

ISS Releases Top 100 Securities Suit Settlements List

K [dandodiary.com/2025/02/articles/securities-litigation/iss-releases-top-100-securities-suit-settlements-list](https://www.dandodiary.com/2025/02/articles/securities-litigation/iss-releases-top-100-securities-suit-settlements-list/)

February 12, 2025



By Kevin LaCroix on February 12, 2025

Posted in Securities Litigation

According to the latest annual report from ISS Securities Class Action Services, there were four court-approved securities class action settlements in 2024 large enough to make the firm's list of the Top 100 U.S. Securities Class Action settlements. These settlements took place in a year in which there were 136 court-approved monetary securities class action lawsuit settlements totaling over \$4.7 billion. The details of the 2024 court approved settlements, including with respect to the four largest during the year, can be found in the ISS Securities Class Action Services report entitled "The Top 100 U.S. Class Action Settlements of All-Time" (as of December 31, 2024), [here](#).

The 136 securities suit settlements in 2024 represents a 7% increase in the number of settlements over 2023 (126). But while the total number of settlements increased in 2024, the aggregate total of the settlement amounts decreased. The approximately \$4.7 billion in aggregate 2024 securities suit settlements was down 18% from the aggregate total in 2023 (approximately \$5.7 billion). However, it should be noted that 2023 was a "banner year," in that it included two outlier, billion-dollar settlements. (Please note that none of these settlement figures include antitrust settlements, SEC fair funds distributions, and settlements outside the United States.)

While the number of settlements increased in 2024, the average settlement amount decreased by 26%, to \$34.9 million, compared to approximately \$47.1 million in 2023. Again, the average settlement amount in 2023 was driven by the two large outlier billion-dollar settlements. The report notes that the 2024 average "was very close to that in 2022, which implies that 2024 was simply an example of the reversion to the mean." The 2024 median securities-related settlement was \$13.5 million.

Of the 136 settlements in 2024, 98 settlements representing \$3.76 billion received court approval in federal courts, while the remaining cases totaling \$985 million received court approval in state court. (Based on disclosures in prior years' reports, it can be noted here that many of the state court settlements relate to corporate transactions, including cases involving breach of fiduciary duty allegations.)

The average time to settlement for the 2024 securities class action lawsuit settlements, measured by the time of filing of the initial complaint to the final approval of the settlement, was 3.7 years, while the median time to settlement was 3.1 years.

Of the 136 securities class action settlements that received court approval in 2024, four were large enough to make the Top 100 list: Apple, \$490 million (tied for 34th on the list); Under Armour, \$434 million (discussed here, 47th on the list); Alphabet, \$350 million (discussed here, 56th on the list); and Uber (\$200 million, tied for 98th on the list). These four settlements together total \$1.474 billion, or over 30% of the total value of the 2024 securities suit settlements.

In all, there were ten mega settlements in 2024 (that is, with a value equal or greater than \$100 million), collectively amounting to more than \$2.4 billion, or approximately half of the aggregate value of the 2024 securities suit settlements.

Readers may be interested to know how big a settlement has to be to make the Top 100 list. In fact, the 2024 Uber settlement, mentioned above, just squeaked onto the list as part of a four-way tie for the 98th spot at the end of the list. In other words, a nine-figure settlement of less than \$200 million is not good enough to make the list. Indeed, a settlement of over \$1 billion will not even make the Top Ten unless it exceeds \$1.142 billion. (The \$1 billion 2023 Dell Technologies settlement comes in tied for number 17.) A settlement would have to come in at over \$500 million just to earn a spot in the top 32.

Because there are four cases tied for the 98th spot (at \$200 million), the Top 100 list actually includes 102 settlements. Of the 102 settlements on the list, 96 had an institutional lead plaintiff and only eight had a non-institutional lead plaintiff. The court with the highest number of settlements on the list is the Southern District of New York, with 40 settlements.

Among the plaintiffs' law firms, the plaintiffs' firm with the most cases on the list in which the firm served as lead counsel or co-lead counsel is the Bernstein Litowitz firm, which has 37 cases on the list, followed by the Robbins Geller firm, with 24. The Bernstein Litowitz firm also has cases on the list that aggregate the highest value from among the settlements on this list, totaling \$27.3 billion, followed by the Robbins Geller firm, with cases on the list totaling \$20.1 billion. The Robbins Geller firm's cases include the largest case of all times, the Enron case, which had total settlements of \$7.242 billion.

As noted, the aggregate settlement figures discussed above exclude antitrust settlements, SEC fair funds settlements, and settlements outside the United States. Adding these excluded settlements to the U.S. securities class action lawsuit totals brings the overall 2024 total to about \$6.2 billion. Among these other types of investor recoveries in 2024 was the settlement in the Stock Loan Transaction antitrust lawsuit, which settled for approximately \$580 million. (The report includes a table showing that the Stock Loan Transaction antitrust

lawsuit settlement, as large as it is, qualifies only for the fifth largest antitrust class action lawsuit settlement. The largest antitrust class action settlement is the Foreign Exchange Benchmark Rates antitrust lawsuit settlement, at approximately \$2.3 billion.)

The report also includes a table showing the top 50 SEC disgorgement cases. Interestingly, none of the top 50 disgorgement cases were resolved in 2024. Indeed, a separate table shows that no cases have been added to the top 50 disgorgement cases list since 2022 (when one case was added). The largest disgorgement on the list is the \$800 million in the 2008 AIG action. In order to make the Top 50 list, a future SEC disgorgement order would have to exceed \$85.3 million.

In terms of the possible Top 100 settlements in 2025, there are two announced settlements that are likely to receive final approval in 2025: Alibaba (\$433.5 million, which would qualify for 48th on the current list, just ahead of the \$434 million 2024 Under Armour settlement); and General Electric (\$362.5 million, which would qualify for 55th on the current list). In addition, and though not large enough to make the Top 100 list, the \$102.5 million VMWare settlement, the \$85 million Windstream/Earthlink settlement, and the \$70 million Wynn Resorts settlement are likely to receive final court approval in 2025.

Special thanks to Donald Grunewald of ISS SCAS for providing me with a copy of the Top 100 report. Don is the report's Managing Editor.

Securities Law

Feb. 13, 2025, 9:20 AM PST

Bausch Health Defeats Shareholder Suit Over Spinoff, Drug Patent

By [Ufonobong Umanah](#)

- **Investor lawsuit comes after Valeant, Xifaxan litigation**
- **Most statements found inactionable opinion, corporate optimism**

Bausch Health Cos. convinced a federal court to dismiss, for now, allegations that executives misled investors about the spin-off of Bausch + Lomb, and other corporate liabilities.

Most of the statements shareholders challenged were forward-looking expressions of belief that were inactionable, the US District Court for the District of New Jersey said Wednesday when it dismissed the proposed class suit without prejudice in an unpublished opinion.

Statements that implied Bausch had moved beyond “legacy legal issues” from when it went by Valeant Pharmaceuticals International Inc. may have been misleading, but the plaintiffs failed to allege executives spoke with sufficient knowledge of the statements’ falsehood to support a Section 10(b) Securities Exchange Act claim, the court said

And while a comment about the strength of Bausch’s patents for diarrhea treatment Xifaxan, which the plaintiffs say is its most valuable drug, failed to fall under the safe-harbor rule under the Private Securities Litigation Reform Act, the statement was “objectively true,” Judge Zahid N. Quraishi said.

Valeant had to pay over \$1 billion in a class action settlement, and millions to the Securities and Exchange Commission, after securities violations that the complaint described as “one of the most egregious cases of securities fraud in U.S. history.” The complaint said that the Bausch + Lomb spinoff, sold as a way to increase share value, was really a bid to defraud plaintiffs in the Valeant litigation.

The complaint also said that Bausch should’ve disclosed that its Xifaxan patents were subject to litigation that threatened their exclusivity and, as a result, the spinoff.

Ultimately, many of the allegedly misleading statements were forward-looking opinion statements, or expressions of corporate optimism, Quraishi said. The PSLRA protects those statements through a safe harbor.

The court declined to determine whether the statements about Valeant litigation caused loss since plaintiffs hadn’t sufficiently pled knowledge.

The plaintiffs were given 30 days to submit a second amended complaint.

McCarter & English LLP represented Bausch.

Pomerantz LLP, Robbins Geller Rudman & Dowd LLP, and Seeger Weiss LLP represented the lead plaintiffs. Levi & Korsinsky LLP and Bronstein, Gewirtz & Grossman LLC is additional counsel. Levi & Korsinsky LLP filed the initial complaint.

The case is Kelk v. Bausch Health Cos. , D.N.J., No. 3:23-cv-03996, unpublished 2/12/25 .

To contact the reporter on this story: Ufonobong Umanah in Washington at uumanah@bloombergindustry.com

To contact the editor responsible for this story: Brian Flood at bflood@bloombergindustry.com

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Ozempic causes serious health issues, class action claims

topclassactions.com/lawsuit-settlements/lawsuit-news/ozempic-causes-serious-health-issues-class-action-claims

February 12, 2025



(Photo Credit: fcm82/Shutterstock)

Ozempic lawsuit overview:

- **Who:** Plaintiff Diane Dyess sued Novo Nordisk Inc. and Novo Nordisk A/S.
- **Why:** Dyess claims Novo Nordisk failed to warn consumers its weight loss drug Ozempic can cause a number of serious health issues, including gastroparesis.
- **Where:** The Ozempic lawsuit was filed in Pennsylvania federal court.

Novo Nordisk failed to warn consumers its weight loss drug Ozempic can cause a number of serious health issues, including gastroparesis, a new class action lawsuit alleges.

Plaintiff Diane Dyess filed the Ozempic side effects class action lawsuit Jan. 31 in Pennsylvania federal court, where it joins an existing multidistrict litigation centered on claims that Novo Nordisk's glucagon-like peptide-1 receptor agonists (GLP-1 RAs) cause serious injuries, including gastroparesis.

The lawsuit claims Novo Nordisk failed to provide adequate warnings about the risk of gastroparesis and other adverse events allegedly associated with Ozempic, including gastrointestinal injuries, ischemic bowel, necrotizing pancreatitis, gallbladder disease, deep vein thrombosis, micronutrient deficiencies, Wernicke's encephalopathy and aspiration of gastric contents.

It alleges Novo Nordisk engaged in deceptive and misleading marketing practices to promote Ozempic for weight loss despite the drug only being approved for the treatment of Type 2 diabetes.

“Defendants intentionally omitted other facts that they knew to be true from their labels, physician communications, marketing, website, public statements and other public facing communications,” the Ozempic lawsuit says.

Novo Nordisk failed to adequately warn of gastroparesis, class action claims

The Ozempic side effects class action argues Novo Nordisk’s marketing of Ozempic downplayed the risks of adverse events and failed to adequately warn health care providers and patients about the potential for serious complications.

The plaintiff claims Novo Nordisk’s marketing campaign for Ozempic was so pervasive it led to widespread off-label use of the drug for weight loss.

“Defendants’ aggressive marketing of Ozempic and other GLP-1 RAs created a perception that these drugs were a magic solution for weight loss, leading to increased demand and off-label use,” the Ozempic side effects class action says.

Dyess argues Novo Nordisk is guilty of negligence, failure to warn, strict liability, breach of express warranty, breach of implied warranty, fraudulent concealment, intentional misrepresentation, negligent misrepresentation, strict product liability misrepresentation, innocent misrepresentation, negligent design and strict liability design defect.

The plaintiff demands a jury trial and requests declaratory and injunctive relief and an award of compensatory and punitive damages for herself and all class members.

Last year, consumers hit pharmaceutical companies Novo Nordisk and Eli Lilly with a similar class action lawsuit alleging they **failed to warn consumers about health risks** associated with weight loss drugs like Ozempic.

Have you experienced gastroparesis after taking Ozempic? Let us know in the comments.

The plaintiff is represented by John J. Vecchione of New Civil Liberties Alliance and William W. “Billy” Wilkins, Robert S. Peck, Paul J. Geller, Mark J. Dearman, Stuart A. Davidson, Lawrence J. Gornstein and Jason H. Alperstein of Robbins Geller Rudman & Dowd LLP.

The **Ozempic lawsuit** is *Diane Dyess v. Novo Nordisk Inc.*, Case No. 2:25-cv-00546, in the U.S. District Court for the Eastern District of Pennsylvania.

Don't Miss Out!

Check out our list of Class Action Lawsuits and Class Action Settlements you may qualify to join!

Read About More Class Action Lawsuits & Class Action Settlements:

Litigation

Feb. 13, 2025, 7:21AM PST

Merck Sued by Investor Over Misjudged Gardasil Demand in China

By Gillian R. Brassil

- **COURT:** D.N.J.
- **TRACK DOCKET:** No. [2:25-cv-01208](#) (Bloomberg Law subscription)

Merck & Co. Inc. misled investors about traction for its HPV vaccine in China, sending the stock down when it revealed oversaturated inventory and that it would fall short of its expected \$11 billion worldwide sales target, a proposed class action said.

The global health care giant was issuing positive statements about financial expectations that artificially inflated share prices when it actually didn't have good insight into demand in China, said Michael Cronin's complaint. When Merck shared on Feb. 4 it would miss its long-predicted \$11 billion in revenue off Gardasil by 2030 and cease sending the vaccine to China through at least mid-year, the stock fell more than 9% to close at \$90.74 a share that day, said the complaint filed Wednesday in the US District Court for the District of New Jersey.



Merck previously disclosed a significant reduction in Gardasil vaccinations in China, resulting in its distributor there having too much inventory, when announcing second quarter of fiscal year 2024 earnings on July 30, Cronin said. Share prices slid almost 10% that day to close at \$115.25, a record single-day tumble since Nov. 2021, according to data compiled by Bloomberg.

The company also said shipments to China might fall below 2024 contracted levels July 30—but executives remained bullish on their long-term projections, the complaint said. And Merck continued boasting efforts to bolster demand in China and lower inflated inventory levels in 2024, misleading investors, Cronin said.

The proposed class would include people who bought Merck stock from Feb. 3, 2022 through Feb. 3, 2025.

Levi & Korsinsky LLP represents Cronin, who is suing the company and three of its top executives. He seeks damages for alleged securities law violations.

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

The case is Cronin v. Merck and Co. , D.N.J., No. 2:25-cv-01208, complaint filed 2/12/25 .

To contact the reporter on this story: Gillian R. Brassil in Washington at gbrassil@bloombergindustry.com

To contact the editor responsible for this story: Adam Ramirez at aramirez@bloombergindustry.com

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Investors sue Edison International, claiming wildfire misstatements

DJ [dailyjournal.com/articles/383547-investors-sue-edison-international-claiming-wildfire-misstatements](https://www.dailyjournal.com/articles/383547-investors-sue-edison-international-claiming-wildfire-misstatements)

Securities,

LA Fires

Feb. 12, 2025

At the heart of the complaint, filed Tuesday, is a statement the plaintiffs claim the company made about SCE's use of a wildfire prevention tool that temporarily shuts off electrical power in neighborhoods during dangerous weather conditions.



A street of homes burnt by the Eaton Canyon fire, on Jan. 26 Photo: New York Times
The first federal action against Edison International was filed by a putative class of investors who claimed the company artificially inflated its stock price and caused them significant losses by making misleading statements about its Los Angeles County wildfire mitigation processes.

Laurence M. Rosen, founder of The Rosen Law Firm PA, represents the individual plaintiff and putative investors who claim they purchased securities from Edison International - the parent company of Southern California Edison (SCE) - from Feb. 25, 2021, through Feb. 6, 2025.

Jeff Monford, a spokesman for Edison, responded to the federal complaint in a phone interview on Wednesday: "We are reviewing and will address the allegations," he said. Rosen was not available for additional comment by press deadline.

Rosen did not respond by press time to a phone call and email seeking additional comment.

At the heart of the complaint, filed Tuesday, is a statement the plaintiffs claim the company made about SCE's use of a wildfire prevention tool that temporarily shuts off electrical power in neighborhoods during dangerous weather conditions. On the evening of Jan. 7, a series of wildfires blazed throughout Los Angeles County. The investors' action primarily follows the

fire that began in the Eaton Canyon area that day, burning homes throughout Altadena and in Pasadena. *Antillon v. Edison International et al.*, 2:25-cv-01154 (C.D. Cal., filed Feb. 11, 2025).

"Following the outbreak of the Eaton Canyon Fire ... 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 Shutoffs program. However, on Jan. 12, 2025, 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,'" the complaint stated.

On Jan. 13, several state lawsuits against Edison were filed in Los Angeles County Superior Court that alleged the fires originated from the company's power lines. Edison's share prices dropped approximately 12% shortly thereafter, according to the federal complaint. The company's stock dropped an additional 2.5% on Feb. 6, the investors claimed, after SCE submitted letters to the California Public Utilities Commission that suggested the company's equipment could be associated with the start of the smaller Hurst fire in Sylmar.

The investors claimed the company's statements about its proactive usage of the power shutoff program since 2021 were false and misleading, in violation of the Securities Exchange Act. The action raises two claims against Edison International, its CEO and CFO.

In one instance, a red flag and high wind warning was issued in Los Angeles County on Jan. 5, yet Edison kept many parts of its distribution circuit near Eaton Canyon energized, the plaintiffs claimed.

"These statements ... misrepresented and failed to disclose the following adverse facts pertaining to the company's business, operations and prospects, which were known to defendants or recklessly disregarded by them," the complaint stated.

"Specifically, defendant made false and/or misleading statements and/or failed to disclose that: (1) Edison's claim that SCE used its Public Safety Power Shutoffs program to 'proactively de-energize power lines to mitigate the risk of catastrophic wildfires during extreme weather events' was false; (2) this resulted in heightened fire risk in California and heightened legal exposure to the company; and (3) as a result, defendants' statements about Edison's business, operations, and prospects were materially false and misleading and/or lacked a reasonable basis at all times."

The exact number of class members is unknown to the plaintiff's counsel at this time, according to the complaint. However, they estimated that number could range between hundreds or thousands of Edison investors who traded during the proposed four-year class period.

AI Search Company Hit with Securities Suit

K [dandodiary.com/2025/02/articles/artificial-intelligence/ai-search-company-hit-with-securities-suit](https://www.dandodiary.com/2025/02/articles/artificial-intelligence/ai-search-company-hit-with-securities-suit)

February 13, 2025



By Kevin LaCroix on February 13, 2025

Posted in Artificial Intelligence



The global economy is still adapting to the advent of the Artificial Intelligence (AI) era. It remains unclear what AI ultimately will mean for economies and businesses, and many businesses are struggling to adjust in real time. The firms experiencing these struggles also include companies in the business of providing AI products and services. In many cases, these companies' struggles can translate into securities litigation. A lawsuit filed earlier this week against Netherlands-domiciled AI services company Elastic illustrates the ways securities litigation can arise from AI companies' business struggles. A copy of the February 11, 2025, complaint filed against Elastic can be found [here](#).

Background

Elastic, whose shares trade on the NYSE, describes itself as “the Search AI Company.” Its platform, which is available both as a cloud-hosted, managed service or as a self-managed software, allows customers to “find insights and drive AI and machine learning use cases from large amounts of data.” The company’s sales teams are organized geographically. The company’s Americas business has consistently accounted for the largest proportion of the Company’s revenues.

On May 30, 2024, Elastic released its fourth quarter and FY 2024 financial results. Among other things, the company also provided financial guidance for FY 2025, among other things projecting revenue of \$1.468 billion to \$1.48 billion, representing 16% year-over-year growth at the midpoint of the projected revenue range. Among other things in the May earnings call with analysts, company management, according to the subsequently filed securities suit assured investors that “Elastic’s sales operations were working, stable, and helping the company thrive, even though Defendants knew at the time that they had recently made significant changes that had impacted basically the Company’s entire Americas sales operation.”

On August 29, 2024, Elastic announced its financial results for the first quarter of FY 2025. Among other things, the company announced that it was reducing its FY 2025 revenue guidance; as the subsequently filed securities lawsuit complaint put it, the company reduced its guidance “to a range of \$1.436 billion to \$1.444 billion, representing 14% year-over-year growth at the midpoint – significantly down from their prior FY 2025 guidance of \$1.468 to \$1.48 billion, or 16% year-over-year growth at the midpoint.”

In explaining this reduction in its FY 2025 guidance, the company cited “a slower start to the year with the volume of customer commitments impacted by segmentation changes that we made at the beginning of the year, which are taking longer than expected to settle.” In a call with analysts, company management said, among other things, that while they had anticipated some degree of change associated with the segmentation alterations, the magnitude of the change was larger than anticipated, and that it might take a couple of quarters to work through.

According to the complaint, the company’s share price fell over 26% on the news.

The Lawsuit

On February 11, 2025, a plaintiff shareholder filed a securities class action lawsuit against Elastic; the company’s CEO; and the company’s CFO. The complaint purports to be filed on behalf of a class of investors who purchased the company’s securities between May 31, 2024 (that is, the day after its fourth quarter and FY 2024 year-end financial release) and August 29, 2024 (that is, the day of the company’s 1Q25 financial release).

The complaint alleges that during the class period, the defendants made false and/or misleading statements and/or failed to disclose that: “(i) Elastic has implemented significant changes to its sales operations, particularly with respect to its customer segments in the Americas; (ii) the foregoing changes were likely to, and did, disrupt Elastic’s sales operations during the first quarter of FY 2025; (iii) accordingly, Defendants had overstated the stability of Elastic’s sales operations; (iv) as a result of all the foregoing, Elastic was unlikely to meet its own previously issued revenue guidance for its FY 2025; and (v) as a result, Defendants’ public statements were materially false and misleading at all relevant times.”

The complaint also alleges that during the class period the CEO sold 28,483 shares of his personal holdings in Elastic stock for total proceeds of over \$3 million, and that the CFO sold 10,011 shares of Elastic stock for total proceeds of over \$ million. The complaint does not state what percentage of the individuals’ total holdings of Elastic stock that the sales represented.

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

Discussion

Elastic is an AI-based company. But does this lawsuit against Elastic qualify as “AI-related”?

On the one hand, the kind of allegations here could have been made against any company. The company implemented some sales segmentation changes that had a larger impact than the company anticipated, as a result of which it lowered its fiscal year guidance, as a result of which its share price declined. There is nothing about this sequence of events that is unique to an AI-based company. Indeed, it could be argued that this sequence of events really has nothing at all to do with AI as such.

On the other hand, let’s step back and look at what happened here. This company is not losing money; indeed, even at the lower guidance level, this company was projecting that its revenue would *increase by double-digits* — that is, that its revenue would *increase* by nearly a billion and a half dollars. Not only that, but it reduced its projected revenue growth for the fiscal year by *only two percentage points*. It would be tempting to argue that this was a *de minimus* change in guidance – except for the fact that in response to the reduction in guidance, the company’s market capitalization lost over a quarter of its value.

Pretty clearly prior to the company’s guidance reduction its share price was priced for perfection. The company’s share price undoubtedly was at sky high levels, as its market valuation reflected the AI-related premium that all AI-adjacent companies were enjoying at the time. Even a bobble as slight as a two-percentage point reduction in the company’s projected revenue growth was enough to undercut the company’s share price by over a quarter.

I will leave it to others to argue about whether or not in the end this case qualifies for the category of “AI-related” cases. But there is no doubt that what happened here, and in particular what happened to the company’s share price, happened because the company was an AI company whose share price reflected the peculiarities of market valuations for AI companies.

There is a point I am trying to make here for my friends on the D&O underwriting side. The point has to do with how to view AI companies from a D&O underwriting perspective. It is apparent that because of the peculiarities of the way the market is valuing AI companies, the companies’ share prices may be subject to an inherent volatility risk. And, as this case demonstrates, with the prospect of the volatility comes the prospect of corporate and securities litigation risk.

As a result of the advent of AI, it is in many ways a whole new world out there. As AI integrates itself into the economy and into business plans and prospects, the way that these developments translate into risk will change as well.

Musk Shareholder Lawsuit Shows Disregard for Acquirers' Interests

- *Attorney Robert Zwirb analyzes regulation of disclosures*
- *It's important to preserve financial incentives for takeovers*

Despite its seemingly open-and-shut nature, a lawsuit involving the Securities and Exchange Commission and Elon Musk raises an important policy issue: whether an outsider's effort to take over a company via the purchase of its shares should be subject to certain regulatory scrutiny, or whether such scrutiny overly favors a company's current shareholders over potential acquirers.

The SEC last month sued the Tesla Inc. and Space Exploration Technologies Corp. CEO for alleged violations of federal securities laws in his acquisition of X Corp., then known as Twitter Inc.

The agency claimed Musk misled Twitter shareholders when he failed to timely disclose that he had amassed a large stake in the company prior to acquiring it in 2022. Under SEC rules governing such transactions at the time, anyone acquiring 5% of the common stock of a public company was required to publicly disclose that fact within 10 calendar days—shortened to five days since then.

Musk waited 11 more days before notifying the SEC, while purchasing more shares at bargain prices. This allowed him to save more than \$150 million at the expense of Twitter shareholders, according to the SEC.

To regulators, such activity obviously warrants enforcement. As the SEC noted in its complaint, Congress enacted the reporting requirement to help investors make informed investment decisions by giving them information about the potential to change or influence control of that company.

The SEC said Musk's delay in reporting allowed him "to make these purchases from the unsuspecting public at artificially low prices," that "did not yet reflect the undisclosed material information of [his] beneficial ownership of" a large stake in the company. In the SEC's view, the \$150 million that Musk saved in not complying with this requirement constituted an ill-gotten gain that belonged to the shareholders.

But arrayed against this view, as SEC Commissioner Hester Peirce argued, is the need to "preserv[e] an incentive structure for investors to seek change of control at under-performing companies." That structure allows those who identify firms that are mismanaged, are operating poorly, or simply are undervalued to benefit from their efforts.

Permitting buyers to profit from such activity “is often needed to induce them to invest the effort to discover firms that are mismanaged,” as one commenter said. Peirce noted that requiring purchasers to disclose too early enables uninformed traders to share in profits created by more informed investors’ diligent efforts.

While the disclosure requirement here may strike many as worthwhile—and not all that burdensome—it can make completing a takeover more difficult. As soon as a buyer reveals their position to the market, the price of the target gets bid up, making the proposition more expensive and hence more difficult to achieve.

But that’s exactly the point and the problem with this form of regulation—it requires those who gather information about undervalued firms to share that information with others who have made no such effort. Peirce explained that people who lawfully possess information shouldn’t have to hand that information over to their uninformed counterparties, absent a “compelling reason.”

The SEC’s concern appears to be ensuring that shareholders receive timely access to such information and to the benefits that can be derived from it. Others’ concerns—especially those of economists—center on ensuring that the agency’s rules don’t deter market participants from seeking to identify and improve the performance of mismanaged or undervalued companies because they can’t be adequately compensated for their efforts and the risk they undertake.

Ultimately, the public policy choice here is whether the gains generated from takeover activity belong primarily to potential acquirers or current shareholders. Although mandating early disclosure may benefit certain shareholders, it may do so at the cost of discouraging would-be acquirers from engaging in such efforts in the first place.

What may appear to be a routine regulatory infraction at first glance raises an important policy question on who is entitled to the gains emanating from discovering suitable takeover targets. If we leave this question solely to regulators, we may regret the outcome, as incentives for such activities erode over time.

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

Author Information

Robert Zwirb is an attorney who has advised market participants on financial regulatory issues. He served as counsel to a Wall Street law firm and two former chairmen of the Commodity Futures Trading Commission.

Write for Us: Author Guidelines

To contact the editors responsible for this story: Daniel Xu at dxu@bloombergindustry.com; Melanie Cohen at mcohen@bloombergindustry.com

Credit Suisse Volatility Index Investors Get Added Class Status

By Martina Barash

UBS unit Credit Suisse Group AG faces an additional class of investors in a suit over the bank's own hedging that allegedly collapsed the market for exchange traded notes tied to a volatility-based index.

Class status is appropriate for Securities Exchange Act claims that market manipulation depressed the notes' value, but not for claims based on alleged misrepresentations under the Act, Judge Analisa Torres said Tuesday for the US District Court for the Southern District of New York. Torres previously granted class certification on Securities Act claims in the case.

- The lawsuit claimed investors lost \$1.8 billion in the Feb. 5, 2018, collapse of the market for VelocityShares Daily Inverse VIX Short Term Exchange Traded Notes, known as "XIV Notes," a derivative investment that increased in value when the stock market was calm and decreased when it was volatile
- Torres earlier identified different, opposing arguments that manipulation and misrepresentation class members would have an incentive to make, creating a conflict between classes
- The lead plaintiffs aren't adequate representatives for the misrepresentation claimants because of the conflict, but they can represent the manipulation claimants, Torres said, appointing Slarskey LLC lead counsel for that class

Counsel for the investors also includes Cohen Milstein Sellers & Toll PLLC and Levi & Korsinsky LLP. Cahill Gordon & Reindel LLP represents Credit Suisse.

The case is Set Capital LLC v. Credit Suisse Group AG , S.D.N.Y., No. 18-cv-02268, 2/11/25 .

To contact the reporter on this story: Martina Barash in Washington at mbarash@bloomberglaw.com

To contact the editor responsible for this story: Kiera Geraghty at kgeraghty@bloombergindustry.com

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Amazon, Allstate Flooded with Class Actions Targeting Alleged Collection of Geolocation Data

 [law.com/nationallawjournal/2025/02/13/amazon-allstate-flooded-with-class-actions-targeting-alleged-collection-of-geolocation-data](https://www.law.com/nationallawjournal/2025/02/13/amazon-allstate-flooded-with-class-actions-targeting-alleged-collection-of-geolocation-data)

Kat Black

What You Need to Know

- At least eight class actions against Allstate and three classes actions against Amazon targeting their use of SDKs to collect geolocation data were filed this year.
- The complaints allege that Allstate and Amazon pay mobile app developers to integrate their SDK technology into mobile apps and illegally siphon user data without their consent.
- According to the claims, Allstate sells the data to third parties and Amazon uses the data to promote its own targeted advertising.

Big Tech retail giant Amazon, its subsidiary Amazon Advertising, insurance company Allstate Corp. and Allstate's data analytics subsidiary, Arity LLC, were swarmed in the first two months of 2025 with class actions alleging they unlawfully collected users' geolocation data using software development kit (SDK) technology embedded in mobile phones.

At least eight class actions were filed last month against Allstate, which is based in Northfield Township, Illinois, and Arity in the U.S. District Court for the Northern District of Illinois and the U.S. District Court for the Northern District of California. The complaints are backed by Bursor & Fisher; Bleichmar Fonti & Auld and Tycko & Zavareei; Girard Sharp; Ahdoot & Wolfson; Kopelowitz Ostrow; Milberg Coleman Bryson Phillips Grossman; Cafferty Clobes Meriwether & Sprengel; and Morgan & Morgan and Clifford Law Offices.

All eight actions contend that Allstate and Arity, which analyzes driving data for auto insurance companies, paid mobile app developers to install the Arity Driving Engine SDK, designed in 2015, on mobile apps in order to track "trillions of miles" of users' "driving behavior" information from "mobile devices, in-car devices, and vehicles" without their consent.

Companies such as Routely, GasBuddy, Sirius XM and Fuel Rewards have allegedly been compensated "millions" of dollars since 2017 to surreptitiously incorporate Allstate's SDK into their apps without informing users of their intention to collect or monetize data about their driving habits.

Furthermore, stated the complaint filed by Tycko & Zavareei and Bleichmar Fonti & Auld, the data at issue is "fundamentally flawed" because it "reflect[s] the location and movement of consumers' phones—not the consumer's driving behavior" and could just as easily capture the consumer's movement on, for example, a roller coaster.

Allstate harvested data from a total of 45 million Americans, the plaintiffs claimed, to inform its coverage decisions, raise insurance rates and sell to third parties, including other car insurers.

"If a consumer requested a car insurance quote or had to renew their coverage, Insurers would access that consumer's driving behavior in Defendants' database," wrote attorneys from Bursor & Fisher in their Jan. 28 complaint against Allstate. "Insurers then secretly used that consumer's data to justify increasing their car insurance premiums, deny them coverage, and/or drop them from coverage altogether."

Morgan & Morgan attorney John Yanchunis and Robert A. Clifford, founder and senior partner of Clifford Law Offices in Chicago, said in an emailed statement that Allstate "has allegedly built the 'world's largest driver database' by collecting and selling data about tens of millions of people without their consent."

"Our class action lawsuit alleges that Allstate undertook this data collection effort to increase its profits at the expense of unaware consumers and their privacy," they said. "We are fighting on behalf of our clients to put a stop to this purportedly improper data collection and hold Allstate accountable for its alleged surveillance and invasion of privacy."

Amazon now faces at least three similar class actions, two of which were filed in the U.S. District Court for the Western District of Washington in Seattle by Cotchett, Pitre & McCarthy and Keller Rohrback, and one of which was filed by Edelson in the U.S. District Court for the Northern District of California in San Francisco. Causes of action include violations of the Federal Wiretap Act, California Comprehensive Computer Data Access and Fraud Act and Washington's My Health My Data Act, which was passed in 2023 to "protect a consumer's sensitive health data from being collected and shared without that consumer's consent."

The claims allege that Amazon has illegally collected time and location data about millions of consumers from "hundreds of millions of smartphones" through the Amazon Ads SDK, developed in 2013, which it licenses to third-party mobile app developers to provide app-building software tools that "operate in the background" for its own targeted advertising and strategic pricing purposes. App developers are incentivized to integrate Amazon's SDK in order to access the "tens of millions of dollars" that Amazon spends on mobile app advertising, they said.

Thomas Loeser, a partner at Cotchett, Pitre & McCarthy, said in an interview that what makes the cases against Amazon distinct from the complaints against Allstate is that "Amazon promotes use of its SDK because they pipeline ads into the app with that SDK."

Cotchett, Pitre & McCarthy is also currently investigating allegations against Allstate and Arity, per its website.

"If you have the Amazon SDK as ... one of the backbones for your weather app, then you're able to serve Amazon ads," Loeser said. "And Amazon tells app developers, 'Hey, if you put our SDK in there, we'll buy ads.' And ... this is how they make money, is by selling ads. So of course they want to do that ... It's unclear whether or not they even tell the app developers that in addition to that, whenever a user of your app allows your app to use their geolocation sensor in their phone, that data is going to flow to Amazon ... But no reasonable consumer, when they allow the weather application to know their location, is told or is thinking or believes or has any way to know that they also just gave Amazon a pipeline of data as to where they go throughout their day."

J. Eli Wade-Scott, a managing global partner at Edelson in its Chicago office, said in an interview that the firm has been "sounding the alarm about geolocation data for years now." Edelson filed a wave of similar litigation under California's "wiretapping" statute last August against three tech companies in San Jose federal court.

"Big Tech's increasing interest in where you go really just means that they're able to paint a detailed picture of who you are using geolocation data," he said. "You can track where somebody lives, where they go to school, where they worship—and it allows companies to collect the picture for their own purposes."

"We certainly hope that everyday people become more aware of this issue and, frankly, that legislators and courts become more aware of this issue, because ... the phrase 'geolocation' doesn't mean much, but once you understand that it paints this portrait of everywhere you go and, really, who you are, I think it starts to resonate a lot more," he added.

An Amazon spokesperson maintained in an emailed statement that the claims were "not accurate" and that the company looked forward to "explaining this in court."

"We work hard to earn customer trust, and customer privacy is a top priority for Amazon," said the spokesperson.

"Our agreements with publishers prohibit them from sending us any information that could be considered consumer health data under [Washington's] My Health My Data Act, and we have long prohibited publishers from sending us precise location and biometric data. If they do accidentally send us this information, we immediately discard and do not use it in any way." Counsel has not yet appeared for Amazon.

Allstate and its counsel at Sidley Austin did not immediately respond to requests for comment.

Law.com Radar

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

NOT FOR REPRINT

© 2025 ALM Global, LLC, All Rights Reserved. Request academic re-use from www.copyright.com. All other uses, submit a request to asset-and-logo-licensing@alm.com. For more information visit Asset & Logo Licensing.

Latest

Trending

New Suit - Trademark

Merch Traffic, a brand focused on the creation and management of merchandise, primarily for musicians and artists, filed a trademark infringement lawsuit on Feb. 13 in Illinois Northern District Court over the alleged sale of counterfeit goods. The suit, filed by Greer, Burns & Crain, pursues claims against unidentified e-commerce operators. The case is 1:25-cv-01525, Merch Traffic, LLC v. The Partnerships and Unincorporated Associations Identified on Schedule A .

[Read More](#)

New Suit - Copyright

Cross Innovations, which sells medical products under the brand Lundberg, filed a copyright infringement lawsuit on Feb. 13 in New York Eastern District Court. The suit, brought by Dan B Law, takes aim at KingsHealth and Gaopei Feng for allegedly copying the instruction manual for the plaintiff's 'Under Mattress' bed alarm system

From AI chatbots to social media: data identification and preservation in the digital age

 [reuters.com/legal/legalindustry/ai-chatbots-social-media-data-identification-preservation-digital-age-2025-02-12](https://www.reuters.com/legal/legalindustry/ai-chatbots-social-media-data-identification-preservation-digital-age-2025-02-12)

Nicole Gill

AI (Artificial Intelligence) letters and robot hand are placed on computer motherboard in this illustration taken, June 23, 2023. REUTERS/Dado Ruvic/Illustration/File Photo Purchase Licensing Rights , opens new tab

February 12, 2025 - The advent of new software applications, such as AI chatbots like ChatGPT and third-party messaging applications like Slack, may help streamline chaotic areas of our lives, but their inclusion in e-discovery preservation workflows could do quite the opposite. New applications may pose challenges for collections in the course of discovery, but they more immediately pose challenges at the identification and preservation stages of the EDRM (Electronic Discovery Reference Model).

As such, attorneys need to be aware of new applications their clients are using so that they can ensure data generated by this software is preserved appropriately and can counsel their clients on what to do if the application does not allow for the preservation of this data.

Identifying new sources of data and the challenges they pose for preservation

The new applications an average client is likely to use can be placed in one of three categories: AI chatbots, third party messaging applications, and social media platforms. Once you have identified one of these sources as containing relevant data, the Federal Rules demand that this data is preserved so that sanctions are avoided.

The most common way that data is deleted from these applications is through default or selected settings. As such, the most integral step in data preservation for these applications is to understand what, if any, the default data retention period of a particular application is and if the period can be actively changed by the individual user for preservation purposes. Note that, as technology changes, so too do the retention policies associated with these applications. Be sure to consult each application's website to understand its latest privacy and retention policies.

1. AI chatbots

An AI chatbot is a tool that uses artificial intelligence to answer questions and respond to prompts. Some of the most popular AI chatbots are ChatGPT and Microsoft Copilot; however, new chatbots are always emerging. For example, Perplexity.ai, Jasper AI, and Google's Gemini have garnered the attention of technology enthusiasts.

ChatGPT chats are saved unless actively deleted; however, users can opt to disable the automatic saving of chat histories. As such, ensuring that a client does not actively delete relevant histories and that automatic retention settings are not disabled will prevent relevant information from being deleted.

Copilot chats, especially when governed by a larger organization, can be retained for a set period of time before deletion. In this instance, retention settings are set at an enterprise level for an organization, so it best for an attorney to understand what the retention period is and ensure automatic deletion is suspended if needed.

Perplexity.ai prompts are saved as long as the account is active, and once an account is deleted, information is removed from servers within 30 days. Here, instructing a client to keep his/her account active and to not actively delete chat histories will ensure messages are preserved. If a deletion occurs within the 30-day window, corresponding directly with Perplexity.ai for preservation may be warranted.

Jasper AI appears to have a short retention period for chat history so it is important to collect data as early as possible, to understand if there are any other means by which relevant chat history was saved if deleted (i.e., screenshots), and to document the steps taken to attempt preservation in case needed in court.

Gemini prompts are saved for up to 72 hours, and the last 24 hours of conversation data is accessible within a user's activity log even if a particular activity function is disabled. Auto-delete settings are managed by the user with options to save prompts for anywhere from three to 36 months. As such, instructing your client to choose the longest auto-delete setting along with making early arrangements for collection will prevent spoliation.

2. Third party messaging applications

Third party messaging applications allow individuals to do everything from chat and conduct video conferences to store shared files. Teams and Slack are rampant in the corporate market, WhatsApp and WeChat are popular in the foreign data market, and Signal, Telegram, and Element have also gained traction.

These tools often have back-end enterprise settings that dictate how long messages are kept. Teams messages are stored according to an organization's retention policy, and policies can be set for specific teams or an entire organization. Understanding your client's back-end retention policies for these applications will ensure that you counsel your client appropriately about disabling auto-delete functions.

Slack saves messages for different lengths of time depending on the user's plan and set retention schedules. For free accounts, data is kept up to one year, and for paid plans, data is kept for as long as the paid workspace exists by default. As such, it is important to

understand under which type of account your client is operating so that you can appropriately counsel them on maintaining an active paid workspace or implementing an early collection so messages that would be deleted in the ordinary course are preserved.

For WhatsApp and Element, users can set messages to disappear after a set amount of time, though messages can be kept for the lifetime of the account. For Telegram, Signal and WeChat, data is retained until an account is deleted or the user actively deletes the data. For these applications, attorneys should counsel their clients to choose appropriate retention settings when available and avoid deleting an account or relevant messages.

3. Social media accounts

Social media has remained a staple of content production. The popular platforms of Facebook, Instagram and X are still thriving alongside Snapchat and TikTok, but other new platforms have emerged such as Bluesky, Threads, and Mastodon.

Social media applications often offer lengthy data retention. Platforms like TikTok, X, Facebook, Instagram, Mastodon, Bluesky, and Threads do not delete your posted information unless the account itself is deleted or if the user actively deletes the data. Oftentimes, even if an account is deleted, there is a period during which the company may keep a user's data before permanent deletion.

It is best to counsel your client to not actively delete any relevant data from these platforms and to keep his/her account active. If an account is deleted, it may be worth checking directly with the platform to see if that data has been retained and if it can be preserved.

Snapchat data deletes 24 hours after viewing or seven days after viewing, depending on a user's setting; however, the Memories feature of Snapchat allows content to be kept for as long as the user would like. In this instance, it is best to counsel your client to suspend the use of these applications for relevant communications, work on an early collection of anything that may be preserved through a client's Memories, and document your process in the interim.

Keeping up with the future of data identification and preservation

The rapid evolution of software applications presents both opportunities and challenges in the realm of e-discovery. As new tools emerge, it is crucial for attorneys to stay informed about the technologies their clients use and their associated data retention policies. By understanding the default data retention settings and advising clients on best practices, legal professionals can ensure that relevant information is preserved appropriately.

Jumpstart your morning with the latest legal news delivered straight to your inbox from The Daily Docket newsletter. Sign up here.

Opinions expressed are those of the author. They do not reflect the views of Reuters News, which, under the Trust Principles, is committed to integrity, independence, and freedom from bias. Westlaw Today is owned by Thomson Reuters and operates independently of Reuters News.

Nicole Gill

Nicole Gill, chair and managing member of CODISCOVER, an e-discovery and information governance practice within Cozen O'Connor, develops tailored discovery management strategies and oversees complex, high-profile e-discovery projects using advanced technologies. She negotiates agreements on ESI preservation, directs AI use in discovery, and advises on data management and compliance with privacy laws across various jurisdictions. She is located in Philadelphia and can be reached at ngill@cozen.com.

Using Westlaw headnotes to train competing AI legal research program isn't fair use, judge rules

 [abajournal.com/web/article/using-westlaw-headnotes-to-train-competing-ai-legal-research-program-isnt-fair-use-judge-rules](https://www.abajournal.com/web/article/using-westlaw-headnotes-to-train-competing-ai-legal-research-program-isnt-fair-use-judge-rules)

Copyright Law

By Debra Cassens Weiss

February 12, 2025, 2:30 pm CST

An appeals judge has changed his mind and partly ruled for Thomson Reuters in its lawsuit claiming that a legal research startup committed copyright infringement by training its artificial intelligence program using Westlaw headnotes. (Image from Shutterstock)

An appeals judge sitting by designation changed his mind Tuesday and partly ruled for Thomson Reuters in its lawsuit claiming that a legal research startup committed copyright infringement by training its artificial intelligence program using Westlaw headnotes.

In a Feb. 11 opinion, U.S. Circuit Judge Stephanos Bibas of the 3rd U.S. Circuit Court of Appeals at Philadelphia ruled that Ross Intelligence's use of 2,243 headnotes constituted direct copyright infringement, and the copying did not constitute fair use. Bibas was sitting by designation in the federal court for the District of Delaware.

"A smart man knows when he is right; a wise man knows when he is wrong," Bibas wrote. "Wisdom does not always find me, so I try to embrace it when it does—even if it comes late, as it did here. I thus revise my 2023 summary judgment opinion and order in this case."

Publications covering the decision include Law.com, LawSites, Law360 and Reuters. The Volokh Conspiracy noted the opinion.

Westlaw had refused to license its headnotes to Ross Intelligence because it was a competitor. Ross Intelligence then made a deal with another company to license its "Bulk Memos" for training, which were written using Westlaw headnotes.

In the 2023 opinion, Bibas said, he "largely denied" Thomson Reuters' motions for summary judgment on infringement and fair use. In the new opinion, Bibas found infringement for 2,243 headnotes out of 21,787 for which Thomson Reuters claimed infringement.

"The rest of the headnotes must go to trial," he wrote.

On the fair use question, Bibas weighed four factors and concluded that the most important ones—Ross Intelligence’s commercial use of the material and its intent to compete with Westlaw—favor Thomson Reuters.

In his 2023 opinion, Bibas said the degree of overlap between headnotes and the case opinion determines whether they are entitled to copyright protection. But Bibas said he now thinks that a headnote can “introduce creativity by distilling, synthesizing or explaining part of an opinion and thus be copyrightable.”

Bibas said he reached that conclusion when he analogized the headnote writer’s editorial judgment “to that of a sculptor.”

“A block of raw marble, like a judicial opinion, is not copyrightable. Yet a sculptor creates a sculpture by choosing what to cut away and what to leave in place. That sculpture is copyrightable,” Bibas wrote.

“So, too, even a headnote taken verbatim from an opinion is a carefully chosen fraction of the whole. Identifying which words matter and chiseling away the surrounding mass expresses the editor’s idea about what the important point of law from the opinion is. That editorial expression has enough ‘creative spark’ to be original.”

Some issues remain to be decided at trial, LawSites reports. One issue is whether some of Thomson Reuters’ copyrights have expired or were “untimely created,” Bibas said. Another is whether Ross Intelligence used Westlaw’s key number system and how.

Write a letter to the editor, share a story tip or update, or report an error.

Related topics:

3rd Circuit Court | States | Copyright Law | Intellectual Property Law | Technology | Delaware | Practice Technology | Career & Practice | Artificial Intelligence & Robotics | Unfair Competition

Litigation

Feb. 13, 2025, 2:03 AM PST

DOGE-Triggered Data Lawsuits Center on Watergate-Era Privacy Law

By [Cassandra Coyer](#)

Deep Dive

- **Privacy Act of 1974 hasn't been a 'litigator's dream'**
- **Disputes over Musk team's access to test data-protection law**

A series of lawsuits challenging federal agencies' sharing of Americans' personal data with Elon Musk's federal cost-cutting group all have something in common: a 50-year-old privacy statute with little applicable precedent.

In the last week, groups sued the US Labor, Treasury, and Education departments, as well as the Office of Personnel Management and Consumer Financial Protection Bureau, alleging their handing over of individuals' sensitive data to the Trump administration's Department of Government Efficiency violates the Privacy Act of 1974.

The Watergate-era law aimed to restore trust in government agencies by restricting how federal bodies can collect, maintain, use, and share Americans' information. But the Privacy Act has had little play in court over accusations of agencies' unlawful and willful disclosures of data, leaving open questions about how judges will apply the act's requirements to agencies' compliance with DOGE's demands.

"We can see, potentially, all government agencies being subject to unauthorized access of their systems," said Ron De Jesus, field chief privacy officer at Transcend. "So it's incredibly important that these lawsuits are coming because it's going to force judges to make decisions about Americans and their privacy."

At least nine complaints filed so far accuse the agencies of unlawfully exposing swaths of personal data to DOGE, including mortgage statements, tax returns, immigration status, and Social Security numbers. Judges have so far split on granting plaintiffs' requests for temporary restraining orders barring DOGE employees from accessing personal data held by agencies.

Not a 'Litigator's Dream'

The Privacy Act is the main law that regulates the public sector's data practices. It prohibits disclosures of information from agencies' records systems without consent, with defined exceptions that include when the information is needed for an agency to perform its duties, for routine uses, or to comply with a law enforcement request.

If an agency must share its data, federal bodies can add a new "routine use" of the data only if it's compatible with the original purpose of collection. Before relying on the exception, they're required to publish the new use in the Federal Register for public comment.

In a Feb. 9 filing, the government argued that a temporary restraining order limiting “all political appointees” from accessing data from Treasury should be vacated because it limits high-level employees like Treasury Secretary Scott Bessent from doing their job. The government said the order was a “remarkable intrusion” on the executive branch.

It’s “hard to imagine what possibly legitimate reason” DOGE has for accessing agencies’ information, said Adam Pulver, attorney at Public Citizen Litigation Group, the organization representing plaintiffs in suits against the Education and Treasury departments.

The agencies targeted with lawsuits haven’t yet published notices related to the new uses of their data by DOGE, according to Federal Register filings.

Though the law allows private citizens to sue over violations, it hasn’t exactly been a “litigator’s dream,” said Robert Gellman, privacy consultant and former House staffer.

Attorneys have struggled to obtain damages from improper disclosures after a 2012 Supreme Court ruling in *FAA v. Cooper* curbed the remedies available for Privacy Act violations.

The law is old and wasn’t “done as well as it could have been,” Gellman added.

The US Justice Department, which represents federal agencies in litigation, didn’t immediately respond to a request for comment.

Unprecedented

On Feb. 7, attorneys general from 19 states also sued President Donald Trump, the Department of the Treasury, and Bessent over the department’s “new and dangerous expanded access policy,” noting that their states “have not received even basic information about whether sensitive information is being shared” or “how that information is being used.”

On Feb. 8, District Judge Paul A. Engelmayer found that the states have shown a “likelihood of success” on the merits of their claims, with statutory claims that are “particularly strong.”

The breadth of the alleged disclosures makes these cases novel under the Privacy Act, legal professionals said.

“I can’t remember a time when there’s been such an obvious and well-documented” grant of unfettered access to agencies’ data, said Alan Butler, executive director and president of the Electronic Privacy Information Center, who sued the Treasury Department, OPM, and DOGE. This is an “egregious overreach with respect to a really sensitive federal government database.”

Still, the lack of precedent over agencies’ alleged Privacy Act violations won’t mean judges will be in completely uncharted territory.

"The case law is clear about what is or isn't permissible," said Lynn Parker Dupree, leader of Finnegan, Henderson, Farabow, Garrett & Dunner LLP's privacy practice and former chief privacy officer at the Department of Homeland Security. "So while we have never seen these circumstances," there is an "understanding" of what is acceptable under exceptions to the law's consent requirement.

"It will be a matter of applying that case law to these circumstances," she said.

Agency Status

The status of DOGE as the renamed US Digital Service within the White House will likely play a central role in how judges determine its ability to access federal data. Non-government employees "cannot get information about individuals that is maintained in a Privacy Act system of records," Gellman said.

If courts find the data was shared with federal employees, it could provide a path for DOGE's lawful access to data going forward. Still, an after-the-fact notice of a new routine use from the agencies won't "undo the violations," Pulver said.

As federal judges across jurisdictions are tasked with applying the law to an unprecedented scenario, the continued multiplication of lawsuits could soon create differing rulings on DOGE's access to government data—as well as the recourse that plaintiffs' attorneys will be able to obtain.

"Even if a court stops DOGE from continually accessing these systems, again, they have the information. It's like a hacker, right? They already have the information," De Jesus said. "We can stop access. We can stop the bleeding. But once it's bled, the damage has been done."

To contact the reporter on this story: Cassandre Coyer in Washington at ccoyer@bloombergindustry.com

To contact the editors responsible for this story: Adam M. Taylor at ataylor@bloombergindustry.com; Kartikay Mehrotra at kmehrotra@bloombergindustry.com

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Litigation

Feb. 12, 2025, 11:15 AM PST

Smattering of Paragard IUD Defect Suits Trimmed as Time-Barred

By [Shweta Watwe](#)

- **Lawsuits say Paragard makers didn't warn about breakage risks**
- **Some claims dismissed because statute of limitations expired**

The makers of the Paragard IUD device convinced a federal judge to dismiss dozens of individual suits in consolidated multidistrict litigation alleging the companies failed to warn people of the device's risks.

Judge Leigh Martin May of the US District Court for the Northern District of Georgia trimmed claims in a handful of suits from plaintiffs in Idaho, Mississippi, New York, Alabama, Michigan, Virginia, and Texas as time-barred under those states' statutes of limitations.

The lawsuits are part of litigation alleging Paragard, a non-hormonal and non-surgical contraceptive device, was defective and prone to breaking inside people's bodies. The plaintiffs in the litigation are women whose Paragard IUD broke while still inside their bodies.

They alleged the device's rigidity made it prone to snapping more than any other IUD on the market. They also said the defendants, Teva Pharmaceuticals USA Inc. and CooperSurgical Inc., knew about this breakage problem because they received thousands of reports of Paragard breaks between 2009 and 2020.

The plaintiffs argued dismissal would be improper because the companies were substituting "breakage" for "injury" when the breakage is the defect. The plaintiffs said some of the injuries were surgeries and hysterectomies caused by the device's fragility, so, as a result, individual injury dates hadn't been established yet.

May rejected that argument and noted that the master complaint in the litigation said each plaintiff's Paragard was already broken by the time of her removal surgery.

"It would defy logic to find that a broken Paragard may not have inflicted medically ascertainable injuries until after it had already been removed from the woman's body," May said.

She also rejected their argument that the statute of limitations was tolled based on the defendants' fraudulent concealment.

Based on their pleadings, there was enough for a fact finder to say the companies did intentionally lie to delay the patients' discovery of their claims. But "by the date of the first Paragard removal, it was no longer necessary for Plaintiffs to rely on Defendants' omissions and false representations" because by then each plaintiff knew her Paragard had broken inside her, May said.

The case is *In re Paragard IUD Prods. Liab. Litig.*, N.D. Ga., No. 1:20-md-02974, 2/11/25.

Changes from 2023 didn't take Roundup plaintiffs' 'shaky' causation experts

 legalnewsline.com/stories/669771528-changes-from-2023-didn-t-take-roundup-plaintiffs-shaky-causation-experts

February 13, 2025

SAN FRANCISCO (Legal Newsline) - Experts once called "shaky" by the federal judge hearing thousands of Roundup cases can continue to testify, as the latest wave of plaintiffs make their way through a multidistrict litigation proceeding.

The methods of many researchers were up for debate in the MDL, overseen by San Francisco judge Vince Chhabria. Monsanto, now under the ownership of Bayer, last year hoped recent changes to evidence standards would result in a group of plaintiff experts being unable to testify.

It was in August that Monsanto began seeking to disqualify experts once deemed admissible by Chhabria. They are general-causation experts whose opinions apply to all cases.

Monsanto was pointing at Rule 702 and its recent amendment to Federal Rules of Evidence targeting so-called "junk science." It went into effect in 2023, and though Bayer says it has a winning record in the many trials that have gone on around the country, losses result in eye-popping verdicts.

One Philadelphia jury awarded \$2.25 billion, later reduced to \$400 million while Bayer appeals. In 2018 in the San Francisco MDL, Chhabria wrote there were "significant problems" with plaintiffs' general-causation experts, and that their admissibility was "a very close question."

Chhabria pointed at three cases as reasons for ultimately allowing the testimony, but Rule 702 should have prodded him the other way, Monsanto said.

"Indeed, the amendments directly implicate the Court's (2018) analysis..." Monsanto wrote. "For example, the Court recognized that the opinion of one of Plaintiffs' experts, Dr. (Christopher) Portier, was 'far from unassailable' given the 'legitimate concerns about the reliability of the data' that he relied on

"Despite this, the Court deemed his opinion admissible, stating that Monsanto could 'cross-examine Dr. Portier on the apparent weaknesses in his analysis, and there is little reason to think that a jury will not understand those weaknesses.'"

Chhabria, though, said in September his previous rulings did not need to be reconsidered, no matter the new standards of Rule 702.

"Those rulings will continue to serve as the guideposts for decision in future motions to exclude general causation or specific causation experts," he wrote.

Among the experts Monsanto wanted excluded were Portier, saying his opinion can only be presented if Portier demonstrates his testimony is based on sufficient facts, is the product of reliable principles and methods and reflects a reliable application of the principles and methods to the facts of the case.

Portier was the chairman on the International Agency for Research on Cancer, which kickstarted litigation in 2015 when it became the only group to find glyphosate, the active ingredient in Roundup, is a probable carcinogen.

He left the IARC to work as an expert for plaintiff lawyers. Last year, Chhabria tossed a "meta-analysis" published in 2019 by toxicology professor Dr. Luoping Zhang because it cherry-picked data to come to the conclusion Roundup causes Non-Hodgkins lymphoma.

Portier and three others were criticized by Monsanto as being similarly out-of-touch in not recognizing research that has been published since 2019 - "These experts have no disclosed new expert reports in years."

"Rather than provide reports from these experts that take the latest science into consideration, Plaintiffs' Wave VII Rule 26 disclosures have simply incorporated by reference these experts' prior reports," Monsanto added. "But such outdated reports cannot be reliable, as this Court has held."

And other experts continue to rely on the since-tossed analysis of Zhang, Monsanto said. One such person is Dr. Kristan Aronson, who in 2023 was involved in a St. Louis case when it was discovered she only formed an opinion when approached by plaintiffs lawyers with the IARC study.

The judge hearing the case granted a directed verdict to Monsanto. A separate motion to exclude her testimony in the San Francisco MDL feared, among other things, she would compare Bayer and Monsanto to the tobacco, lead or asbestos industries.

"(T)his testimony would be unfairly prejudicial: this opinion is simply an attempt to score points with the jury by [incorrectly] painting Monsanto as a general bad actor who exerted undue influence on its own regulators," Monsanto wrote.

There are more than 4,400 cases in the MDL, even after Monsanto settled 100,000 others for about \$11 billion. There are probably 50,000 more Roundup cases in state courts, the company says.

Late last year, the Federal Court of Australia closed all Roundup cases after a court found the weight of scientific evidence did not support a link between glyphosate and NHL. It was the first final Roundup judgment outside of the U.S. on that issue.

Bayer, as of Jan. 3, had won 15 of the last 22 trials. The cases of plaintiffs in Wave VIII of the litigation are proceeding, leading to a new round of expert disqualification issues being preserved for possible appeals.

Chhabria did exclude some testimony, including from Zhang, from other Wave VII experts after declaring his previous decisions would guide his future ones. He told the sides on Jan. 14 that when preparing their new disqualification motions for Wave VIII, "they should carefully review the Court's recent Wave 7 orders."

"If a party is considering filing a motion that covers an issue addressed in a previous order, they should clearly note in their motion that the issue is being raised for preservation purposes only," he added.

On Feb. 10, motions to exclude the general causation experts, including Portier, were denied again, as they were filed for preservation purposes only.

Class Action

Feb. 12, 2025, 10:57 AM PST

Judge Backs Major Poultry Firms' Settlement in Wage-Fixing CaseBy [Justin Wise](#)

-
- **Workers sued poultry firms for conspiring to drive down wages**
 - **Koch Foods, Tyson among companies to reach settlements**

A federal judge gave backing to a batch of settlements to resolve claims that poultry producers, including Koch Foods Inc. and Tyson Foods Inc., colluded to suppress worker wages.

In a Tuesday order, Judge Stephanie A. Gallagher of the US District Court for the District of Maryland said the reached between a class of workers and poultry firms “are sufficiently fair, reasonable, and adequate.”

She granted a motion for preliminary approval of the settlement. It marks a momentous step for a lawsuit brought in 2019 and that accuses the nation’s largest chicken producers of conspiring to fix and depress hourly wages and benefits paid to plant workers.

Plaintiffs have reached nine written settlement agreements with chicken producers, according to Tuesday’s order. Terms of such agreements have not been disclosed.

Counsel for a class of workers declined to comment.

Along with Koch Foods and Tyson, other firms that have reached deals with plaintiffs include Allen Harim Foods LLC, Amick Farms LLC, Butterball LLC, Fieldale Farms Corporation, Foster Poultry Farms, JennieO-Turkey Store Inc., OK Foods, and Keystone Foods, LLC.

The court also appointed Cohen Milstein Sellers & Toll PLLC, Hagens Berman Sobol Shapiro LLP, and Handley Farah & Anderson LLP as settlement class counsel.

The case is *Jien v. Perdue*, D. Md., 1:19-cv-02521, 2/11/25

To contact the reporter on this story: Justin Wise at jwise@bloombergindustry.com

To contact the editor responsible for this story: Rob Tricchinelli at rtricchinelli@bloombergindustry.com

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Meta Costs Black Students Opportunities in Higher Education, New Discrimination Lawsuit Says

 [law.com/therecorder/2025/02/12/meta-costs-black-students-opportunities-in-higher-education-new-discrimination-lawsuit-says-](https://www.law.com/therecorder/2025/02/12/meta-costs-black-students-opportunities-in-higher-education-new-discrimination-lawsuit-says/)

Colleen Murphy

Meta Platforms is facing a civil rights and privacy lawsuit in the District of Columbia for allegedly racially discriminating on its platforms by disproportionately steering for-profit education advertisements to Black people.

Takeaway: The lawsuit was filed amid the tumult of the Trump administration's targeting of federal and corporate diversity, equity, and inclusion efforts. An executive order signed by Trump on Jan. 21 halted the Office of Federal Contract Compliance Programs from investigating discrimination allegations, which, among other things, essentially stopped an audit of Tesla over allegations of discrimination at an automobile factory, according to The San Francisco Standard.

Court: Washington, D.C., Superior Court

Case Type: Civil rights, privacy

Industry: Social Media

Lawyers: The plaintiffs are represented by Edward G. Caspar, Marc P. Epstein, Gillian Cassell-Stiga, Sumayya Saleh, Chavis Jones and Zakiya Lewis of the Lawyers' Committee for Civil Rights Under Law; Kaitlin Banner and Mirela Missova of the Washington Lawyers Committee for Civil Rights and Urban Affairs; and Diane L. Houk, Samuel Shapiro and Hafsa S. Mansoor of Emery Celli Brinckerhoff Abady Ward & Maazel. Counsel has not yet entered an appearance for Meta.

Law.com Radar

Liability Arguments: The lawsuit, filed Tuesday, alleged that Meta uses tracking pixels to determine users' ethnicities and then steers ads for public colleges and universities to white people and ads for for-profit schools to Black people. The complaint alleged that race-based steering of information violates the D.C. Human Rights Act and the D.C. Consumer Protection Procedures Act.

The complaint also includes reference to a 2024 study conducted by academic researchers that ran three sets of experiments comparing the racial breakdown of ad delivery for public versus for-profit colleges and universities. Further, the complaint alleged that the study

results prove that Meta disproportionately steers for-profit higher education ads to Black users. That practice, according to the complaint, means Black users are denied access to information about public colleges and universities.

Damages Arguments: The plaintiffs alleged that the unlawful practices in the complaint harm Black social media users by denying them valuable information on higher education. By steering ads in this manner, Black social media users end up with higher college debt and are less likely to graduate than their peers at public schools. The complaint also contends that for-profit college and university graduates often fair worse in the labor market than those with only a high school education.

The complaint seeks a declaration that Meta violated the D.C. Human Rights Act and Consumer Protection Procedures Act. It also asks for equitable relief to end future discrimination, award restitution, damages, and attorney costs and fees, among other requests.

What the lawyers are saying: "Our lawsuit alleges that Meta disproportionately steers advertisements for for-profit schools to Black people and advertisements for public nonprofit schools to white people," plaintiff's counsel, Marc P. Epstein of the Lawyers' Committee for Civil Rights Under Law, told Law.com. "This violates D.C. civil rights laws, including the Human Rights Act and Consumer Protection Procedures Act, by providing separate and unequal services in places of public accommodation. The bottom line is algorithmic systems should promote equity and opportunity, not replicate and reinforce systemic discrimination."

Meta did not return a request for comment.

Radar scan: Meta Platforms is a frequent target of lawsuits, including at least 25 products liability claims filed in California state and federal courts in the past week by school districts claiming that the company's social media platforms negatively impact the mental health of children.

Caption: *Equal Rights Center v. Meta Platforms*

Date filed: Feb. 11.

Judge: Judge Julie H. Becker.

Read the complaint here.

This complaint was first surfaced by Law.com Radar, ALM's source for immediate alerting on just-filed cases in state and federal courts. Law.com Radar now offers state court coverage nationwide. Sign up today and be among the first to know about new suits in your region, practice area or client sector.

NOT FOR REPRINT

Class Action

Feb. 12, 2025, 3:32 PM PST

FCA, Cummins Trim 'Defeat Devices' Emissions Warranty Claims

By [Shweta Watwe](#)

- **Express warranty requires repair attempt plaintiffs didn't try**
- **Consumer protection claims based on misrepresentation proceed**

FCA US LLC and Cummins Inc. convinced a federal judge to trim claims in a proposed class action alleging the companies misrepresented the performance and environmental compliance of two pickup truck lines because the companies manufactured and installed "defeat devices" to get around emissions requirements.

FCA—now doing business as Stellantis— and Cummins shed warranty claims, but it still has to face consumer protection claims, according to a ruling Tuesday from the US District Court for the Northern District of California. The court also cut a fraud claim brought on behalf of a nationwide class but allowed the claim on behalf of a proposed state class to proceed because the named plaintiffs were all from California.

The consumers alleged Cummins, the engine maker, and Stellantis made false and misleading representations about the Ram 2500 and 3500 diesel pick-up trucks' emissions compliance because the companies installed 'defeat devices.'

Judge Jacqueline Scott Corley dismissed the express warranty claims because some plaintiffs didn't meet the necessary element of presenting the vehicle for repair. And the plaintiffs don't allege that any of the named plaintiffs tried to get their trucks repaired more than once, she said.

Corley allowed an implied warranty claim under the Song-Beverly Act to proceed because the law says all consumer goods come with an implied warranty that the goods are merchantable. The plaintiffs adequately alleged the trucks were unmerchantable because California law prohibits operating cars that contain incorrect pollution control devices.

The companies failed to get consumer protection claims based on misrepresentations and omissions dismissed. The complaint alleges consumers wouldn't have bought the trucks if they'd known about the defeat devices, and that the companies knew the vehicles had the devices.

But the claims based on misrepresentation are preempted by the Clean Air Act to the extent that the plaintiffs argue the trucks weren't emissions compliant, Corley noted.

The consumers are represented by Lieff Cabraser Heimann & Bernstein LLP, Baron & Budd PC, and Seeger Weiss LLP, among others. FCA is represented by Klein Thomas Lee & Fresard.

The case is *Biederman v. FCA US LLC*, N.D. Cal., No. 3:23-cv-06640, 2/11/25.

To contact the reporter on this story: Shweta Watwe in Washington at swatwe@bloombergindustry.com

Counsel for Jailed SCOTUSblog Publisher Tom Goldstein Demand Pretrial Release

 [law.com/nationallawjournal/2025/02/12/counsel-for-jailed-scotusblog-publisher-tom-goldstein-demand-pretrial-release](https://www.law.com/nationallawjournal/2025/02/12/counsel-for-jailed-scotusblog-publisher-tom-goldstein-demand-pretrial-release)

Sulaiman Abdur-Rahman

What You Need to Know

- Munger, Tolles & Olson represent indicted SCOTUSBlog publisher Tom Goldstein.
- Counsel for Goldstein filed a motion seeking to have his pretrial detention order revoked.
- The U.S. Department of Justice alleges Goldstein is too untrustworthy to return to pretrial release.

Indicted SCOTUSblog publisher and appellate attorney Tom Goldstein has retained criminal defense counsel as he challenges his pretrial detention order as unjustifiable.

“The government’s assertion that Mr. Goldstein used cryptocurrency wallets owned by him to engage in transactions since his arraignment is just wrong,” Munger, Tolles & Olson trial attorneys wrote in a motion filed Wednesday on behalf of Goldstein. “The messages attached to Mr. Goldstein’s motion plainly show that the wallets do not belong to him and that he had no connection whatsoever to the recent transactions in those wallets.”

Chief U.S. Magistrate Judge Timothy J. Sullivan of the District of Maryland ordered Goldstein jailed without bond Monday after the U.S. Department of Justice accused Goldstein of being a “significant flight risk.”

Prosecutors alleged Goldstein violated his former conditions of pretrial release by failing to disclose his cryptocurrency assets worth millions after he pleaded not guilty Jan. 27 to numerous white-collar criminal offenses.

“There is clear and convincing evidence that Defendant violated his conditions of release and probable cause that Defendant committed a violation of 18 U.S.C. § 1001 by failing to disclose his interest in and transactions using undisclosed cryptocurrency accounts,” DOJ attorneys wrote in a brief filed Tuesday opposing Goldstein’s motion for immediate release from jail. “In short, Defendant’s labyrinthine financial transactions, his involvement with numerous foreign actors with significant assets, and his extensive and sophisticated foreign travel, including through the Fixer, show that he presents a real risk of flight.”

Counsel for Goldstein deny their client made any large crypto transactions since pleading not guilty to tax evasion and related offenses.

“Remarkably, the government also does not dispute that its detention motion contained inaccurate allegations of criminal conduct and misleading characterizations of the evidence, concessions that should give the Court considerable pause in weighing the credibility of the government’s arguments,” Goldstein’s counsel wrote in a rebuttal filed Wednesday. “Mr. Goldstein’s motion should be granted, and he should be released from custody forthwith.”

Goldstein lacked legal representation when he appeared in Maryland federal court Monday afternoon for a bail hearing. He later retained Munger, Tolles & Olson trial lawyers Jonathan Kravis and Stephany Reaves to challenge his detention order.

The criminal defense attorneys asked the court to revoke Goldstein’s pretrial detention order in a motion filed Tuesday.

U.S. District Judge Lydia Kay Griggsby will preside over a motion hearing scheduled for 2 p.m. Friday at the federal courthouse in Greenbelt, Maryland.

A seasoned attorney who has practiced law for over 25 years, Goldstein became a criminal defendant Jan. 16 when a federal grand jury handed up a 22-count indictment charging him with white-collar felonies.

Goldstein, 54, remains incarcerated at the maximum-security Chesapeake Detention Facility in Baltimore as of Wednesday evening.

NOT FOR REPRINT

© 2025 ALM Global, LLC, All Rights Reserved. Request academic re-use from www.copyright.com. All other uses, submit a request to asset-and-logo-licensing@alm.com. For more information visit Asset & Logo Licensing.

Matt Levine's Money Stuff: Not Everywhere Is Insider Trading

By Matt Levine

Opinion

Insider betting

Here's an insider trading hypothetical for you. I have a golf buddy who is a senior executive at a public company. One day on the course, she tells me: "My firm is going to announce a takeover of Anacott Steel at \$15 per share; you should buy some." I go back to my office, open up my brokerage app, and am about to buy 10,000 short-dated out-of-the-money call options when I think: "Wait, no, this is insider trading, I will get in trouble for this." I close the app.

Instead, I pick up my phone and call you. "Hey," I say, "I'll bet you a million dollars that Anacott Steel closes above \$13 this Friday." You are a degenerate gambler and have never heard of the concept of adverse selection, so you say "ha, Anacott Steel is at \$10 now, this is easy money, it's a bet." The next day, the takeover offer is announced, the stock goes to \$14, and I collect \$1 million from you.

Did I commit insider trading? Oh man is this not legal advice, but my gut is: yes? Technically I didn't trade any stock — I just made a bet with you — but I'm not sure that matters. Our bet is, arguably, a "security-based swap": We have agreed to exchange payments based on the future value of a security (the Anacott Steel stock). And insider trading in security-based swaps counts as insider trading.

In real life there is also a more practical reason to consider this insider trading. In real life, when you get a phone call from me asking to bet \$1 million on the price of Anacott Steel, you might *hedge* that bet. You might agree to the bet with me and hedge it by buying some Anacott Steel stock (or options): If the stock goes up, you will lose the bet but make money on the hedge, and if it goes down, you will win the bet but lose money on the hedge. You wouldn't necessarily do that if you were a degenerate gambler, but realistically if I am calling someone to bet on the future price of a stock, I'm probably calling a *bank* or other trading firm, and the bank will probably hedge. Therefore, while my bet is not an *actual* insider trade in Anacott Steel stock, it predictably *causes* trades in Anacott Steel stock. It's not just between us; somebody else — some seller of the stock — is indirectly on the wrong side of my inside information.

Now let me change the hypothetical slightly. Everything stays the same, except that I am in London and you are in London. Anacott is in Erie, Pennsylvania, and its stock trades on the New York Stock Exchange, but our *bet* is in London. Is that insider trading? Or, rather, if it's insider trading, can anyone do anything about it? Specifically, can US federal prosecutors do anything about it?

This is extra super not legal advice but:

A trader accused by the US of making nearly \$2 million from insider dealing won a last-ditch attempt at the UK Supreme Court to block his extradition, after the country's top judges ruled that the alleged wrongdoing took place outside the US.

Joseph El Khouri, who holds dual Lebanese-British citizenship and lives in London, was facing criminal charges that he traded on inside information. US prosecutors alleged that the trader, an avid poker player, gave lavish gifts to middlemen, including expensive hotel stays in New York, and a charter yacht in Greece, in exchange for tips as part of an international insider trading conspiracy.

British courts first ruled that he could be extradited in 2021.

But the trader successfully argued that the overwhelming majority of the alleged misconduct took place in the UK and that the US lawyers were wrong to say that the impact of the trading was likely to have affected US markets. ...

El Khouri was alleged to use the insider tips to trade in contracts for difference.

Here are the original charges and the 2019 indictment, which says that he traded contracts for difference — similar to total return swaps, bets on the stock price — in the UK based on US stocks. If you use inside information to bet on the prices of US stocks in the UK, what does that have to do with US prosecutors? Maybe nothing: If British people want to trick other British people, that's between them and their government, not the Southern District of New York. Or maybe something: If British brokers sell CFDs to British traders and then hedge those CFDs by trading the underlying stock (in the US), then that does seem like something US prosecutors might care about. But not enough for the court.

I am mentioning this mostly because I can never resist a fun insider trading puzzle. But there is *perhaps* a broader theme here. I have gotten used to the idea that, if anyone in the world does any sort of financial transaction that the US government doesn't like, that's a crime in the US. If you are a French bank (or a stateless crypto exchange) moving money from a sanctioned Russian company to its Venezuelan supplier, the US legal and financial system will find a way to get you: You probably moved dollars, the dollars probably touched banking settlement systems in New York, boom, you committed a US crime. Or if you are a Swiss commodities trading firm paying bribes to win contracts in Nigeria, that's a crime in the US too, and you'll pay up. The US is a big powerful country with big markets and the global currency, and it can exert its power to make foreigners subject to its laws.

Could that be changing? This is just one case. But there are other shifts. We talked a few times last year about Tether, the stablecoin, as a way to transfer dollars without being subject to the legal risks of the US dollar system: If you want to send dollars to Russian arms dealers, a US bank will stop you, and a French bank will probably stop you, but stablecoins move on the blockchain and are more resistant to US government interference. Last year, the US government didn't like that idea, but this year it might. ("Commerce Nominee Lutnick Is Backer of Outlaws' Favorite Cryptocurrency," was a Bloomberg headline last month.)

Or I mentioned that paying bribes abroad is a crime in the US, but that's only what the law says. But President Donald Trump has issued an executive order "pausing" enforcement of the Foreign Corrupt Practices Act, so bribery abroad is no longer any of US prosecutors' business. (Not legal advice!)

And it turns out that insider trading abroad might not be either. The US is a big powerful country, but that doesn't mean that US law applies to everyone.

Vanguard

I do not give financial advice around here, but a *pretty good* piece of financial advice — not the *best possible* financial advice, not advice that applies to all people in all situations, but a pretty good first cut — is "(1) save as much money as you can, (2) put it in broad market index funds with low fees, and (3) leave it alone."

That does not answer all of your questions! For one thing, it doesn't *exactly* tell you which index funds to buy. (Should you buy the global stock portfolio, or tilt toward your own country? Should you be 60/40 stocks and bonds, or some other mix, and should the mix shift over time?) But it also doesn't tell you exactly how much to save, or how to budget, or how to decide between investing and paying down debt, or when you should start withdrawing money for retirement; it doesn't answer any of your questions about tax loss harvesting or tax-advantaged savings vehicles or charitable giving or efficiently passing money on to your heirs; it is not responsive to your particular circumstances.

But it's *pretty good*, in the sense that a large number of Americans would probably be better off following this advice than doing whatever they're currently doing. It was also, once, pretty revolutionary. Once upon a time, many people got their financial advice from stockbrokers, who would tell them things like "buy this mutual fund that underperforms the market but pays me a 7% sales commission" or "buy these three stocks I love right now, and sell them next week to buy different stocks so I can earn a lot of commissions." In the aggregate, the customers were unlikely to outperform the market (in the aggregate, they *were* the market), and they paid a lot for the advice. Telling those customers "just put it in index funds and ignore it" would have simplified their lives, saved them lots of money on fees, and probably improved their returns.

On the other hand their stockbrokers — or other financial advisers — also probably reminded them to harvest tax losses and put money into tax-advantaged 401(k) plans, helped them plan for retirement and advised them on passing money on to their heirs. There was sort of a bundle where the overpriced stock-picking paid for the useful advice.

Someone *did* come along and tell the customers “put it in index funds and ignore it,” with great success. That someone was John Bogle and Vanguard Group. A lot of people found that advice appealing, and Vanguard made it easy to follow it: Vanguard has a website where you can open a brokerage account and buy its low-fee mutual funds, many of which are index funds. You can go to the website, buy like five broad index funds, automatically put in new money every month, and forget about it.

This is very good for a lot of people, who save money on fees and get market performance and also don't have to think about this stuff all the time. But there are downsides, the main one being that the website does not really answer all of your questions about budgeting or taxes or charitable giving or efficiently passing on money to your heirs. It essentially unbundles the stock-picking and the useful advice: Vanguard will do the stock-picking better and more cheaply than most financial advisers, but it won't sit down with you in a plush office for quarterly meetings where you discuss your financial hopes and dreams and Vanguard tells you how to achieve them.

That's an obvious thing to work on. Here's a Financial Times story about Vanguard's evolution:

For much of its history, it catered mostly to do-it-yourself investors and employee-directed retirement plans. Though its online offerings were clunky compared with rivals, and its customer service lines had limited hours, investors were rewarded with low fees that led to superior returns.

Having forced rival asset managers to slash fees and rethink business models built around stockpicking, Vanguard is now taking aim at other parts of the financial services industry. [Chief Executive Officer Salim] Ramji is spearheading pushes into investment advice, actively managed bond funds and cash accounts. ...

Meanwhile, many of its older customers are reaching retirement age and need advice on the complexities of drawing down their pension pots. “Vanguard is the sleeping terror for US wealth managers,” says a senior executive at a major Wall Street rival. “If it wakes up, it will swoop upon the complacent cottage industry of financial advisers, and tear it apart.”

Venturing into financial advice defies the instincts of Bogle, who died in 2019 but spent a lifetime urging investors to “minimise the croupier's take”. ...

The company launched personal adviser services in 2015 and added a digital-only robo-adviser in 2020. It already has more than \$900bn in advisory assets, making it a big player in a highly fragmented industry.

“Low fees, novel price transparency, operating scale, great brand, unlimited resources — it can't lose,” says the senior executive at a rival firm. “Unless it stays asleep.”

Vanguard last year cut the minimum account size to \$100 for digital-only advice and charges a maximum of 0.2 per cent for the service. Clients with at least \$50,000 can graduate to a combination of digital and live advice for 0.3 per cent. Vanguard plans to keep costs down by using video and artificial intelligence to help advisers serve more clients, more effectively. ...

One potential mother lode could be Vanguard's existing retail customers — at present, only 5 per cent of them pay the firm for advice. [The head of the advisory business, Joanna] Rotenberg describes how her father, “a dyed-in-the-wool self-directed customer, a Boglehead for life”, reached his seventies and wanted help sorting out his retirement spending: “He actually moved out of Vanguard to another firm because, in his perception, Vanguard didn't have those capabilities.”

When Bogle started, “minimize the croupier's take” was counterintuitive but ultimately good advice *about investing*: He was ridiculed for this idea at first, but now it is widely accepted that paying a lot of money to star fund managers to pick stocks for you is worse than paying Vanguard 0.04% *not* to pick stocks. But you might want more from your financial relationship than stock picks, and you might be willing to pay for it.

The Dow

One counterintuitive idea of modern finance that I like to think about is that stocks are all kind of interchangeable. In old-timey finance, you would buy Amalgamated Widgets because you liked its dividend and bought its products and were golf buddies with its chief executive officer, but in modern finance every stock is just a list of factor exposures, and your job is to get the right factor exposures. There are lots of stocks, and you can get your factor exposures in various ways, so it is approximately true that a stock is a linear combination of other stocks. And so, for instance, if you have to sell Amalgamated Widgets stock to take a tax loss, you can immediately replace it with some other basket of stocks to keep the same market exposure under a different name.

Again, this is an interesting approximation; it is not quite true. Over long periods, most of the returns from the stock market come from a fairly small fraction of the stocks, so replacing the 10 good stocks with 100 bad stocks in your portfolio would be a disaster. But for many purposes, much of the time, “a stock is a set of factor weights, and you can get those factors lots of places” is approximately true.

And so, if your finance professor assigned you a job like “replicate the return of the broad stock market using only a small subset of the stocks in the market, and weighting them in some arbitrary way unconnected to market capitalization,” you could probably put together some reasonable approximation.

Why would you want to do a thing like that in real life? Well, the classic answer is what people call “closet indexing”: If you get a job running an actively managed stock mutual fund, you might think “actually achieving average market performance is pretty good for a mutual fund, but I can't charge 0.75% fees for running an index fund when Vanguard charges 0.04%, so I have to run a fund that *looks* different from the index but that gets roughly the same returns.”

Another, funnier answer is that if you get put in charge of the Dow Jones Industrial Average, you will have exactly that job:

1. You will want your index to *look* like a broad market index: People think of the Dow as an indicator of how the market is doing, so if your index regularly goes up when the market is down, people might stop paying attention to the Dow and you'll be sad.

- 2. Your index is *not* a broad market-cap-weighted index of the whole market: It is limited to 30 stocks, it has the word “industrial” in the name (though that doesn’t mean much), and most amusingly, because it comes from a pre-computer era, it is weighted by *dollar stock price* rather than *market cap*.

And so the assignment is “can you find 30 big stocks and weight them by stock price and get something that tracks the S&P 500 *pretty well*,” and the answer is historically “sure why not.” But not right now. James Mackintosh writes:

Far from tracking the S&P 500 index of the top U.S. companies, the Dow Jones Industrial Average for the past two years has been left in the shade. It lagged behind the S&P by more than 10 percentage points in 2023 and 2024, a dismal performance matched in only two years since the S&P 500 was introduced in 1957. ...

Excitement about artificial intelligence has driven the Magnificent Seven stocks of Alphabet, Amazon.com, Apple, Meta Platforms, Microsoft, Nvidia and Tesla to make up almost a third of the S&P 500. Moves in the S&P are dominated by whether it is a good day or a bad day for Big Tech. But in the Dow, these seven make up only 13.9%, with Meta, Tesla and Alphabet missing altogether.

Instead, the Dow gives five stocks that barely matter to the market as a whole the same weight that the Mag 7 have in the S&P. Aside from Microsoft (third-biggest in the Dow, as in the S&P), the five-biggest Dow stocks are Goldman Sachs, UnitedHealth, Home Depot, Caterpillar and Sherwin-Williams. Together they are 32% of the Dow, but make up a tiny 2.6% of the S&P.

What moves the S&P matters relatively little to the Dow, and increasingly what moves the Dow matters even less to the S&P.

Right now there are seven important stocks and several hundred unimportant stocks, and if you get the balance wrong your index won’t track the market.

I don’t know how much this matters. Not that much money is indexed to the Dow. Surely the main job is to keep people *citing* the Dow, which does not necessarily require minimizing tracking error.

Also, there is a lot of complaining about how concentrated the stock market is right now: The Magnificent Seven account for a lot of the S&P 500, not because the S&P is flawed but because it accurately reflects the outsized importance of those companies in the universe of US public companies. But a lot of people worry about this concentration: Investing in a diversified index fund nowadays mostly means betting on demand for Nvidia chips, which might feel like not a very diversified bet. A pitch like “this is a broad index of blue-chip companies, but it’s not all concentrated in AI stocks” is actually pretty appealing?

Metaplanet

It can't really be the case that "put \$100 of Bitcoin in a box and sell shares of the box for \$200" is a viable strategy for *anyone*, but it works in huge size for Strategy Inc. (formerly MicroStrategy Inc.), and it is really the definition of "nice work if you can get it." Lots of people want it. Here's a Financial Times story from last week about "the MicroStrategy copycats: companies turn to bitcoin to boost share price," and we talked last month about a crypto thing called "FartStrategy" that copied the essential MicroStrategy idea — put \$100 of crypto in a box and sell the box for \$200 — but modified it by (1) making the box a crypto protocol rather than a public company and (2) putting FartCoin in the box.

I wrote at the time:

It's not clear that *you* can do this. *MicroStrategy* can do it. Why? What is special about MicroStrategy?

And I gave some answers that boiled down to (1) Strategy was *early* to this trade, (2) Strategy is *smart* about it and (3) "a big US non-financial public company" is actually a very nice box to put Bitcoins in. People — US retail investors with brokerage accounts, US institutional investors with a mandate to buy only common stocks, some index funds — can invest in a public-company box, but might not be able to invest in Bitcoin directly, or perhaps in a Bitcoin exchange-traded fund, Bitcoin futures, etc. And so Strategy can trade at a premium to its underlying Bitcoins because it is offering Bitcoin exposure to an audience that, for whatever reason, can't easily get it elsewhere.

If you are another US company, you can copy this, but it's not clear that it will work: People *can* get their US-public-company-flavored Bitcoin exposure elsewhere. (From Strategy.) But surely there are other niches to fill. For instance, a Japanese-public-company-flavored box:

Shares of Metaplanet Inc. are up around 4,800% over the past 12 months, the largest gain among all Japanese equities in that period and one of the highest globally, according to data compiled by Bloomberg. ...

Metaplanet is one of a number of outfits around the world that aim to emulate the success of Michael Saylor's Strategy, formerly known as MicroStrategy Inc. The Tysons Corner, Virginia-based company has morphed into a leveraged Bitcoin proxy and behemoth after accumulating more than \$45 billion of the token.

Metaplanet's CEO, former Goldman Sachs equity derivatives trader Simon Geroovich, said he was drawn to the idea after hearing about Saylor's strategy on a podcast. He'd been running Metaplanet, formerly Red Planet Japan Inc., as a hotel developer since 2013, but shifted to a "Bitcoin-first strategy" in early 2024 after a pandemic slowdown forced the company to shutter all but one of its hotels. ...

A large chunk of Metaplanet's retail shareholders bought shares via the Nippon Individual Savings Account (NISA) program, which Japan's government revamped in early 2024 to encourage citizens to invest their savings for long-term growth and retirement. ...

Capital gains on direct Bitcoin purchases are subject to taxes of up to 55% in Japan, making investing in stock proxies like Metaplanet via NISA a cheap and convenient option for small-scale and first-time buyers.

One long-term possibility here is “crypto gets so normalized and mainstreamed that all of these weird proxies for it go away, or at least stop trading at a premium,” but there are a lot of fortunes to be made before that happens.

Things happen

BlackRock Now Wants to Become Private Equity's Key Financier. US Inflation Tops Forecasts, Bolstering Case for Fed to Hold. Effort to Save VC Tax Break Has Become Familiar, Nerve-racking Ritual. Microsoft-Backed Startup Raises \$160 Million for Forest Carbon Removal. Fearing Trump, Wall Street Sounds a Retreat on Diversity Efforts. Office attendance is becoming a performance metric. US Private School Tuition Nears \$50,000 as Inflation Lifts Costs. Trump's Sons Back Friend's Penny Stock, Spurring 84% Price Jump.

If you'd like to get Money Stuff in handy email form, right in your inbox, please subscribe at this link. Or you can subscribe to Money Stuff and other great Bloomberg newsletters here. Thanks!

To contact the author of this story:

Matt Levine at mlevine51@bloomberg.net

To contact the editor responsible for this story:

Michael Newman at mnewman43@bloomberg.net

- 1. See Section 3(a)(68) of the Exchange Act (defining “security-based swap”) and Section 1a(47) of the Commodity Exchange Act (defining “swap”). In particular a swap includes “any agreement, contract, or transaction ... that provides on an executory basis for the exchange, on a fixed or contingent basis, of 1 or more payments based on the value or level of 1 or more ... securities.” It also includes *options* transactions, and this bet is essentially a binary (or digital) option.
- 2. Here is a 2023 US Securities and Exchange Commission final rule about the “Prohibition Against Fraud, Manipulation, or Deception in Connection with Security-Based Swaps,” but actually you don’t need the new rule: “The Dodd-Frank Act [of 2010] amended the definition of ‘security’ in section 3(a)(10) of the Exchange Act and section 2(a)(1) of the Securities Act to include security-based swaps. As a result, security-based swaps, because they are securities, are subject to the general antifraud and anti-manipulation provisions of the Federal securities laws, including sections 9(a) and 10(b) of the Exchange Act, and 17 CFR 240.10b-5 (‘Rule 10b-5’) thereunder.” Section 10(b) and Rule 10b-5 are what prohibit insider trading.
- 3. You don’t, like, buy \$1 million of stock: The bet is a digital option, so your hedge will be dynamic, nonlinear, and a little weird. But Bloomberg (page OV) will happily price a digital stock option for you, and give you a delta, which is the amount of stock you should buy. In any case the CFDs in the actual case are delta-one bets, so they could be (statically) hedged by simply buying the underlying shares.
- 4. The Tether and bribery examples are about the US becoming less interested in enforcing its laws abroad, but also other countries might be less interested in enforcing US laws. (“America First Is Quickly Becoming

America Alone,” writes my Bloomberg Opinion colleague Andreas Kluth.) People have speculated for years that America’s use of the dollar system to enforce its policy goals abroad might backfire; “Paper Soldiers: How the Weaponization of the Dollar Changed the World Order” is the title of my Bloomberg colleague Saleha Mohsin’s book on the subject.

- 5. It is, for instance, roughly Warren Buffett’s financial advice.
- 6. Disclosure: This was my approach to investing for many years. I was a self-directed Vanguard customer, using its website to buy and hold boring index funds. In recent years I have moved to a more full-service platform for reasons suggested in the Financial Times story, though I feel sort of sheepish about that. It feels like “buy five index funds from the Vanguard website” might be the aesthetically correct choice, *for me*.
- 7. In some efficient-markets the-market-portfolio-is-optimal sort of expected way; maybe your adviser will actually get better returns.
- 8. I suppose you could market a lower premium, but that seems like ... not in the spirit of the thing. You want a higher premium! Your investors might want a higher premium!

© 2025 Bloomberg L.P. All rights reserved. Used with permission.

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

'Greenhushing' Emerges as Anti-ESG Pressures Mount for Companies

By Ben Miller

Deep Dive

- Federal stance, state laws place climate goals in crosshairs
- Downplaying ESG role risks disclosure-based litigation

The Trump administration's attacks on companies pursuing environmental, social, and governance goals are contributing to a rise in "greenhushing"—where businesses are accused of downplaying their ESG initiatives.

A spate of "greenwashing" cases, targeting companies for overstating their sustainability or corporate governance efforts, have now opened the door to new litigation that instead highlights misleading disclosures for failing to clearly convey how ESG impacts the bottom line or contributes to corporate strategy writ large.

"Companies are caught in an ESG paradox—sued for saying too much, sued for saying too little, and sometimes both at once," said Kushal Bhimjiani, group general counsel at climate consulting firm South Pole.

Shifting expectations from regulators and investors are a major reason many companies stay quiet on their climate goals, according to South Pole's 2024 Net Zero report.

In the latest rollback, the Securities and Exchange Commission on Feb. 11 began officially unraveling its legal defense of Biden-era climate reporting rules for public companies, with the SEC under acting Chairman Mark Uyeda asking the US Court of Appeals for the Eighth Circuit case not schedule arguments in the consolidated case.

Preempting Litigation

The Trump administration's early focus on dismantling diversity, equity, and inclusion initiatives and withdrawing the US from the landmark Paris climate agreement set an immediate anti-ESG tone for the executive branch.

The SEC's climate disclosure mandate, which the agency put on hold last April amid multiple court challenges, is a "deeply flawed" rule that could inflict significant harm on capital markets and the economy, Uyeda said in his statement this week.

"Obviously the wind is now blowing a different direction, and some companies are saying that they are balancing the favorable attention of bright and sunny disclosures about ESG with the dangers of being sued or reviled by politicians," said Rich Glaze, partner at Barnes & Thornburg LLP and a former enforcement counsel at the Environmental Protection Agency.

"The practice of hiding or limiting disclosures is a defensive mechanism generated by all the greenwashing litigation," Glaze said.

Some 81% of companies South Pole surveyed worldwide said they knew communications around the Paris Agreement goal to achieve net-zero emissions by 2050 were good for their bottom line, but 58% of companies admitted to greenhushing. Heightened scrutiny from customers, clients, and investors is among the top factors companies cited as a reason for greenhushing, according to the survey results.

"This means companies' nervousness of being accused of greenwashing is leading them to greenhush, thereby creating a mutually reinforcing downward spiral towards low levels of transparency and low ambition around climate goals," Bhimjiani said.

State Fights

Red states have taken up their own anti-ESG campaigns in recent years, putting forth laws that aim to limit how public funds are allocated, and drawing legal opposition from several investor and industry groups. Companies cite the state-level political environment as another obstacle when seeking to advance ESG initiatives.

In Texas, a pending challenge frames a 2021 state law as an unconstitutional attempt to "coerce and punish" climate-aware businesses. Texas Attorney General Ken Paxton (R) last month dropped his threat to cut off some US banks from municipal-bond deals only after Wall Street giants including JPMorgan Chase & Co., Bank of America Corp., and Goldman Sachs Group Inc. quit the Net-Zero Banking Alliance.

Meanwhile, Florida Gov. Ron DeSantis (R) in 2023 signed a measure banning public and state-controlled funds from considering ESG factors in making investments, following similar actions by Republican lawmakers in Indiana and Kansas.

In some cases, challenges at the state level are gaining traction, including an order in May 2024 blocking enforcement of Oklahoma's 2022 Energy Discrimination Act. That law aimed to bar certain financial firms accused of boycotting the energy sector from receiving state contracts or pension system investments.

Some companies are still pursuing ESG goals amid the uncertain legal and regulatory landscape.

"While many US companies are responding to the anti-ESG movement by being less vocal about their climate goals, investment towards sustainability is continuing," Bhimjiani said.

Overseas Requirements

Regulatory regimes in the European Union and the United Kingdom have considerable influence on US and other multinational companies that also do business in those jurisdictions. Activist shareholder litigation in Europe around greenhushing and other ESG issues offers a preview for how similar cases could fare stateside.

A Dutch court's landmark 2021 ruling ordered Shell Plc to reduce emissions faster than it had planned on the basis it had violated human rights by contributing to climate change, but it was overturned on appeal in November 2024. The climate group plaintiffs this week brought the challenge to the Dutch Supreme Court, arguing that the appeals court used too narrow a standard to determine whether the energy giant should face a legal emissions reduction target of 45% by 2030.

The Biden-era SEC stopped short of policies adopted by the EU imposing explicit requirements for revealing Scope 3 emissions, a category that includes the indirect greenhouse gas impact that supply chains and customers contribute to a given company's carbon footprint. Instead, the agency limited disclosure to corporate reporting of direct emissions, watered-down rules which are being dismantled by the new administration.

"Greenhushing and greenwashing are really two sides of the same coin," said Kimberly Logue Ortega, associate vice president at J.S. Held, who specializes in environmental risk and compliance. "Litigants are going to be looking for creative and alternative avenues to bring the Scope 3 discussions that are happening in Europe right now into courtrooms in the United States."

To contact the reporter on this story: Ben Miller in New York at bmiller2@bloombergindustry.com

To contact the editors responsible for this story: Michael Smallberg at msmallberg@bloombergindustry.com; Jeff Harrington at jharrington@bloombergindustry.com

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Biglaw Small Law Law Schools In-House Legal Tech Bonuses AI Career Center Money Appellate Court Blog

FEATURED: [LMA on ATL](#) [ILTA on ATL](#) [Sponsorships With Guaranteed ROI](#)



LexisNexis
Protégé™
Power Your Productivity
[Meet Protégé](#)

BIGLAW

Elon Musk Is Coming For Biglaw

His tweet unleashed a torrent of ugliness against lawyers.

By Kathryn Rubino on February 12, 2025

[Share](#)

It should be abundantly clear by now, but it bears repeating: Elon Musk has no respect for the rule of law. His position on everything depends solely on his calculation of how much he personally benefits. Musk's unelected and unconfirmed position at the right hand of Donald Trump only pushes that maxim into starker relief.



(Photo by Apu Gomes/Getty Images)

So, when [a federal judge](#) (or more accurately, [judges](#)) [pushes back](#) on the power grab going on in Washington, D.C., of course Musk has something to say about it. And because he [\(ill-advisedly\)](#) purchased a social media platform that's steadily lost users and value since his takeover, Musk [used X](#) to stir up the far-right base, saying, "Democracy in America is being destroyed by judicial coup."



SPONSORED CONTENT

Calculate Your Firm's Time-Saving Potential

Want more time for what matters most? MyCase streamlines your firm so you can focus on winning cases. See how much time you could save with our Law Firm Time Savings Calculator—try it now!

By The MyCase Team

Which, obviously, is not at all what's happening. As someone who actually understands the American system of government and isn't trying to twist it for their own benefit, Paul Grimm, director of the Bolch Judicial Institute at Duke Law School, notes, "The Constitution imposes on judges the duty to exercise checks and balances on legislative and executive action that has been challenged as violating the law. While individuals and organizations have a First Amendment right to criticize judicial decisions, it crosses the line to attempt to threaten and intimidate a judge in doing so, and such conduct is indefensible."

But that isn't the only legal institution Musk has taken to bashing.



Which law firms are pushing these anti-democratic cases to impede the will of the people?

@amuse @amuse

LAWFARE: Democrat judges across the country are working with Democrat AGs and NGOs to either block/delay president Trump's EO's aimed at reducing fraud, abuse, and waste. This time it is Biden-appointed Judge Angel Kelley from MA ordering Trump to restore DEI funding to the NIH.



BIDEN JUDGE BLOCKS TRUMP NIH FUNDING PAUSE & CUTS

Judge Angel Kelley has blocked the President's NIH funding cuts for DEI programs and pauses for most other discretionary funding. The Massachusetts judge is the latest federal judge to block or delay Trump's attempts to reduce fraud, abuse, & waste.

SPONSORED CONTENT

5 Cost Control Strategies To Manage Law Firm Spend



Effective cost control isn't just about saving money—it's about creating a foundation for growth, efficiency, and exceptional client service. Read the blog now to power up your practice.

By Chris Krubeck, Content Writer - MyCase

Recommended

Top Biglaw Firms Love Elite Law Schools



SPONSORED CONTENT

LexisNexis®

Lexis' CounselLink+™: A One-Stop Shop To Streamline Your Law Department

Recent CounselLink upgrades integrate the full in-house workflow with the broader suite of LexisNexis products.

By Above the Law

As [pointed out](#) by Reuters:

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.

There are at least eight large and midsize firms working on cases to oppose the Trump administration, to say nothing of the legal advocacy groups, state attorneys general, and unions bringing lawsuits.

This [isn't the first time](#) Musk has had something negative to say about a Biglaw firm. But now Musk has tapped into the MAGA brain rot — so there are some wild responses to Musk's tweet.



Musk is whipping the MAGA faithful into a frenzy because, [unlike when a ruling](#) comes out of the Fifth Circuit, he doesn't like the result. The most consistent and disturbing trend of the Trump II reign is the denigration of institutions or individuals that don't sycophantically cower to the right's whims.

Legendary Litigator Neal Katyal Makes Major Lateral Move, Joining Milbank

The M&A Attorneys Bringing In The Big Bucks

SPONSORED CONTENT

Why Better Financial Acumen is the Key to Law Firm Success in 2025

From training to technology, uncover the essential steps to futureproof your law firm in a competitive market.

By George Egford, Solutions Manager, BigHand

Recent Jobs

Mid-Senior Insurance Litigation Associate Attorney
Location: Houston
posted by Kinney Recruiting LLC

Litigation Associate
Location: Los Angeles
posted by Kinney Recruiting LLC

Real Estate Associate
Location: New York
posted by Kinney Recruiting LLC

[VIEW ALL](#)

SPONSORED CONTENT

Gen AI: Your Legal Research Assistant, Not Your Replacement

Here's how you can spend more time practicing law, and less time sorting, sifting, and summarizing.

By Thomson Reuters

Kathryn Rubino is a Senior Editor at Above the Law, host of [The Jabot podcast](#), and co-host of [Thinking Like A Lawyer](#). AtL tipsters are the best, so please connect with her. Feel free to email [her](#) with any tips, questions, or comments and follow her on Twitter [@Kathryn1](#) or Mastodon [@Kathryn1@mastodon.social](#).



TOPICS

[BIGLAW](#) [ELON MUSK](#)

More from Above the Law



Federal Judge Rules Legal Research Startup ROSS Infringed Westlaw's Copyrights, Rejecting Fair Use Defense



GOP Seeks To Drastically Cut Medicaid Spending — How Are Healthcare Leaders Reacting?



Morning Docket: 02.13.25



Pray The State Away — See Also

From the Above the Law Network



White Paper
GenAI: Your legal research

Gen AI: Your Legal Research Assistant, Not Your Replacement

Thomson Reuters



A Law Firm Checklist For Successful Client Portals

Thomson Reuters



A Law Firm Checklist For Successful Transaction Management

Thomson Reuters



AI Assistant

Advertising & Marketing Solutions

OUR SITES

ABOVE
THE
LAW

ALL
HOW
APPEALING

BREAKING
DEFENSE

BREAKING
Energy

BREAKING
GOV

DEALBREAKER

FASHIONISTA

MedCityNews

© 2025 Breaking Media, Inc. All rights reserved. Registration or use of this site constitutes acceptance of our [Terms of Service](#) and [Privacy Policy](#).



Trump Bribery Order Threatens Big Law Anti-Corruption Practices

By Roy Strom

Column

Welcome back to the Big Law Business column . I'm Roy Strom, and today we look at how the Foreign Corrupt Practices Act grew into a major Big Law practice, and what may happen now that new investigations are paused. Sign up for Business & Practice , a free morning newsletter from Bloomberg Law.

President Donald Trump's executive order halting investigations into foreign bribery scandals has the potential to disrupt a major business for Big Law firms.

The Foreign Corrupt Practices Act has, in just a couple of decades, become a huge revenue driver for many law firms. The law is designed to prevent US companies from bribing foreign officials to win business. Law firms investigate bribery claims, defend companies against cases brought by Justice Department and Securities and Exchange Commission, and develop compliance policies.

Walmart Inc. spent more than \$900 million over seven years on FCPA inquiries and investigations related to its operations in Brazil, China, India, and Mexico, according to the retail giant. The hefty sum included nearly \$283 million in combined settlement payments to the DOJ and SEC, and likely plenty in fees for the company's lawyers from Jones Day.

Trump's Feb. 10 executive order called enforcement of the law "overexpansive and unpredictable." US companies are at a disadvantage by not being able to conduct "routine business practices" in other countries, it said.

Trump isn't the first politician to voice concerns about the law. Senators Amy Klobuchar (D., Minn.) and Chris Coons (D., Conn.) in 2012 pressed then-Attorney General Eric Holder to give companies more information about what might lead to a FCPA charge. They said some companies were targeted for relatively harmless activity, like buying lunches.

The president goes further in the new order. His message seems to be that so long as paying bribes is commonplace, US companies shouldn't be put at a disadvantage by being forced to play by different rules.

There will be no new investigations for at least 180 days while Attorney General Pam Bondi updates guidelines for the law's application, according to the order.

FCPA lawyers anticipated change, but few expected a complete freeze. Numerous year-end roundups, including from Gibson Dunn, WilmerHale, and Debevoise, stressed that FCPA enforcement remained robust during Trump's first term, even if he was on record calling it a "horrible law" as early as 2012.

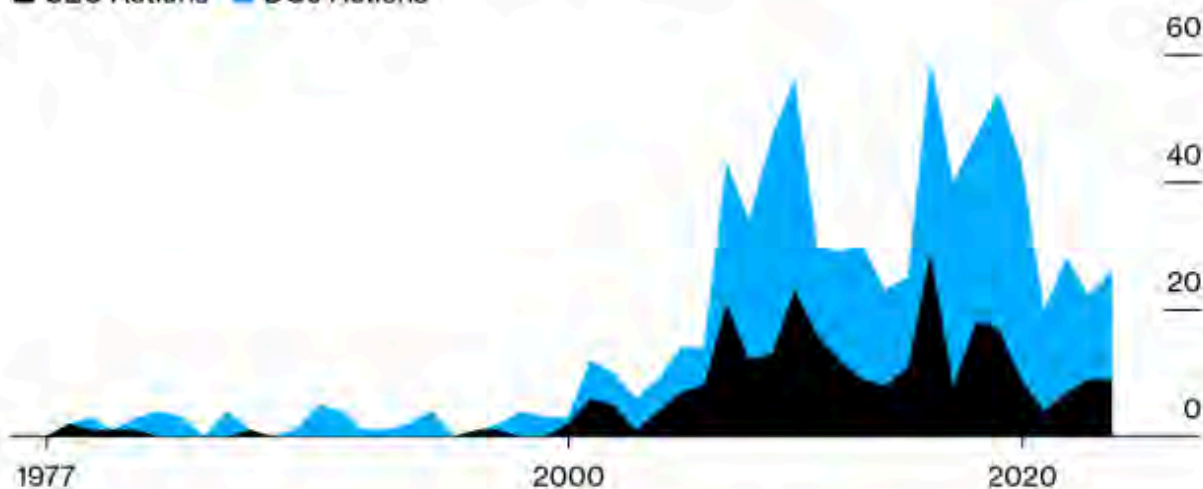
Just last week, Bondi issued a memo stating that the Justice Department's FCPA unit should prioritize cases involving cartels and transnational criminal organizations.

Experts that constantly track new Justice Department and Securities and Exchange Commission FCPA enforcement actions will be seeing zeroes for months. This could be a major blow to firms that have amassed large teams to advise clients on the law.

Enforcing the Foreign Corrupt Practices Act

FCPA enforcement actions surged in the mid-2000s and remained active during Republican and Democratic administrations. The Trump administration has paused new investigations.

■ SEC Actions ■ DOJ Actions



Source: Stanford Law School's Foreign Corrupt Practices Act Clearinghouse

Bloomberg Law

Much is also on the line for those firms' clients. Enforcement actions can cost companies \$1 billion-plus fines, even after racking up huge legal fees to ward them off.

The average monthly cost of an FCPA-related investigation is nearly \$1.6 million, according to Stanford Law School's Foreign Corrupt Practices Act Clearinghouse, which tracks data going back to the law's enactment in 1977.

The investigations last more than three years on average, meaning an average total cost of more than \$60 million, according to the clearinghouse data.

The costs include document and evidence gathering, enhancing compliance policies, large-scale reviews of policies and practices, and—of course—lawyers' fees.

No Panic

Still, lawyers don't believe the practice area will dry up overnight. They will likely be called in to help companies understand how the new policy impacts compliance programs—or current investigations—they say.

The statute of limitations on the FCPA's anti-bribery provision is five years. That means a future administration could pursue wrongdoing that occurs during Trump's term.

US companies are too invested in compliance to abandon investigations of internal claims of corruption, said Mike Koehler, a prominent FCPA commentator who previously worked at Foley & Lardner.

"The company wants to find out what happened so they can discipline culpable actors," Koehler said. "The company wants to engage in remedial measures."

"If a whistleblower calls the company's hotline on Monday with a viable FCPA issue, I just don't see the company and its external lawyers saying ... let's move on," he said.

Even if internal investigations don't dry up, the longer-term risk for law firms—and advocates for the benefits of less corruption—is that the US government loses interest in bringing FCPA actions for far longer than 180 days.

FCPA Growth

The law was largely unused until an explosion of activity in the mid-2000s. The surge is often linked with Paul Weiss partner Mark Mendelsohn, whose law firm bio calls him "the architect" of modern day FCPA enforcement.

Mendelsohn led DOJ's FCPA unit from 2004 to 2010, when annual enforcement actions ballooned to as many as 34 cases from five, according to Stanford's data. He worked alone when he first arrived, Mendelsohn said on a podcast last year. His group eventually grew to four prosecutors.

The FCPA today is such a major practice that Chambers & Partners ranks 30 law firms as having top practices—more than the 27 "elite" mergers and acquisitions firms the lawyer-ranking website lists.

"It has become more institutionalized, more sophisticated, and a higher priority for the US government writ large," Mendelsohn said on the podcast. "And it has become—and there is no judgment behind this—an industry, a business."

He didn't respond to an email seeking comment.

The question now is what happens with that business—a business the president sees as more of a hindrance than a priority.

Worth Your Time

On Polsinelli: One of the fastest growing US law firms aims to expand its reach domestically by recruiting lawyers and building in key markets such as South Florida, Tatyana Monnay reports.

On Tom Goldstein: SCOTUSblog co-founder Tom Goldstein asked to be freed from jail after the government accused him of violating his release conditions by transferring millions of dollars' worth of cryptocurrency, John Woolley reports.

On a Bribery Scandal: Gautam Adani, Asia's second-richest man who is facing US charges over an alleged bribery scheme, has been busy building a political influence operation in the US, including hiring Kirkland & Ellis and Quinn Emanuel, Bloomberg News reports.

That's it for this week! Thanks for reading and please send me your thoughts, critiques, and tips.

To contact the reporter on this story: Roy Strom in Chicago at rstrom@bloombergindustry.com

To contact the editors responsible for this story: John Hughes at jhughes@bloombergindustry.com

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Major corporate law firms join legal battle over Trump policies

 [reuters.com/world/us/major-corporate-law-firms-join-legal-battle-over-trump-policies-2025-02-13](https://www.reuters.com/world/us/major-corporate-law-firms-join-legal-battle-over-trump-policies-2025-02-13)

Mike Scarcella

Item 1 of 2 U.S. President Donald Trump waits to welcome Jordan's King Abdullah, at the White House in Washington, U.S., February 11, 2025. REUTERS/Nathan Howard

[1/2]U.S. President Donald Trump waits to welcome Jordan's King Abdullah, at the White House in Washington, U.S., February 11, 2025. REUTERS/Nathan Howard Purchase Licensing Rights , opens new tab

Feb 13 (Reuters) - As opponents of U.S. President Donald Trump's rapid-fire executive actions turn to the courts, at least eight of the largest corporate law firms in the country have signed on to represent plaintiffs leading the fight in the past two weeks.

All eight firms, which include WilmerHale, Perkins Coie, Jenner & Block and Arnold & Porter, also challenged Trump policies during his first term, such as restrictions on immigration from some majority Muslim countries.

They are again representing or working alongside liberal advocacy groups and other challengers, adding legal firepower to lawsuits targeting Trump's expansive new crackdown on illegal immigration and transgender rights, and the administration's firing of officials and crippling of federal spending on health research and foreign aid.

On Tuesday, the appearance of private law firms in the cases drew the ire of Trump's billionaire ally Elon Musk in a post on his social media platform X.

"Which law firms are pushing these anti-democratic cases to impede the will of the people?" the Tesla CEO wrote, without naming any firm.

The WilmerHale firm, which sued administration officials on Wednesday on behalf of U.S. agency inspectors general fired by Trump, has represented Musk's electric vehicle company Tesla in litigation. Tesla did not immediately respond to a request for comment.

WilmerHale partner Seth Waxman said attorney-client privilege rules barred him from discussing the firm's involvement in the new case or other client work.

Other firms suing the administration declined to comment or did not respond to requests for comment on their involvement in the cases or Musk's statements. Musk did not respond to a request for comment.

WORKING PRO BONO

Ethics rules prohibit taking cases where the interests of one client directly conflict with those of another, but that does not require all clients to agree on their lawyers' cases, legal experts said.

"The interests of a big law firm and those of its clients are not necessarily in lock step," said ethics scholar Stephen Gillers of New York University School of Law. "A law firm can support legal action, including pro bono, with which one, more, or all of its clients disagree without violating any duty to clients."

Corporate law firms regularly work on lawsuits involving public policy questions pro bono, or free of charge, especially litigation that requires extensive legal resources to mount or sustain a case.

Musk's post to his 217 million X followers on Tuesday highlighted the risk of attention such cases may bring in the divisive Trump era, legal experts said.

Law firm political action committees gave about \$3.7 million to Democratic candidates and about \$4.7 million to Republicans in the 2023-2024 U.S. election cycle, according to Federal Election Commission data compiled by non-profit Open Secrets.

Large law firms with PACs typically split donations between both parties and often favor the more dominant party. Arnold & Porter's PAC, for example, gave \$54,000 to Democrats and \$80,000 to Republicans in the 2024 cycle, according to Open Secrets' data.

Trump has moved swiftly since retaking the White House to throttle illegal immigration, dismantle racial diversity programs, reverse transgender protections and assert direct control over federal spending and personnel.

Advocacy groups, grant recipients, Democratic state attorneys general and others have filed more than 50 lawsuits challenging the administration's moves. The eight large firms, which each employ hundreds of lawyers, appear on 11 of those cases. Some smaller law firms are also involved in cases against the administration.

Among the cases, Arnold & Porter partnered with advocacy groups to sue over Trump's bid to end automatic birthright citizenship in the United States. Perkins Coie is representing plaintiffs suing over Trump's restrictions on transgender military service. Jenner & Block is also involved in litigation related to transgender rights and is suing to restore research funding cuts.

About two dozen of the largest U.S. law firms that were active in lawsuits during Trump's first term have not yet appeared in new cases.

Christopher Clark, a lawyer with Lambda Legal who manages its pro bono work with law firms, said the gay and transgender advocacy group would likely require more firms' participation as litigation with the administration expands.

"Based on what we've seen so far, we're going to be very, very busy," Clark said.

Get weekly news and analysis on U.S. politics and how it matters to the world with the Reuters Politics U.S. newsletter. [Sign up here.](#)

Reporting by Mike Scarcella in Washington; Editing by David Bario, Amy Stevens and Alistair Bell

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

Trump Allies' Criticism of Judges Prompts Security Concerns

By Jacqueline Thomsen and Suzanne Monyak

- Elon Musk shared posts about judges, called one 'evil'
- Courts unable to push back against rhetoric

President Donald Trump's allies have fueled misinformation and verbal attacks against courts on social media, raising concerns that judges hearing high-profile litigation challenging his administration could be at risk.

Elon Musk, whose government efficiency team's actions are being litigated in multiple courts, has amplified posts targeting judges who have put temporary blocks on early Trump administration actions, a regular step in litigation. Some posts shared by Musk and other Trump associates have included information about judges' family members.

Experts on disinformation, the purposeful spread of inaccurate information, and misinformation, the unintentional sharing of false information, said such posts can spread quickly, especially without fact checking. X, the Musk-owned platform formerly known as Twitter, offers a "community notes" feature but no formal fact checking process.

Legal experts said courts are in a tough position, as they're unlikely to step up and defend themselves. A spokesperson for the federal judiciary declined to comment on the attacks, or whether the courts plan on pushing back against the rhetoric.

"Once they breach that wall and appear to be taking sides in the debate, no matter how inappropriate the rhetoric is, they run a risk," said John E. Jones III, a former federal judge in Pennsylvania. He noted that the courts are dependent on Congress for funding and other resources, giving judges more reason not to speak out.

Judges are also limited by ethical rules in what they can say publicly outside of their rulings.

Social media allows attacks to spread more quickly than the federal government is equipped to handle, said Joan Donovan, a journalism professor at Boston University who studies disinformation.

"There's no way in which judges are going to be able to speak out about the media circus that Musk is orchestrating," Donovan said.

Without being able to defend themselves, judges rely on outside bodies to defend the courts.

But Jones, now president of Dickinson College, said he finds that idea "unavailing."

"People have to cut to the ultimate chase here and ask ourselves, as a nation, do we really want to get a member of the federal judiciary harmed or killed, or their family members harmed or killed?" he said.

"That's the roulette that we're playing here, and that worries me terribly."

Musk's Posts

Musk has been posting about judges' reach since a Manhattan judge, appointed by Barack Obama, on Feb. 8 barred members of his team from accessing Treasury Department payment systems. That decision was criticized for seeming to also apply to other department appointees like Treasury Secretary Scott Bessent, and was later modified by another federal judge.

Musk has since turned his ire toward a federal judge in Washington, a George W. Bush appointee, who ordered federal health agencies to restore websites with health statistics while he considers the case further, calling the judge "evil" and amplifying posts about the judge's wife.

He's also shared posts about a Rhode Island federal judge appointed by Barack Obama who said the Trump administration wasn't complying with his order that federal funds be restored after they were initially frozen.

Steven Lubet, a law professor emeritus at Northwestern University, said judges and their families also came under attack as courts issued rulings in favor of Black Americans during the civil rights era in the 1960s and 70s. But he said the government fully complied with those rulings.

"The idea that a judge could be impeached based on the content of a decision is totally repudiated in American history," Lubet said.

The majority of rulings issued by judges so far are temporary restraining orders, decisions meant to keep the status quo in place while a court hears fuller arguments on whether to issue a more permanent block against a policy or action.

Lubet said these temporary rulings are "actually a conservative thing for a judge to do," and that if lawyers can show a pause is needed, they're usually granted.

Attacking a judge for issuing a temporary order "just shows a complete failure to understand what's necessary in order to get a fair determination in court," Lubet added.

Escalating Attacks

Public attacks of judges from Trump and his allies aren't new. Trump called New York state court judge Juan Merchan, who oversaw Trump's criminal case over hush-money payments, a "certified Trump-hater," and called out his daughter by name.

Democrats have also faced some backlash for singling out judges in public criticism.

Senate Minority Leader Chuck Schumer (D-N.Y.) drew criticism in 2023 for saying at a rally that Trump-appointed Supreme Court justices "won't know what hit" them if they rule against abortion rights. Schumer later said he regretted his word choice.

And threats to judges in general have risen in recent years.

Still, legal experts see the latest deluge in social media posts from Musk and other conservative figures as an escalation in aggression toward the judiciary.

The consequences of these attacks "can be severe," said Jeffrey Blevins, professor at the University of Cincinnati's school of public and international affairs who studies disinformation on social media.

"Look no further than January 6th. We can see the impact that sustained disinformation campaigns can have," Blevins said, referring to the 2021 riot at the US Capitol. "People will believe it. And in many cases, it encourages them to act violently. You're putting people in harm by doing this."

Samuel Woolley, a professor at the University of Pittsburgh who studies disinformation, said ideally, government officials and owners of major media platforms "have had a duty to democracy."

He said these attacks now on judges and other democratic institutions are "straight out of the authoritarian playbook."

Musk, who has over 217 million followers on X, "has instrumentalized and used trolls on X as his private army," Donovan said.

"Musk is not just the greediest man in the world, but he's also one of the most connected people on the planet. That targeting, when it's done on that scale, spreads the danger even further and wider," Donovan said.

To contact the reporters on this story: Suzanne Monyak at smonyak@bloombergindustry.com; Jacqueline Thomsen at jthomsen@bloombergindustry.com

To contact the editors responsible for this story: Seth Stern at sstern@bloomberglaw.com; John Crawley at jcrawley@bloomberglaw.com

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Trump, allies ramp up attacks on judges as Musk calls for impeachments

 [reuters.com/world/us/trump-allies-ramp-up-attacks-judges-musk-calls-impeachments-2025-02-12](https://www.reuters.com/world/us/trump-allies-ramp-up-attacks-judges-musk-calls-impeachments-2025-02-12)

Nate Raymond

Elon Musk listens to U.S. President Donald Trump speak in the Oval Office of the White House in Washington, D.C., U.S., February 11, 2025. REUTERS/Kevin Lamarque/File Photo
Purchase Licensing Rights , opens new tab

Summary

- White House press secretary accuses judges of abusing their power
- Elon Musk calls one judge 'evil,' argues to impeach judges
- Comments follow string of court losses over Trump's agenda

Feb 12 (Reuters) - Donald Trump and his supporters on Wednesday continued to ramp up their criticism of judges who they say have stymied the Republican U.S. president's second-term agenda, with billionaire ally Elon Musk calling for "an immediate wave of judicial impeachments."

Those statements came a day after federal courts forced U.S. agencies to restore health-related websites taken down in response to one of Trump's executive orders and declined to lift a judge's order barring the administration from freezing federal funding.

Those and other legal setbacks have prompted Trump, key members of his administration and Musk to attack judges who have blocked major pieces of his agenda, in some cases arguing judges have no power to intrude on the president's authority. Such comments have fueled concerns about whether the Trump administration would abide by court rulings. The American Bar Association on Tuesday condemned such comments, saying they presented "serious risks to our constitutional framework."

White House press secretary Karoline Leavitt at a press briefing on Wednesday accused judges of "abusing their power" and said the "real constitutional crisis is taking place within our judicial branch."

She said the administration would "comply with the law in the courts, but we will also continue to seek every legal remedy to ultimately overturn these radical injunctions and ensure President Trump's policies can be enacted."

Trump in his first term appointed a near-record 234 judges and pushed the U.S. Supreme Court and the federal judiciary overall to the right.

In a social media post earlier on Wednesday, Trump repeated Musk's unsubstantiated claims that his Department of Government Efficiency, a team focused on reducing the size of the government, had found "massive" amounts of fraud and waste.

Yet "even knowing this, a highly political, activist Judge wants us to immediately make payment, anyway," Trump said.

His post appeared to be a reference to Providence, Rhode Island-based U.S. District Judge John McConnell, who on Monday found Trump's administration had defied an earlier ruling he issued at the behest of Democratic-led states by continuing to withhold billions of dollars in frozen federal grant funding.

CHECKS AND BALANCES

The U.S. Department of Justice quickly asked a federal appeals court to lift McConnell's Monday order enforcing his earlier decision unfreezing the funding, but the Boston-based 1st U.S. Circuit Court of Appeals declined to on Tuesday.

Democratic lawmakers and even some members of Trump's Republican Party in Congress have come to the defense of the judges. Federal judges, who are appointed for life, have the authority to decide the constitutionality of federal laws and resolve cases involving federal laws and policies.

They can only be impeached by the U.S. House of Representatives for treason, bribery and other high crimes and misdemeanors and must be convicted by the Senate to be removed.

Only 15 judges have ever been impeached, and only eight have been convicted by the Senate, most recently in 2010.

"Thuggery toward judges is not the way courts work in rule-of-law countries," Democratic Senator Sheldon Whitehouse of Rhode Island wrote on Tuesday in response to one of Musk's posts on his social media platform X.

U.S. Attorney General Pam Bondi told Fox News the Justice Department would keep defending Trump's policies in court and appeal rulings from "outrageous, overzealous, unconstitutional judges trying to control federal spending."

Musk, the CEO of Tesla and founder of SpaceX, on X called McConnell, an appointee of Democratic former President Barack Obama, a "scammer," and described a different judge in Washington who ruled against the administration as "evil" and someone who should be fired.

"There needs to be an immediate wave of judicial impeachments, not just one," Musk said.

The Washington-based jurist is U.S. District Judge John Bates, who on Tuesday issued an order requiring the restoration of various government health websites that were scrubbed in response to an executive order requiring the removal of "gender ideology extremism."

Bates, an appointee of Republican former President George W. Bush, had in a different case delivered one of the rare wins for the administration when he on Friday declined to block DOGE from the U.S. Department of Labor's systems.

McConnell declined to comment. Bates did not respond to a request for comment. The Administrative Office of the U.S. Courts, the judiciary's administrative arm, declined to comment.

Reporting by Nate Raymond in Boston; Additional reporting by Sarah N. Lynch and Nandita Bose in Washington; Editing by Alexia Garamfalvi and Daniel Wallis

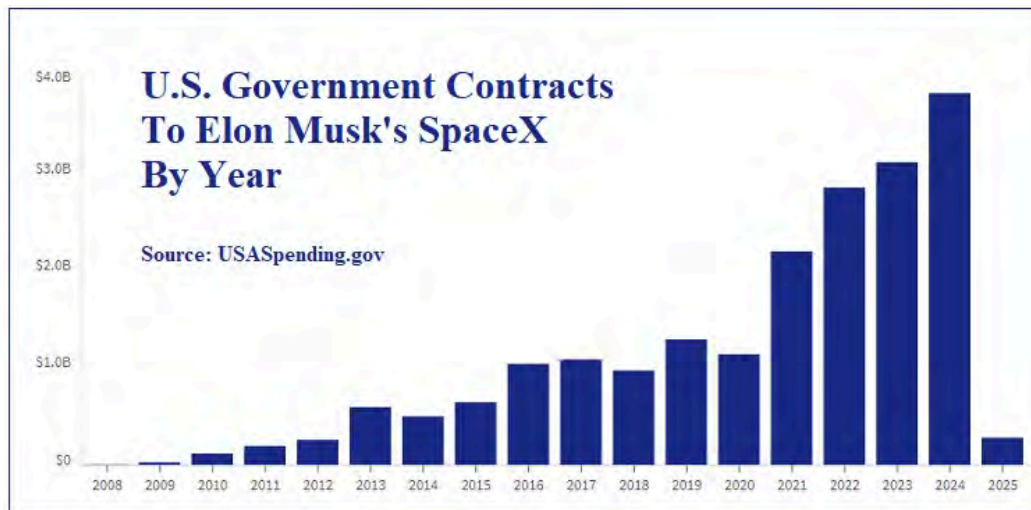
Our Standards: The Thomson Reuters Trust Principles. [↗](#), opens new tab

Nate Raymond
Thomson Reuters

Nate Raymond reports on the federal judiciary and litigation. He can be reached at nate.raymond@thomsonreuters.com.

Elon Musk's Companies Were Under Investigation by Five Inspectors General When the Trump Administration Fired Them and Made Musk the Investigator

 wallstreetonparade.com/2025/02/elon-musks-companies-were-under-investigation-by-five-inspectors-general-when-the-trump-administration-fired-them-and-made-musk-the-investigator



By Pam Martens and Russ Martens: February 13, 2025 ~

Yesterday, the newly formed House Subcommittee on Delivering on Government Efficiency (DOGE) held its first hearing titled: "The War on Waste: Stamping Out the Scourge of Improper Payments and Fraud." The Subcommittee appears to be part of an echo chamber attempting to bring legitimacy to President Donald Trump tapping his largest campaign donor, billionaire Elon Musk, to lead an effort to gut federal law enforcement and regulatory agencies and create enough savings to give tax breaks and other perks to the ultra-rich.

Musk should be immediately disqualified from any such watchdog role for the following reasons: he effectively put Trump over the election finish line, giving \$288 million to PACs or Super PACs supporting Trump; the Wall Street Journal (paywall) reported that Musk has been communicating with Russian President Vladimir Putin since 2022, notwithstanding the fact that Musk's company SpaceX is a U.S. military defense contractor and Putin is on a U.S. sanctions list for launching a war on Ukraine.

In addition, Musk's companies have received \$19.8 *billion* in U.S. government contracts since 2009. (See chart above.)

And finally, and most importantly, Musk's so-called Department of Government Efficiency (with the same acronym as the Subcommittee, i.e. DOGE, and the same name as a crypto coin Musk has boosted) is now investigating the same federal agencies whose Inspectors

General were investigating Musk's companies until they were sacked by the Trump administration last month.

Yesterday, during the DOGE Subcommittee's first hearing, Congressman Greg Casar (D-TX) revealed that the Inspectors General of five federal agencies that were investigating Musk's companies had been fired by the Trump administration last month. Casar said that the Inspector General of the Department of Labor had 17 open investigations into Tesla and SpaceX, where Musk is the CEO of both and a major shareholder. Casar also called out that the Inspector General of the Department of Transportation was investigating Tesla when he was fired by the Trump administration.

According to Casar, the Department of Defense's Inspector General was looking into SpaceX when he was fired. The investigation was potentially a result of the Wall Street Journal's reporting on Musk's use of illegal drugs and secret conversations with Putin, both of which would be highly problematic for a defense contractor with security clearance.

Also, according to Casar, the Inspector General of the U.S. Department of Agriculture was investigating Neuralink, another Musk company (experimenting with computer brain implants) when he was fired; and the Inspector General of the Environmental Protection Agency (EPA) was repeatedly "taking on" Tesla, when he was fired.

Musk's companies currently have over \$3 billion in existing contracts with the U.S. government. In that regard, Casar told the witnesses at the hearing that Musk will receive an average of \$8 million a day from his companies' contracts while the Social Security recipients that he's investigating receive an average of \$65 a day.

You can watch the Casar exchange with the hearing witnesses [here](#).

New AI feature coming soon

We're launching Ask FT, a Professional subscription feature that answers questions by using AI to summarise FT journalism. Visit our admin hub for FAQs and guides.

[Visit admin hub](#)

Barclays PLC

Barclays reveals FCA money-laundering probe and tax fight

UK bank also provisions £90mn for potential car finance mis-selling costs



Net profit at Barclays surged to £1bn in the fourth quarter © Reuters

Ortenca Aliaj in London 4 HOURS AGO



Barclays has revealed a series of alleged misconduct issues that have put it in the crosshairs of investigators once more.

The FTSE 100 banking group is being probed by the Financial Conduct Authority over alleged lax controls against anti-money laundering and financial crimes, Barclays said on Thursday.

The British lender disclosed the civil enforcement investigation in its annual report published alongside its fourth-quarter earnings, which included a £90mn provision for potential [car finance mis-selling costs](#) as a result of a separate FCA probe.

The new money-laundering investigation “focuses primarily on the historical oversight and management of certain customers with heightened risk”, [Barclays](#) wrote, adding that it had been co-operating with the FCA.

It is the latest clash between Barclays and the FCA, [which fined the bank](#) £40mn late last year over payments to Qatari investors linked to an emergency capital injection in 2008 that the regulator called “reckless”. The bank also landed a £72mn FCA fine in 2015 for sloppy financial-crime checks around wealthy Qatari clients.

The fresh disclosures come two years after the Financial Times reported that the [FCA had ordered](#) an independent review of Barclays’ systems used to detect and prevent financial crime. The regulator put banks more widely on notice last year to improve their money-laundering controls.

Barclays is also facing a separate challenge from UK tax authorities over its interpretation of bank levy legislation, an annual charge applied to UK balance sheets that was introduced following the financial crisis.

The two fresh legal issues present a problem for the British lender, which was already caught up in the wider car-finance mis-selling scandal; an issue that analysts have estimated could cost the industry billions.

Barclays exited the market in 2019 and is not believed to be as exposed to the issue as rivals such as Close Brothers, Lloyds Banking Group and Santander UK.

The FCA did not immediately respond to a request seeking comment.

The update comes as Barclays reports a £1bn net profit for the fourth quarter, up significantly from the same period the previous year when the bank posted a net loss of £111mn that was largely down to structural cost cuts. Group revenue was up 24 per cent at £7bn, compared with the £6.7bn analysts had anticipated.

Investors marked the shares down 5 per cent in mid-morning trading, however, as better than expected results failed to translate into an improved outlook for next year.

“Overall a solid set of results, but little new to get excited about either,” said Andrew Coombs, an analyst at Citi. “This, plus the strong run-up in the share price over the past year, may temper any initial reaction.”

Barclays’ shares have more than doubled since chief executive CS Venkatakrisnan unveiled his restructuring plan last year, which promised £10bn to shareholders over three years and a commitment to expand significantly in its home market, as well as to limit the amount of capital consumed by its investment bank.

Investment banking nevertheless provided a boon to Barclays’ quarterly earnings as equities and fixed income traders benefited from market volatility in the US ahead of the election.

Income from equities trading was up 40 per cent year on year at £604mn, while fixed income trading income rose 29 per cent to £934mn. Barclays also reported a 22 per cent increase in investment banking fees while its debt capital markets business lagged behind with income up 9 per cent.

The performance falls broadly in line with the [strategy set out](#) by investment banking co-heads Taylor Wright and Cathal Deasy in October to focus more on advisory and equity capital markets and become less reliant on debt underwriting.

Barclays reported credit impairment charges of £700mn, up about 17 per cent from last year and slightly higher than expected.

“We see Barclays stock price in ‘travel and arrive’ mode considering its 15 per cent [year to date] performance with the results impacted by higher restructuring cost levels compared to consensus,” said Kian Abouhossein, an analyst at JPMorgan.

Venkatakrisnan and finance chief Anna Cross shot down the idea that the bank would bid for Santander’s UK business. The FT previously reported that the Spanish lender last year rejected a “low ball” offer for its UK retail business from Barclays.

The bank also disclosed in its annual report that chair Nigel Higgins had received a three-year extension and a pay rise of 8 per cent to £925,000.

Additional reporting by Martin Arnold in London



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Bausch Health Beats Suit Over 'Faking' Financial Stability

By **Katryna Perera**

Law360 (February 12, 2025, 10:15 PM EST) -- Pharmaceutical company Bausch Health Cos. Inc. and its top brass have beaten, for now, a proposed class action accusing them of misleading shareholders about threats to the company's financial stability, with a New Jersey federal judge finding Wednesday the complaint fails to identify any actionable misstatements or omissions, or plausibly plead scienter.

U.S. District Judge Zahid N. Quraishi on Wednesday **dismissed without prejudice** an amended complaint filed January 2023 by lead plaintiffs R. Cassian Anderson and Donna S. Preves, saying the two categories of alleged material misstatements identified do not pass the pleading bar of the Private Securities Litigation Reform Act.

According to the judge, "based on a complete and liberal reading of the amended complaint," many of the alleged misleading statements in the complaint are forward-looking and, therefore, inactionable.

"These statements ... involve the company's hopes, wishes, and thoughts, ... relate to capital structure, revenue, income, and ... address plans and objectives of management for future operations," Judge Quraishi said. "Thus, the statements are forward-looking and protected by the PSLRA's safe-harbor provision."

He also noted the statements the plaintiffs rely upon to show fraud "are merely expressions of corporate optimism."

The judge concluded the suit failed to adequately plead scienter on the part of the individual defendants.

"The amended complaint — even when read in the 'aggregate,' ... — fails to put forth facts demonstrating 'particularized allegations of a concrete and personal benefit to the individual defendants resulting from the fraud,'" Judge Quraishi said. "The amended complaint does not include memoranda, internal reports, or communications suggesting that defendants were aware that their statements were false."

Judge Quraishi added that a "defendant's desire to raise capital is insufficient to show scienter."

Bausch is a global healthcare conglomerate that develops, manufactures and markets pharmaceuticals and medical devices. Bausch's CEO, Thomas Appio, is a named defendant in the suit, as are the company's former CEO and former chief financial officer.

According to the complaint, before becoming a corporate entity in 2018, Bausch was known as Valeant Pharmaceuticals International Inc., and the company changed its name to Bausch Health Cos. Inc. following "one of the most egregious securities frauds in history."

The class action alleged Valeant used a clandestine network of pharmacies to push high-priced drug prescriptions, sending the stock plummeting once price-gouging allegations surfaced. The suit settled for **\$1.2 billion in 2019**.

"After the name change, plaintiffs allege that defendants maintained a façade that downplayed the company's financial struggles, including that the company owed billions of dollars in liability from

Valeant shareholders, and that the company's most valuable drug — Xifaxan — was 'seriously threatened,'" the Wednesday order states.

Anderson and Preves alleged that after the settlement and name change, Bausch was a "sinking ship," and its stock price declined by more than 76% from 2020 through 2023 as it became clear Bausch and its executives could not keep the promises they were making.

"The company's strategy to recover from its Valeant past could be characterized as 'fake it till you make it,'" they alleged in the complaint. "By downplaying the threats it faced on all sides — from legacy Valeant liability, the imminent loss of a lucrative patent, and more — Bausch Health hoped to procure vital financing and stabilize its balance sheet."

However, the stabilized balance sheet and financing never materialized, the investors said, and the problems hidden by the defendants "exacerbated one another, materializing systemically in a domino effect."

Representatives for the parties did not respond to requests for comment on Wednesday.

The investors are represented by Christopher A. Seeger and Christopher L. Ayers of Seeger Weiss LLP, Samuel H. Rudman, David A. Rosenfeld, Joshua D. Forgy, Alyssa H. Plascoff and Jonah H. Goldstein of Robbins Geller Rudman & Dowd LLP, Thomas H. Przybylowski and Michael J. Wernke of Pomerantz LLP, and Peretz Bronstein of Bronstein Gewirtz & Grossman LLC.

Bausch and the individual defendants are represented by Matthew A. Sklar and Omar A. Bareentto of McCarter & English LLP, and Jonathan K. Youngwood, Craig S. Waldman, Meredith D. Karp and Jonathan S. Kaplan of Simpson Thacher & Bartlett LLP.

The case is *Kelk v. Bausch Health Cos. Inc. et al.*, case number 3:23-cv-03996, in the U.S. District Court for the District of New Jersey.

--Editing by Lakshna Mehta.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Boeing Brass Face Chancery Suit Over Safety Breach Scandal

By **Katryna Perera**

Law360 (February 12, 2025, 9:08 PM EST) -- Public employee pension funds in Ohio and Oklahoma have launched a derivative suit in Delaware's Chancery Court against Boeing board members and executives, seeking damages on the aircraft company's behalf tied to production issues and multiple safety breaches involving several Boeing commercial passenger jets.

The pension funds — the Ohio Public Employees Retirement System, State Teachers Retirement System of Ohio, and Oklahoma Firefighters Pension and Retirement System — filed a 264-page **complaint** that was made public on Tuesday claiming that Boeing's board of directors ignored their fiduciary obligations and pursued profits over safety.

The complaint comes after an initial suit was filed in Virginia federal court last year. Since then, multiple parties have moved to intervene to assert and lead derivative claims against Boeing's top brass.

The pension funds say the defendants, who include several board members and two former CEOs, knew they were required to act in good faith and fix any safety problems in Boeing's manufacturing process because of how heavily the company and aircraft industry are regulated.

"Instead, they did the opposite. The directors drove Boeing to build unsafe airplanes by approving and reapproving an aggressive production schedule that they knew Boeing could not safely or legally meet," the complaint states. "And instead of taking good faith action to resolve the known issues in Boeing's broken manufacturing practices, the directors contented themselves with merely attending meetings and receiving management reports."

The complaint focuses on the defendants' implementation of a production schedule they knew Boeing could not meet safely and in compliance with relevant laws and regulations.

According to the complaint, the defendants ignored already-present manufacturing deficiencies at Boeing and implemented a production schedule that called for nearly quadrupling the production rate of the 737 Max airplane in less than four years — going from 16 planes per month in mid-2021 to almost 60 planes per month in early 2025.

"This exponential ramp-up was the cornerstone of management's announced goal of \$10 billion in free cash flow by 2025 or 2026," the complaint states. "As the board and management knew, Boeing's suppliers were in no position to support this board-approved production ramp-up."

The complaint states that the defendants knew the production schedule was not possible because one supplier in particular, Spirit Aerosystems Holdings Inc., was "notorious" for providing defective parts.

"Nevertheless, setting quality aside, Boeing insisted that Spirit boost its production significantly to support Boeing's master schedule," the complaint states. "Even after it became clear that Spirit's increased speed led to additional product defects, Boeing's CEO boasted on an earnings call that Boeing was 'keeping [Spirit] hot according to the master schedule.'"

The defendants also allegedly knew that Boeing's own production teams couldn't keep up with the ramp-up in production because of issues at factories, the complaint states.

"The COVID-19 pandemic had disrupted global supply chains for Boeing. To cut costs during the pandemic, Boeing had offered buyouts to many of its most experienced workers. The board-approved, highly aggressive production schedule required the company to hire tens of thousands of new, inexperienced workers," the complaint states.

"These under-trained employees, and other Boeing employees, engaged in numerous unsafe and illegal practices to try to meet an untenable production schedule approved by the board," the complaint further states. "Instead of stopping those practices, management incentivized them. When employees raised safety and regulatory issues that threatened to derail the board-approved schedule, management retaliated against them."

The pension funds claim the defendants saw "a parade of red flags demonstrating that Boeing was on the path to corporate trauma," but pushed ahead exposed the company and flying public to "inexcusable risk."

Eventually, the defendants' bad faith conduct led to a major safety incident in January 2024 when the left mid-cabin door plug in a "nearly new" Boeing 737 MAX 9 aircraft separated from the fuselage at approximately 16,000 feet, the complaint states.

"The 'Door Plug Blowout' occurred because Boeing had removed the safety bolts securing the door before delivering the plane to Alaska Airlines," the complaint states. "The specific 737 MAX 9 involved in the Door Plug Blowout epitomized the unsafe and noncompliant practices that the Board's breaches of fiduciary duty enabled."

According to the complaint, the door plug blowout and its aftermath revealed the defendants' breaches and conduct, while also causing Boeing hundreds of millions of dollars in damage through fines, remediation and capping of production of its 737 Max jets.

"The cap ended Boeing's production ramp-up and effectively prevents Boeing from turning a profit for the foreseeable future — a stark illustration of how Boeing could not, and cannot, build safe aircraft on the aggressive production schedule that the Board approved," the complaint states. "And the revelation that Boeing delivered an obviously defective and unsafe aircraft further tarnished Boeing's reputation with regulators, lawmakers, customers, lenders, investors, employees, and the flying public."

The suit seeks damages, restitution, disgorgement and attorney fees.

Counsel for the pension funds and Boeing declined to comment on Wednesday.

The pension funds are represented by Javier Bleichmar, Lesley E. Weaver, Derrick B. Farrell, Matthew L. Miller and Robert B. Lackey of Bleichmar Fonti & Auld LLP, by Christine M. Mackintosh, Vivek Upadhyay, Casimir O. Szustak and Jonathan C. Millis of Grant & Eisenhofer PA, and by Justin O. Reliford, Geoffrey M. Johnson, Donald A. Broggi, Jing-Li Yu, Maxwell R. Huffman and Ora L. Lupear of Scott+Scott Attorneys At Law LLP.

Counsel information for the defendants was not immediately available.

The case is In Re The Boeing Co. Derivative Litigation, case number 2024-1210-MTZ, in the Court of Chancery of the State of Delaware.

--Editing by Vaqas Asghar.

Update: This article has been updated to include additional counsel information for the plaintiffs.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Aurion Tells Del. Justices IPO Delayed Amid Investor Battle

By **Jeff Montgomery**

Law360 (February 12, 2025, 10:01 PM EST) -- Cell therapy venture Aurion Biotech told Delaware's Supreme Court on Wednesday that it has delayed a planned initial public offering now at the center of an appeal from a January Court of Chancery ruling that rejected a top investor's challenge to a reverse stock split.

Richard P. Rollo of Richards Layton & Finger PA told a three-justice panel that the company had hoped to move forward on the IPO on Friday, but was unable to meet a Monday deadline for a U.S. Securities and Exchange Commission filing.

The disclosure followed arguments on appeals by both parties focused in part on Alcon Research LLC claims that Aurion breached Alcon's rights as a preferred stockholder to consent to a reverse stock split that Alcon argued was unnecessary and dilutive of its preferred shares.

"The sole purpose of the reverse split amendment was for the company to obtain what it did not have before, shares to sell in an IPO," Monica Loseman of Gibson Dunn & Crutcher LLP, counsel to Alcon, told Chief Justice Collins J. Seitz Jr. and Justices Gary F. Traynor and Abigail M. LeGrow.

Loseman said Aurion also wants the justices to "conclude that the company did not acquire any of those shares, and that the company did not purchase any of those shares."

"In other words, Aurion is asking this court to rely on the transactional magic of a reverse stock split" that would make millions more shares available to the company without what Alcon argued were bargained-for approval rights, Loseman said.

Chancellor Kathaleen St. J. McCormick on Jan. 27 issued a posttrial ruling finding that Alcon successfully revoked its voting proxy and that its claims were not time-barred, but rejected the consent right argument. Although Alcon lost its bid for a veto of the public listing by Aurion, it secured a right to vote its 40% stake against the transaction.

Rollo argued that Alcon wrongly claimed that Aurion purchased or acquired shares in the reverse split. The action instead combined or reclassified shares under Delaware General Corporation Law provisions, the company argued.

"It's akin to melting 10 small gold coins to make two large gold coins. You end up with the same value, just fewer coins," Rollo said.

The transaction did not change the upper limit of authorized share or issue new shares, but made more authorized, but unissued, shares available to the company.

Alcon is the largest eye care devices company in the world. Aurion is a clinical stage biotech company.

On Wednesday, Rollo told the justices that it would be "at least a matter of weeks" before the company can move ahead with its IPO, and noted in an earlier court motion the next "window" would be this summer.

Loseman said Aurion had disclosed in an SEC filing that it had a cash "runway" at least until fall.

Earlier in the argument, Loseman said the parties had previously interpreted Aurion's certification to mean the company would not move forward with an IPO without the unanimous consent of the parties.

"It's hard to see how an objective third party could interpret" the issues "in a way that's expressly inconsistent with the parties' understanding," Loseman said, noting separately "If the company now has to sell what it did not have to sell before, it has acquired those shares."

Aurion's stock split combined all issued shares of common stock, including outstanding and treasury shares, into a smaller number of issued shares, resulting in reclassification of every 1.395 pre-split shares into one post-split share, with fractional shares to be cashed out.

The transaction meant that post-split shares were more valuable, while also increasing the conversion price of preferred stock, making them convertible into fewer shares of common stock. The terms overall, Chancellor McCormick observed in a posttrial opinion last month, "had the effect of making available millions of shares of authorized and issuable common stock for sale in a qualified IPO."

Alcon argued that Aurion cannot close on a qualified initial public offering that triggers mandatory conversion of preferred stock into common until enough authorized, issued shares are sold "pursuant to an effective registration statement," and that are listed and trading and generate \$90 million in gross proceeds to Aurion after the underwriter's share.

"None of those events can occur with shares of common stock that do not exist," Alcon argued in a posttrial answering brief on Jan. 21.

Alcon Research LLC is represented by Jon E. Abramczyk, D. McKinley Measley, Elizabeth A. Mullin Stoffer and Jacob M. Perrone of Morris Nichols Arsht & Tunnell LLP and Monica K. Loseman, John D.W. Partridge, John Turquet Bravard, Mary Beth Maloney, Jonathan D. Fortney, Mark H. Mixon Jr. and Kevin J. White of Gibson Dunn & Crutcher LLP.

Aurion Biotech Inc. is represented by Richard P. Rollo, Travis Hunter, John M. O'Toole, Kevin M. Kidwell and Edmond S. Kim of Richards Layton & Finger PA and Brad D. Sorrels, Daniyal M. Iqbal, Jessica A. Hartwell, Lauren G. DeBona and Joshua A. Manning of Wilson Sonsini Goodrich & Rosati PC.

The case is Alcon Research LLC v. Aurion Biotech Inc., case number 34,2025, in the Supreme Court of the State of Delaware.

The Court of Chancery case under appeal is 2024-1102.

--Editing by Linda Voorhis.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Judge Partially Certifies Credit Suisse XIV Notes Class Action

By **Sydney Price**

Law360 (February 12, 2025, 9:16 PM EST) -- A New York federal judge has granted class certification to investors alleging that Credit Suisse manipulated the market for its XIV notes, while denying certification for those claiming losses from misrepresentations, finding that the suggested class failed to resolve previous deficiencies in its proposal.

The four lead plaintiffs — Set Capital LLC, Apollo Asset Ltd., Aleksandr Gamburg and Stefan Jager — intended to represent a Securities Act class, which has already been certified, as well as the misrepresentation and manipulation classes, according to the **order** signed Tuesday by U.S. District Judge Analisa Torres.

In their suit, the investors claimed that Credit Suisse plotted to trigger a liquidity crunch that caused the price of its exchange-traded notes to drop nearly 96% after the close of regular trading on Feb. 5, 2018. The crash caused an "acceleration event" that allowed Credit Suisse to redeem those notes at a cratered price, earning what investors said were \$475 million to \$542 million in profits.

Some investors were damaged by Credit Suisse's misrepresentations, and others were damaged based on Credit Suisse's market manipulation, the suit alleged.

"Lead plaintiffs allege Credit Suisse misrepresented or omitted its knowledge that the next episode of high market volatility would allow it to manipulate the market to profit at investors' expense," the order said. "Lead plaintiffs also allege that Credit Suisse did, in fact, manipulate the market by issuing millions of XIV notes, collapsing their value through its own hedge trading on February 5, and accelerating the notes' redemption — all at a substantial loss to investors."

The proposed misrepresentation class would have consisted of "all persons and entities that purchased or acquired [XIV] notes between Jan. 29, 2018, and 4:15 PM Eastern Time on Feb. 5, 2018, inclusive ... and who were damaged thereby."

When denying the misrepresentation class's motion for class certification with prejudice, Judge Torres said the lead plaintiffs cannot adequately represent plaintiffs who claim to be damaged by misrepresentation only, and not both misrepresentation and manipulation, due to the timing of their trades.

Based on their trades, the lead plaintiffs are "functionally indifferent" to whether damages are allocated to the defendants' alleged inflationary misrepresentations or deflationary manipulations.

"[A]lthough misrepresentation-only plaintiffs may be few, the court emphasized its duty to ask independently whether the interests of all class members [are] adequately represented," the order said. "For the third time, the court cannot answer this question in the affirmative."

The plaintiffs define the manipulation class as "all persons and entities that sold or redeemed the [XIV] notes on or after 4:15 PM Eastern Time on Feb. 5, 2018, ... and who were damaged thereby."

The defendants previously argued that "individual questions of investor knowledge of publicly available information concerning the alleged misconduct would predominate over classwide issues in the manipulation class," but Judge Torres said news stories and other publicly available information raise "issues of knowledge" and apply to the whole class, satisfying the predominance requirement.

She also said the manipulation class meets the numerosity, commonality and typicality requirements of class certification.

"[T]here are questions common to all class members, such as 'whether the price of XIV notes was artificial during the [class period],' 'whether manipulation occurred' and 'whether damages exist.' ... The trust's claims are typical because they 'arise from the same series of events and find support in the same legal theories as the claims of all of the remaining class members,'" the order said.

In March 2023, Judge Torres granted certification to the Securities Act class. That group includes all individuals and entities harmed after they purchased or acquired Inverse VIX exchange-traded notes, also known as XIV notes, traceable to the bank's offering documents.

In 2024, Judge Torres **rejected Credit Suisse's argument** that she erred when she declined to examine traceability while determining whether to certify the Securities Act class. Traceability is a merits question that doesn't need to be considered at the class certification stage, the judge said.

Judge Torres initially tossed the consolidated suit in 2019, without leave to amend, finding that the bank had expressly warned investors that buying short-term notes that were inversely tied to stock market volatility was risky before the price of those notes crashed.

However, investors got another chance after the Second Circuit concluded that the complaint plausibly alleged a strong inference of scienter to support the investors' claims of market manipulation on behalf of the bank and that it identified actionable misstatements or omissions in Credit Suisse's offering documents, according to court filings, and the claims were remanded.

The investors are represented by Michael B. Eisenkraft, Laura H. Posner, Steven J. Toll, Brendan Schneiderman and Carol V. Gilden of Cohen Milstein Sellers & Toll PLLC, Eduard Korsinsky, Nicholas I. Porritt, Adam M. Apton and Alexander Krot of Levi & Korsinsky LLP and Adam David Hollander and Kimberly Alice Grinberg of Slarskey LLC.

Credit Suisse is represented by Herbert S. Washer, Tammy L. Roy, Edward N. Moss and Adam S. Mintz of Cahill Gordon & Reindel LLP.

The case is Set Capital LLC et al. v. Credit Suisse Group AG et al., case number 1:18-cv-02268, in the U.S. District Court for the Southern District of New York.

--Editing by Rich Mills.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

EthereumMax Buyers Seek Cert. In Celeb Crypto Promos Suit

By **Sydney Price**

Law360 (February 12, 2025, 10:42 PM EST) -- A group of investors in crypto product EthereumMax have asked a federal judge in California to certify a class action accusing Floyd Mayweather Jr., Kim Kardashian and other celebrities of promoting the token, which allegedly was used in a pump-and-dump scheme.

According to a **motion** filed on Tuesday, 10 plaintiffs seek to represent a nationwide class, as well as California, New York, Florida and New Jersey subclasses. The plaintiffs also asked to appoint Scott + Scott Attorneys at Law LLP as lead counsel.

The suit accuses boxing legend Mayweather, Kardashian, former Boston Celtics forward Paul Pierce and former Pittsburgh Steelers wide receiver Antonio Brown of helping to artificially inflate the value of EMAX by touting it to followers before the token's collapse.

The plaintiffs told the judge they meet the requirements for class certification.

With respect to the requirement of numerosity, the plaintiffs' expert estimated that in the class period, more than 300,000 relevant tokens were purchased through cryptocurrency exchange Uniswap, according to Tuesday's motion. Of these, 100,000 were made by unique Ethereum addresses, the motion stated.

There are also questions of the law that are common to the class, the plaintiffs said.

"Here, plaintiffs' and class members' claims arise from the common contentions that: Defendants made uniform representations to plaintiffs and the class members regarding the EMAX token, and this resulted in a common harm [to] plaintiffs and class members who overpaid for the tokens that were unregistered and did not possess their promised attributes," the motion said.

The securities claims also arise from a common set of facts, including the sale and promotion of the EMAX token, according to the plaintiffs.

"The proof of each of these elements focuses on the conduct of the defendants and accordingly, proof for one will be proof for all," the motion said. "EMAX tokens were either registered as securities or they were not."

Some of the celebrity promoters have had claims against them dismissed. In October 2023, U.S. District Judge Michael Fitzgerald **allowed five claims** brought under consumer laws in California, Florida, New York and New Jersey to stand, denying the celebrities' motion to dismiss them. The figures argued that the token-holders failed to establish a clear duty to disclose certain information in their suit, but the judge ruled that failure to disclose information can constitute an actionable fraud.

Judge Fitzgerald also denied a request from EMAX co-founder Giovanni Perone to escape the state consumer claims in 2023 but granted him dismissal of three securities claims brought under California law. The investors contended that they don't need to show that Perone personally sold EMAX to make the allegations because of his "role in directing the sale and solicitation of EMAX tokens to the public," but the judge said that argument contradicts case law.

Jona Rechnitz, a one-time donor to former New York City Mayor Bill de Blasio, was also allowed to

escape the insider trading claim and secondary liability claim in the EMAX case in October 2023.

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

The token-holders are represented by John Jasnoch of Scott + Scott Attorneys at Law LLP.

Mayweather is represented by James Sanders, Carla Wirtschafter and Charles Hyun of Reed Smith LLP.

Pierce is represented by Joel Weiner, Mark Wooster and Sarah Lee of Katten Muchin Rosenman LLP.

Perone is represented by Andrew Michaelson, Craig Carpenito, David Willingham and Meghan Strong of King & Spalding LLP.

Rechnitz is represented by Brittany Lane, Michael Schafler and Neil Jahss of Cohen Williams LLP.

The case is In Re Ethereummax Investor Litigation, case number 2:22-cv-00163, in the U.S. District Court for the Central District of California.

--Additional reporting by Elliot Weld. Editing by Rich Mills.

All Content © 2003-2025, Portfolio Media, Inc.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Boston's Opioid Damages Claims Tossed As Too Late

By **Julie Manganis**

Law360 (February 12, 2025, 7:31 PM EST) -- Boston waited too long to sue a group of drug benefits intermediaries over their alleged roles in the opioid crisis, a Massachusetts federal judge said in dismissing the city's complaint Tuesday.

The city's complaint was removed to federal court on March 1, 2024, and detailed years of costs from the crisis. But U.S. District Judge Patti B. Saris wrote in an order that the detailing shows Boston knew of the harm that the over-prescribing of opioids like Purdue Pharma's OxyContin was causing years before it pursued public nuisance and collusion claims against pharmacy benefits managers Express Scripts Inc. and OptumRx Inc., and well before the statutes of limitations had run on both claims.

Judge Saris said it was also significant that other municipalities around the country — represented by Boston's own co-lead counsel Motley Rice LLC — had already sued the same defendants as early as 2018, in cases that are now bellwethers in pending multidistrict litigation in the Northern District of Ohio.

Those facts undercut the city's argument that the statutes of limitations on the city's claims — three years on the public nuisance and four years on the Racketeer Influenced and Corrupt Organization Act claim — were paused as a result of intentional concealment by the defendants or some other extraordinary circumstance, Judge Saris said.

"By 2018 'all the telltale warning signs' were present," Judge Saris said, quoting case law.

The city's efforts to overcome those statutes of limitations on other grounds were unavailing, the judge said.

Even if the defendants had misrepresented their actions in attempting to respond to the crisis, the judge said, "The city's actions to combat the opioid epidemic, combined with the widespread scrutiny and litigation concerning the role of [pharmacy benefits managers] 'leave no doubt' that the city knew or should have known of its injuries."

The court also rejected Boston's argument that the statute of limitations on the claims extend from the date of the last incident, or that they were extended because of ongoing conduct.

Judge Saris cited the Supreme Court's 2000 holding in [Rotella v. Wood](#) that RICO claims accrue from when a plaintiff knows of an injury, and said the city had failed to show ongoing conduct to support extending the window for its public nuisance claim.

The complaint, **first filed** in state court in January 2024 before it was moved to federal court, detailed years of increased financial burdens on the city, including the costs of providing opioid-blocking drugs in public buildings and to first responders, providing treatment, and dealing with quality of life issues and crime.

The judge, however, said Boston had failed to show that the issues were ongoing due to the actions of the defendants.

The city could point only to a single sentence it added to the complaint in which it simply asserts that the "defendants have created and maintained a public nuisance through their ongoing and unreasonable conduct."

"Simply labeling allegations as 'ongoing' does not convert conclusory statements into 'factual allegations,'" Judge Saris wrote. "The most recent actions alleged are remedial measures defendants took to address the opioid epidemic, not actionable misconduct."

The judge also declined to wade into a circuit split on whether the city, as a private plaintiff, could still obtain equitable relief under its RICO claim, saying that Boston had offered only "hypothetical" future harms it wants to be addressed through a court order, and hadn't shown a likelihood that the conduct will continue.

The city had argued that the four-year statute of limitations does not apply to requests for equitable actions, but it's not clear the city would have standing to seek such relief, the judge said.

The Fourth, Fifth and Ninth circuits have said plaintiffs pursuing civil RICO claims do not have standing, while the Second and Seventh circuits do. The First Circuit has not expressly ruled on the question, the judge said.

A spokesperson for Boston Mayor Michelle Wu said the city is reviewing the ruling.

Counsel for the defendants did not immediately respond to messages left Wednesday.

OptumRX and UnitedHealth are represented by Brian D. Boone, Reagan Drake, Matthew Hooker and Matthew P. McGuire of Alston & Bird LLP, and by Zachary R. Hafer and Dane R. Voris of Cooley LLP.

The Express Scripts Inc. entities, Medco Health Solutions and ESI are represented by Patrick D. Curran, Alexander del Nido, Michael Lyle, Jonathan G. Cooper and Christopher G. Michel of Quinn Emanuel Urquhart & Sullivan LLP.

The city of Boston is represented by Elizabeth Smith, Vincent Greene, Mimi Liu and Fred Baker of Motley Rice LLP, Christopher C. Naumes and Robert T. Naumes Sr. of Naumes Law Group LLC, and its own Adam Cederbaum, Caesar P. Cardozo and Batool Raza.

The case is City of Boston et al. v. Express Scripts Inc. et al., case number 1:24-cv-10525, in the U.S. District Court for the District of Massachusetts.

--Editing by Amy French.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Social Media MDL Judge Rips Google, Snap Quick Appeal Bid

By **Dorothy Atkins**

Law360 (February 12, 2025, 11:01 PM EST) -- A California federal judge indicated Wednesday she likely won't let Google and Snap file interlocutory appeals in multidistrict litigation over social media's allegedly addictive designs, saying the appeals requests make "no sense," and she slammed Meta insurers' unnecessary motion to expedite its coverage dispute with Meta as "unprofessional."

U.S. District Judge Yvonne Gonzalez Rogers' comments came during an hourslong hearing in Oakland, California, on multiple motions pending in consolidated personal injury **litigation launched in 2022** against social media tech giants, including Snap Inc., Meta Platforms Inc., TikTok Inc. and YouTube LLC.

The MDL involves hundreds of claims by parents of minors, school districts and dozens of state attorneys general who claim that social media platforms — such as Instagram and Facebook, which bring in billions of dollars annually in ad revenues — are designed to be addictive to the detriment of minors' mental health and livelihood.

In the latest motions, Google and Snap asked permission to appeal to the Ninth Circuit Judge Gonzalez Rogers' order last year **denying in part their motions to dismiss** the school district plaintiffs' allegations.

Google's counsel, Ashley Wall Hardin of Williams & Connolly LLP, argued during the hearing that Judge Gonzalez Rogers should allow the Ninth Circuit to review her lengthy ruling, and clarify whether the school districts' state public nuisance and negligence claims are viable before the MDL proceeds further.

Hardin repeatedly pointed to state supreme court rulings in opioid litigation, which rejected other novel applications of state nuisance statutes, and she argued that the court could save years of litigation, and the parties billions of dollars, by letting the appellate court weigh in now, and decide whether the California Supreme Court justices should clarify the state public nuisance law.

Meanwhile, Joseph G. Petrosinelli of Williams & Connolly LLP argued on behalf of Google and Snap that the Ninth Circuit should review the finding of whether Section 230 of the Communications Act shields the tech giants from liability.

In response, the school districts' counsel, Previn Warren of Motley Rice LLC, urged the judge to reject the requests, arguing that the interlocutory appeals would further complicate and delay litigation, which is already nearing the close of fact discovery. If anything, the court should consider the requests after motions for summary judgment when the fact record is fully developed, and not rely on the defendants' speculation regarding what the plaintiffs' experts will say, but even then the requests should be denied, he said.

For her part, Judge Gonzalez Rogers' doubted Google and Snap's requests, repeatedly telling Hardin that her argument that the school district litigation should be paused for years while the defendants challenge what would likely turn out to be a single theory of liability "makes no sense," and is not pragmatic.

"Even if you were right about nuisance [claims], the school districts still have negligence claims, and that seems to me to be a huge waste to certify one and not both," the judge said.

The judge added that Google's challenge of the negligence claim is "much weaker," than its nuisance challenge.

"I know you want both, but you have a much weaker argument with respect to negligence, and it becomes even weaker when you're asking me to splinter them," the judge said. "There's no pragmatism to go up on one, while staying everything ... How is it efficient for me to litigate fully, and then if you're wrong [on negligence], which of course I think you are, to then have to do a redo [a trial] on negligence? It makes no sense."

In regard to Google's Section 230 argument, the judge noted that Meta has already appealed the Section 230 issue to the Ninth Circuit over a year ago, and the issue is fully briefed. Judge Gonzalez Rogers added that if the Ninth Circuit decides Meta's appeal and the Section 230 challenge is worth hearing, "You don't think they'll tell us?"

"Since when has the Ninth Circuit been shy?" the judge asked.

Judge Gonzalez Rogers suggested it wouldn't make sense to grant Google's request while awaiting the Ninth Circuit's decision on Meta's appeal, and she noted that she has other motions pending before her that are a bigger priority.

"I don't understand why I should get involved when [Meta's] counsel has filed a perfectly good [appellate] motion, which the Ninth Circuit is perfectly authorized to grant or not," she said.

Aside from the interlocutory appeals requests, Judge Gonzalez Rogers also heard oral arguments on Meta's request for permission to seek a stay of **insurance coverage litigation** pending in Delaware, and before the Judicial Panel on Multidistrict Litigation, until the ultimate outcome of the MDL.

Meta's counsel, Martin H. Myers of Covington & Burling LLP, argued that six insurers have sought declaratory relief in Delaware that they're not required to cover certain costs Meta incurs in the MDL, and the insurers filed a motion to expedite their request to remand the dispute to Delaware state court.

Judge Gonzalez Rogers declined to rule from the bench, and ordered the parties to file a brief explaining the current procedural posture of all insurance litigation pending in Delaware and JPML, and a brief explanation of the basis for filing motions before her.

However, the judge also questioned Federal Insurance Co.'s counsel, Blair Kaminsky of Holwell Shuster & Goldberg LLP, why the insurance companies were trying to litigate the insurance dispute on an expedited basis, when such coverage disputes are often resolved late in MDLs, or even years after the MDL has been resolved. The judge also warned Kaminsky that in the future, the insurance companies should check how many cases a judge has before filing a motion to expedite.

"I have in this courtroom some of the best litigators in the country, and you don't do yourself justice by piling motions on our dockets," Judge Gonzalez Rogers said.

Judge Gonzalez Rogers noted that federal judges have hundreds and hundreds of cases, and "we were not very pleased when the bill to add federal judges to the judiciary was not signed."

"So save your urgency motions when something is actually urgent," Judge Gonzalez Rogers warned. "I'm sure the judges will get to [your case] when they can ... You all have to help us ... and you're frequently not helping. You're making it worse, and I would suggest your motion to expedite made it worse ... To add fuel to the fire is unprofessional."

At the end of the hearing, the judge didn't rule from the bench on any of the motions, and she took the arguments under consideration.

The school district plaintiffs are represented by Previn Warren of Motley Rice LLC.

The Meta entities are represented by Ashley M. Simonsen and Martin H. Myers of Covington & Burling LLP and James P. Rouhandeh of Davis Polk & Wardwell LLP.

Google and YouTube are represented by Joseph G. Petrosinelli and Ashley Wall Hardin of Williams & Connolly LLP.

Federal Insurance Co. is represented by Blair Kaminsky of Holwell Shuster & Goldberg LLP.

The MDL case is In re: Social Media Adolescent Addiction/Personal Injury Products Liability Litigation, case number 4:22-md-03047, and the California coverage case is Instagram LLC et al. v. Hartford Casualty Insurance Co. et al., case number 4:24-cv-09500, both in the U.S. District Court for the Northern District of California.

The Delaware federal coverage case is Hartford Casualty Insurance Co. et al. v. Instagram, LLC et al., case number 1:24-cv-01422, in the U.S. District Court for the Northern District of California.

--Additional reporting by Abraham Gross. Editing by Jay Jackson Jr.

All Content © 2003-2025, Portfolio Media, Inc.

\$180M Deals In Poultry Process Wage-Fixing Row Get First OK

By Irene Spezzamonte

Law360 (February 12, 2025, 2:04 PM EST) -- A Maryland federal judge gave her blessing to several settlements totaling approximately \$180 million in a suit accusing a slew of poultry companies of conspiring to keep wages low at their plants, greenlighting what the workers called "a historic recovery."



Workers for several poultry plants have reached settlements totaling about \$180 million to resolve claims that the companies operated an anticompetitive clique. (AP Photo/Charlie Neibergall)

U.S. District Judge Stephanie A. Gallagher **granted** the workers' motion for preliminary approval of the settlements Tuesday, saying the deals are "sufficiently fair, reasonable, and adequate to authorize dissemination of notice" to the settlement class.

The companies the workers reached the deals with are Allen Harim Foods LLC, Amick Farms LLC, Butterball LLC, Fieldale Farms Corp., Foster Poultry Farms, Jennie-O Turkey Store Inc., Koch Foods Inc., O.K. Foods Inc., Tyson Foods Inc. and Keystone Foods LLC.

The companies agreed to pay different amounts: Allen Harim Foods \$5 million, Amick Farms \$6.25 million, Butterball \$8.5 million, Fieldale Farms \$5.5 million, Foster Poultry Farms \$13.3 million, Jennie-O Turkey Store \$3.5 million, Koch Foods \$18.5 million, O.K. Foods \$4.75 million and Tyson and Keystone \$115.5 million.

The settlement class includes all workers those companies, their subsidiaries and related entities employed at their poultry processing plants, poultry hatcheries, poultry feed mills and poultry complexes in the U.S. from Jan. 1, 2000, to July 20, 2021, according to the order.

Those settlements add up to other deals the workers **have already reached** and the court preliminarily approved, according to the workers' **December motion** for preliminary approval.

All combined, the workers' recovery is set at approximately \$398 million, "the second-largest recovery ever in a labor antitrust class action," the workers said in the motion.

The dispute began in 2019 when the workers claimed that the companies operated an anticompetitive clique with executives holding secret meetings to trade information about how much they paid workers and the benefits they offered them in order to set industrywide benchmarks, violating the Sherman Act, a federal law that promotes economic fairness, the workers alleged.

Brent W. Johnson of Cohen Milstein Sellers & Toll PLLC, who is representing the workers, declined to comment Wednesday.

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

Allen Harim Foods is represented by Michael Heyden, Alexander Nemiroff and Joseph C. Monahan of Gordon Rees Scully Mansukhani LLP.

Amick Farms is represented by Howard B. Iwrey, Steven H. Gistenson and Jason Christopher Reichlyn of Dykema Gossett PLLC.

Butterball is represented by Hayden J. Silver III of Womble Bond Dickinson LLP.

Fieldale Farms is represented by B. Parker Miller, Laura A. Komarek, Kayla C. Butler and Valarie C. Williams of Alston & Bird LLP and Max Marks of The Block Firm LLC.

Foster Poultry Farms is represented by Carmine R. Zarlenga, Richard S. Snyder and Katherine M. Bleicher of Mayer Brown LLP.

Jenny-O Turkey Store is represented by Jonathan H. Todt, Kathryn E. Bettin, Richard A. Duncan, Craig S. Coleman, Emily E. Chow and Jacob D. Bylund of Faegre Drinker Biddle & Reath LLP.

O.K. Foods is represented by J.R. Carroll, Jeffrey M. Fletcher, Stephen M. Dacus and John P. Passarelli of Kutak Rock LLP.

Tyson and Keystone are represented by John Francis Terzaken III and Abram Ellis of Simpson Thacher and Bartlett LLP.

Koch Foods is represented by Scott W. Pedigo, Amy L. Champagne, Jennifer G. Hall, John G. Calender, Russell W. Gray and Clinton P. Sanko of Baker Donelson Bearman Caldwell & Berkowitz PC.

The workers are represented by Brent W. Johnson, Benjamin D. Brown, Daniel H. Silverman and Alison S. Deich of Cohen Milstein Sellers & Toll PLLC, Shana E. Scarlett, Rio R. Pierce, Steve W. Berman, Breanna Van Engelen and Elaine T. Byszewski of Hagens Berman Sobol Shapiro LLP, Matthew K. Handley, Rachel E. Nadas, George F. Farah, Rebecca P. Chang and William Anderson of Handley Farah & Anderson PLLC, Brian D. Clark and Stephen J. Teti of Lockridge Grindal Nauen PLLP and Candice J. Ender and Julia R. McGrath of Berger Montague.

The case is Jien et al. v. Perdue Farms Inc. et al., case number 1:19-cv-02521, in the U.S. District Court for the District of Maryland.

--Editing by Emma Brauer.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Poultry Producers Can't Dodge Bid-Rigging Claims In MDL

By **Dorothy Atkins**

Law360 (February 12, 2025, 7:36 PM EST) -- An Illinois federal judge trimmed on Tuesday some conspiracy claims from a massive antitrust case against chicken producers, including Pilgrim's Pride and over a dozen others, but kept intact other bid-rigging allegations, finding that a class of restaurants and other direct buyers plausibly alleged the companies increased prices in parallel.

In a 40-page ruling, U.S. District Judge Thomas M. Durkin rejected in part motions to dismiss by multiple chicken producers seeking to throw out federal antitrust claims alleging a bid-rigging conspiracy among the companies.

The judge concluded that a class of direct buyers of chicken products, which includes restaurants and other children buyers, have plausibly alleged a bid-rigging conspiracy among the defendants by pointing to purported facts showing that the companies increased prices in parallel, as well as by pointing to communications between the companies allegedly swapping price information with the intent to work together to maintain or increase prices offered to their customers.

"Defendants' argument — that not every plaintiff in particular has alleged facts showing that they were offered higher prices as a result of the conspiracy — takes too narrow a view of the reasonable inferences the court can draw from the extensive allegations of communications among the bid-rigging defendants," the order says. "The only bid-rigging defendant for whom the allegations are insufficient is [Fieldale Farms Corp.]."

However, the judge also concluded that the direct buyers have failed to state an overarching conspiracy claim against seven companies who are accused of participating in only a supply reduction conspiracy, and not the bid-rigging or other alleged conspiracies.

"There is nothing about the factual allegations supporting the supply reduction conspiracy indicating that those seven defendants knew of or participated in any broader conspiracy," the order says.

The ruling keeps alive in part claims in sprawling multidistrict litigation **launched in 2016** by consumers and direct and indirect buyers of chicken products, accusing broiler chicken producers of conspiring to reduce supply and to manipulate the Georgia Dock price index.

In 2017, the judge denied multiple motions to dismiss, and the case proceeded into discovery, which **revealed** that the U.S. Department of Justice was in the midst of conducting an investigation into allegations of bid rigging in the industry. Pilgrim's Pride pled guilty, while many of its officers were acquitted at trial, and indictments against other companies were eventually dismissed.

Following the criminal litigation, the classes in the MDL amended their complaint to include civil bid-rigging claims. But in order not to further delay the adjudication of the initial conspiracy claims, which were at least five years old at that point, the judge set two separate litigation tracks in which plaintiffs could pursue either the initial conspiracy claims regarding supply and the Georgia Dock price index, or the bid-rigging conspiracy claims.

On the first track, the judge denied summary judgment to 11 of the 18 defendants, and all but one defendant — Sanderson — **settled before trial**. Sanderson **ultimately prevailed** before a jury.

Meanwhile, roughly 130 direct buyers who opted out of the first track pursued bid-rigging claims

against the defendants. Those direct buyers filed a consolidated amended complaint asserting six federal antitrust claims, as well as racketeering claims and state antitrust claims against over a dozen companies including Case Foods Inc., House of Raeford Farms Inc., Pilgrim's Pride, Sanderson Farms Inc., Simmons Foods Inc., Tyson Foods Inc. and Wayne Farms LLC.

In separate motions in 2022, many of the defendants asked the court to throw out the bid-rigging claims under federal antitrust law arguing, among other defenses, that the buyers lack standing to sue or failed to allege a viable antitrust claim. Pilgrim's also sought to ax a count alleging a supply reduction conspiracy, and a Georgia Dock conspiracy.

But in his decision, Judge Durkin denied Pilgrim's motion, noting that it was raising similar challenges that the court already rejected in the earlier rounds of motions to dismiss, and hasn't explained why the judge should reconsider his prior findings that the supply reduction and Georgia Dock conspiracy claims are plausibly alleged.

Judge Durkin also refused to toss bid-rigging claims, and in light of his ruling, he ordered the parties to file a joint status report addressing discovery and other next steps by March 5.

Counsel for the plaintiffs declined to comment on Wednesday and counsel for the defendants did not immediately respond to requests for comment.

The plaintiffs are represented by Floyd A. Mandell, Catherine E. O'Brien and Mark T. Ciani of Katten Muchin Rosenman LLP.

Pilgrim's Pride is represented by Michael Bonanno, William Burck, Kathleen Lanigan, Debra Bernstein and Michelle Schmit of Quinn Emanuel Urquhart & Sullivan LLP.

The Keystone entities — Keystone Foods LLC, Equity Group Eufaula Division LLC, Equity Group Kentucky Division LLC and Equity Group — and the Tyson entities — Tyson Foods Inc., Tyson Chicken Inc., Tyson Breeders Inc. and Tyson Poultry Inc. — are represented by Bradley D. Justus, Daniel K. Oakes, Denise L. Plunkett, Nicholas E.O. Gaglio, Jarod G. Taylor of Axinn Veltrop & Harkrider LLP and Jordan M. Tank of Lipe Lyons Murphy Nahrstadt & Pontikis Ltd.

Ferndale Farm Corp is represented by B. Parker Miller, Valarie C. Williams and Thomas P. Grantham of Alston & Bird LLP and by Max Marks of the Block Firm LLC.

Sanderson Farms Inc. and its divisions are represented by Daniel E. Laytin, Christa C. Cottrell and Jenna M. Stupar of Kirkland & Ellis LLP.

Simmons Foods Inc. and Simmons Prepared Foods Inc. are represented by Lynn H. Murray and Laurie A. Novion of Shook Hardy & Bacon LLP and by John R. Elrod and Vicki Bronson of Conner & Winters.

Harrison Poultry Inc. is represented by Patricia A. Gorham, James R. McGibbon, Kaitlin A. Carreno and Rebekah Whittington of Eversheds Sutherland LLP and Ronald Balfour of Amundsen Davis LLC.

Wayne Farms LLC is represented by Christopher E. Ondeck, Stephen R. Chuk and Scott A. Eggert of Proskauer Rose LLP.

House of Raeford Farms Inc. is represented by Gregory G. Wrobel of Vedder Price PC and Henry W. Jones Jr. of Jordan Price Wall Gray Jones & Carlton PLLC.

Case Foods Inc., Case Farms LLC and Case Farms Processing Inc. are represented by Joseph D. Carney of Joseph D. Carney & Associates LLC, Thomas M. Staunton and Daniel M. Feeney of Miller Shakman Levine & Feldman LLP and Deborah A. Klar of D.Klar Law.

The case is In re: Broiler Chicken Antitrust Litigation, case number 1:16-cv-08637, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Lauraann Wood and Bryan Koenig. Editing by Jay Jackson Jr.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

DOGE, Treasury Accused Of 'Largest' US Data Breach

By **Lauren Berg**

Law360 (February 11, 2025, 11:18 PM EST) -- Elon Musk's Department of Government Efficiency, the U.S. Department of the Treasury and the U.S. Office of Personnel Management conducted the "largest" data and IT security breaches in U.S. history, illegally exposing millions of people's sensitive information, a data privacy watchdog and group of federal employees alleged this week.

Federal employees Denise Nemeth-Greenleaf, Jason Judkins, Jon Michel, Donna Nemeth and Michael Rifer in a putative class **complaint** filed Tuesday in Washington, D.C., accused OPM and the Treasury of failing to protect government workers' privacy by disclosing their Social Security numbers, personal health information, addresses and other sensitive data to "non-governmental employee and private citizens," Musk and other unauthorized members of the U.S. DOGE Service Temporary Organization — more commonly known as the Department of Government Efficiency, which is not a cabinet-level agency.

"Defendants' failure to protect government employees' privacy is the biggest breach of American trust by political actors since Watergate," the workers said, adding that "the individuals granted access to the [personal sensitive information] are, essentially, hackers who have been given access to the data by the government itself."

"They are individuals who lack authorization to access such information; they are non-government employees who do not have proper security clearances and are uninhibited by the restrictions required by law and placed on federal government employees," they said.

President Donald Trump created DOGE in an executive order on Inauguration Day, renaming the preexisting United States Digital Service and directing the new unit to work on "modernizing federal technology and software to maximize governmental efficiency and productivity."

The Electronic Privacy Information Center, a nonprofit research center aiming "to protect privacy, freedom of expression and democratic values in the information age," filed a similar **complaint** Monday in Virginia federal court, alleging that OPM and the Treasury unlawfully provided Musk's department with access to sensitive and protected data belonging to tens of millions of Americans, including millions of federal employees.

The Treasury and OPM have abandoned their federally mandated security protocols, and have relinquished control of their information systems and disclosed "vast stores of personal information" to DOGE and Musk's associates, who are not legally authorized to access them, EPIC said.

Now, with access to the Treasury payment systems, DOGE has the ability to stop payments from the federal government, the complaint states.

What's more, a day after a former Musk employee, who has since resigned from DOGE, was granted administrator-level privileges over the Bureau of Fiscal Services systems, information taken from those systems was posted to Twitter, now X, according to the suit.

Former Trump national security adviser Michael Flynn — who pled guilty twice to lying to the FBI about his Russia contacts and was later pardoned by the president — on Feb. 1 tweeted screenshots showing 42 payments from the U.S. Department of Health and Human Services to various recipients, the suit states. Flynn specifically criticized payments to Lutheran Family Services, a faith-based charity that provides social services to refugees, the complaint states.

"The information contained in Mr. Flynn's tweet was taken from protected BFS systems," EPIC said, adding that Musk replied to Flynn's post with, "The @DOGE team is rapidly shutting down these illegal payments."

"On the basis of these public messages, and upon further information and belief, USDS/DOGE and Treasury Department personnel are unlawfully exfiltrating identifying information from BFS payments systems, impermissibly matching this information with other data sets, and using and redisclosing such information for impermissible purposes," the organization said.

And with access to the OPM's Enterprise Human Resources Integration systems, DOGE and Musk's associates can see the Social Security numbers, dates of births, salaries, home addresses and other sensitive information for all civil government employees, according to the complaint.

The information in this system is only to be disclosed for "narrow, carefully defined purposes relating or incident to the provision of human resource services," the suit states.

"These purposes do not include dismantling, slashing, and restructuring federal programs," EPIC said, adding that OPM has "flagrantly violated these safeguards" at the direction of DOGE.

EPIC's suit asserts violations of the Administrative Procedure Act, the Privacy Act and the Fifth Amendment's right to informational privacy, among other things.

It seeks injunctive relief to bar the defendants' access to and disclosure of personal information in the OPM and Treasury systems and to bar the defendants' use of the systems to share data "with non-agency employees for non-routine and non-permitted purposes." It also wants to bar DOGE from controlling the systems and from accessing personal information.

In addition, EPIC wants an order requiring the defendants to disgorge or delete all unlawfully obtained information and an order barring DOGE from collecting, disclosing or retaining personal information in the systems, as well as statutory and punitive damages, attorney fees and litigation costs.

The federal employees, who want to represent a nationwide class of "all current, former and prospective employees of the United States whose personal sensitive information was accessed without their prior written authorization from OPM and Department of Treasury beginning in January 2025," assert violations of the Privacy Act.

They are seeking injunctive relief, damages, litigation costs and attorney fees, among other relief.

"We believe that the illegal seizure of personnel records and payment system data poses an immediate and existential threat to the privacy and security of all Americans, and we are working diligently to stand up and challenge these unlawful actions," EPIC Executive Director Alan Butler said in a statement Monday.

Plaintiffs' counsel Skye Perryman, CEO of Democracy Forward Foundation, added, "This is a massive and egregious breach of privacy that impacts the private information of millions of Americans."

"This seizure of personal data is the latest part of DOGE's sweeping campaign to gain access to highly-sensitive information and weaponize the government," she said. "We will use every tool available to prevent these types of harmful and unauthorized actions by the administration, and we are grateful for EPIC's partnership in pushing back against this invasion of Americans' privacy."

Counsel for the federal employee plaintiffs and representatives for the U.S. Department of Justice and Treasury did not immediately respond to requests for comment Tuesday. DOGE could not be immediately contacted.

A Manhattan federal judge Saturday **blocked DOGE's access** to Treasury payment systems and ordered the department to destroy any data already obtained, after state attorneys general alleged the access was "dangerous" and unlawful.

U.S. District Judge Paul A. Engelmayer's temporary restraining order prohibits the Trump

administration from giving "political appointees" and "special government employees" access to Treasury payment records and systems, and says any previously obtained material must be "immediately" destroyed.

And U.S. District Judge Jeannette A. Vargas, who is overseeing the case, on Tuesday mostly upheld Judge Engelmayer's TRO, but clarified in the **eight-page order** that Senate-confirmed officials, like the Treasury secretary, are exempt.

EPIC is represented by Matthew B. Kaplan of The Kaplan Law Firm, Alan Butler and John L. Davisson of the Electronic Privacy Information Center, and Mark B. Samburg, Aman T. George, Orlando Economos, Robin F. Thurston and Skye Perryman of Democracy Forward Foundation.

The federal employee plaintiffs are represented by Hassan A. Zavareei, Andrea R. Gold, Gemma Seidita and Cort T. Carlson of Tycko & Zavareei LLP and Gregory McGillivray, Sara L. Faulman, John W. Stewart and Sarah M. Block of McGillivray Steele Elkin LLP.

Counsel information for the defendants was not immediately available.

The cases are Electronic Privacy Information Center et al. v. U.S. Office of Personnel Management et al., case number 1:25-cv-00255, in the U.S. District Court for the Eastern District of Virginia, and Denise Nemeth-Greenleaf et al. v. U.S. Office of Personnel Management et al., case number 1:25-cv-00407, in the U.S. District Court for the District of Columbia.

--Additional reporting by Hailey Konnath and Pete Brush. Editing by Michael Watanabe.

All Content © 2003-2025, Portfolio Media, Inc.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Google Must Face Wiretapping Suit Over AI-Powered Assistant

By **Dorothy Atkins**

Law360 (February 12, 2025, 5:39 PM EST) -- A California federal judge has refused to toss a proposed class action accusing Google of using a "human-like" customer-service product powered by artificial intelligence to illegally eavesdrop on users' calls with Hulu, Verizon and others, finding the consumers adequately allege Google is a third party that can benefit from the data.

In an 11-page order dated Feb. 10, U.S. District Court Judge Rita Lin found that the consumers sufficiently alleged that Google LLC acted as an unauthorized third party to their calls in violation of the California Invasion of Privacy Act to survive a motion to dismiss.

The ruling keeps alive a **lawsuit initially filed** by Napa County resident Misael Ambriz in October 2023 that asserts a single count under CIPA. Ambriz alleges that the Google Cloud Contact Center AI, which companies use to respond to customer service calls without human agents, runs afoul of CIPA by eavesdropping on and recording customers' conversations with third parties unbeknownst to the customers.

The product gives step-by-step guidance to the human agents interacting with customers, but to do so, Google listens to and transcribes the phone conversation without the consumer's knowledge or consent, the suit alleges.

In this case, Ambriz specifically alleges that Google eavesdropped on his customer service call with Verizon, and he seeks to certify a nationwide class of consumers who similarly had their conversations with Verizon read and learned by Google using the Google Cloud Contact Center AI.

Google filed a motion to dismiss in January 2024, pointing to its own terms of service, which says Google will not use customer data to train its tech. After a **hearing on the motion**, the judge **tossed** the suit with leave to amend in June, finding that Google was exempt from liability because it was acting as Verizon's agent.

In September, Ambriz's case was consolidated with another similar action, and in October, multiple lead plaintiffs joined the case, and they filed a consolidated amended complaint, alleging CIPA violations with respect to calls made to Hulu, GoDaddy, Home Depot and Verizon.

Google again asked the court to toss the case, arguing that the latest rendition of the lawsuit fails to state a viable claim against Google.

However, Judge Lin rejected Google's argument. In reaching her conclusion, the judge applied a test laid out in the California district court's 2023 **Javier v. Assurance IQ LLC** decision, which found that the defendant ActiveProspect's software monitoring visitors' interactions with Assurance's website made it a third party based on its capability to use user data to its benefit, regardless of whether it did so.

In light of that precedent, Judge Lin found that the consumers have adequately alleged that Google has the capability to use the wiretapped data it collects to improve its AI models, and she noted that Google's own terms of service allows Google to use data collected on customer service calls for its own purposes if its business clients give it permission.

"This provision creates a plausible inference that Google has the technological capability to use the

data it collects and analyzes, regardless of whether it actually makes use of that data," the ruling says. "After all, it would be illogical for Google to grant itself the conditional right in under its own terms of service to do something it is not capable of doing."

The judge additionally held that the complaint adequately alleges Google is a "person" under CIPA, that uses the Google Cloud Contact Center AI to allegedly collect consumer data, and the plaintiffs have adequately alleged that Google learned the content of their communications while they were in transit, "either before or simultaneously with the intended recipient."

Judge Lin also rejected Google's argument that the CIPA statute only applies to landlines and not smartphones, due to the statute's use of the term "telephone wire." The judge noted that the statute also covers the "unauthorized connection" with "telephone ... instrument[s]," which all smartphones have. The judge added that Google's "overly narrow" reading of the statute is at odds with lawmakers' intent to protect consumers' privacy.

"Given the increased prevalence of smartphones, limiting the protection of [the statute] solely to calls made over landlines would be inconsistent with these goals," the order says.

Google's counsel declined to comment Wednesday and counsel for the plaintiffs didn't immediately respond to a request for comment.

The plaintiffs are represented by Neal J. Deckant of Bursor & Fisher PA and Anthony G. Simon and Jeremiah W. Nixon of the Simon Law Firm PC.

Google is represented by Travis LeBlanc, Tiana Demas, Kristine Forderer, Anupam Dhillon and Thilini Chandrasekera of Cooley LLP.

The case is Misael Ambriz et al. v. Google LLC, case number 3:23-cv-05437, in the U.S. District Court for the Northern District of California.

--Additional reporting by Lauren Berg, Allison Grande and Gina Kim. Editing by Jay Jackson Jr.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Ga. Judge Trims Untimely Paragard IUD Claims From MDL

By **Chart Riggall**

Law360 (February 12, 2025, 7:45 PM EST) -- The Georgia federal judge overseeing the sprawling multidistrict litigation over alleged defects in Paragard intrauterine devices agreed Tuesday to dismiss as untimely dozens of claims against Teva Pharmaceutical and Cooper Cos. from patients in eight states.

U.S. District Judge Leigh Martin May ruled that Teva Pharmaceutical Industries Ltd. and The Cooper Cos. Inc. had **correctly identified** around 100 personal injury and breach of warranty claims that were filed after the statute of limitations in New York, Michigan, Idaho and other states.

But she declined to toss over 100 more claims that the two companies said were barred by statutes of repose in Georgia, Illinois and elsewhere, ruling that plaintiffs there had sufficiently alleged the companies fraudulently concealed the defects in the IUDs in order to delay the claims' filing.

"Simply put, viewing the pleadings in the light most favorable to plaintiffs, there is enough to enable a reasonable finder of fact to conclude that defendants intentionally lied in order to delay plaintiffs' discovery of their claims," she said.

Teva and Cooper, court records show, originally tried in 2021 to **toss a master complaint** from patients who said they were injured by the faulty Paragard product. They contended that the T-shaped device is made with dangerously brittle arms prone to breaking off while inside the uterus, leading to complications including surgeries to remove the broken pieces, infertility and pain.

According to the suit, the defendants also used subpar raw materials for the birth control device and concealed the defects from the public while overstating the device's benefits.

After Judge May shot down the companies' initial dismissal bid more than three years ago, more claimants have streamed in with short-form complaints stating when they had the Paragard IUD inserted, the city and state where it was inserted, and the date and location of any procedures to remove the device.

Last September, Teva and Cooper said some 236 of those short-form complaints were deficient on timeliness grounds. Some were barred by the statutes of limitations in six states — Alabama, Idaho, Michigan, Mississippi, New York and Virginia — while others were doomed by statutes of repose in Iowa, North Carolina, Tennessee and Texas, according to the defendants.

And statutes of repose in Georgia and Illinois undermine claims for strict liability in another grouping of complaints, the companies added.

Judge May on Tuesday agreed to toss most of the claims from the six states in which the statute of limitations had run out, ruling that in most cases, the plaintiffs should have been aware of their injuries when their IUDs were removed.

She went on to dismiss a limited number of the claims that Teva and Cooper said were barred by the respective states' statutes of repose, but in most of the cases, the allegations of fraudulent concealment prevented dismissal on those grounds, the judge said.

And in a handful of cases, Judge May converted the dismissal bids to motions for summary judgment

where the date that the device was removed was not clear from the pleadings.

The plaintiffs are represented by Fibich Leebron Copeland & Briggs, Childers Schlueter & Smith LLC, Keller Postman LLC, Motley Rice LLC, Schneider Hammers LLC, Porter Malouf PA, Wexler Wallace LLP, The Cochran Firm, Sanders Phillips Grossman LLC, Ferrer Poirot & Wansbrough, Breit Biniazan, Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins PC, Cory Watson PC, Laminack Pirtle & Martines LLP, Parafinczuk Wolf, Aylstock Witkin Kreis & Overholtz PLLC, The Carson Law Firm PC, and Susen Law Group.

The Cooper Cos. is represented by Butler Snow LLP and Greenberg Traurig LLP.

Teva is represented by Butler Snow LLP.

The case is In Re Paragard IUD Products Liability Litigation, case number 1:20-md-02974, in the U.S. District Court for the Northern District of Georgia.

--Editing by Kristen Becker.

All Content © 2003-2025, Portfolio Media, Inc.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Paraquat Plaintiffs Urge 7th Circ. To Revive MDL Suits

By **Lauraann Wood**

Law360 (February 12, 2025, 8:45 PM EST) -- Four plaintiffs who were set for bellwether trials in multidistrict litigation targeting the herbicide paraquat argued Wednesday that the Seventh Circuit should unwind their summary judgment losses because the district court's ruling was based on "core misunderstandings" about their expert's evidentiary requirements.

The three-judge appellate panel should reverse the lower court's ruling because it holds the plaintiffs' expert to too high a standard at the wrong stage of its analysis, their attorney, Andrianna Kastanek of Jenner & Block LLP, asserted during oral argument. The ruling also includes "ticky-tack" criticisms of their expert which veer too far out of bounds set by circuit precedent, she argued.

The plaintiffs had been set to be the first tester trials in a sprawling MDL containing thousands of cases claiming exposure to paraquat dichloride leads individuals to develop Parkinson's disease.

The lower court's April 2024 ruling agreed with the defendants' assertion that the bellwether plaintiffs' expert had impermissibly cherry-picked the scientific data he used to form an opinion supporting their claims, and that their claims fail without it.

But that part of the expert's process was supposed to be subjective because "a meta-analysis involves picking the best quality studies, and judgments across biostatisticians that differ as to study quality [is] an everyday occurrence in this field," Kastanek told the appellate panel Wednesday.

The lower court also "quite inexplicably" ignored the sensitivity analysis their expert conducted to demonstrate his analysis was not outcome-driven and instead the result of standard procedures in his field, Kastanek asserted.

He conducted the analysis responding to precisely that defense criticism, and it dropped one study from his considerations, but that just shows the expert's work "was sufficiently transparent to be able to push the boundaries to be able to refute and respond," she argued.

"This is a classic case of dueling experts that should have gone to the jury," she argued.

Arguing for Chevron and Syngenta, however, Leon DeJulius Jr. of Jones Day argued the lower court correctly found the expert's methodology unreliable. Part of the problem is he applied a subjective wholistic methodology that civil procedure rules consider unreliable, DeJulius told the panel.

But the expert also changed his methodology midstream, having to "fudge the numbers" in his rebuttal report to make his initial analysis work, and "you cannot change midstream after reaching conclusions," the attorney asserted.

"That's sentence first, verdict later," he argued.

Paraquat is banned in many European countries and restricted in the U.S. due to its high toxicity. Still, it remains one of the most widely used herbicides in the nation. It's sold by Syngenta as Gramoxone. Chevron is a defendant in the litigation because the company sold it until the 1980s.

Both Syngenta and Chevron maintain that no peer-reviewed research supports the plaintiffs' contention. The lower court made similar acknowledgments in its summary judgment ruling, noting that the plaintiffs' expert had presented an opinion directly conflicting with a recent scientific community consensus that evidence currently available does not connect paraquat and Parkinson's

disease.

The lower court has since selected six MDL cases to serve as bellwethers in two trials, with the first set for October and the next to kick off in April 2026.

U.S. Circuit Judges Doris Pryor, Joshua Kolar and Nancy Maldonado sat on the Seventh Circuit panel.

Firms representing the plaintiffs include Jenner & Block LLP, Meyers & Flowers LLC and Walkup Melodia Kelly & Schoenberger.

Syngenta is represented by Kirkland & Ellis LLP.

Chevron is represented by Jones Day.

The consolidated appeal is Frederick Richter et al. v. Syngenta Crop Protection LLC et al., case numbers 24-1865, 24-1866, 24-1867 and 24-1868, in the U.S. Court of Appeals for the Seventh Circuit.

--Additional reporting by Hailey Konnath. Editing by Kelly Duncan.

All Content © 2003-2025, Portfolio Media, Inc.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Gore-Tex Maker Accused Of Greenwashing Waterproof Fabric

By **Gina Kim**

Law360 (February 12, 2025, 6:49 PM EST) -- W.L. Gore & Associates has been slapped with a proposed class action in Washington federal court accusing it of embarking on a "greenwashing" campaign by touting its Gore-Tex waterproof fabric as being environmentally sound, while concealing from customers it uses forever chemicals in manufacturing the material.

A group of customers **brought their complaint** in the Eastern District of Washington against the Gore-Tex fabric maker, which has been an industry leader in outdoor apparel and gear. The suit accuses the company of hyping its commitment to environmental stewardship and sustainability, while failing to inform consumers that its fabric is made through the use of per-and polyfluoroalkyl substances, also known as PFAS.

"Unfortunately, Gore offers not much more than empty environmental promises via its misleading greenwashing campaign," the customers said. "Greenwashing is the act of making false or misleading statements about the environmental benefits of a product or practice. ... Gore's greenwashing campaign misleads the public by purporting to be highly committed to environmental responsibility and at the forefront of sustainable manufacturing processes."

Environmental sustainability has long been a major point in Gore's marketing efforts, and it knows consumers are willing to pay more for brands that employ environmentally conscious practices, the customers said.

They alleged they've bought different types of outdoor wear made with the Gore-Tex fabric at different times between 2018 and 2022, including a pair of Volcom brand of snow pants, a Dainese Dolomiti Gore-Tex jacket and a pair of Danner Sharptail boots.

The plaintiffs, led by Washington state resident Micah Mason, said they bought the products featuring the Gore-Tex fabric after relying on the representations on the product labels, without knowing the products contained PFAS. The customers alleged they wouldn't have bought the products had they known about the use of PFAS.

In the past few years, companies have faced similar "greenwashing" suits challenging product labels, from toiletries, recycling programs, beauty and personal care, and more.

Target customers **sued the retailer** in Minnesota accusing it of creating and overusing its "Target Clean" symbol of approval on a series of beauty products that the shoppers have claimed contain harmful chemicals.

Tyson Foods **was sued** in D.C. state court in September by the Environmental Working Group accusing the meat company of falsely touting it'll be net-zero by 2050 and misrepresenting its industrial beef products as "climate-smart."

The Honey Pot Co. was sued in California federal court by customers **who said** its line of "plant-derived" organic feminine care products — such as washes, pads and liners — contain synthetic ingredients.

Last month, Procter & Gamble **was accused** of greenwashing its Charmin toilet paper and of misleading its customers about its campaign to "keep forests are forests" and to grow at least two

trees for every tree used. The consumers alleged P&G failed to disclose its suppliers are replanting single species conifers and then covering those trees with chemical herbicides.

Northwest Natural Gas **was accused by customers** of "greenwashing" its Smart Energy program as a way to offset natural gas emissions, while directing the program's funds to methane-generating industrial dairy farms.

Johnson & Johnston customers **hit the company** with a proposed false advertising class action in California federal court alleging its line of Aveeno makeup removing wipes aren't 100% plant-based or environmentally friendly, as the package claims.

In the Gore-Tex suit, the customers alleged the fabric consists of multiple layers: outer material; inner material; and a layer of membrane technology that's breathable, lightweight and water-and-wind proof. There's another layer on top of all the other layers, which is referred to as "durable water repellent" treatment, a coating with a slippery layer that allows for water resistance, the complaint explained.

"But defendant does not disclose that Gore still includes [expanded polytetrafluoroethylene] in several of its current products and still uses a [durable water repellent] treatment derived from PFAS," the customers alleged.

The complaint noted scientific studies have linked PFAS exposure to a host of health risks, such as fertility issues, developmental delays in youth, bone variations, behavioral changes and heightened risks of certain cancers.

Gore also has failed to tell consumers the Gore-Tex fabric sheds PFAS through the course of ordinary use and wear, according to the suit, and that some tests have revealed the fabric can shed types of PFAS when exposed to rain.

Gore has other alternatives to make its fabric without PFAS, as other companies have been able to, the plaintiffs argued. For example, Columbia uses a fabric called OutDry, which doesn't have a PFAS membrane. Nikwax produces water-based durable water-repellent treatments without using PFAS, and North Face has a perfluorinated chemicals-free durable water-resistant treatment that is single polymer fiber and not polytetrafluoroethylene, according to the suit.

Polytetrafluoroethylene is the same polymer used to make Teflon, the complaint notes, and falls under the category of perfluorinated chemicals, or PFC.

North Face's Freedom snow pants also have a DWR treatment without PFC, the customers added.

They brought their claims for fraudulent concealment and violations of consumer protection under the statutes of several states, including Washington, California, Illinois, Minnesota, Alabama, Florida, Maine, Arizona, Alaska, Montana, New Hampshire, Maryland, New Mexico, New York, Massachusetts, Ohio, South Carolina, Vermont, Utah and more.

The proposed class is estimated at more than one million individuals, according to the complaint, and common legal and factual issues affect all members, including whether Gore made specific representations touting its environmental stewardship and the product's sustainability, whether Gore knew about the alleged environmental harm caused by the use of PFAS when making its Gore-Tex fabric, and whether it was aware of PFAS shedding from the fabric through ordinary course of use and wear.

The customers have asked the court to certify the proposed class and appoint their attorneys as class counsel; prohibit Gore from continuing its deceptive business practices; pay the plaintiffs their attorney fees, litigation costs, restitution, damages; and have a jury trial to litigate their claims.

Steve Berman, counsel for the customers, declined to comment.

A spokesperson for Gore told Law360, "W. L. Gore & Associates is aware of the recently filed lawsuit. Gore stands behind its representations, statements and advertisements regarding our commitment to environmental responsibility as well as the performance and safety of our Gore-Tex products."

The customers are represented by Steve W. Berman and Catherine Y.N. Gannon of Hagens Berman Sobol Shapiro LLP, and Lori G. Feldman, Rebecca Peterson, Krista K. Freier and Catherine Peterson of George Feldman McDonald PLLC.

Counsel information for W.L. Gore was not available Wednesday.

The case is Micah Mason et al. v. W.L. Gore & Associates, case number 2:25-cv-00049, in the U.S. District Court for the Eastern District of Washington.

--Additional reporting by Parker Quinlan, Madeline Lyskawa, and Rae Ann Varona. Editing by Lakshna Mehta.

Update: This article has been updated with additional counsel information for the proposed class.

All Content © 2003-2025, Portfolio Media, Inc.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Wells Fargo Cheated Seminole Trust Out Of \$800M, Jury Hears

By **Cara Salvatore**

Law360 (February 12, 2025, 11:09 PM EST) -- Wells Fargo and its predecessor Wachovia cheated minors of the Seminole Tribe of Florida out of \$818 million by secretly hiking fees and mismanaging investments in a multibillion-dollar gambling trust, a Florida jury heard Wednesday in opening argument for a multiweek trial in litigation involving more than 2,000 minors.

The jury in Florida's Seventeenth Judicial Circuit heard that the trust created in 2005 set out that Wachovia's fee would be 10 basis points, but it surreptitiously more than tripled the fee rate and said nothing. The bank allegedly charged two types of fees that were never agreed on: "revenue share" fees and recordkeeping fees, plaintiffs' lawyer Steve Osber said.

In 2009, Debra Charbonnet, managing director of personal trust, decided the bank should add another 17-basis-point fee, Osber told the jury.

"Instead of 8 basis points, they're charging over three times the basis points. They tripled their fee ... 10 basis points was all that was ever authorized," he said.

He said the tribe found out in 2015. Its then-chief financial officer, Suresh Geer, emailed Wells Fargo relationship manager Kim Scott, and it was "unsettling" that Scott could find no documentation supporting \$2 million in annual fees after Scott looked back through the entire file back to 2005, Osber said.

Osber also showed the jury another email in which Wells Fargo accounting manager Debi Thomson writes to a colleague in May 2015: "Honestly the fee schedules and other documentation ... is 'less than desired' or just horrible."

The plaintiffs' lawyer said the bank's internal emails revealed what was going on, but customer statements did not do the same.

"The trustee knew that the millions in fees weren't authorized or disclosed," Osber said. According to the plaintiffs, without legally required notice on statements, millions in fees charged cannot be kept.

The plaintiffs also said the bank had complete, unilateral control over the trust's investments, and the tribe could not give any direction as to what investments should be made. The trust's investments performed worse than inflation in 2008 and 2011-2014, the tribe said. The trust did not hold equities, and the plaintiffs believe it should have, under Florida's prudent-investor law.

They said the trust instrument was even changed in 2012 — after two other prior changes — to prohibit the holding of stocks and remove the duty to diversify. But the tribe said the 2012 amendment was not valid and that the bank was just attempting to cover itself.

The plaintiffs said their expert damages witness, Max Schanzenbach, will testify that the trust would have earned \$818 million more if it had been invested in a higher-risk portfolio appropriate for children, with a long investment horizon, and if it had utilized longer-term bonds. Schanzenbach's other investment scenarios came out with a minimum damages level of \$404 million, plaintiffs' lawyer Irwin Gilbert told the jury.

Wells Fargo's lawyers did not speak to the jury on Wednesday, but one of the emails shown in the

plaintiffs' openings showed a Wells Fargo employee saying the fee "never actually increased" but was switched to a different type.

The bank did refund more than \$1.05 million to the trust in April 2016, the tribe also noted. And it said the bank will likely argue that the 2012 trust amendment was done at the tribe's behest.

Wells Fargo is set to give its defense opening argument on Thursday.

The trust and the three individual plaintiffs in this trial are represented by William R. Scherer, Steve H. Osber and Irwin R. Gilbert of Conrad & Scherer LLP.

Counsel information for Wells Fargo was not available Wednesday.

The case is Gopher v. Wells Fargo, case number not immediately available, in the Seventeenth Judicial Circuit Court of the State of Florida.

--Editing by Lakshna Mehta.

For more of this trial, see Courtroom View Network.

All Content © 2003-2025, Portfolio Media, Inc.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

BREAKING: Goldstein Freed As Judge Doubts Feds' Crypto Claims

By **Ali Sullivan**

Law360 (February 13, 2025, 12:56 PM EST) -- A Maryland federal magistrate judge on Thursday ordered Tom Goldstein released from jail after expressing skepticism toward federal prosecutors' claims that the SCOTUSblog publisher and U.S. Supreme Court advocate secretly made millions of dollars' worth of cryptocurrency transactions in recent days.

Goldstein was **jailed Monday** after prosecutors accused him of making a series of surreptitious crypto transactions that raised concerns he could try to evade justice. But after Goldstein offered WhatsApp messages that he said showed the crypto wallets in question did not belong to him — as well as a \$2 million transaction that took place while he was in jail and cut off from electronics — U.S. Magistrate Judge Timothy J. Sullivan agreed to free him following a hearing Thursday morning.

Still, the judge imposed new conditions blocking Goldstein from using cryptocurrency and requiring him to install monitoring equipment on all of his internet-connected devices.

"I need to end this crypto controversy with him," Judge Sullivan said.

Goldstein has pled not guilty to a 22-count indictment alleging he schemed to avoid paying taxes for years, including by hiding winnings from high-stakes poker games. The charges were filed a little less than two years after he retired from private practice, capping a distinguished career in which he argued more than 40 cases at the Supreme Court, including the historic copyright case *Google v. Oracle*, and also taught Supreme Court litigation at Harvard Law School.

--Additional reporting by Phillip Bantz. Editing by Adam LoBelia.

All Content © 2003-2025, Portfolio Media, Inc.