levine

Opinion

OpenAI hostile takeover

In the spring of 2022, Elon Musk offered to buy Twitter Inc. for about \$44 billion. Twitter's board of directors met with its investment bankers to discuss exactly one question: Was Musk's offer more than Twitter was worth otherwise (on its own or in a competing deal)? The bankers and board concluded that Twitter was not going to do better for its shareholders than Musk was offering, so they took Musk's deal.

A lot of Twitter employees and users were sad about this. Musk's takeover was, let's say, a mixed bag for Twitter's employees and users and advertisers, and for its role in public life. At the time, the employees expressed their sadness at a town hall with Parag Agrawal, then Twitter's chief executive officer. Agrawal was unmoved, as Casey Newton reported, saying that the board's job was to "act in the interest of our shareholders and look for value for them in the long term":

OK sure, employees said, but how is it in Twitter's best interest to go private?

"This is the answer you don't want to hear, right?" Agrawal said. "Twitter is a public company owned by shareholders. There are other companies which may have other legal mechanics ... Twitter is not one of those companies."

We talked about this at the time. It was 2022, remember, and I wrote that "now we have stakeholder capitalism and environmental, social and governance investing" and talk of "redefining the purpose of a corporation":

And then Twitter's CEO shrugs and says, in effect, "meh look this deal might be bad for our users and employees and product and mission, but we can't think about that; the price is right and my only duty is to shareholders." It's strange!

Strange but understandable. I don't think it's exactly right that Twitter's only duty, in considering Musk's offer, was to think about what would make shareholders the most money, but I understand why Twitter's board thought that. And I think that a board and chief executive officer with a more compelling vision of *what Twitter was* might have been better positioned to say no to Musk: Visionary tech founders can confidently turn down big-dollar buyout offers, both because they are motivated by some mission other than making money, and because they think that if they achieve that mission they will make even more money than whatever they're being offered now. Lacking that sort of vision, Twitter shrugged and sold.

If you are the board of directors of a *nonprofit organization* and a consortium led by Elon Musk comes to you with a \$97.4 billion hostile takeover offer, are you obligated to get the highest possible price, or are you allowed to consider other factors in deciding whether or not to accept his offer? Man: I do not know! It seems very unlikely that any nonprofit board has ever faced this problem before, and when I put it like that, it sounds completely incoherent. Nonprofits do not get hostile takeover offers, nonprofits do not get acquired by investor consortiums for \$97 billion, and surely nonprofit boards do not have an obligation to maximize their valuation? Like, generally, the opposite? Of all of that?

And yet there is something extremely clever here:

A consortium of investors led by Elon Musk is offering \$97.4 billion to buy the nonprofit that controls OpenAI, upping the stakes in his battle with Sam Altman over the company behind ChatGPT.

Musk's attorney, Marc Toberoff, said he submitted the bid to OpenAI's board of directors Monday.

The unsolicited offer adds a major complication to Altman's carefully laid plans for OpenAI's future, including converting it to a for-profit company and spending up to \$500 billion on AI infrastructure through a joint venture called Stargate. He and Musk are already fighting in court over the direction of OpenAI. ...

The bid is being backed by Musk's own artificial intelligence company xAI, which could merge with OpenAI following a deal.

Get it? OpenAI is, currently, a nonprofit organization that controls a for-profit subsidiary. The for-profit subsidiary has some investors who have written big checks in exchange for quasi-equity profit shares in the business. OpenAI's plan is to make the for-profit subsidiary a more normal standalone for-profit company, so that it can sell more normal shares, raise more money from investors and, uh, have more profits. (Eventually.)

But you cannot just take the assets of a nonprofit organization and give them to a for-profit company. The nonprofit's assets have to remain "irrevocably dedicated to its charitable purpose." OpenAI-the-nonprofit's main asset is control of OpenAI-the-business, and it can't just give that away. It can *sell* it, though. The newly independent for-profit business could *pay* OpenAI-the-nonprofit the fair value of its current ownership, and then OpenAI-the-nonprofit's assets (that payment) could remain dedicated to charitable purposes.

In practice that value is very large, and the for-profit entity wouldn't just write the nonprofit a check for the value; instead, the value would be expressed in *shares* of the for-profit. The for-profit arm would become a normal corporation with normal shareholders, and the nonprofit would be one of those shareholders.

How much should the nonprofit get? Well, you know, OpenAI-the-nonprofit hires some bankers, and OpenAI-the-for-profit hires some bankers, and OpenAI's for-profit investors (Microsoft Corp. and some venture capitalists) hire some bankers, and they build financial models and propose valuations. In theory, the nonprofit's bankers should seek a high number, arguing that the nonprofit currently controls OpenAI's business and so should get most of the value of that business, while, for instance, Microsoft's bankers will seek a lower number, arguing that most of the profits of that business have already been promised to investors, and so those investors should end up with most of the ownership.

And then they negotiate, and they come to an answer that they can all live with, and they get some sort of fairness opinion or valuation blessing that answer, and they submit it to the California and Delaware state attorneys general (and probably eventually to a court), and eventually it gets more or less blessed. At The Information, Martin Peers estimates that those negotiations might give the nonprofit something like a 25% stake in OpenAI's business, which is currently raising money at a \$260 billion pre-money valuation, making the nonprofit's stake worth about \$65 billion.

And then Musk threw a spanner in the works by proposing a bigger number. Because if the nonprofit needs to be fairly compensated, then if Musk is offering a bigger number, that implies that OpenAI's smaller number is not fair compensation. From Musk's lawyer's emailed statement:

"If Sam Altman and the present OpenAI, Inc. Board of Directors are intent on becoming a fully for-profit corporation, it is vital that the charity be fairly compensated for what its leadership is taking away from it: control over the most transformative technology of our time," said Marc Toberoff, the attorney representing the investors.

"As we understand the OpenAI, Inc. Board's present intentions, they will give up majority ownership and control over OpenAI's entire for-profit business in exchange for some minority share of a new, consolidated for-profit entity. Who on Earth would make that trade? If the Board is determined to relinquish OpenAI, Inc.'s assets, it is in the public's interest to ensure that OpenAI, Inc. is compensated at fair market value. That value cannot be determined by insiders negotiating on both sides of the same table. After all, the public is OpenAI, Inc.'s beneficiary, and a sweetheart deal between insiders does not serve the public interest." ...

Musk and his investment partners have determined that the ownership and control that OpenAI, Inc. represents it has over its various for-profit OpenAI subsidiaries and affiliates is worth no less than \$97.375 billion. They offer that amount today, and they are prepared to consider matching or exceeding higher bids. Because OpenAI, Inc.'s assets are held in charitable trust, this entire purchase price will flow into the charity and be irrevocably dedicated to charitable purposes.

And so you are left with the absolutely bizarre circumstance that a nonprofit plausibly *might* have a fiduciary obligation to sell to the highest bidder, even if it finds that highest bidder unsavory and uncharitable. What if it got a topping bid from the Chinese Communist Party? What if a robot wearing a fake mustache came in and said “I will pay \$150 billion for your company and will not use it to take over the world and enslave humanity, what even gave you that idea”? Would the charity’s obligation — its obligation not to give assets away to a for-profit company, but to be paid fair value for them — require it to sell to the highest bidder?

And, recognizing that bizarre circumstance, Musk, the richest man in the world, lobbed in a bid. I cannot fault it! It is top-tier M&A trolling.

One assumes he is not serious. The point here is not to *buy OpenAI*; the point is to *raise the price*. If the right valuation of the nonprofit’s stake in OpenAI is north of \$100 billion, then that means that the nonprofit needs to get a bigger chunk of the company, which leaves less for the for-profit shareholders. It is harder to raise \$40 billion from SoftBank if that \$40 billion gets SoftBank a smaller share of the company. The Wall Street Journal notes:

The higher the valuation of the nonprofit, the bigger its stake would likely be in the for-profit OpenAI following a conversion.

At the same time, OpenAI is negotiating how much equity Microsoft, its biggest investor, should get in the for-profit company, along with other backers and employees. It is also seeking to raise up to \$40 billion of new capital. Investors in that round will likely expect equity when OpenAI becomes a for-profit as well.

Satisfying all those parties was already complicated. If Musk’s gambit increases the equity awarded to the nonprofit, it will be even more difficult.

And here’s Sam Altman:

“I think he is probably just trying to slow us down. He obviously is a competitor,” Altman said in an interview with Bloomberg Television Tuesday on the sidelines of the Paris AI summit. “I wish he would just compete by building a better product, but I think there’s been a lot of tactics, many, many lawsuits, all sorts of other crazy stuff, now this.” ...

In the interview on Tuesday, Altman chided Musk, saying: “Probably his whole life is from a position of insecurity — I feel for the guy.” Altman added that he doesn’t think Musk is “a happy person.”

Also:

Altman added in the interview Tuesday that the OpenAI board is looking at a range of options for the business in the future. But selling the AI operations is not on the table.

“OpenAI is not for sale,” he said. “The OpenAI mission is not for sale.”

Yeah I mean sort of? The nonprofit board's obligation is to its mission, and it should make decisions that are in the best interests of building AI for the benefit of humanity, not to maximize dollars. On the other hand, OpenAI kind of literally is for sale, in that the nonprofit really is not allowed to *give it away* to a for-profit company. Someone has to buy OpenAI-the-business from OpenAI-the-nonprofit. OpenAI would like that someone to be OpenAI-the-business, but OpenAI has put itself in play, and now there's a higher bidder.

And again, as with Twitter, the problem here — the thing that leaves the board vulnerable to Musk — is the *fuzziness* of OpenAI's vision. If OpenAI had a vision like "we are going to build open AI, for the benefit of mankind, rather than for profit," then there would be absolutely no question of it selling out to the highest bidder. That would be an absurd suggestion. Or if OpenAI had a vision like "we are going to make zillions of dollars building AI, it's gonna be absolute Skynet up in here," there would be no question of it selling to Elon Musk for any price even he could name. But OpenAI is trying to do both: It is still pursuing its benefit-of-humanity mission while also converting to a for-profit. That is messy and arguably insupportable, and Musk pounced.

By the way: I assume he does not have \$97 billion of committed financing? Like:

1. That would be a lot: by a factor of 2 the largest-ever leveraged buyout, and by a factor of, uh, probably infinity, the largest-ever leveraged buyout *of a nonprofit*.

- 2. Honestly how would you even get financing to do a leveraged buyout of a nonprofit? I'm sure there is an answer, but, man.
- 3. This is mostly trolling? Like the goal here is not to *buy OpenAI*, but to make it awkward and difficult for OpenAI to convert to a for-profit company. Seems silly to get commitment letters for this.

At the same time, though, he's not *kidding*, right? Like he clearly *could* raise \$97 billion for a stunt like this. I suppose OpenAI could reject his offer for the uncertainty of his financing, and then he'd come back 12 hours later and be like "aha, I have the money right here," and then where would they be? He'll roll up with 9.7 trillion pennies, won't he?

Hedge fund fees

Here's how Goldman Sachs Group Inc. works :

1. It uses money to do various sorts of trades that, broadly speaking, serve customers: It uses its balance sheet to buy and sell bonds for customers, it acts as a counterparty on derivatives, etc.

- 2. Goldman earns revenue by doing those trades.
- 3. To do the trades, Goldman needs money. It gets a lot of that money by borrowing it, and some of it from investors. The investors are called "shareholders."
- 4. The lenders get paid some market interest rate for their money. The shareholders do not; Goldman has no obligation to pay them back anything.

- 5. But the shareholders *expect* some return on their capital; they expect dividends and stock buybacks and appreciation of the value of their shares.
- 6. There is a popular notion, among investment bank shareholders and executives, that the shareholders expect a certain *number* for that return: The bank has a “cost of capital,” or at least a “target return on equity,” and if it regularly returns less than that target, shareholders will be mad. (Goldman’s target return on equity is 14% to 16%.) If the shareholders are mad, there’s not *that* much they can do about it — they can’t take their money out — but it’s probably unpleasant for the executives.
- 7. Goldman pays various costs — for office space and computers and travel and photocopying, but especially the salaries and bonuses of its employees — out of the money that it makes.
- 8. Those payments that Goldman makes are largely *not* determined directly by its revenue. It’s not like Goldman only pays rent when it has a good quarter of trading; it incurs costs to try to make money, whether or not it actually makes money.
- 9. The obvious exception to that is that a pretty big chunk of Goldman’s costs are *bonuses* for bankers and traders and executives, and you’d expect those bonuses to be pretty closely tied to revenue. But not perfectly. A desk, or the bank, could have a bad year and still pay traders a lot to keep them around. The bonuses are not set at a fixed percentage of revenue; they are determined by competitive market pressures.
- 10. You take the revenue and you subtract the costs (mostly compensation) and what’s left over is the net income available for shareholders.
- 11. If the net income is at or above the return on equity target, good. If it’s below the target, bad. Goldman tries to beat the target, but it is a big complicated machine and it doesn’t always work. “Wait you missed the target because you paid big bonuses, why not just pay lower bonuses,” you might naively say, but then Goldman would shake its head at your naivete.

I submit to you that, in 2025, big multistrategy hedge funds play a role similar to that played by big investment banks, and *they work the same way*:

1. Balyasny, for instance, uses money to do various sorts of trades that, broadly speaking, fill some economic niche in the markets. It uses its balance sheet to buy Treasury bonds and provide Treasury futures to investors, or to help index funds with rebalancing, or to manufacture index volatility out of single-stock volatility. Balyasny does not have *customers* in quite as direct a way as Goldman does, but it is performing a similar economic function.
- 2. Balyasny earns revenue by doing those trades, though the revenue is more likely to be called something like “gains.”
- 3. To do the trades, Balyasny needs money. It borrows some of it, and gets the rest from investors. The investors are called “limited partners in the fund.”
- 4. The lenders get interest; the LPs do not.
- 5. But the LPs *expect* some return on their capital; they expect cash payments and/or appreciation in the value of their stakes in the fund.
- 6. Balyasny’s LPs expect some number for their return, with that number based on (1) the volatility of Balyasny’s results (lower volatility means lower expected return), (2) what they could get elsewhere (from

Citadel or Millennium or Treasury bonds or the stock market) and (3) the same rule-of-thumb-type calculation that makes Goldman target mid-single-digit returns.

- 7. Balyasny pays various costs out of the money that it makes.
- 8. Those costs are not directly determined by revenue.
- 9. The obvious exception is bonuses, but again they are only a partial exception. If Balyasny needs to guarantee a star portfolio manager \$50 million to hire her, it's going to pay her \$50 million, even in a down year.
- 10. You take the gains and you subtract the costs (mostly comp) and what's left over is the money available for the LPs.
- 11. If the returns to the LPs are above the target, good. If they're below, bad.
- 12. If they're below the target for a long time, the investors eventually can take their money out of the fund, though they are probably locked up for a while. But it's not like one year of below-target returns are a disaster. Businesses are supposed to earn their cost of capital over the long term.
- 13. Balyasny tries to beat the target, but it is a big complicated machine and it doesn't always work. "Wait you missed the target because you paid big bonuses, why not just pay lower bonuses," you might naively say, but then Balyasny would shake its head at your naivete.

This is not a perfect model, but I want to argue that it is a better model than "Balyasny is an investment fund, it takes its limited partners' money and invests it in stuff, and if the stuff goes up the investors get the returns, minus some fees that they pay to Balyasny." The limited partners are not *partners in Balyasny's investing*; they are *capital providers to Balyasny's business*. And they get the returns that they get.

Anyway Bloomberg's Hema Parmar, Weihua Li, Kyle Kim and Armand Emamdjomeh report on passthrough fees:

In 2023, the main hedge fund at billionaire Dmitry Balyasny's eponymous firm notched a gross return of 15.2%.

Investors walked away with a gain of just 2.8%.

The rest they paid in fees — more than \$768 million — mainly for compensation but also a wide variety of other costs down to mobile-phone service.

That parceling out of costs is one of the most coveted perks of running a multistrategy hedge fund. Investors are so eager to pony up money that they effectively write a blank check, agreeing to cover just about any expense managers deem reasonable, in good times and bad.

The term for that: Passthrough fees. ...

A Bloomberg analysis of the group's regulatory filings shows their publicly disclosed lists of expenses eligible to pass through have exploded in recent years. A decade or so ago, they typically called out run-of-the-mill categories like compensation, rent and computers. Now, some firms specify that fees may include artificial intelligence, compliance costs, internal referral payments, the expense of terminating staff and catch-all items — like "extraordinary or non-recurring expenses." ...

Last week, Citadel issued a bond prospectus, obtained by Bloomberg, with pages of details on costs it charges. They include technology and travel “of all forms,” such as booking or leasing a private jet. Investors can also foot bills for employee gifts, entertainment for employee gatherings, as well as snacks, drinks and “other nourishment,” the document shows. ...

“There is no limit on the amount of passthrough expenses that may be charged,” Point72 wrote in a 2020 filing, the first year it used that language. The fees are generally expected to increase as fund performance improves. But they “are expected to be substantial regardless of the performance.”

One industry study shows that the portion of gross returns shared with clients is shrinking. Multistrats kept 59 cents of every dollar they made for investors in 2023, according to a BNP Paribas report. That was up from 46 cents two years earlier.

Goldman had \$14.3 billion of net income on \$53.5 billion of net revenue last year, meaning that it kept about 73 cents of every dollar it made for investors, so the multistrats are still relatively lean.

Memecoins

We talked about memecoins yesterday, and I don’t want to talk about them today, but I do feel obligated to mention three updates.

First: I wrote yesterday that memecoins have become the main line of US crypto in part because, unlike more useful crypto ideas, they avoid scrutiny from the US Securities and Exchange Commission. “Memecoins are *obviously* not securities,” I wrote; “they are *obviously* not ‘an investment of money in a common enterprise with profits to come solely from the efforts of others,’ because there are no enterprise, no profits and no efforts.”

I think that is right, but a reader pointed out that some lawyers disagree, and have made a business of suing memecoin promoters for doing unregistered securities offerings. Here’s one against “the ‘Hawk Tuah Girl,’” whose memecoin we have discussed previously:

At the heart of the lawsuit is the allegation that the \$HAWK token constitutes an unregistered security. The complaint states, “[t]he \$HAWK Token exhibits all the characteristics of an unregistered security under established legal precedent.” The plaintiffs argue that the defendants leveraged Haliey Welch’s celebrity status to create “a speculative frenzy that caused the [\$HAWK] Token’s market value to spike shortly after launch, reaching a significant market capitalization.” As alleged in the complaint, the defendants engaged in actions that potentially violated federal securities laws. The lawsuit claims that the \$HAWK token exhibits characteristics of an unregistered security, and was offered and sold to the public without proper registration with the SEC.

The important lesson of this column is that everything is securities fraud, including the things that I don’t think are securities fraud.

Second:

The leader of one of Africa's poorest nations has mimicked Donald Trump with the launch of a so-called memecoin, only to see its value immediately crash over concerns the project was an elaborate fake.

Faustin-Archange Touadéra, president of the Central African Republic, said on X that the country's memecoin was "an experiment designed to show how something as simple as a meme can unite people, support national development and put CAR on the world stage in a unique way". ...

The \$CAR memecoin's value has plunged 95 per cent since trading began early on Monday, hitting around \$0.04 on Tuesday. The token has a market capitalisation of \$37mn, according to data provider CoinMarketCap, down from a shortlived peak of \$350mn.

Yes look if you are a country you should definitely launch a memecoin? A memecoin is, like, sovereign debt with no maturity, no interest and no inflationary effect: You just sell it for money and then forget about it. What's not to like?

Third: Someone launched a "Money Stuff by Matt Levine (MONEYSTUFF)" coin on pump.fun, the main site for memecoins. When I checked this morning it had a market capitalization of about \$5,700, which, uh. It should go without saying that (1) I didn't launch this coin, (2) I don't own any of it and (3) you should not buy it.

A new kind of financial adviser

This kind:

Unlike most rich clients, who seek out financial advisors in the hope of getting even richer, the 18- to 35-year-olds at the Making Money Make Change conference in Nashville are here to do the opposite. As the children of millionaires and billionaires, they are among the heirs to the greatest wealth transfer in American history — some \$16 trillion that will be passed down in the next decade alone. And they don't want it. ...

Those attending the conference say they have found it surprisingly difficult to figure out how to divest themselves of their money. Depending on how their trust funds are set up, accessing their funds might require them to go through their family or a trustee, who often have a vested interest in keeping the money locked up for generations to come. "The trustees are like, 'What about your children's children?'" Meg recalls being asked. "And we're like, 'What about everybody else's children?'"

What's more, the personal-finance industry is predicated on building wealth, not getting rid of it. "Almost all of my clients are really frustrated with the financial team that they come in with," says Iris Brilliant, a money coach who works with heirs to redistribute their wealth. Originally a poetry major, Brilliant worked as an organizer at Resource Generation for five years before launching her own practice. Now she's overwhelmed by the demand for her services. "There is a huge blossoming of interest, and I have a waitlist for individual coaching," she says. "I imagine that's the case for a lot of my peers."

I love capitalism, and probably my favorite kind of capitalism — really the main thing I write about around here — is the kind where you relieve people of their money and make them feel good about it. This is perhaps the most transparent way to do that: financial advisers who help heirs give away all their money.

No, just kidding, not *all* their money. That's just marketing. Really:

Given all the "Tax the Rich" and "Liberation" T-shirts they're wearing, you wouldn't guess that the people at the conference possess a combined net worth of at least \$246 million. And that's not including the wealth they stand to inherit from their families — some \$1.5 billion, a "money survey" completed by all but seven of the attendees found. ...

By the end of the conference, 35 heirs have pledged to redistribute a total of \$9.2 million.

That's roughly 3.7% of their combined wealth? You can get like 4.3% in a money market fund.

Things happen

Trump Curbs Enforcement of Antibribery Law. Goldman Sachs Abandons IPO Diversity Pledge With US DEI Goals Under Fire. Proxy Adviser ISS Kills Diversity Criteria for Assessing Boards. Deloitte asks consultants to US government to remove gender pronouns from emails. Powell Says Law Doesn't Allow Trump to Fire Fed Board. JPMorgan Defector Aims to Make Wells Fargo a Wall Street Force. Credit Quants Target Bulk Trades to Conquer \$8 Trillion Market. Shopify takes down Ye website selling swastika shirts after Super Bowl ad. Behind the Scenes at the Westminster Dog Show.

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- 1. Are these comparisons unfair? Musk's lawyer's statement says: "At x.AI, we live by the values I was promised OpenAI would follow. We've made Grok open source, and we respect the rights of content creators. ... It's time for OpenAI to return to the open-source, safety-focused force for good it once was. We will make sure that happens." He's got a case that he's the *most* charitable option.
- 2. I should say: Everyone, including me and Sam Altman, assumes that Musk will not actually buy OpenAI. But ... I mean, he would do it for \$97.4 billion, no? Like that's an incredible bargain? If he bought the nonprofit's controlling stake for \$97.4 billion, he'd control the business. OpenAI-the-nonprofit wants to give up control of the business, because that will help with fundraising, but Musk wouldn't. Musk would pay \$97.4 billion to get control of a \$260 billion-ish business. He'd have minority shareholders (or weird-profit-interest-holders), but he could deal with them. And he'd have no trouble with fundraising.
- 3. Also a larger percentage ownership for the nonprofit might be off-putting to investors even outside of worries about cutting back their own stake. A, say, 40% nonprofit ownership would mean (1) more overhang

(more shares to be sold eventually) and (2) more *control* for the nonprofit, which might make the for-profit investors nervous. The nonprofit control has not always been good for valuation.

- 4. Exercise for the reader: If Musk, through xAI, buys OpenAI, is that positive or negative for the credit of X?
- 5. Down here in a footnote I am just going to throw out there that, if Bill Ackman doesn't launch a hostile bid for Harvard in the next couple of years, I'll be a little disappointed.
- 6. Disclosure, I used to work at Goldman, though this litany is not really about Goldman; it's about investment banks with market businesses generally.

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Musk takes aim at law firms involved in Trump policy challenges

[reuters.com/world/us/musk-takes-aim-law-firms-involved-trump-policy-challenges-2025-02-11](https://www.reuters.com/world/us/musk-takes-aim-law-firms-involved-trump-policy-challenges-2025-02-11)

Reuters



Elon Musk speaks next to U.S. President Donald Trump (not pictured) in the Oval Office of the White House in Washington, D.C., U.S., February 11, 2025. REUTERS/Kevin Lamarque Purchase Licensing Rights [↗](#), opens new tab

Feb 11 (Reuters) - President Donald Trump's billionaire ally Elon Musk on Tuesday directed his ire at U.S. law firms that have teamed up with advocacy groups to challenge the Republican's sweeping policy changes in court.

"Which law firms are pushing these anti-democratic cases to impede the will of the people?" Musk, the world's richest man, wrote on his social media platform X.

The post was his first to target law firms involved in cases against the Trump administration, though he did not identify a specific firm. Musk did not immediately respond to a request for comment.

The Tesla (TSLA.O) [↗](#), opens new tab CEO and owner of X, who has been spearheading efforts to slash the federal workforce and spending, also criticized judges who have issued rulings that paused Trump's executive actions. "Democracy in America is being destroyed by judicial coup," Musk wrote in a separate post on X.

The post on law firms focused on a ruling by U.S. District Judge Angel Kelley that temporarily blocked the administration's sharp cuts to federal grant funding for universities, medical centers and other research institutions.

That lawsuit was brought in Boston by Democratic attorneys general from 22 U.S. states challenging cuts adopted by the National Institutes of Health. Two other related lawsuits related to NIH funding have been brought by groups represented by law firms Jenner & Block and Ropes & Gray.

The two law firms, which did not immediately respond to requests for comment, are among more than eight large and medium sized U.S. law firms that have signed on to lawsuits against the Trump administration related to funding cuts, immigration restrictions and transgender rights.

Many of the firms, including Gibson, Dunn & Crutcher, Hogan Lovells, Jenner & Block and Perkins Coie, are handling the cases without charge. The firms either declined to comment or did not immediately respond to requests for comment on Musk's post about law firms.

Musk has used his social media megaphone in the past to criticize prominent law firms by name.

In 2022 he denounced Perkins Coie, writing on X, then known as Twitter, that they "thrive on corruption" in reference to the firm's past work for Trump's 2016 Democratic election opponent Hillary Clinton.

Most of the more than 50 lawsuits opposing Trump policy moves so far have not been brought by law firms, but rather by legal advocacy groups, unions, Democratic states and federal grant recipients.

Reporting by Mike Scarcella in Washington; Editing by David Barrio and Deepa Babington

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<https://www.wsj.com/business/autos/tesla-revenue-elon-musk-openai-bid-73789d2d>

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Tesla Can't Afford Another Twitter-Size Distraction

Elon Musk's bid for OpenAI and his divisive political image raise new risks for Tesla's expensive stock

By [Dan Gallagher](#) [Follow](#)

Feb. 12, 2025 6:00 am ET



Distractions have proven costly to Tesla's shareholders before. PHOTO: FLORENCE LO/REUTERS

In the eyes of Tesla **TSLA 4.80% ▲** shareholders, Elon Musk hardly needed another distraction. OpenAI could turn out to be a costly one.

The EV maker's multitasking chief executive is leading a consortium bidding \$97.4 billion for the nonprofit entity that controls the OpenAI business. The bid is being backed by Musk's own artificial-intelligence company called xAI and includes backers from around the venture-capital world, The Wall Street Journal reported late Monday.

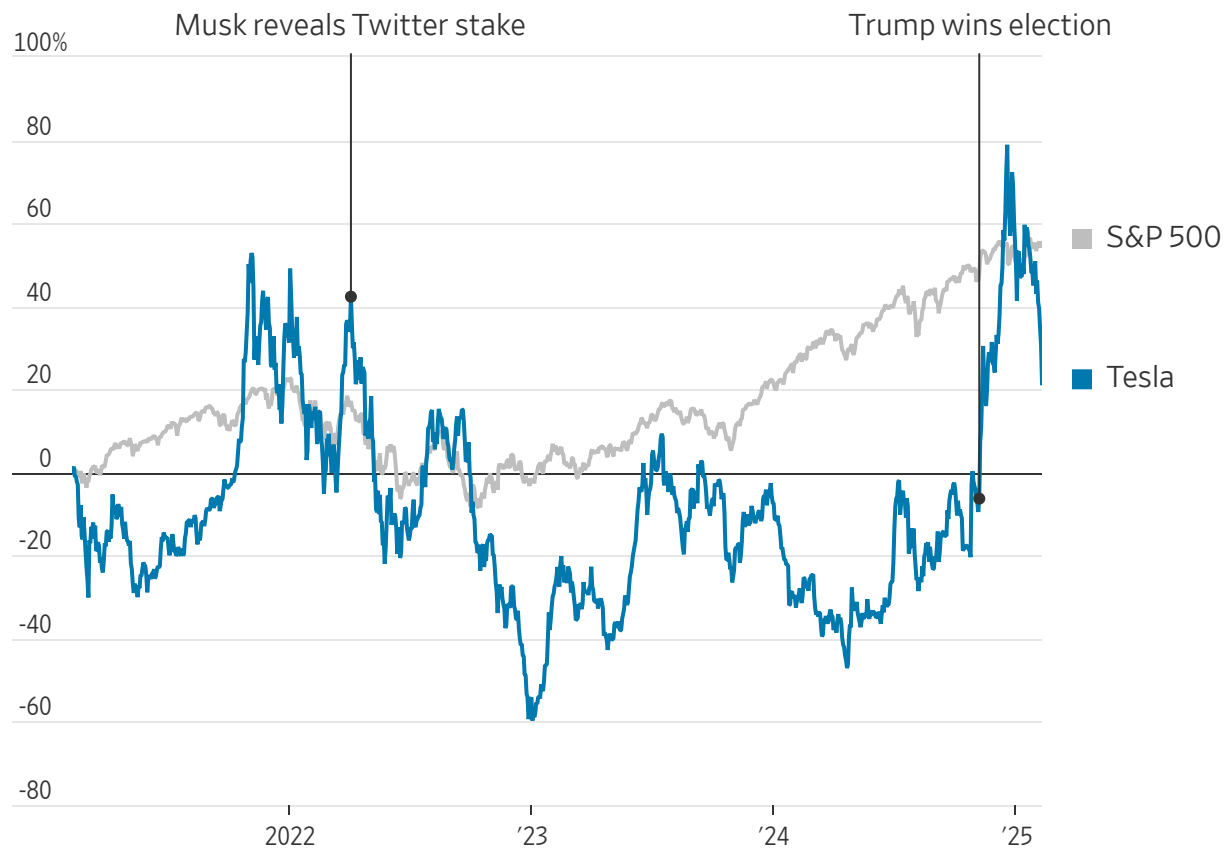
The price for OpenAI is more than double what Musk paid for Twitter in 2022. And it is a long shot at best, especially given the personal friction between Musk

and OpenAI CEO Sam Altman. Altman responded to Musk's offer on Monday by offering to buy X, formerly Twitter, for \$9.7 billion—an allusion to the scorching decline in market value that the social-media platform has experienced under Musk's ownership.

Tesla's share price fell 6.3% on Tuesday. The EV maker just closed out a tough year, when total automotive revenue fell for the first time ever on an annual basis, according to data from FactSet. And that is notably different from 2022, when the company's sales were still growing at high double-digit rates. In a report Tuesday, Colin Rusch of Oppenheimer called the OpenAI move “a distraction from Tesla's challenges.”

Spin Outs

Share-price and index performance, past four years



Source: FactSet

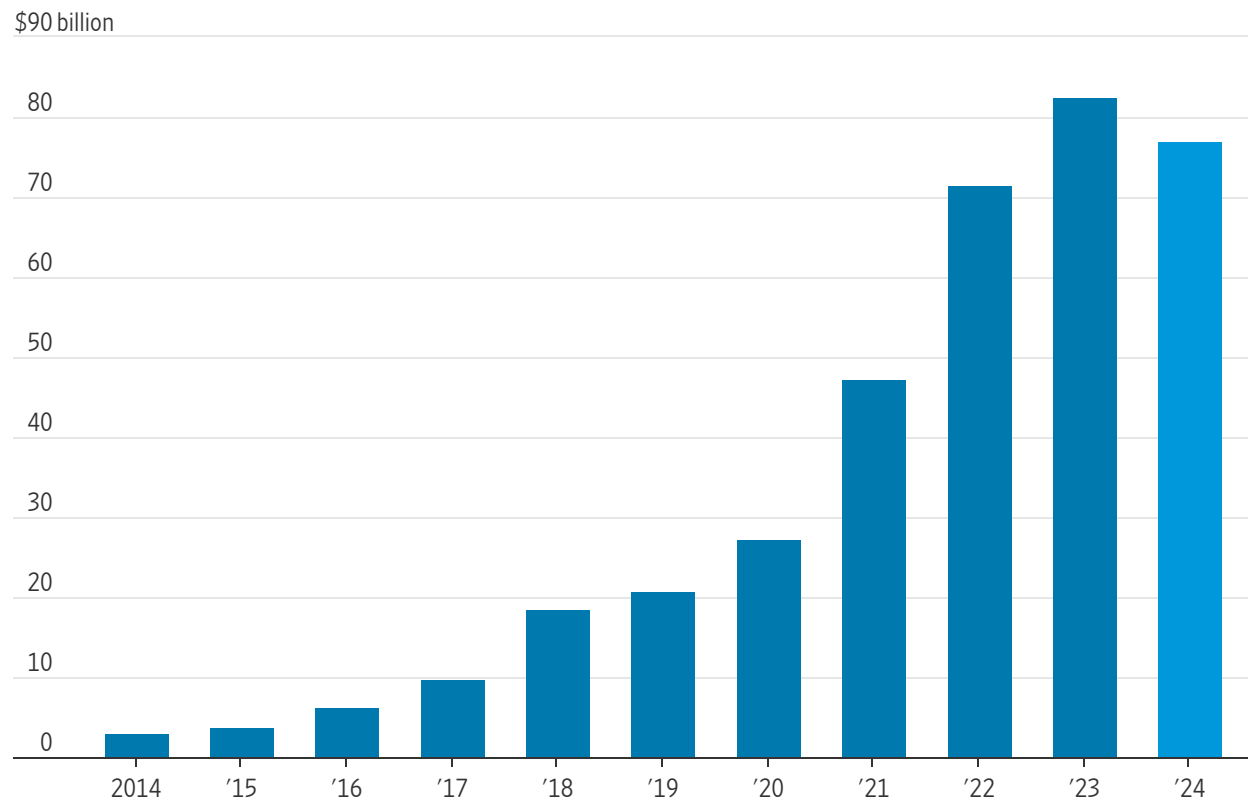
Distractions have proven costly to Tesla's shareholders before. The company's market cap plunged by more than two-thirds in 2022 after Musk first revealed an ownership stake in Twitter in early April. Investors worried about Musk's focus on the platform and his divisive presence on it.

Tesla's stock didn't even fully recover those losses until after the U.S. election three months ago, which effectively put Musk in the White House with a key position in the Trump administration. But the shares have also cooled notably, falling nearly 18% between the inauguration and Monday's close. Musk has been closely involved with some of the administration's more controversial moves, including running the newly created Department of Government Efficiency, or DOGE.

CEOs have long dabbled in politics. But few have had as big a public profile as Musk, and few public companies are more closely tied to the image of their chief than Tesla. In a report last week, Stifel analysts said Tesla's trailing four-week net favorability rating is "nearing all-time lows," according to their survey. "We believe the negative downturn in consumers' perception of Elon Musk is captured in our proprietary survey data out of our Stifel Think Tank Group and potentially results in a headwind to sales," the report read. Rusch of Oppenheimer also called Musk's political activity "a potential overhang" on Tesla's sales in his report.

Down Shift

Tesla's automotive revenue by year



Note: Includes sales, regulatory credits and leasing.

Source: FactSet

Even with the stock's recent weakness, Tesla's market cap still exceeds that of the world's next 20 largest automakers combined, according to data from S&P Global Market Intelligence. And shareholders can't say they weren't warned. "Although Mr. Musk spends significant time with Tesla and is highly active in our management, he does not devote his full time and attention to Tesla," Tesla's annual 10-K filings have warned since the company went public in 2010.

But those boilerplate passages have typically referred only to Musk's leadership of SpaceX. In its latest annual filing made last month, Tesla added X, xAI, Neuralink, the Boring Company and the DOGE agency as competing demands on the boss's time. And he is unlikely to get canned for excessive moonlighting. "We are highly dependent on the services of Elon Musk, Technoking of Tesla and our Chief Executive Officer," the filing read. At more than 114 times this year's projected earnings, Tesla's stock is still a big bet that even kings don't get stretched too thin.

Write to Dan Gallagher at dan.gallagher@wsj.com

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Feb. 12, 2025, 9:18 AM PST

Adani Builds US Influence Machine While Trump Reins In DOJ (1)

By Tom Schoenberg, P R Sanjai and Ava Benny-Morrison

- **Billionaire aims to avoid conviction and ramp up US business**
- **Lawyers, lobbyists, Republican lawmakers are helping his cause**

In the months since the US criminally and civilly charged **Gautam Adani** over an alleged bribery scheme, both court dockets have gone quiet.

But Asia's second-richest man has been busy, building a political influence operation in the US spanning white shoe law firms and lobbyists, looking to simultaneously deal with the legal cases and expand his business, according to people with knowledge of the effort.

And, increasingly, he is leaning on political relationships, with mounting signs he's gaining clout that could help sway the White House. In India, his camp has reached out to officials there ahead of Prime Minister **Narendra Modi**'s meeting with President Donald Trump in Washington this week, said some of the people, who asked not to be named discussing confidential talks.



Gautam Adani

Photographer: Sumit Dayal/Bloomberg

Even if India's leader – widely [considered](#) an ally of the Indian billionaire – doesn't mention the topic directly to Trump, the issue could be discussed by their entourages, some of the people said.

In other corners, the pace of activity is quickening. Late last week, two prominent law firms previously hired by Adani – Kirkland & Ellis and Quinn Emanuel Urquhart & Sullivan – registered as lobbyists for both his legal cases and business interests.

This week, a growing number of Republican lawmakers publicly weighed in, framing the charges as detrimental to the US-India relationship and both countries' economies.

More broadly, Trump himself signaled intent to dial back how the US polices international bribery.

An Adani Group representative did not offer any comments to emailed queries. A spokesperson for the White House referred questions to the Justice Department, which declined to comment on the charges it unveiled in November. So did the Securities and Exchange Commission, which brought parallel civil lawsuit.

India's Ministry of External Affairs didn't say whether the charges against Adani would be discussed with US officials during the trip to Washington. Randhir Jaiswal, a spokesperson for the ministry, said neither the agency nor the prime minister's office had reached out to the Trump administration on the allegations against Adani.

The moves show how Adani, 62, is striving to avoid a US conviction and limit the financial impact his cases could inflict on his international conglomerate.

Dismantling Legacy

It's a campaign that comes just as Trump and his appointees dismantle parts of the Justice Department's legacy under their Democratic predecessors.

Trump began his term by pardoning and commuting the sentences of more than 1,500 defendants involved in the Jan. 6, 2021, attack on the US Capitol building. This week, he pardoned former Illinois Governor **Rod Blagojevich** for a corruption conviction. Acting Deputy Attorney General **Emil Bove** also ordered officials to drop charges against New York Mayor Eric Adams in a corruption probe.

And in an executive order Monday, Trump told Attorney General Pam Bondi to pause actions taken under the Foreign Corrupt Practices Act until she issues new enforcement guidelines. Current and past actions will also be reviewed.

Read More: [Adani Shares Rise Amid Trump's Action on Overseas Bribery Law](#)



Donald Trump signs an executive order in the Oval Office on Feb. 10.

Photographer: Al Drago/Bloomberg

Adani Group stocks jumped in Mumbai on Tuesday on speculation that the US may go easy on that front. Though it was an FCPA probe that swept up Adani, authorities didn't actually invoke the act against him.

Instead, the Justice Department charged him with securities fraud and conspiracy to commit securities and wire fraud. Prosecutors said he promised to pay \$250 million in bribes to regional officials in India to lock in solar-power contracts. But their case and the SEC's lawsuit hinge on claims he misled US lenders by falsely asserting his company was fully compliant with anti-bribery laws.

The Adani Group has denied the US allegations.

Small Presence

Despite his roughly \$70 billion net worth, Adani's footprint in the US was relatively anemic when the investigation began years ago.

One key business, Adani Solar USA Inc., was so nascent that, even now, the address of its headquarters – listed in filings to the US House and Senate – is a white brick house in a Dallas suburb, a short walk from a Rottweiler breeder. An Adani employee who owns the home didn't respond to messages seeking comment.

Adani Solar USA kicked into a higher gear soon after court records show the Federal Bureau of Investigation approached Adani's nephew and seized a mobile phone in early 2023. By the middle of that year, Adani Solar was enlisting high-powered corporate lobbyists.

They include Anurag Varma, a former Akin Gump and Patton Boggs lobbyist whose profile and filings note past work for international trade associations and major companies, including digital-services provider Infosys and Sun Pharmaceutical Industries Ltd.

Varma's lobbying disclosures, filed in January, show he had a variety of contacts with US officials after coming on board 18 months earlier, advocating for the solar business and a number of other Adani affiliates. That includes contacting the National Security Council, State Department and the Export-Import Bank.



Solar cells and modules manufacturing facility of Adani Group in Gujarat.

Photographer: Prashanth Vishwanathan/Bloomberg

The day after the US cases against Adani were announced in November, Adani Solar USA and affiliates also hired a group of lobbyists from Akin Gump. They included **Reggie Babin**, former chief counsel to Democratic Senator Chuck Schumer, and Ileana Ros-Lehtinen, a former Republican congresswoman from Florida who previously served as chair of the House Foreign Affairs Committee.

The team's work focused on issues including renewable energy and supply chains, according to disclosure forms. Members contacted the White House, State Department and Commerce Department, the documents show.

The lobbyists linked to Adani either declined to comment or didn't respond the messages.

Law Firms

Recently, the Adani family signed up a pair of law firms with veteran Republican white-collar defense lawyers steeped in politically-fraught criminal cases.

One is Kirkland & Ellis, where **Mark Filip** – once the No. 2 official in George W. Bush's Justice Department – helps lead the firm's government enforcement defense practice.

The other firm is Quinn Emanuel, co-managed by William Burck, a former federal prosecutor in Manhattan. He represented Trump ally Steve Bannon and former Trump White House Counsel Donald McGahn. He has also been retained by the Trump Organization to act as its [outside ethics adviser](#).

Burck and a colleague were recently spotted visiting the Justice Department, where, according to a person with knowledge of the matter, they met with senior officials about dropping the corruption case against another client, Mayor Adams.

The lawyers declined to comment.

Promising Jobs

Shortly after November's election and days before the Justice Department probe became known, Adani publicly congratulated Trump on X, promising to make \$10 billion in US investments and creating upwards of 15,000 jobs.

His inroads with business-minded Republicans have since become more visible.

Beginning in January, Texas Representative Lance Gooden publicly condemned the Justice Department's charges against Adani in a pair of letters to Biden's attorney general. This week, he and five other Republican lawmakers followed up with another letter.

Reckless pursuit of industrialists, Gooden wrote as he launched the initiative, "could start a harmful narrative against India's growth." Moreover, he said, "targeting entities who invest tens of billions of dollars and create tens of thousands of jobs for Americans only harms us in the long run."

His letters went largely unnoticed by national media in the US, but in India they have been widely reported, including being broadcast by a news organization [owned by Adani](#).

In an X posting on one report, news channel NDTV asked: "Is US DoJ trying to disrupt #Trump?"

(Updates with ministry's response in ninth paragraph.)

--With assistance from **Julie Fine**, Josh Wingrove, **Patricia Hurtado**, **David Voreacos**, **Sudhi Ranjan Sen** and **Bill Allison**.

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American Bar Association says rule of law is under 'attack'

 [reuters.com/legal/government/american-bar-association-says-rule-law-is-under-attack-2025-02-11](https://www.reuters.com/legal/government/american-bar-association-says-rule-law-is-under-attack-2025-02-11)

Karen Sloan

By Karen Sloan

February 11, 2025 3:06 PM PST Updated 16 hours ago

Signage is seen outside of the American Bar Association (ABA) in Washington, D.C., U.S., May 10, 2021. REUTERS/Andrew Kelly Purchase Licensing Rights , opens new tab

Feb 11 (Reuters) - The American Bar Association is warning the public about attacks on the rule of law — and suing the Trump administration — following the U.S. president's recent actions to dismantle parts of the federal government.

The ABA, the nation's largest voluntary lawyer group, on Tuesday joined a coalition of organizations that contract with the government to provide foreign assistance in suing the Trump administration over its moves to shut down the U.S. Agency for International Development.

Also on Tuesday, the ABA, which has about 150,000 paying members, issued a forceful statement , opens new tab condemning "recent remarks of high-ranking officials of the administration that appear to question the legitimacy of judicial review." To "attack" judges for their legal decisions is never acceptable, it said, adding the government is free to appeal decisions that don't go its way.

The ABA statement on Tuesday referenced calls to impeach the federal judge who on Feb. 8 temporarily blocked the Elon Musk-led Department of Government Efficiency's efforts to gain access to U.S. Department of Treasury systems. The statement did not name Musk, who called for that judge to be impeached in a post on his social media platform X.

On Monday, ABA President William Bay warned , opens new tab that the new administration's "chaotic" approach is threatening the rule of law and said the ABA will act to ensure legal processes are followed — adding that courts will serve as a "bulwark" against constitutional violations.

The Monday statement broke nearly three weeks of relative silence from the ABA following Trump's inauguration, during which time the president took aim at diversity initiatives, disrupted executive agencies, and moved to pull federal funding for international aid, medical research grants and other government programs.

"We cannot afford to remain silent," Bay wrote. "We must stand up for the values we hold dear."

The White House did not respond to a request for comment Tuesday.

Trump made bar associations a target on his second day in office with an executive order that federal agencies investigate diversity and inclusion programs at bar associations, companies and universities.

Bay's Monday statement cited the attempted dismantling of agencies and entities created and funded by Congress and the bid to end birthright citizenship as examples of Trump's overreach.

The Tuesday statement defending the legitimacy of the courts stated that the judiciary's role is to defend against government overreach.

"These bold assertions, designed to intimidate judges by threatening removal if they do not rule the government's way, cross the line," the statement reads.

Read more:

Trump diversity order sparks pushback from attorney groups

ABA opposes any DEI probes into bar associations

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Reporting by Karen Sloan

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Thomson Reuters

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SEC Looks to Nix Requirements for Businesses to Disclose Climate Risks

 [law.com/nationallawjournal/2025/02/11/sec-looks-to-nix-requirements-for-businesses-to-disclose-climate-risks](https://www.law.com/nationallawjournal/2025/02/11/sec-looks-to-nix-requirements-for-businesses-to-disclose-climate-risks)

Alyssa Aquino

The U.S. Securities and Exchange Commission is looking to pause a legal challenge to a Biden-era rule requiring companies to disclose their greenhouse gas emissions, setting the stage for the agency, now under the Trump administration, to drop a policy criticized by business groups and Republicans alike.

Acting Chairman Mark Uyeda on Tuesday directed agency staff to ask the U.S. Court of Appeals for the Eighth Circuit not to schedule oral arguments for a consolidated case over the disclosure rule, which also required businesses to inform shareholders of their climate-related risks.

Uyeda said he held reservations about the rule since it was first adopted in March 2024, including whether the securities regulator could enact what he viewed to be a climate policy.

“These views, the recent change in the composition of the Commission and the recent Presidential Memorandum regarding a Regulatory Freeze bear on the conduct of this litigation. I believe that the Court and the parties should be notified of these changes,” he said.

Delaying the case would also “provide time for the Commission to deliberate and determine the appropriate next steps in these cases.”

The regulation had been adopted under the Biden administration on a 3-2 vote, with Uyeda and fellow Republican Commissioner Hester Peirce both voting against the policy.

But the policy came under immediate legal attack from a coalition of red states led by Iowa, as well as several business groups, who argued that the SEC was overstepping its authority. Environmental groups like the Sierra Club also came out against the policy, arguing in their own litigation that the rule—a tailored version of a prior proposal—hadn’t gone far enough.

The cases were later all consolidated in the Eighth Circuit, following a random draw. As the case proceeded, the SEC stayed implementation of the rule.

Uyeda’s actions were swiftly panned by the sole remaining Democratic commissioner, Caroline Crenshaw, who said that Uyeda acted without the full commission’s input. She further defended the rule, saying that investors had for years called for consistent and reliable climate risk disclosures and that the commission had “clear authority” to require disclosures within the public interest.

“I dispute with equal vigor the notion that the agency acted outside of its remit. It did not. The only things that have changed since the Rule was passed have been matters of politics and not substance. As such, I disagree with the position unilaterally taken today by the acting Chairman,” she said.

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'Game of Whack-a-Mole' Awaits Lawyers Helping Clients Navigate Changing ESG Policies

 [law.com/nationallawjournal/2025/02/11/game-of-whack-a-mole-awaits-lawyers-helping-clients-navigate-changing-esg-policies](https://www.law.com/nationallawjournal/2025/02/11/game-of-whack-a-mole-awaits-lawyers-helping-clients-navigate-changing-esg-policies)

Samson Amore and Dan Roe

What You Need to Know

- ESG attorneys will continue to be busy this year, even if there's pushback to sustainability requirements in some states.
- Some 27% of roughly 400 in-house lawyers surveyed by Norton Rose Fulbright expect more exposure to ESG lawsuits this year.
- A current SEC rule mandating increased environmental reporting by companies is currently stayed and could be stricken down.

Fluctuating regulations combined with pressure from activist shareholder groups are, increasingly, expected to foster a busy but challenging environment for lawyers in the environmental, social and governance (ESG) space in the coming year.

Not unlike DEI initiatives, ESG issues have become a legislative buzzword in recent years, prompting many companies to simply avoid using the term to describe their work on the issue. But “there's a trend of ESG moving away from a politicized umbrella concept,” said Lyuba Goltser, partner and co-head of Weil, Gotshal & Manges’ public company advisory group and a founding member of the firm’s ESG advisory group.

Goltser told The American Lawyer that she’s “seen a lot of pressure on the anti-ESG side,” but noted, “lots of our big multinational global clients, they're still in it, and I think in terms of the underlying subject matter—product safety, workplace safety, human capital issues, labor issues—those things are still important to their long term performance and strategy.”

Demand for ESG guidance is increasing, especially given the change in presidential administrations, various partners at Am Law 100 firms said.

“There's a lot of confusion, a lot of waiting because we have a general sense of the [Trump] administration’s policies, but we have yet to see how any of those policies are going to be implemented,” said Rachel Roosth, partner and co-lead of Norton Rose Fulbright’s ESG and human rights practice. She added that she’s consuming perhaps more news than ever as she works to keep up with changing policies and guidance on ESG from governments both domestic and abroad to keep clients informed.

Increased Demand for Class Action Defense

One area of ESG work expected to continue at pace is the defense of class actions filed against businesses by activist shareholders or other groups.

“We are expecting increased demand,” said Rebecca Grapsas, co-lead of Weil’s sustainability and ESG group and partner in the firm’s public company advisory group. “The disclosure regulations are one year closer now to companies having to comply. ... We’re also one year closer on the supply chain side of things; There will be penalties to companies who get that wrong.”

ESG claims saw a 15% increase in class action activity year over year, according to Norton Rose Fulbright’s recently published [litigation trends survey report](#). The survey included over 400 general counsel and in-house litigation executives. More businesses told Norton Rose they expect increased exposure to ESG disputes in the coming year, up to 27% from 24% the year prior.

The backlash to diversity, equity and inclusion initiatives, which is generally considered part of the “social” component of ESG, is putting more pressure on companies. Some 79% of the clients who told Norton Rose they were concerned about increased ESG risk said they expected more altercations related to ESG’s social aspects this year up from 58% last year.

A close second was environmental regulations, which 75% of survey respondents said they expect to drive disputes. Nearly half of the respondents to Norton Rose’s survey said they expect more exposure to ESG litigation because of pressures to support those policies.

“I don’t see a reason why we would see fewer disputes, if anything, I would expect them to increase,” Roosth said. “There are very differing views on ESG issues and I think when people feel like they’re aligned with the dominant [political] party on a particular issue, they feel emboldened and so that could encourage plaintiff action on one end of the spectrum.”

On the other hand, Roosth noted, “If they’re not aligned with the government [on ESG issues], they have to take matters into their own hands and use the courts to try and affect the change they’re looking for.”

A Patchwork System of Regulations

States are likely to pick up any slack in enforcing ESG regulations that the federal government may drop. “Obviously, there are various state attorneys general bringing actions as well and bringing up public nuisance claims,” Grapsas said.

California, for example, is attempting to adopt climate-related disclosure laws for private and public companies. “They’re new, and depending on your point of view, they are considered to be groundbreaking or outrageous,” said William Troutman, partner at Norton Rose, head of its U.S. consumer markets practice and co-lead of the firm’s ESG and human rights practice.

There are laws limiting consideration to ESG initiatives in at least 20 states, while 41 states have regulations related to ESG investing on the books or pending approval.

At the federal level, the U.S. Securities and Exchange Commission adopted new rules in March 2024 under the Biden administration that would require companies to disclose much more about their climate-related business risks, goals and actions. The rule has provoked criticism, including from the American Legislative Exchange Council, which consists of mostly conservative state legislators who argue the rule oversteps the SEC’s congressional authority. It faced challenges in the Fifth Circuit Court of Appeals and from states including Iowa, Ohio, Louisiana, Texas and West Virginia.

“There’s pending legislation and the rule was stayed,” said Troutman. “The question is will it proceed, or will the SEC withdraw it rather than just leave it stayed?”

On a global front, companies with foreign supply chains are particularly reliant on attorneys to sort out the best ways to avoid running afoul of local ESG laws and regulations.

“Our clients are trying to be compliant everywhere, all the time,” Troutman said. “So it is, to a certain degree, a consistent game of Whack-a-Mole trying to figure out what’s going on and how you comply. ... One of [our] roles is risk spotting and risk management.”

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Top 5 ESG considerations for US investors under the Trump-Vance administration

 [reuters.com/legal/legalindustry/top-5-esg-considerations-us-investors-under-trump-vance-administration-2025-02-11](https://www.reuters.com/legal/legalindustry/top-5-esg-considerations-us-investors-under-trump-vance-administration-2025-02-11)

Levi McAllister, Celia Soehner, Daja Apetz-Dreier

President Donald Trump and Vice President JD Vance salute while accompanied by first lady Melania Trump and their son Barron after they arrived inside Capital One Arena on the inauguration day of his second presidential term, in Washington, January 20.

REUTERS/Amanda Perobelli Purchase Licensing Rights  , opens new tab

February 11, 2025 - The 2024 US presidential election has ushered in significant shifts in the regulatory environment surrounding environmental, social, and governance (ESG) issues. With the Trump-Vance administration now in office, the administration has made clear its anti-ESG agenda, signaling a rapidly evolving landscape that could profoundly impact ESG strategies, disclosure requirements, and compliance efforts.

At the same time, ESG-related legislative and regulatory initiatives from individual US states and the EU are also on track to bring further changes to this space in the coming months and years. As federal, state, and international ESG regulatory frameworks evolve, careful monitoring of these developments will be key to adapting to new risks and opportunities.

Here, we outline the top five ESG considerations for US investors in 2025, including those that will be affected by the new administration.

1. The SEC's climate disclosure rules and leadership changes

The US Securities and Exchange Commission (SEC) plays a pivotal role in shaping ESG regulations, and the incoming administration's influence is expected to shift its priorities. Under the Biden administration, the SEC adopted climate-related disclosure rules in March 2024, requiring public companies to report certain climate-related risks in registration statements and annual reports.

However, implementation of these rules was voluntarily stayed following legal challenges, now consolidated in the US Court of Appeals for the 8th Circuit. These challenges invoke the major questions doctrine, First Amendment issues, and administrative law.

Paul Atkins, President Trump's nominee for SEC Chair, has been a vocal critic of the climate disclosure rules. His appointment signals the possibility of regulatory rollbacks or a less aggressive defense of the rules' legality. Regardless, companies must adhere to existing guidance, including the SEC's 2010 interpretative guidance on climate disclosures, and continue to assess whether disclosure, if any, would be necessary regarding material risks related to climate.

2. State-level ESG regulations: spotlight on California

California remains a trailblazer in climate legislation, with three pieces of legislation that demand robust corporate compliance. Passed in October 2023, this trio of laws will impact a wide range of companies with operations in the Golden State. In brief, they are:

- SB 253, the Climate Corporate Data Accountability Act, which requires companies with over \$1 billion in revenue to report Scope 1 and Scope 2 greenhouse gas emissions starting in 2026, with Scope 3 disclosures mandated by 2027;
- SB 261, the Climate-Related Financial Risk Act, which obligates companies with revenue exceeding \$500 million to disclose climate-related financial risks by 2026; and
- AB 1305, the Voluntary Carbon Market Disclosures Act, which mandates reporting on net-zero claims and carbon offset transactions beginning in 2025.

These laws — applicable to businesses operating in California regardless of their headquarters — are already facing legal challenges on First Amendment grounds. Early rulings have favored the state, but ongoing litigation creates uncertainty. Noncompliance carries steep financial penalties, ranging from \$50,000 to \$500,000 annually, alongside reputational risks. Companies must act swiftly to enhance data collection and reporting systems to meet these ambitious requirements.

3. Voluntary carbon markets under scrutiny

Voluntary carbon markets, a cornerstone of corporate greenhouse gas reduction strategies, are under increasing regulatory scrutiny. Concerns about additionality, permanence, and verification have raised alarms about potential fraud, including double counting offsets and conflicts of interest in price setting.

The Commodity Futures Trading Commission (CFTC) has flagged risks of manipulation and fraud in these markets. Recent adoption of UN-backed standards for global voluntary carbon markets offers US companies an opportunity to align with international frameworks. Nevertheless, businesses must navigate these markets cautiously, addressing legal risks such as fraud allegations and potential antitrust scrutiny.

4. The EU's ESG framework and implications for U.S. investors

The European Union's ESG regulations, particularly the Corporate Sustainability Reporting Directive (CSRD) and Corporate Sustainability Due Diligence Directive (CSDDD), extend compliance obligations to US-based multinational corporations with significant EU operations.

CSRD's phased implementation, starting in 2028, will require non-EU companies with substantial EU activities to adhere to European sustainability standards. Meanwhile, CSDDD, effective in 2027, imposes due diligence obligations for human rights and environmental impacts on companies operating in the EU.

While some US legislators have criticized the extraterritorial nature of these directives, private ordering and investor demands may outweigh regulatory pushback and compel compliance. Noncompliance risks reputational damage and enforcement actions, emphasizing the importance of proactive preparation for these requirements.

5. State and federal divergence on ESG investing

The polarization of ESG investment policies at the state and federal levels presents unique challenges for asset managers and retirement funds.

A number of Republican-led states such as Texas and Florida have enacted legislation prohibiting certain social and political ESG considerations in state-managed funds, while some Democratic-leaning states have rules that favor ESG integration in state assets. This fragmented landscape creates compliance complexities for asset managers and public retirement funds operating across jurisdictions.

At the federal level, the Department of Labor (DOL) is likely to revisit ESG investment rules under ERISA. Stricter regulations could limit the integration of ESG factors in private retirement plans unless they are demonstrably pecuniary. Litigation challenging ESG considerations under fiduciary duty standards is also expected to rise, potentially creating a chilling effect on ESG-driven investment strategies in retirement plans.

Preparing for the new ESG landscape

Investors must remain agile as the regulatory environment evolves under the new administration. Monitoring regulatory developments will be essential, as changes to SEC policies, state-level laws, and federal ESG investment rules unfold. Robust data collection and reporting systems should be developed to meet both US and international disclosure requirements. Evaluating legal risks, including exposure to litigation tied to voluntary carbon market practices and fiduciary duty claims under ERISA, will also be critical.

In addition, aligning strategies with global standards is imperative. Companies must prepare for the extraterritorial application of EU ESG frameworks while balancing compliance with restrictive US policies. Proactive advocacy — collaborating with policymakers and industry groups to shape balanced ESG regulatory frameworks — can further mitigate risks.

As the Trump-Vance administration's approach to ESG regulation takes shape, investors must navigate a dynamic landscape of opportunities and challenges. Proactive engagement with these evolving legal standards will be critical to managing risks and capitalizing on new opportunities in the years ahead.

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Despite Musk's Rebuff, Delaware Must Remain Corporate Law Center

- *Univ. of Delaware expert defends state as corporate law venue*
- *Legal system must respond to innovation and preserve stability*

As a handful of major corporations consider following Elon Musk's lead in moving their incorporation out of Delaware, the debate over Delaware's dominance as the leading state for corporate chartering has intensified.

Some critics have argued that Delaware's corporate law system is primarily driven by the state's desire to maximize revenue, given the large number of corporations incorporated there. However, this linear perspective overlooks the core principle of Delaware's approach: creating an environment that is fair, predictable, and adaptable for businesses.

The state's impartial legal framework allows corporate leaders and shareholders to operate with confidence, knowing legal decisions are based on sound principles rather than financial pressures or external influences.

True, Delaware's success contributes to funding schools, hospitals, and infrastructure and avoids the need for a sales tax—ultimately benefiting both businesses and the public. A thriving corporate sector generates substantial revenue that supports the well-being of Delaware residents who rely on these services.

Yet the state's legal system creates a robust, mutually reinforcing relationship between the state's corporate dominance and its public welfare. It also benefits citizens outside the state, offering a consistent and stable legal framework for companies nationwide, without the greater costs of federal regulation.

Delaware's corporate law has been shaped by its desire to remain the top choice for corporate chartering. However, the state has realized that the best way to maintain that position isn't by favoring one side of the corporate equation over the other, but by creating a legal system that balances certainty with flexibility and provides stability while adapting to a changing business world. Delaware's long-term success stems from this principled, balanced approach, benefiting all parties involved.

The state's corporate law is built on a strong foundation of precedents, offering companies a predictable legal environment where they can confidently plan their affairs. However, this predictability doesn't come at the expense of flexibility. Delaware's courts approach each case individually, considering its unique facts.

The state's laws are regularly updated—sometimes in significant ways—to remain responsive to the evolving business landscape. Examples include reducing the risk of personal liability for directors and officers and permitting companies to reimburse shareholders who incur expenses in proxy contests.

Similarly, Delaware's courts blend consistency with the ability to adapt, offering clear guidance but leaving room for nuanced decisions. Delaware's corporate statute provides a menu of options—defining boundaries while allowing businesses to tailor their governance structures to fit their unique needs.

Delaware's commitment to fairness and evolution ensures that its legal framework remains both stable and innovative. Its jurists—such as Chancellor William Allen in the 1990s and Chief Judge Myron Steele more recently—mirror great legal minds such as Oliver Wendell Holmes and Benjamin Cardozo, who both emphasized the need to balance certainty with flexibility in the law.

Despite these strengths, there is a risk that too much flexibility could lead to uncertainty or inconsistency in certain cases, particularly when businesses seek clearer, more predictable rules. Flexibility in Delaware's system, while essential for growth, can occasionally create ambiguity, which may frustrate companies seeking clear answers to complex questions.

Striking the right balance remains a challenge, as the legal framework must remain responsive to innovation without sacrificing the stability businesses depend on.

To paraphrase Delaware's Justice Andrew Moore during the 1980s takeover era, some critics have suggested that recent legal decisions in Delaware attempt to establish permanent principles. This view overlooks that Delaware's corporate law is continuously evolving, with each decision reflecting a careful, case-specific analysis. Delaware's leaders—judges, lawyers, legislators, and the executive branch—recognize that the system is dynamic and that trial and error are part of any legal evolution.

It's important not to focus solely on specific cases or statutes but to recognize the broader, ongoing process that has kept Delaware at the forefront of corporate governance for over a century.

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Write for Us: Author Guidelines

Banks Wanted Curbs on CFPB. They Got Chaos and Confusion Instead

By Evan Weinberger

- Trump administration taking major steps to eliminate CFPB
- Banks were seeking defanged consumer finance watchdog agency

Banks and other financial companies were seeking a lighter touch and more certainty from the Consumer Financial Protection Bureau.

What they're getting is a sudden evisceration of the agency. And it's starting to cause industry jitters.

"Having this much uncertainty in the regulatory arena is of concern here at America's Credit Unions," Carrie Hunt, the credit union trade association's chief advocacy officer, said on a Monday call with reporters.

The CFPB's supervision, enforcement, rulemaking, and other operations are on hold while a team from Elon Musk's Department of Government Efficiency pores over the agency's internal documents—including confidential supervisory information from companies the CFPB oversees and customer information.

That might provide a "sugar high" for companies facing enforcement actions, examinations, and other CFPB requirements, said Laurel Loomis Rimón, a Jenner & Block LLP partner and a former CFPB enforcement attorney.

"In the short-term, it's going to feel good to a lot of companies," she said.

But like a sugar high, that good feeling is likely to fade for companies that want to abide by the law. "What you're going to see in more of the medium term is the effects of the chaos and the uncertainty," said Rimón, a former federal prosecutor.

The chaos at the CFPB has the potential to throw sand into the workings of the nearly \$12 trillion mortgage market as well as banks with \$10 billion in assets or more and other nonbank companies.

Vought at the Helm

Russell Vought, the CFPB's acting director and the Senate-confirmed director of the Office of Management and Budget, told all agency employees Monday to do nothing while the agency's Washington headquarters is shut for the week.

Vought, installed in his post at the CFPB on Feb. 7, also announced that he would draw no funds from the Federal Reserve in the coming quarter in a post on the X social media platform on Feb. 8.

The agency has \$711 million in reserves and is funded through disbursements from the Fed, not Congressional appropriations.

The CFPB didn't respond to a request for comment. Vought's order blocked the agency's external communications.

'What's the Plan?'

Banks and other companies had been hoping for new leadership to roll back Chopra's more aggressive guidance and regulations, do basic supervision and enforcement, and provide a level playing field where nonbanks get similar oversight on consumer issues as banks do, according to an industry source who was granted anonymity to discuss private conversations with financial institutions and trade groups.

With Vought and Musk seemingly following the playbook deployed to hobble USAID, companies may not get what they're hoping for.

"What's the plan? The plan just seems to be tear it down and there we go," said Brendan McKay, the owner of McKay Mortgage Co. LLC in Bethesda, Md., and the chief advocacy officer at the Broker Action Coalition, a mortgage broker industry group.

Lost Flexibility

Freezing the CFPB poses problems on the regulatory front, according to David Silberman, a lecturer at Yale Law School and the CFPB's former assistant director for research, markets, and regulations during the Obama and first Trump administrations.

The CFPB has authority over about 10 regulations that get adjusted annually for inflation. One exempts small banks from a requirement to create escrow accounts for high-priced mortgages.

If that rule isn't adjusted for inflation, the number of covered community banks will expand each year, Silberman said.

The CFPB's rule writers are also necessary in an emergency. During the Covid-19 pandemic, Congress made several changes to consumer finance laws, such as making it easier to get student loan and mortgage forbearance agreements.

But the CFPB had to implement them, Silberman said.

And where consumer finance is rapidly evolving, particularly outside the banking system, the CFPB can adapt old rules to new products, he said.

"You lose all that capacity for flexibility and adjustment, but also a source for clarity" if the CFPB isn't functioning and Congress doesn't assign those responsibilities to other agencies, Silberman said.

Force Multiplier

Companies may also rejoice at the idea of a CFPB enforcement unit cut off at the knees.

But enforcement would persist among state regulators, private attorneys, and prudential banking regulators.

"The idea that there is no regulation in consumer financial services is wrong," said Cathy Brennan, a Hudson Cook LLP partner whose practice focuses on fintech.

Unless Congress eliminates the CFPB through legislation, a future Democratic administration could go back and conduct retroactive enforcement, attorneys say.

Companies that want to follow the law may also be at a competitive disadvantage to those that don't.

"Without the CFPB being the big bad wolf out there, those companies could cause a great deal of harm in a very short period of time to consumers," said Mercedes Tunstall, a partner at Cadwalader Wickersham & Taft LLP who counsels companies overseen by the CFPB.

The cryptocurrency industry, such as Coinbase CEO Brian Armstrong, has been particularly vocal in applauding the Trump administration's moves against the CFPB.

"When you have industry cheering on the demise of a consumer protection agency, you have to wonder why are they cheering on a lack of enforcement," said Richard Horn, the co-managing partner of Garriss Horn LLP and a former top CFPB attorney.

Rule of Law

The wholesale hobbling of the CFPB is part of a broader question about the rule of law in the US.

On Feb. 9, Vice President JD Vance mused on X about not following court orders, and there are indications the administration is entertaining similar thoughts.

Vought's order seeks to block actions otherwise mandated by the 2010 Dodd-Frank Act.

If the rule of law is in question, the US financial system might fall apart, said Brennan, who has been critical of many CFPB policies, such as an interpretive rule applying some credit card regulations to buy now, pay later products.

"This is really not about defending the CFPB and its right to exist, it's more about defending the rule of law," she said.

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Wirecard AG

Prosecutors drop some charges against former Wirecard chief

Decision announced in effort to speed up case that has been under way since December 2022



Markus Braun, who has been in custody since July 2022, has consistently denied any wrongdoing © Lukas Barth/Reuters

Olaf Storbeck in Frankfurt 6 HOURS AGO



Munich prosecutors have dropped some of the criminal charges against former Wirecard chief executive Markus Braun as they believe he is all but certain to receive a long prison sentence for the remaining charges in the case.

The prosecutors made the decision, announced in a statement by the Munich district court on Wednesday, in an effort to speed up a case that has been under way since December 2022.

Braun and two other former [Wirecard](#) managers are facing charges of having run a “criminal racket” responsible for fraud worth billions of euros.

Among the dropped charges are allegations of falsifying Wirecard’s 2015 annual results, 26 counts of market manipulation and certain cases of alleged embezzlement linked to suspicious loans to Wirecard business partners.

Braun will continue to face charges over the alleged falsification of the collapsed fintech company’s 2016 to 2018 annual results, a potentially inaccurate ad-hoc release over interim findings in a KPMG special audit, and suspicious loans to Asian business partners. He is also accused of defrauding a consortium of banks over a €1.75bn revolving credit facility.

Braun, who has been in custody since July 2022, has consistently denied any wrongdoing. He has argued he was deceived by his second-in-command, Jan Marsalek, who absconded after the collapse and is thought to be hiding in Russia.

Wirecard, once a high-flying payments company that at its peak was valued at €24bn on the Frankfurt Stock Exchange, crashed into insolvency in 2020 in one of Europe’s largest accounting frauds.

One of the co-defendants in the trial has turned chief witness and given evidence against Braun.

At the start of the case, prosecutors took four hours to read out the 89-page indictment, which included charges of fraud, market and accounting manipulation and embezzlement spanning five years. Under German law, the maximum possible jail term is 15 years.

Presiding judge Markus Födisch last month suggested to prosecutors that they should streamline the indictment. He argued it would demand substantial additional time to review the evidence for the now-dropped charges but they were unlikely to make a meaningful impact on a potential sentence.

Prosecutors told the court on Wednesday that they expected “a conviction” for all the remaining offences “based on the investigation results, as well as the findings of the trial”. They added that the remaining alleged crimes were “so serious” that a “severe punishment” could still be imposed.

Before Wednesday's development, there had been no end in sight for the trial and the court had scheduled hearings for the remainder of the year. The court told the FT on Wednesday that it was unclear how much the dropping of the charges would shorten the trial.

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Research Org Faces Investor Suit Over Customer Cost-Cutting

By **Katryna Perera**

Law360 (February 11, 2025, 6:41 PM EST) -- Clinical research organization Icon PLC has been hit with a proposed shareholder class action in New York federal court, alleging it misled investors about a slowdown in demand the company experienced due to customers implementing drastic cost-reduction measures that involved research and development expenditures.

Chan Kwok Shing, an Icon shareholder, filed a **complaint** on Monday against the company, its CEO Stephen Cutler, and former Chief Financial Officer Brendan Brennan. The suit is on behalf of a proposed class of all purchasers of Icon's ordinary shares between July 27, 2023, and Oct. 23, 2024.

Icon is a clinical research organization that helps pharmaceutical companies bring new drugs and medical devices to market, which includes conducting all aspects of phase I to phase IV clinical trials. But according to the complaint, the company failed to warn shareholders about a plunge in revenue due to customer cost-cutting, leading to a pair of stock price declines that saw its shares sink from over \$280 to about \$200.

The company has two main customer groups — large pharmaceutical companies and biotechnology companies — but the complaint states that most of its revenue is earned from the former. Additionally, Icon secures most of its new business contracts through its responses to requests for proposals, or RFPs, that it receives from prospective and existing customers.

The complaint also states that Icon's service agreements allow customers to cancel all or part of any services that remain outstanding under the contract.

Shing says that leading up to the proposed class period, Icon's customers began looking at ways to reduce their research and development, or R&D, expenditures "in response to a tightening capital and high interest rate environment."

"To reduce costs, many of Icon's large pharmaceutical customers implemented drastic cost reduction programs that sought to cut billions of dollars in annual R&D expenditures," the complaint states. "For example, in the fall of 2023, Pfizer announced it was launching a 'cost realignment program' that would cut \$4 billion in annual costs by the end of 2024 with 70% of total reductions targeted specifically at R&D costs."

These customers also began moving away from full-service outsourcing arrangements, such as those offered by Icon, in favor of hybrid models that allowed them to choose which specific functions of a clinical trial to outsource, the complaint states.

"The shift allowed customers to reduce fees paid to [clinical research organizations] by performing a greater portion of their clinical studies in-house," the complaint states. "Icon's smaller biotechnology customers, who are largely dependent on funding from outside investors, were also in the midst of an unfavorable funding environment, which limited their ability to engage CROs for clinical trial work."

Shing says these changing market dynamics and their impact on Icon's business were unbeknownst to investors because Icon and its executives claimed that the company was "enjoying robust client demand and in fact benefitting from market shifts as it meant that Icon's clients were consolidating their CRO providers, with a bigger market share going to Icon."

"Defendant Cutler represented to investors that ICON was 'well placed to benefit' from the prevailing market challenges, as customers 'were happy' to consolidate their overall R&D spend with the company," the complaint states.

In reality, though, Icon's business, operations and prospects had significantly deteriorated due to customers' cost reduction measures and other funding limitations, Shing claims.

"Icon's customers had canceled contracts, limited or reduced engagements, delayed clinical trial work, and/or failed to enter into new contracts with Icon for additional clinical trial work at historical rates once existing projects ended (or were scheduled to end) in 2024," the complaint states. "Rather than consolidate more CRO business to Icon, the company's two largest customers had actually diversified their CRO providers away from the company."

Additionally, the complaint alleges that a "material portion" of the RFPs Icon had highlighted as indicative of client demand was actually just sent to Icon to gauge industry prices.

"As a result, Icon was not benefiting from market dynamics as defendants represented to investors during the class period, but rather was experiencing undisclosed adverse impacts as a result of the broader biotechnology funding slowdown," the complaint states.

The truth began to come to light in October 2024 when Icon reported a revenue shortfall of more than \$100 million in its financial results for the third fiscal quarter of the year. The company also revealed that customer demand had deteriorated and that two of its large pharmaceutical customers had curtailed trial work with the Icon due to ongoing budgetary programs, the complaint states.

As a result, Shing says Icon cut its annual revenue guidance for fiscal year 2024 by \$220 million at the midpoint.

A Truist Securities analyst also published a report summarizing discussions with Icon's management about the recently reported financial reports, revealing that Icon "had known for a while that its two largest customers were diversifying CRO providers away from the company, as management described the dynamic as 'not a new development' and conceded that the influx of competitors 'did not come as a surprise to Icon,'" the complaint states.

Following all this news, Icon's share price declined by more than 20% over two days, from \$280.76 per share on Oct. 23, 2024, to \$220.47 per share on Oct. 25, 2024, according to the complaint.

A month later, following the end of the class period, Shing says Cutler revealed during a conference call with industry analysts that a material portion of RFPs Icon had received from its biotechnology customers had been issued only to obtain better pricing elsewhere.

Finally, in January, Icon issued financial guidance for 2025, and the defendants confirmed that "the disappointing guidance reflected a continuation of the adverse effects on the company's financial performance as a result of softness in biotech clinical research."

On this news, Shing says Icon's shares fell 8% from \$217.99 on Jan. 13, 2025, to \$200.24 on Jan. 14, 2025.

The suit seeks damages, attorney fees and a jury trial. Representatives for the parties did not immediately respond to requests for comment on Tuesday.

Shing is represented by Samuel H. Rudman, Brian E. Cochran and Francisco J. Mejia of Robbins Geller Rudman & Dowd LLP, and Ralph M. Stone of Johnson Fistel LLP.

Counsel information for the defendants was not immediately available.

The case is Shing v. Icon PLC et al., case number 2:25-cv-00763, in the U.S. District Court for the Eastern District of New York.

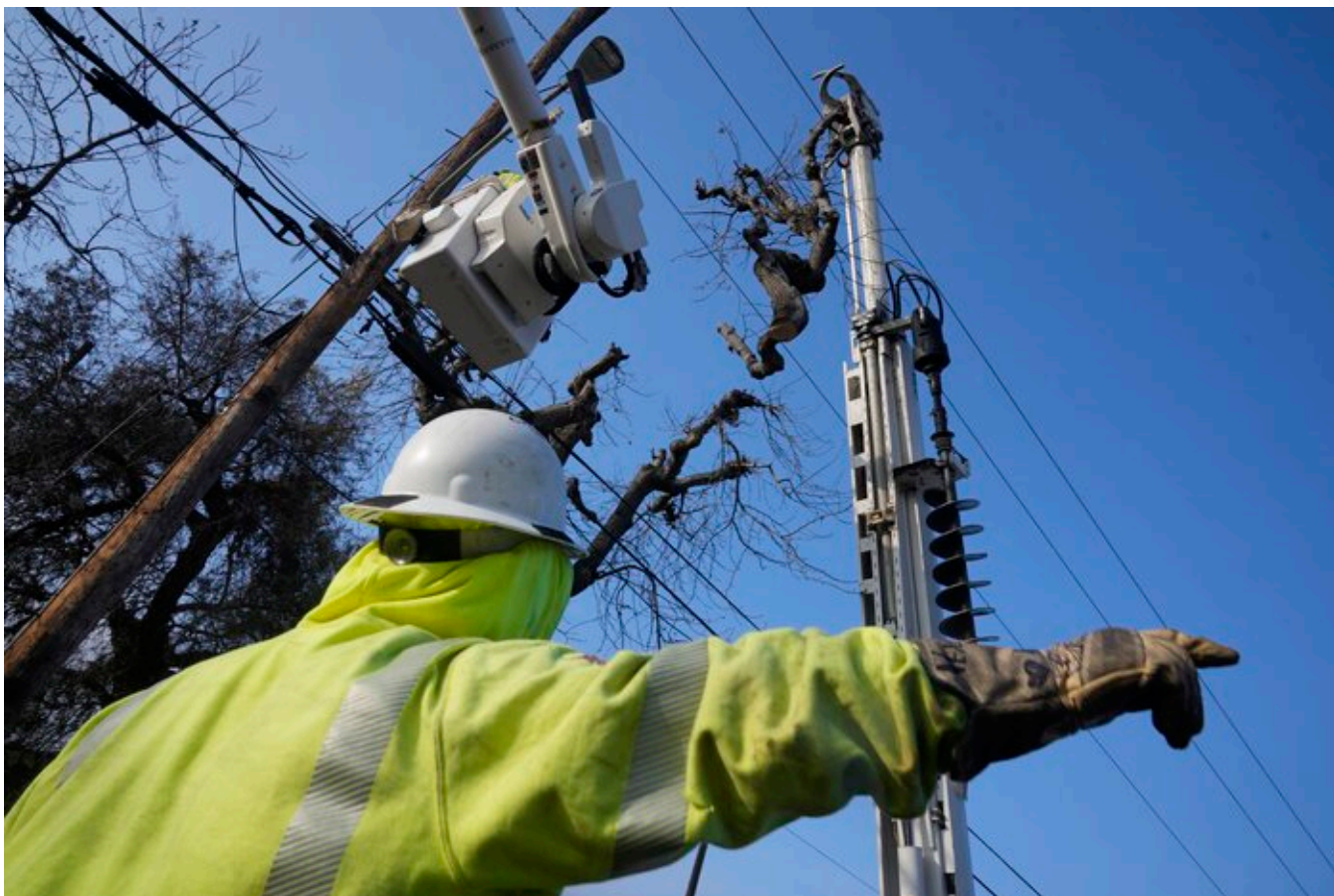


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SoCal Edison Investors Sue Over LA Wildfire Mitigation Claims

By **Katryna Perera**

Law360 (February 11, 2025, 11:02 PM EST) -- The parent company of Southern California Edison was hit with a putative shareholder class action on Tuesday that alleges the public utility company misled investors about implementing the power company's wildfire-mitigation measures in the lead-up to the Eaton and Hurst fires that devastated an area north of Los Angeles.



Southern California Edison utility workers restore power in the aftermath of the Eaton fire in Altadena, California, last month. SCE's parent company has been sued alleging the company misled investors about implementing the power company's wildfire-mitigation measures. (AP Photo/Damian Dovarganes)

Shareholder Felipe Antillon filed a **complaint** against Edison International, its CEO Pedro Pizarro and its Chief Financial Officer Maria Rigatti. Edison is the parent holding company of SCE, according to the complaint.

The suit is filed on behalf of a proposed class of all individuals and entities that purchased or acquired Edison publicly traded securities between Feb. 25, 2021, and Feb. 6, 2025.

According to the complaint, Edison claimed during the proposed class period that SCE uses its "Public Safety Power Shutoffs" program to "proactively de-energize power lines to mitigate the risk of catastrophic wildfires during extreme weather events."

After the Eaton fire began in early January, Edison stated in a press release that its "distribution lines immediately to the west of Eaton Canyon were de-energized well before the reported start time of the fire, as part of SCE's Public Safety Power Shutoff program," the complaint states.

However, Antillon alleges that on Jan. 12, a few days after the Eaton fire began, Edison admitted that there were "no interruptions or operational/electrical anomalies in the 12 hours prior to the fire's reported start time until more than one hour after the reported start time of the fire," meaning that the lines had not been de-energized.

According to the complaint, the following day, a California state court suit was filed alleging that the fires originated from Edison's power lines, with eyewitness accounts and photographs showing that Edison's electrical equipment started the fire.

Antillon said on this news, Edison's share prices dropped by \$7.73, or approximately 11.89%, on Jan. 13, 2025.

A few weeks later, another stock drop occurred when the Wall Street Journal reported that SCE "submitted two letters to the California Public Utilities Commission with updates on its analysis of the Eaton and Hurst wildfires, saying it believes its equipment may be associated with the start of the Hurst fire," the complaint states.

Antillon says on this news, Edison's share price dropped by \$1.28, or approximately 2.4%, on Feb. 6, 2025.

The Eaton fire burned over 14,000 acres, killed 17 people and destroyed more than 9,000 structures in Altadena, California, while the Hurst Fire burned roughly 800 acres in the San Fernando Valley and did not cause any fatalities or building destruction.

In its filings to the California Public Utilities Commission, SCE **said that** according to the Los Angeles Fire Department's investigation, hardware on one of its transmission towers near the origin of the Hurst Fire became detached and caused multiple parts of the tower to collapse the night of Jan. 7.

"The cause of the fire remains under investigation, and SCE will continue to cooperate with fire investigators," the utility's letter said. "Absent additional evidence, SCE believes its equipment may be associated with the ignition of the Hurst Fire."

In a separate letter to the commission regarding the Eaton fire, SCE said it's still assessing video footage released by The New York Times that appears to show several flashes of light near an SCE transmission tower in Eaton Canyon just before the fire ignited.

SCE told the commission it has not yet discovered any "typical or obvious evidence," such as "broken conductors or fresh arc marks," that would link the flashes of light to its equipment.

The utility is already facing **more than 60 lawsuits** from Altadena residents blaming its equipment for the blaze.

In a statement to Law360 on Tuesday, a spokesperson for Edison said the company will "review and address the allegations."

Counsel for Antillon did not immediately respond to requests for comment Tuesday. The suit seeks damages, attorney fees and a jury trial.

Antillon is represented by Laurence M. Rosen of The Rosen Law Firm PA.

Counsel information for the defendants was not immediately available.

The case is Antillon v. Edison International et al., case number 2:25-cv-01154, in the U.S. District Court for the Central District of California.

—Additional reporting by Rachel Scharf and Elizabeth Daley. Editing by Michael Watanabe.



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Celsius Crypto Spinoff Stockholders Sue For Board Docs

By **Emily Lever**

Law360 (February 11, 2025, 10:22 PM EST) -- Stockholders of Ionic Digital Inc., a company formed to hold and operate digital mining assets of bankrupt Celsius Network LLC, have sued in Delaware's Court of Chancery for access to the company's stockholder lists in order to run a competing slate of directors.

Ionic's board of directors has not carried out the Celsius Chapter 11 plan and made questionable business decisions, according to the complaint filed Monday by stockholders Veton "Tony" Vejseli, Brett Perry and Christopher Villinger, but Ionic has refused to provide records needed to hold a vote.

"The plaintiffs, who sustained substantial losses after depositing their cryptocurrency in Celsius's 'Borrow' and 'Earn' programs, received shares of Ionic as partial compensation for their claims," the complaint said. "They have watched with growing concern as the board has repeatedly demonstrated that it is incapable of overseeing the business as originally proposed."

Under Celsius' Chapter 11 plan, shares in the successor company worth \$20 each were distributed to 86,000 creditors. The plan said stockholders would need board approval to sell their equity up until the successor company went public in May 2024, but that change never went into effect and stockholders remain unable to sell the equity freely, according to the complaint.

The board's directors have paid themselves lavishly — \$420,000 a year each — but have proved "not capable of overseeing the business as contemplated," according to the complaint.

Ionic has seen significant churn in its upper management, going through three CEOs, three chief financial officers, two auditors and two chief legal officers in the space of a year, according to the complaint. The board, too, has lost four members since January 2024, and only four remain, the complaint says.

Under the leadership of the board — whose members were selected because they served on the unsecured creditors' committee — Ionic has failed to accrue shareholder value and stockholders are unable to get liquidity for their stock, the plaintiffs say.

"Millions of dollars have been funneled out of Ionic, revictimizing stockholders already hurt by Celsius's pre-bankruptcy fraud," the complaint said.

Vejseli, Perry and Villinger have obtained the financial backing of crypto companies Figure Markets Inc. and GXD Labs LLC to carry out regime change within the company, according to the complaint. Figure Markets attempted in the past to buy Ionic stock but was turned down, and GXD was a major vendor of Celsius and helped the unsecured creditors committee investigate the debtor's assets during the bankruptcy process.

The trio of plaintiffs plans to run a slate of candidates for election to the board later this year and claims to have collected data indicating that the holders of 25% of Ionic's stock support holding a vote. To that end, the plaintiffs requested in September 2024 and again in December that Ionic produce a list of its stockholders.

But Ionic said it would turn over the list only if the three stockholders sign an agreement not to use funding from non-stockholders for their effort to run a competing slate of directors. That provision is

specifically targeted at shutting out Figure Markets and GXD Labs, according to the complaint.

The court should order Ionic to turn over its books and records and the stock list as it is legally required to do, the complaint says.

Celsius **filed for bankruptcy** in July 2022, a month after freezing customer withdrawals as turmoil began to bubble up across the crypto industry, effectively trapping \$4.7 billion in digital assets on the Celsius platform.

The company **won approval** in November 2023 for its Chapter 11 plan, which, following significant modifications due to regulatory review, went effective in January 2024.

Celsius founder Alex Mashinsky **pled guilty** to commodities fraud and securities fraud in New York federal court in December. He was indicted on charges of lying to Celsius customers about the company's profitability and core aspects of its business practices to coax them into investing their crypto assets with Celsius and falsely inflating the price of the platform's native token, CEL, through manipulative trading and large undisclosed CEL purchases by Celsius.

Vejseli, Perry and Villinger didn't immediately respond to a request for comment Tuesday.

Vejseli, Perry and Villinger are represented by A. Thompson Bayliss and Nicholas F. Mastria of Abrams & Bayliss LLP and Adrienne Ward, Lori Marks-Esterman and Jacqueline Y. Ma of Olshan Frome Wolosky LLP.

Counsel information for Ionic was not available.

The case is Veton Vejseli et al. v. Ionic Digital Inc., case number 2025-0138, in the Court of Chancery of the State of Delaware.

The bankruptcy case is In re: Celsius Network LLC et al., case number 1:22-bk-10964, in the U.S. Bankruptcy Court for the Southern District of New York.

--Additional reporting by Pete Brush and Vince Sullivan. Editing by Linda Voorhis.



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Fitness Co.'s Brass Faces Derivative Suit Over Franchise Woes

By **Emilie Ruscoe**

Law360 (February 11, 2025, 10:43 PM EST) -- Officers and directors of Pure Barre's parent company Xponential Fitness face shareholder derivative claims following the company's disclosure of a federal criminal investigation, regulatory scrutiny and investor ire over the alleged manipulation and harassment of its "financially crushed" franchisees.

In a **complaint filed Monday** in California federal court, Xponential investor Stefanie Nelson said former Xponential CEO Anthony Geisler, current Chief Financial Officer John Meloun and several board members should face liability for luring "corporate refugees" into investing in franchise licenses for its fitness studios by lying to them about the economics of the businesses, then intimidating and threatening franchisees to keep them in line.

As a result, Nelson alleged, "multiple franchisees have declared bankruptcy, lost their homes, or suffered mental health crises."

"Yet Xponential has worked to keep these failures hidden, using non-disclosure agreements and aggressive legal tactics to silence criticism," and it continued to push for aggressive growth, Nelson alleged.

The investor alleged the company targeted prospective franchisees aiming to leave corporate jobs and potentially willing to invest funds from their retirement savings accounts, enticing them by flying them to California to "wine and dine them at expensive restaurants."

But Nelson said these targets were fed misrepresentations about what their sunk costs and potential earnings might be if they signed up. If franchisees found themselves seeking an out, the Nelson alleged, they were sometimes met with "threats and intimidation" as the individual defendants sought to "maintain the façade of success" by keeping studios open.

Starting at the time of the company's initial public offering in July 2021, Nelson said, its shares were artificially inflated because the company excluded from certain key financial metrics sales data from underperforming locations.

Between July 2021 and March 2024, the investor added, the company also allegedly stated it had never permanently shuttered a location when in fact it had closed "at least 30 stores."

According to Nelson, the Xponential brass also allegedly hid that eight of 10 Xponential fitness brands were money losers; at least half of its studios never turned a profit, and more than 100 of its franchises were up for resale at deep discounts.

"As a result, many of the company's franchisees were in substantial debt, experienced high attrition rates, and operated non-viable studios that had no practical path to profitability," Nelson said.

She referenced a June 2023 short-seller's report detailing certain claims about Xponential's franchisees and also pointed to the company's December 2023 disclosure that the U.S. Securities and Exchange Commission sought documents from the company.

Trading prices for Xponential shares fell after both of those events, Nelson alleged, adding that those prices fell again in May 2024, when the company sued Geisler, its then-ousted CEO, alleging in that

suit that the company had been hit with a subpoena in connection with a criminal investigation of the company.

Since February 2024, the investor noted, the company has also faced proposed investor class action claims over the alleged mistreatment of its franchisees. And in March 2024, a **derivative suit was filed**, alleging claims similar to Nelson's.

"The individual defendants' misconduct has exposed Xponential to substantial liability," Nelson said in her complaint Monday.

According to its website, Xponential's portfolio currently includes Rumble, which offers boxing classes; Cyclebar, which offers indoor cycling classes; a weight loss and wellness program called Lindora; Stretchlab, an assisted stretching program; a pilates brand; a yoga brand; and a strength training brand.

Xponential shares were priced at \$12 for its IPO, and market records show its shares have traded for nearly \$32, but the company closed out trading Tuesday at just over \$17.

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

Nelson is represented by Melissa A. Fortunato and Marion C. Passmore of Bragar Eagel & Squire PC.

Counsel information for the defendants wasn't available Tuesday.

The case is Nelson v. Geisler et al., case number 8:25-cv-00258, and the proposed investor class action is In re Xponential Fitness Securities Litigation, case number 8:24-cv-00285, both in the U.S. District Court for the Central District of California.

--Editing by Lakshna Mehta.

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Olaplex Can't Escape IPO Investors' Formula Change Suit

By **Sydney Price**

Law360 (February 11, 2025, 6:01 PM EST) -- Olaplex and some of its executives must face investor claims that the company's initial public offering documents did not disclose the European Union had banned a controversial ingredient known as lilial, which would impact Olaplex's main product offering, but the IPO underwriters and selling stockholders were allowed to escape the suit.

In the **order on Friday**, the court agreed with the investors' allegation that Olaplex's offering documents for its September 2021 IPO were misleading because they only warned of potential risks to the company, and not those that had already manifested or were extremely likely to occur after the EU banned lilial in August 2020.

The ban on the use of lilial as an ingredient in cosmetics took effect in March 2022, five months after Olaplex's IPO, according to the suit. Several research studies have linked lilial to infertility, the complaint notes.

In June 2021, without informing the public, Olaplex reformulated one of its best-selling products, the No. 3 Hair Perfector, removing lilial as an ingredient. But Olaplex chose to continue selling its existing stock of the old version of the product until at least January 2022, subjecting consumers to significant health risks, the suit alleges.

U.S. District Judge Stephen V. Wilson rejected Olaplex's argument that the statements were not misleading because the company had already reformulated the product before the IPO. The warnings in the offering documents suggested that an EU ban was purely hypothetical, Judge Wilson said.

"Ultimately, whether investors would consider the EU's ban of lilial the same as Olaplex No. 3 being unsafe such that it was misleading for Olaplex to characterize that risk as purely hypothetical is a question of fact not suited for resolution at the pleadings stage," the judge said.

Investor Leslie Lilien filed the initial complaint against Olaplex in November 2022. A consolidated version of the complaint filed in April 2023 named more defendants, including the IPO's underwriters.

Also named in the suit are Olaplex's selling stockholders: various branches of private equity company Advent International and Advent Partners, and investment fund Mousserena LP. Together, they held about 96% of Olaplex stock prior to the IPO and about 83% after, according to the complaint.

But Judge Wilson said the claims against them in the amended complaint were filed too late.

"Because plaintiff was aware of the material omissions in March 2022, her claims against the Advent Fund defendants, Mousserena and the underwriter defendants filed on April 28, 2023, are barred by the one-year statute of limitations," the judge said.

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

The investors are represented by Carol C. Villegas, Irina Vasilchenko, Lisa M. Strejlau and Danielle Izzo of Labaton Keller Sucharow LLP, and Robert V. Prongay and Charles H. Linehan of Glancy Prongay & Murray LLP.

Olaplex is represented by Anne Johnson Palmer, Daniel A. Yanofsky and Peter L. Welsh of Ropes &

Gray LLP.

The case is Leslie Lilien v. Olaplex Holdings Inc. et al., case number 2:22-cv-08395, in the U.S. District Court for the Central District of California.

--Editing by Lakshna Mehta.

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Labaton Keller Appointed Lead In Healthcare Co. IPO Suit

By **Katryna Perera**

Law360 (February 11, 2025, 7:37 PM EST) -- A New York federal judge on Tuesday appointed Labaton Keller Sucharow LLP as lead counsel in a securities class action accusing nursing-care provider PACS Group Inc. of misleading investors about false Medicare claims and regulatory investigations tied to its initial public offering.

U.S. District Judge Lewis J. Liman **issued an order** naming Labaton Keller's client 199SEIU Health Care Employees Pension Fund as lead plaintiff, beating out plaintiff Christopher Manchin, saying the fund was best positioned to lead the proposed class due to its significant financial losses.

According to the order, the pension fund suffered a loss of roughly \$460,000, compared to Manchin, who lost \$2,100.

Manchin, who is represented by Glancy Prongay & Murray LLP, had argued the pension fund should not be appointed as the sole lead plaintiff because it lacks standing to bring claims related to PAC's April 2024 **initial public offering**, the order states.

"According to Manchin, the pension fund 'lacks standing to allege the IPO claims because it purchased all its shares in or after the Sept. 6, 2024 [secondary public offering]," Judge Liman said.

But Judge Liman said Manchin's argument is without merit because there is "no requirement that a court select as lead plaintiff only a movant with standing to assert every possible claim against every defendant, nor does the presumptive lead plaintiff fail to satisfy the typicality prong if he or she cannot assert every possible claim."

The judge also said the other arguments Manchin asserted in support of his application to be appointed lead plaintiff were all unpersuasive.

Manchin **launched the suit** in November, alleging PACS took a number of steps to give the illusion of profitability ahead of its April IPO, including concealing from investors that it had submitted false Medicare claims to drive up its net income and adding nonexistent staff to meet minimum requirements for the healthcare facilities it operates. PACS operates assisted living and other facilities through its subsidiaries.

In addition to PACS, its CEO Jason Murray and Chief Financial Officer Derick Apt are individual defendants in the suit. Several of its IPO underwriters, including J.P. Morgan Securities LLC and Goldman Sachs & Co. LLC, as well as directors who signed the registration statement, are also named.

The class period begins April 11, 2024, the day PACS' common stock began publicly trading. In the IPO, PACS sold more than 21 million common stock shares for \$21 each.

Throughout the class period, PACS reported it was making all efforts to "comply with various requirements of federal and private healthcare programs," which the suit alleges was false.

On Nov. 4, Hindenburg Research published a report it said included interviews with 18 former PACS employees, competitors and an analysis of over 900 PACS facility cost reports, the complaint states. The report was based on a five-month investigation into PACS' alleged wrongdoing: PACS had

"abused a COVID-era waiver" by submitting false Medicare claims which "drove more than 100% of PACS' operating and net income between 2020 and 2023," according to the suit.

The report also alleged PACS engaged in staffing fraud and employed unlicensed administrators. PACS secretly listed uncertified nurse aides as certified in the system in an apparent scheme to cheat staffing ratios and "retroactively add fake RN hours" in order "to meet minimum staffing requirements, boost star ratings, and avoid costly penalties," according to the suit.

On this news, the price of PACS shares fell \$11.93, or about 28%, to close at \$31.01 on Nov. 4, according to the suit.

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

The pension fund is represented by Francis P. McConville, Jeffrey A. Dubbin and Connor C. Boehme of Labaton Keller Sucharow LLP.

Manchin is represented by Gregory B. Linkh, Robert V. Prongay and Charles H. Linehan of Glancy Prongay & Murray LLP.

PACS and the individual defendants are represented by Colleen C. Smith, Michele D. Johnson, Morgan E. Whitworth and Thomas J. Giblin of Latham & Watkins LLP.

The case is Manchin v. PACS Group Inc. et al., case number 1:24-cv-08636, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Sydney Price. Editing by Lakshna Mehta.

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J&J Allies Dub Milestone Fee Reversal 'Crucial' To Del.

By **Jeff Montgomery**

Law360 (February 11, 2025, 10:16 PM EST) -- The National Association of Manufacturers pushed back Tuesday against Fortis Advisors LLC opposition to a NAM amicus brief seeking Delaware Supreme Court reversal of a medical robotics developer's \$1 billion merger milestone damage award after its acquisition by Johnson & Johnson.

NAM's reply on Tuesday was the latest of four amicus briefs and defenses triggered by Johnson & Johnson's appeal of Vice Chancellor Lori W. Will's decision in August that J&J owes more than \$1 billion to medical robotics developer and entrepreneur Auris Health Inc. in a multibillion-dollar post-acquisition dispute.

In the decision, Vice Chancellor Will found that Auris' stockholders, represented by Fortis Advisors LLC, are owed for breaches of contract and of the implied covenant of good faith and fair dealing in connection with treatment of milestones reached during development of Auris' "iPlatform" robotic surgical device.

Vice Chancellor Will concluded that Johnson & Johnson violated obligations to treat Auris' system as a "priority" device and support its development without regard to contingent payments.

Instead, Fortis' complaint said, Auris was "made to compete against and combine with" J&J affiliate Ethicon's own "Verb" robotic device, with Verb declared the winner and cash reserved for iPlatform milestones released in April 2020.

Johnson & Johnson and Ethicon argued that the Chancery Court decision "jeopardized one of the most common risk allocation tools in merger and acquisition contracts: earnout provisions." Those terms were described as important to reducing buyer risk of overpaying when seller performance is uncertain.

"Parties will refuse to agree to earnouts — and deals will not get done — if they harbor doubts that courts will enforce earnout provisions as written," Johnson & Johnson said in a brief filed on Jan. 31.

Johnson & Johnson subsidiary Ethicon Inc. acquired Auris in February 2019, originally for \$3.4 billion in cash and \$2.35 billion in potential future "milestone" payments. Auris launched a 12-count suit in October 2020, alleging common law and equitable fraud, breaches of the merger agreement and the implied covenant of good faith and fair dealing, among other counts.

NAM, the Chamber of the Commerce of the United States and the Washington Legal Foundation all urged the five-member appellate court in recent weeks to reverse Vice Chancellor Will's decision. All three asserted that the vice chancellor wrongly invoked the implied covenant of good faith and fair dealing to retroactively rewrite the contract to include an additional, unintended, test for federal approval.

Two finance professors — from Rice University and Duke University — separately argued that earnout provisions must provide certainty under agreed-upon terms if expected to help define deal valuations.

NAM argued Tuesday that J&J was trying to shield the court from NAM's views on what was described as the largest Delaware earnout award "ever." The group also described the Chancery Court decision as "alarming" and asserted that, "When courts rewrite agreements, that erodes the contractual certainty that companies rely upon courts — especially Delaware courts — to uphold."

According to NAM's brief, the vice chancellor "played Monday morning quarterback," relying on terms not in the agreement and instead creating "new obligations out of whole cloth, disregarding the provision's allocation of risk to put Johnson & Johnson on the hook" that could have been considered before the deal.

The Chamber of Commerce argued in part that although Johnson & Johnson's agreement called for use of what was described as a more-streamlined and "less-burdensome" process for securing Food and Drug Administration approval, compared with two others, including the one focused on by the vice chancellor.

Vice Chancellor Will, the Chamber argued, wrongly found that the company obligated itself as a result to use a more expensive and burdensome evaluation pathway called De Novo as well.

"Affirming the decision below could significantly harm the Chamber's members and signal, at minimum, that Delaware does not hold sophisticated parties to the express terms of their agreement," the Chamber wrote.

Vice Chancellor Will found that Johnson & Johnson was liable to Fortis, as stockholder representative, for breaches of a best effort provision governing development milestones for both Auris and another system, Monarch, intended for potential lung cancer and other soft tissues.

For breaches of the merger agreement and the implied covenant of good faith and fair dealing, the vice chancellor found, Fortis sought damages tied to missed payouts for six surgical milestones, one governing general surgery and five body areas, including abdominal, urologic, gynecologic and gastrointestinal. Anticipated payments for the group would have totaled \$1.15 million.

As adjusted by a "blend" of success probabilities, the court found, damages were pegged at \$968.8 million, with \$42.4 million added for interest, bringing the total to \$1.01 billion.

The Washington Legal Foundation, in its amicus brief, argued that Vice Chancellor Will "simply rewrote the contract's milestone terms by excising certain terms unfavorable to Fortis while adding new terms imposing far more onerous obligations on J&J than those the parties had bargained for."

"The much better view — also found in this State's jurisprudence — is that 'the implied covenant only applies to developments that could not be anticipated, not developments that the parties simply failed to consider,'" the Washington Legal Foundation continued.

The Chamber cautioned that "under well-established Delaware law, courts will not imply a contractual term unless it is clear the parties would have agreed to that term had they thought about it. The Court of Chancery in this case abandoned that bedrock principle."

NAM said in its amicus brief defense that it views reversal of Vice Chancellor Will's decision in September as crucial to preservation of Delaware's status as the nation's top corporate base.

"If a leading business association were denied the opportunity to participate as amicus curiae in a case of enormous concern to its thousands of members, that might well exacerbate concerns that it no longer is" a corporate hub, the association said in a letter to the court.

Johnson & Johnson and Ethicon Inc. are represented by William M. Lafferty, Susan W. Waesco, Elizabeth A. Mullin Stoffer and Kirk C. Andersen of Morris Nichols Arsht & Tunnell LLP, E. Joshua Rosenkranz, Robert M. Loeb, Zachary J. Hennessee, Katherine M. Kopp, Anne W. Savin and Elizabeth A. Bixby of Orrick Herrington & Sutcliffe LLP, Joshua A. Goldberg, and Lauren S. Potter of Patterson Belknap Webb & Tyler LLP.

Fortis Advisors LLC is represented Bradley R. Aronstam, Roger Stronach and Dylan T. Mockensturm of Ross Aronstam & Moritz LLP and Philippe Z. Selendy, Jennifer M. Selendy and Oscar Shine of Selendy Gay PLLC.

The Chamber of Commerce of the United States of America is represented by Anthony A. Rickey of Margrave Law LLC, Jeffrey S. Bucholtz and Kellam M. Conover of King & Spalding LLP and Janet

Galeria of U.S. Chamber Litigation Center.

The National Association of Manufacturers is represented by Ethan H. Townsend, Paul W. Hughes, Andrew A. Lyons-Berg, Emmett Witkovsky-Eldred and Kristian Werling of McDermott Will & Emery LLP and Erica T. Klenicki and Michael A. Tilghman II of NAM Legal Center.

The Washington Legal Foundation is represented by Nicholas E. Skiles of Swartz Campbell LLC and Cory L. Andrews of Washington Legal Foundation.

Professors Yael V. Hochberg and David T. Robinson are represented by John L. Reed of DLA Piper and Robert N. Hochman, Kristen R. Seeger, John M. Skakun III and Claire G. Lee of Sidley Austin LLP.

The appeal is Johnson & Johnson et al. v. Fortis Advisors LLC, case number 490,2024, in the Supreme Court of the State of Delaware.

The Court of Chancery case is 2020-0881.

--Editing by Dave Trumbore.

Correction: A previous version of this story misstated counsel details. The error has been corrected.

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Kids Can't Save Reworked EPA Climate Suit, Judge Rules

By **Hailey Konnath**

Law360 (February 11, 2025, 10:31 PM EST) -- A California federal judge on Tuesday threw out, for good, children's amended allegations that the U.S. Environmental Protection Agency's climate policies violate their constitutional rights, ruling that they haven't shown that the alleged harms they've suffered in the midst of climate change can be traced to the policies.

U.S. District Judge Michael W. Fitzgerald dismissed the case with prejudice, holding that the 18 young plaintiffs don't have standing to bring their suit. In particular, he found that they haven't established how their two theories of harm are traceable to the EPA's policies, which the judge said are merely guidance documents and not binding.

The kids claimed they've suffered environmental harms due to under-regulation of greenhouse gas emissions leading to the disruption of their education, recreation and religious expression. They also alleged the EPA policies discriminate against children because increased emissions will disproportionately affect present-day children.

Critically, the policies at the center of the dispute offer guidance for preparing benefit-cost analyses "when the EPA chooses to use them as part of its [regulatory impact analysis,]" Judge Fitzgerald said Tuesday. They are not "binding" policies, as the plaintiffs had claimed, he said.

"The court is not required to accept plaintiffs' legal conclusion — albeit cast in the form of a factual allegation — that the discounting policies are binding, particularly where that purported fact is undermined by the policies themselves," the judge said.

As for their alleged discrimination harms, the plaintiffs "have not, and cannot, allege that the discounting policies are discriminatory in nature," Judge Fitzgerald said.

"The [first amended complaint] demonstrates that no matter how many opportunities for amendment plaintiffs receive, they cannot overcome the structural lack of injury-in-fact and traceability as to their claims," the judge said.

Our Children's Trust, which is representing the kids in the litigation, slammed the decision Tuesday as "complete judicial abdication in the face of an escalating climate emergency."

"Rather than adhere to long-standing equal protection law and standards for fact-finding to ensure that young people have access to justice, the court has rubber-stamped the policies that systematically discount their lives and their futures," the nonprofit law firm said in a statement.

It added that the decision comes "in the wake of one of the most devastating climate-driven wildfires in California's history."

"The ruling sidesteps the key argument in the case: that youth plaintiffs have a fundamental right to be free from government harm causing them a lifetime of hardship," Our Children's Trust said.

The EPA didn't immediately respond to a request for comment late Tuesday.

The proposed class action was filed in December 2023, among a number of ongoing youth climate actions being litigated by Our Children's Trust. Specifically, the California children claimed the EPA

knows youths are disproportionately harmed by climate change but has actively discriminated against them by "systematically allowing climate pollution for decades at levels that harms plaintiffs' health and welfare."

The first version of their complaint was dismissed in **May 2024**, with Judge Fitzgerald noting that it was unclear how a declaratory order from the court would redress the young plaintiffs' alleged harms. The kids quickly filed an **amended complaint**, asking the court for injunctive as well as declarative relief.

At a hearing last year, Judge Fitzgerald hinted that he was likely to toss the suit, saying the plaintiffs face a **"very uphill" battle** to conform their claims with binding Ninth Circuit precedent.

The judge was referring to the Ninth Circuit's **2020 decision** in *Juliana v. U.S.*, another youth climate suit brought by the same attorneys litigating the present case. In *Juliana*, the panel said courts do not have the authority to grant such sweeping relief over environmental regulation.

"I appreciate your efforts to pivot after my last order," Judge Fitzgerald said during the hearing. "But the Ninth Circuit has decided that the courts have no business doing this, so it really is a very uphill problem that you have."

In Tuesday's order, Judge Fitzgerald said the plaintiffs had argued declarations from their experts establish that the policies "impact the ultimate form that environmental regulations take, and therefore strengthen the casual connection between discounting policies and their alleged harmful effects." The expert declarations did no such thing, he said.

"The theory of harm ... bundles uncertainty on uncertainty — discounting may or may not be used as a tool and is only a single guiding factor when used," Judge Fitzgerald held.

When it comes to their discrimination claim, these "climate-related harms will be experienced relatively equally by all people — both in the United States and around the world — who are alive at the time of their impacts," the judge said.

"Present-day children will age and become adults, and new children will be born," he said.

Judge Fitzgerald agreed that much of the alleged harm will affect children when they are adults. However, the amended complaint doesn't establish how this so-called "stigmatic harm" will affect children that will soon reach "the age of majority," including plaintiffs in the case who are nearly 18 years old, according to the decision.

That begs the question "of how in particular the discounting policies work a discriminatory harm against an individual aged 17 years and 364 days and not an individual aged 18 years," the judge said.

"In essence, this claim must fail because it is not about a stigmatic injury at all, but rather about displeasure with the EPA's economic analyses in assessing the impacts of future harms," Judge Fitzgerald said.

He added that "such grievances are simply not judicially cognizable."

Judge Fitzgerald also shot down the plaintiffs' argument that children are a "discrete class who will suffer the negative effects of climate change for a longer period of time."

"That argument concedes that the negative effects of climate change will be felt by all, and plaintiffs failed to present the court with any authority for the proposition that dealing with a societal problem — albeit one of great magnitude — for a longer period of time transforms a generalized grievance into a particularized harm," the judge said.

Our Children's Trust said Tuesday that Judge Fitzgerald disregarded "key evidence" that showed the harmful effects of the policies as well as the "unique vulnerability of children's bodies to climate pollution." The decision also "follows a troubling pattern of courts refusing to listen to medical experts who show them the disproportionate harm climate change is having on young people," the firm said

in the statement.

Julia Olson, chief legal counsel for the plaintiffs, said the court "is turning a blind eye to the real-world harms youth are enduring right now."

"Wildfires are ravaging these children's communities in California, but the court claims that their suffering is too 'indirect' to matter," Olson said.

The lead plaintiff, a young person identifying as Genesis B., said in the statement that the ruling "is a gut punch."

"We are living with the consequences of these policies every single day — wildfires, choking smoke, evacuation orders," Genesis said. "And now, with the strongest storm of the year set to hit Southern California this week, our case is more urgent than ever."

Genesis added, "We wanted the chance to show the court the science, the economics, and the lived experiences that prove the government's actions are harming us."

The youth plaintiffs are represented by Julia A. Olson, Andrea K. Rodgers, Catherine Smith and Brianna Rosier Kabwika of Our Children's Trust, Philip L. Gregory of Gregory Law Group, Paul L. Hoffman of the Civil Rights Litigation Clinic at the University of California Irvine School of Law and John Washington of Schonbrun Seplow Harris Hoffman & Zeldes LLP.

The government is represented by Andrew S. Coghlan of the U.S. Department of Justice's Environmental Defense Section and Sean C. Duffy of the U.S. Department of Justice's Natural Resources Section.

The case is Genesis B. et al. v. U.S. Environmental Protection Agency et al., case number 2:23-cv-10345, in the U.S. District Court for the Central District of California.

--Additional reporting by Rachel Scharf, Gina Kim and Juan-Carlos Rodriguez. Editing by Janice Carter Brown.



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PFAS Litigation Finds A New Frontier: Consumer Products

By **Juan-Carlos Rodriguez**

Law360 (February 11, 2025, 9:10 PM EST) -- Smartwatch wristbands, adhesive bandages, tampons and juice containers — what do they all have in common? In a growing trend, plaintiffs attorneys allege the products contain toxic forever chemicals and that manufacturers misled consumers about it.

While multibillion-dollar settlements in litigation over the use of firefighting foam that contained per- and polyfluoroalkyl substances have captured headlines over the past couple of years, consumer products are increasingly coming into plaintiffs attorneys' crosshairs, said Caitlin Blanche, a partner at Venable LLP who specializes in consumer class actions and product focused litigation.

"We've been watching this litigation and working in this space now for a few years, and we're starting to see the growth and adaptation of the plaintiffs bar in this area," Blanche said. "We're seeing an expansion and a shift over to broader fitness and lifestyle tech and products that make general lifestyle health or longevity representations."

Just since October, several new suits targeting different products have been filed in courts across the country.

The Hershey Co. was hit with two proposed class actions alleging its Kisses and Bubble Yum products contain PFAS, also known as forever chemicals due to their tendency to persist in the human body and environment. Apple Inc. and Samsung Electronics America Inc. were separately sued over allegations that their smartwatch wristbands contain at least one PFAS.

Another proposed class action has been filed against Johnson & Johnson and its spinoff Kenvue Inc., alleging Band-Aid bandages have exposed people to PFAS.

Christopher L. Ayers, a partner at Seeger Weiss LLP representing the plaintiffs in that case, said independent research gave them confidence their claims could stand up in court.

"Ultimately, what all these are about is holding these companies accountable for selling products that they knew contain dangerous levels of PFAS but failed to warn the consumers about the risks," Ayers said.

Kenvue said it's aware of the lawsuit and will respond further to the claims as part of the legal process. It said Band-Aid brand adhesive bandages are safe for people to use.

Apple said its bands are safe and that, in addition to its own testing, it works with independent laboratories to conduct "rigorous testing and analysis of the materials used in our products, including Apple Watch bands."

Hershey and Samsung did not respond to requests for comment Thursday.

Earlier PFAS-based consumer product proposed class actions have faced trouble in court. In October, a California federal judge rejected the reliability of a testing method described by a putative consumer class as the "gold standard" for detecting PFAS, tossing for now claims that The Procter & Gamble Co. falsely advertised its "pure cotton" Tampax tampons.

Coca-Cola defeated an initial complaint that alleged its Simply Orange Juice Co. subsidiary deceptively markets juices as pure, healthy and all-natural when they actually contain PFAS, but now faces a revised proposed class action complaint.

These plaintiffs' losses stem from the fact that this type of PFAS litigation is still in its early phases, and it's been difficult for plaintiffs to prove the scientific connection between the products and the alleged harm, said Marina Schwarz, a partner at Dechert LLP.

"You can allege what you want in a complaint, but then you're going to have to shore that up with specific, consistent and reliable studies," Schwarz said. "You really need to say, 'OK, here is the chemical I'm alleging exposure to and here is the data I have to back up that that exposure could have caused harm.'"

She said plaintiffs often rely on a total organic fluorine analysis, which can indicate the presence of PFAS, but doesn't specify which one — a problem since there are thousands of chemicals in the PFAS family. That test was rejected by the federal district judge overseeing the Tampax lawsuit.

But in the Band-Aid suit, the plaintiffs said, "total organic fluorine testing is the only method that is able to reliably detect the presence or absence of the thousands of varieties of PFAS chemicals for which targeted testing is not currently available."

And Ayers defended the science relied upon in the lawsuit.

"Defendants in consumer litigation will make every defense that they can think of and try to pursue it," he said. "The reality is that these companies have included PFAS within their products that consumers use without telling them while marketing them as safe ... And you need to perform good quality testing of the products and make sure that we validate that products actually do contain the substances that are alleged."

Blanche said there are other difficulties plaintiffs could face beyond what type of testing is accepted by courts. She said they'll also have to show if the product tested was in the same batch as the ones they purchased or whether it was manufactured at a different time or place.

She said much of the attention plaintiffs are focusing on PFAS has been driven by regulations published by states and the federal government in response to health risks. According to the U.S. Environmental Protection Agency, exposure to PFAS beyond a certain amount is likely to cause cancer, as well as harmful liver, immune system, cardiovascular, and developmental effects in humans.

Paul LaFata, a partner at Dechert LLP, agreed but said the safety and risk standards for governmental entities are different from those of courts.

"When you're a regulator, you're looking to the future about what could happen to people if they are drinking water with this or showering with that ... And in that circumstance, your risk tolerance is very low because you don't know if it's a person that has a disability or a person that has an allergy or a vulnerability," he said. "But a court is looking backwards at what actually happened."

Blanche said it's likely that there are many more products that plaintiffs could focus on for future lawsuits.

"I think we're going to see more food wrapper cases, probably more apparel," she said. "And I think more fitness and lifestyle products, including in technology."

--Editing by Emily Kokoll and Drashti Mehta.