

Constellation Brands Misled on Wine, Spirits Growth, Suit Says

By Martina Barash

- **COURT:** W.D.N.Y.
- **TRACK DOCKET:** [No. 6:25-cv-06107](#) (Bloomberg Law subscription)

Constellation Brands Inc. misled investors about the prospects for growth in its wine and spirits segment ahead of a disappointing financial report and 17% stock selloff last month, an investor says in a lawsuit filed Tuesday.

On six occasions from April 11 to Dec. 3, 2024, “Constellation executives continually touted the Company’s progress with regard to its operational and executive initiatives, while detailing plans to improve future growth,” Macaria Meza says in a proposed class action. She filed her complaint Tuesday in the US District Court for the Western District of New York.

But the Rochester, N.Y.-based alcoholic beverage producer and distributor—whose brands include Robert Mondavi, Corona Extra, and Meiomi—released disappointing third-quarter fiscal year 2025 financial results, according to the complaint. The Jan. 10 announcement highlighted “a significant miss on sales performance in the Beer segment, and an even steeper miss for the Wine & Spirits segment,” Meza says.

The company’s stock price fell 17% to close at \$181.81 per share that day—the stock’s steepest decline in nearly 12 years, according to data compiled by Bloomberg.

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

Meza seeks damages on her securities fraud claims.

Constellation Brands didn’t immediately respond to an email seeking comment.

Levi & Korsinsky LLP represents the investor.

The case is Meza v. Constellation Brands, Inc. , W.D.N.Y., No. 6:25-cv-06107, complaint 2/18/25 .

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[Securities Law News](#)

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Venture Global Sued For IPO, Contract Rejection Stock Flop (1)

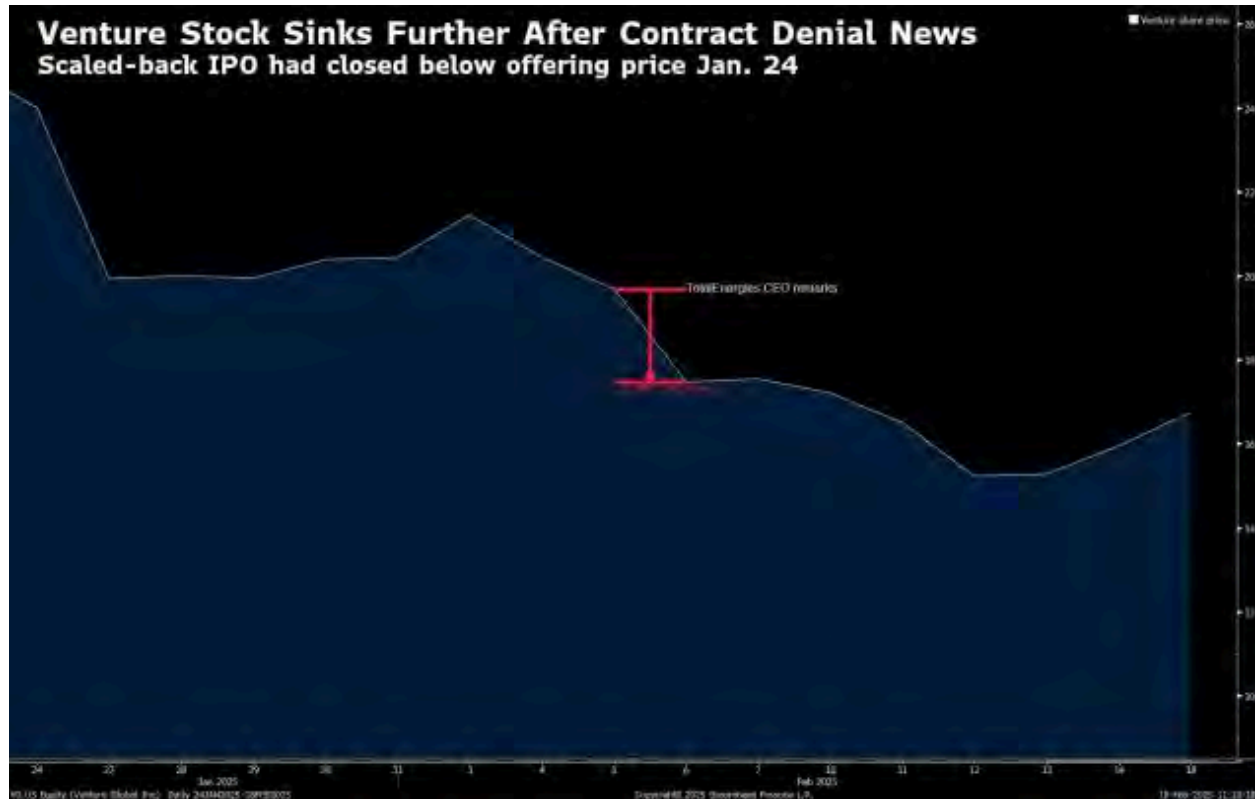
By Gillian R. Brassil

- **COURT:** S.D.N.Y.
- **TRACK DOCKET:** No. [1:25-cv-01364](#) (Bloomberg Law subscription)

Venture Global Inc. overhyped its business prospects in initial public offering documents, only to have its stock stumble on a major contract loss amid legal challenges from large clients, a proposed class action said.

The liquefied natural gas exporter misrepresented customer backing to bring “LNG to the global market years faster and at a lower cost,” Gerald Bowes said in a complaint filed in the US District Court for the Southern District of New York Monday. The filings discussed the development of five projects near Louisiana’s gulf coast, including an LNG facility and pipelines connecting to interstate and intrastate systems, Bowes said.

TotalEnergies SE’s CEO Patrick Pouyanné on Feb. 5 said that he had declined an offer from Venture for a long-term supply contract from its Louisiana LNG plant Calcasieu Pass, citing a lack of trust in the company, Bowes’ complaint said. The next day, the stock slid over 11% to close at \$17.48 a share, according to data compiled by Bloomberg.



Venture priced its Jan. 24 market debut of 70 million shares at \$25 after slashing its target, but share prices closed at \$24 that day, according to Bloomberg terminal data. Share prices closed at \$15.96 Feb. 14, the last full trading day, according to Bloomberg.

Venture faces multiple arbitration claims from existing clients, including Shell Plc. and BP Plc., due to delays in contracted gas deliveries. The company said Monday it would begin long-term supply contracts from its Calcasieu Pass plant in mid-April amid the customer dispute. The export facility started producing LNG cargoes in 2022.

Venture's IPO registration statement was misleading given it failed to account for and address those contract issues, Bowes said. His proposed class would include shareholders who bought stock traceable to the registration statement for the IPO, which ended Jan. 27.

Levi & Korsinsky LLP represents Bowes, who seeks damages for alleged violations of the Securities Act of 1933 by the company and certain executives.

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

The case is *Bowes v. Venture Glob. Inc.*, S.D.N.Y., No. 1:25-cv-01364, complaint filed 2/17/25.

(Updates with additional information about long-term supply contracts in fifth paragraph.)

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Securities Law

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Caribou Biosciences Gets Court Nod for IPO Investor Deal (1)

By Gillian R. Brassil

- **Biopharma company allegedly misled investors on drug success**
- **Judge's final approval includes about \$1 million in attorneys' fees**

Caribou Biosciences Inc. investors got final court approval for a \$3.9 million settlement to their lawsuit claiming the biopharmaceutical company overhyped its cancer treatment in statements surrounding its 2021 initial public offering.

Judge Rita F. Lin approved Caribou's deal with investors over its allegedly inflated stock price in an order and final judgment on Tuesday in the US District Court for the Northern District of California.

Investors, who sued in 2023, alleged that Caribou overstated its clinical trial studies and commercial prospects for its CB-010 cell therapy to treat stubborn forms of lymphoma. These overstatements appeared in IPO documents and later public statements, artificially inflating the stock price, in violation of federal securities laws, the investors claimed.

Caribou held its IPO in 2021, raising proceeds of almost \$283 million for the company, the investors' most recent complaint said. But after the company revealed disappointing trial results in 2022 and 2023, share prices fell, that court filing said.

Investors also sued current and former executives and Caribou's listing underwriters.

Investors agreed to release all of their claims against the defendants as part of the settlement with Caribou. They asked for final approval in January.

About \$1 million of the total settlement sum paid by Caribou will go toward attorneys' fees.

The class, approved for the purposes of the settlement, includes investors who purchased Caribou stock from July 23, 2021 through July 13, 2023. That includes those "who purchased Caribou common stock pursuant to and/or traceable to Caribou's Registration Statement and prospectus issued in connection with its July 23, 2021 IPO and all persons and entities who purchased Caribou common stock during the Settlement Class Period at artificially inflated prices," Lin said.

The court hasn't been informed of any requests for exclusion from the settlement class, Lin said.

The Rosen Law Firm, PA and the Schall Law Firm were co-lead counsel for plaintiffs. Gibson, Dunn & Crutcher LLP represented Caribou. The law firms didn't immediately respond to requests for comment.

Caribou said in an email that it doesn't comment on litigation.

The case is Bergman v. Caribou Biosciences, Inc. , N.D. Cal., No. 3:23-cv-01742, final judgment 2/18/25 .

(Updates with Caribou declining to comment in the 11th paragraph.)

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ExOne Shareholder's Suit Tossed After Merger With Desktop Metal

By Mallory Culhane

- Plaintiff failed to allege ExOne stockholders were uninformed
- Events at Desktop Metal subsidiary not material information

Desktop Metal Inc. and former board members of ExOne Co. beat a lawsuit alleging the companies failed to timely disclose material information prior to their \$575 million merger.

A former ExOne shareholder who brought the suit failed to adequately allege that two “relatively minor events” at Desktop Metal were material to ExOne stockholders voting on the 3D printing companies’ merger, Vice Chancellor Lori W. Will, of the Delaware Chancery Court, wrote in a Tuesday opinion dismissing the suit.

Desktop Metal disclosed on Nov. 8, 2021, that its board launched an internal investigation related to a whistleblower complaint over manufacturing and product compliance at an EnvisionTEC US LLC facility, which is a subsidiary of Desktop Metal. The company also disclosed that the CEO of EnvisionTEC and Desktop Metal board member planned to resign. The following day, ExOne stockholders voted to approve its merger with Desktop Metal, according to the opinion.

ExOne shareholder Pietro Campanella filed a lawsuit in federal court in Pennsylvania in September 2021, which was one of several challenging the merger and related disclosures. Campanella on Nov. 10, 2021, filed a motion requesting the court block the closing of the merger. But the transaction closed on Nov. 12, the opinion said.

Campanella filed a proposed class action in Delaware’s Chancery Court on Nov. 22, 2021, alleging former ExOne board members and general counsel breached their fiduciary duties. Campanella also asserted an aiding and abetting claim against Desktop Metal for allegedly depriving ExOne shareholders of material information.

But Campanella's allegations "rest on a series of conjectural leaps," and he failed to adequately allege that either the investigation or CEO resignation would have been material information for an ExOne stockholder voting on the merger, Will said. He puts forth no facts to suggest the product at issue in the investigation was "material to Desktop Metal's business, let alone to the mixed consideration ExOne stockholders would receive." Desktop Metal also announced on Nov. 15, 2021, that it didn't believe the investigation would have any "material adverse effect on its business," Will wrote.

Campanella also failed to demonstrate how the resignation of a CEO of just one of Desktop Metal's subsidiaries would be material to ExOne investors, Will said.

Bielli & Klauder LLC and Ademi LLP represent Campanella. Richards, Layton & Finger PA and Latham & Watkins LLP represent the defendants.

The case is Campanella v. Rockwell , Del. Ch., No. 2021-1013, 2/18/25 .

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Delaware Legislation Proposing Corporate Transaction Review Revamp Gets Mixed Responses

 [law.com/therecorder/2025/02/19/delaware-legislation-proposing-corporate-transaction-review-revamp-gets-mixed-responses](https://www.law.com/therecorder/2025/02/19/delaware-legislation-proposing-corporate-transaction-review-revamp-gets-mixed-responses)

Ellen Bardash

Delaware state legislators introduced a bill Monday that could make it more difficult to challenge conflicted transactions in the Delaware courts and roll back several Court of Chancery and Delaware Supreme Court decisions that have shaped the law in recent years.

Senate Bill 21 proposes reducing the standards for scrutinizing a conflicted transaction, redefining who can be considered a controlling shareholder, simplifying the process of determining directors' independence and impartiality, narrowing which books and records shareholders can seek in a Section 220 suit, and several other changes to the Delaware General Corporation Law that would effectively further insulate corporate boards' decisions from judicial review.

"This legislation restores Delaware law to what it was historically known for being: balanced as to the relevant stakeholders, protective of stockholder rights and interests, workable for corporate leaders, and empowering of directors who act in good faith with appropriate process and in accordance with their fiduciary duties," the bill's prime sponsors said in a statement. "Alongside our heralded Court of Chancery and the exceptional services provided by the Delaware Division of Corporations, the hallmark of Delaware corporate law is that our statute remains balanced and responsive to developments in the market. This legislation continues Delaware on that path."

Some litigators and law professors who watch developments in Delaware's corporate law have posted on blogs and social media expressing concern that the bill goes too far and goes against Delaware's tendency to defer to the judiciary to shape corporate law on a case by case basis rather than codifying broad standards.

"If this is enacted, this will be a sweeping change to the current state of Delaware law and will make it much, much easier for boards—not only boards of controlled corporations, but all boards—to avoid liability for the transactions that they engage in," said Renee Zaytsev, a partner at Boies Schiller Flexner.

In his first month in office, Delaware Gov. Matt Meyer has said his administration intends to focus on keeping corporations from losing faith in the state's corporate franchise, and he's in support of the changes proposed by SB 21.

"Delaware is the world's preeminent center of corporate jurisprudence. Two-thirds of Fortune 500 companies continue to choose Delaware as their legal home," Meyer said. "We will protect our reputation and continue Delaware's tradition of a balanced and measured approach, and we will do so relentlessly. Clarity, predictability and fairness remain the hallmark of our franchise."

The bill has been assigned to the Senate Judiciary Committee. If it's approved by the committee, SB 21 would need to pass each chamber by a two-thirds majority vote, then be signed into law by Meyer, to officially make changes to the DGCL.

"Delaware's judiciary remains one of the strongest, most diligent and most responsive judicial bodies in our nation. Its reputation for excellence has developed over generations, with the best corporate law practitioners from all across the world having contributed to Delaware's jurisprudence," Delaware Law School emeritus professor Lawrence Hamermesh said. "The framework laid out in SB 21 provides clarity and reassurance to both the corporate and legal community, with a view to promoting predictability and fairly balancing the interest of investors and managers."

The bill marks the second consecutive year in which proposed amendments to the DGCL have been met with a divided, vocal response from corporate litigators and law professors throughout a historically uncontentious process. SB 313, introduced last May, was ultimately passed and became effective Aug. 1.

Along with the bill itself, Delaware lawmakers have introduced Senate Concurrent Resolution 17, which seeks input from the council of the Delaware State Bar Association's Corporation Law Section. SCR 17 specifically asks the council to prepare a report by the end of March on whether legislative action should be taken to put a cap on attorney fees in shareholder litigation in order to "provide incentives for litigation appropriately protective of stockholders but not so excessive as to act as a counterproductive toll on Delaware companies and their stockholders that threatens to make the overall 'benefit-to-cost' ratio of corporate litigation negative."

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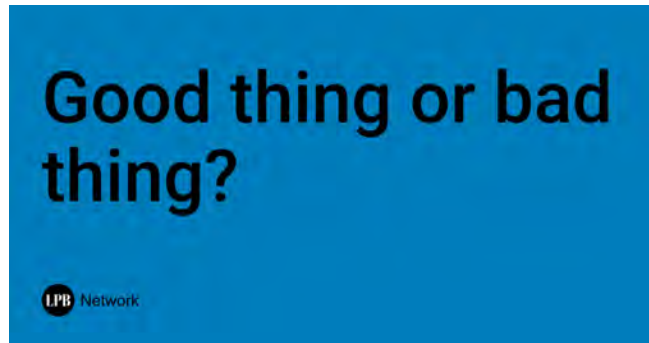
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 [businesslawprofessors.com/2025/02/good-thing-or-bad-thing](https://www.businesslawprofessors.com/2025/02/good-thing-or-bad-thing)

February 19, 2025



Good thing or bad thing?

By Ann Lipton on February 19, 2025

So on Monday I threw up a rather inflammatory post about SB 21, which would dramatically rewrite Delaware law. (Here's a post by Eric Talley, Sarath Sanga and Gabriel V. Rauterberg, which takes a more measured tone).

As I've talked to people about the law, the first question I get asked is, "Is this a good thing or a bad thing?" And that's a really difficult question to answer, because "good" can have many meanings in this context.

Is this good for shareholders?

Well, I find it very difficult to take seriously the notion that the procedures written into the law will have any protective effect for shareholders. The independence standards of the exchanges are notoriously weak; that's why ISS and Glass Lewis frequently adopt their own definitions of independence, so much so that the Business Roundtable accused them of proxy fraud. The cleansing standards would insulate transactions by a board that is entirely captured by a counterparty, so long as a single member of that board is independent and votes with the others (a standard that one can easily see being transferred to the demand excusal context). The definition of controlling shareholder would exclude people with contractual control over virtually all board functioning as long as they didn't actually have power to vote for nominees, and so forth.

So, whether it's good for shareholders depends on how valuable you believe more rigorous procedures – and the litigation that enforces them – to be. Some believe procedural guardrails to be necessary to protect against agency costs, and shareholder litigation to be a necessary corrective to managerial excess; others believe shareholder litigation is a mere nuisance that has little substantive effect on corporate behavior.

Separately, the bill would drastically limit shareholders' ability to access internal corporate records. These matter for more than just litigation – they're used by shareholders to protect their rights and to facilitate activist intervention. More generally, books and records access, and the prospect that boardroom misconduct will be exposed, can act as a kind of soft discipline that curtails agency costs all by itself.

That said, in recent years, some Delaware decisions have suggested that, in an age of powerful, informed, institutional shareholders, these kinds of legal protections are less necessary. Markets, including the market for corporate control, work; maybe in that world we don't need as much litigation or even as much informational access.

At the same time, though, the SEC is starting on a project to limit investor power. The reforms to 13D have the potential to take the largest asset managers out of the oversight business; and we haven't yet begun to see whatever's going to happen with proxy advisor regulation.

What does SB 21 look like in a world where institutional shareholders are suddenly defanged?

Is this good for Delaware?

Delaware, of course, relies on incorporations. My little joke is that Delaware has exactly one industry – the production and export of corporate law – which is entirely controlled by the government, so functionally the beating heart of American capitalism is a socialist state.

Which means, if there is a real threat that corporations will exit en masse, Delaware must change its law, no question.

But there are other truths here as well. Part of Delaware's power also comes from an ecosystem, which Brian Quinn described in this blog post after the Great Battle of SB 313. Law professors study and write about Delaware law, they communicate their respect for it to their students, who go on to recommend Delaware to clients. Federal regulators avoid treading too far on Delaware's turf; other states stay pending corporate cases in favor of Delaware adjudication, look to Delaware precedent when interpreting their own law, and respect the internal affairs doctrine. Delaware judges get invited to international conferences to offer up comparative assessments. And that ecosystem rests, in part, on a belief that Delaware has a technocratic and balanced approach to lawmaking that is relatively insulated from political or industry capture.

That reputation is at risk if Delaware outsources its corporate governance standards to the exchanges, and is perceived as rewriting its corporate code every time a powerful litigant loses a case, particularly so if ordinary procedures are bypassed to do it. And that's especially true if the law gets rewritten in a manner that retroactively restores one particular

litigant's pay package and insulates a pending merger from shareholder challenge to boot. That's not even a story of reform; that's a story of political pay-to-play. To put it more bluntly, if that's how Delaware is perceived, these articles don't get written. Instead, articles get written about the need for a different system, one that is less politically vulnerable.

More generally, Delaware needs cases, not just incorporations alone. Not simply for the actual business they provide (hotels! Meals! Employment for Delaware litigators!), but because the judicial opinions also contribute to an understanding of the law, which provides the foundation for the respect accorded to Delaware from other actors. And that means plaintiffs have to be able to win, occasionally, and get their wins affirmed on appeal without legislative interference, and get paid fees that justify the risks involved.

And then there's the point that part of Delaware law's mystique – and what makes it difficult for other states to copy – has been the fact that it's largely based in caselaw. If the DGCL just becomes a poor man's MBCA, it's, you know, portable.

Last year, I warned that SB 313 could cause a loss of cases to other venues. Now, the new SB 21 threatens to limit the ability of shareholder plaintiffs to litigate altogether. I mean, the Delaware Court of Chancery can always become a court that exclusively hears earnout disputes, but that doesn't get you a pride of place in the Business Organizations casebook. (And even the earnout disputes aren't safe; disappointed litigants are now warning of a corporate exodus if those come out the wrong way, too.)

Which means, the question whether SB 21 is good for Delaware is complicated – there's the short term and there's the long term, and then there's the question whether the full package of proposals appropriately balances the two.

Is this good for society?

That's also complicated, and that's what I'm trying to work out in my *Legitimation of Shareholder Primacy* paper. On the one hand, it has often seemed like the guardrails imposed by Delaware law have been the only real constraints on the exercise of an enormous amount of power by a very small number of people.

On the other hand, those guardrails exist, ostensibly, to protect *capital*, and certainly there is an argument that greater protections for capital come at the expense of other constituencies.

On the third hand, even before SB 21, those guardrails were pretty thin, and to the extent they fooled everyone, including corporate law professors, into believing they were stronger than they actually were, maybe it's better that their fragility be revealed.

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The Delaware Redomestication Debate Heats Up

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February 18, 2025



The Delaware Redomestication Debate Heats Up

By Kevin LaCroix on February 18, 2025

Posted in Director and Officer Liability



As readers of this blog undoubtedly are aware, one of the provocative topics that has emerged in recent months is whether companies incorporated under the laws of Delaware should redomesticate under another state's law, with Texas and Nevada as the alternative states typically under discussion. This ongoing debate has gained momentum in recent days, as additional firms have signaled an intent to move on from Delaware. There have also been a number of other key developments, including the introduction of legislative initiatives and an important court decision, providing further context for the ongoing discussion. Because the discussion of this topic is unlikely to end any time soon, it is important to recognize and understand the recent developments.

First and foremost in the recent developments is the news from various quarters that a number of additional companies have recently signaled their intent to up stakes from Delaware. Among the firms recently signaling either an intent to change their Delaware incorporation or a consideration of the possibility of doing so are Meta (as discussed here), Pershing Square (discussed here) and Dropbox (discussed here). These companies join others that have already made the move (or that are in process), including Tesla and TripAdvisor, or that announced a plan to move late last year, such as The Trade Desk (here). There is no doubt that the recent company announcements have raised the temperature on these issues.

A second recent development worth considering is that it recently has become clear that the political class in Delaware sees what is going on and they don't like it as all. There is a good reason why Delaware politicians might be alarmed by companies' sudden urge to move on from their state. Delaware realizes as much as 20% of its total state tax revenue from its franchise taxes and other fees imposed on companies incorporated in its state. It therefore should come as no surprise that Matt Meyer, the state's new governor (he was just sworn in last month), recently told the media that he recognizes that it is "really important that we get

it right for Elon Musk or whoever the litigants are in Delaware courts,” adding that in coming months “you’re going to see some things rolled out that will help move our state forward,” in order to “make sure we’re protecting and growing the corporate franchise.”

We did not have to wait long to find out about the potential Delaware reforms. On February 17, 2025, a Delaware legislator introduced Senate Bill 21 (a copy of which can be found [here](#)), to reform provisions of the Delaware Code, in part in response to the Delaware redomestication debate. Among other things, the bill contains a number of revisions with respect to controller transactions, and also regulates shareholder access to books and records. The bill is extensive and potentially impactful, as detailed in UCLA Law Professor Stephen Bainbridge’s February 17, 2025 post on his *ProfessorBainbridge.com* blog ([here](#)).

An energetic online debate about the new Delaware bill has already launched. For example, a February 18, 2025 post on the *CLS Blue Sky Blog* written by three prominent law professors ([here](#)) called the bill “the most significant single-year revision of Delaware’s corporate code since at least 1967, reshaping everything from how controlling stockholders negotiate major transactions to the mechanics of derivative litigation and shareholder access to corporate records.” Among other things, in their memo the three professors express their concern both about the process that led to the bill and to the risk that the bill could “narrow judicial oversight, empower controllers, and constrain shareholder enforcement.” Other online comments (for example, [here](#)) have been more restrained and deferential to the legislature’s authority to act.

Readers may be interested to know that, according to media reports, there are substantial grounds on which to believe that the law firm that represented Elon Musk in his ginormous pay package bill drafted the proposed legislation.

(In a related development, on the same day as Senate Bill 21 was introduced, the same legislator also introduced a proposed concurrent resolution to request the Corporation Law Section of the Delaware Bar to prepare a report of recommendation regarding the award of attorneys’ fees in “certain corporate litigation cases.”)

A third recent development that I think should not be overlooked is that, perhaps because of the involvement of Elon Musk in the debate on these issues, the redomestication issue has been drawn into growing cloud of controversy surrounding the new Trump administration. A February 8, 2025 *New York Times* Dealbook column entitled “Delaware Law Has Entered the Culture War,” ([here](#)) noted that Musk’s “ire” against Delaware has managed to frame the redomestication issue alongside “hot button issues like diversity, equity and inclusion programs, as one further example of overreach.” It has, as one commentator is quoted in the article as saying, become “a highly ideological charged political issue, which it never, ever was before.”

There is one further legal development that should also not be overlooked, and that is the Delaware Supreme Court's February 4, 2025 decision in the TripAdvisor case. (A copy of the Court's opinion can be found [here](#)). The Supreme Court reversed the decision of the Delaware Court of Chancery to deny the motion to dismiss the breach of fiduciary duty lawsuit that had been filed against the board of TripAdvisor in connection with the board's decision to move the company's state of incorporation from Delaware to Nevada.

The Chancery Court had held that because the board was motivated by the perceived benefit of reduced board liability exposure under Nevada law, the board's decision to reincorporate the state should be assessed under the demanding "entire fairness standard."

The Supreme Court said that, rather than the "entire fairness" standard, the board's decision should be assessed under the more lenient "business judgment" rule, because the "hypothetical and contingent impact of Nevada law on unspecified corporate actions" is "too speculative to constitute a material, non-ratable benefit triggering the entire fairness review."

In a February 12, 2025 memo on the *CLS Blue Sky Blog* ([here](#)), attorneys from the Cleary Gottlieb law firm said the Court's ruling in the TripAdvisor case means that "stockholder challenges to future conversion decisions by controllers are unlikely to succeed and will be dismissed at the motion to dismiss stage, unless plaintiffs can satisfy that heavy burden that the conversion 'cannot be attributed to any rational business purpose.'"

The law firm memo also observes that the Court's decision is "a clear statement of Delaware's policy as a moment of public debate surrounding decisions on whether to incorporate or remain domiciled in the state." Indeed, the Court said that "allowing directors flexibility in determining an entity's state of incorporation is consistent with this Delaware policy." The decision, the memo observes, "points to an open door – an easier way to exit the state in this case, but perhaps more importantly, a welcoming symbol for future entrants and current Delaware companies."

Discussion

There will no doubt be further discussions pertinent to this redomestication debate in the months ahead. But in considering the developments identified above and that are likely to emerge on this issue, there are some important considerations to keep in mind.

First, even though there are a few high-profile companies leaving Delaware, and even though Elon Musk has managed to propel this redomestication debate into one of the hot topics in the current culture wars, there is no flood of companies rushing to leave Delaware. As Professor Bainbridge has documented in a separate post on his [ProfessorBainbridge.com](#) blog ([here](#)), his research shows that what he calls "DExit" is "a trickle not a flood." For all the high-profile attention this issue has drawn, in the end, we are only talking about a small handful of companies.

Second, even with respect to the few companies that are actually under discussion here, it is important to keep in mind that in almost every case we are talking about companies with controlling shareholders. As I discussed in a December blog post on this topic, an academic article by Yale Law Professor Jonathan Macey correctly points out that much of theoretical justification for the redomestication advocacy, and indeed much of the heat surrounding the debate, arises from what is perceived in certain circles as the “the suspicious and negative tone adopted toward corporate boards and management” particularly with respect to decisions involving controlling shareholders. (Think here, for example, of the Delaware courts’ consideration of Tesla board’s approval of Elon Musk’s massive pay package.) It should not be overlooked that all or virtually all of the companies that have recently announced their plan to leave Delaware are companies with controlling shareholders.

The controlling shareholder issues that predominate the discussion of these issues, while undoubtedly important to certain companies, are simply not relevant to the vast majority of Delaware corporations because they do not have a controlling shareholder. To be sure, because of the high-profile nature of many of the firms that are considering leaving Delaware, we can all expect the public debate of these issues to continue – even if many of the issues are not relevant to most Delaware companies.

The new proposed legislation that has been introduced and that will be considered by the Delaware legislature in the months ahead is intended, among other things, to address many of the issues relating to controller transactions, and to allay fears stirred up in recent Chancery Court decisions. It of course remains to be seen what the final outcome of the proposed legislation will be, but the legislation that ultimately is passed will have a significant impact on the ongoing redomestication debate. The legislation could also have a significant impact overall on Delaware Corporation law.

I have long thought in the discussion of these issues that even if questions have been raised about certain decisions of Delaware’s courts, the state’s overall and historical reputation is likely to ensure that most companies will remain there, in preference to other jurisdictions where the historical record is still being established. As Professor Bainbridge observed in an earlier post about these Delaware reincorporation issues, “Delaware’s competitors face their own hurdles, and the state’s advantages – efficiency, legal expertise, and a comprehensive statutory framework – remain unmatched. As long as Delaware can maintain its reputation as marginally better than its alternatives, it will likely retain its position at the top.”

I will say this. There is one really great thing about having a blog, and that is that there is never a shortage of interesting things to write about.

[Bloomberg Law](#)

Feb. 19, 2025, 10:24AM PST

Musk's War on Delaware Spurs State Bill to Hang On to Businesses

By Jef Feeley and Jennifer Kay (Bloomberg Law)

- **New bill could alter power balance when shareholders sue**
- **Legislation comes after Musk and Ackman flee for Texas, Nevada**

Elon Musk went to [war](#) with Delaware over its corporate laws after a judge shot down his massive Tesla pay package, moving his companies out west. Now the First State is responding with a legislative overhaul to keep other moguls from following him.

State legislators are proposing seismic changes to Delaware's business statutes following recent [defections](#) by Musk's companies and others moving their incorporation to Texas or Nevada in search of friendlier legal treatment. Spurred by the state's new governor, Matt Meyer, a Democrat, they introduced the bill this week.



Delaware Governor Matt Meyer

Source: State of Delaware

The bipartisan legislation, Senate Bill 21, awaits approval by the Delaware House and Senate but is expected to pass. It's the state's effort to stanch a growing number of corporate departures, and an answer to critics – among the ranks of US executives and lawyers – who say Delaware has turned hostile to controlling shareholders. They say the state unfairly limits corporate directors' authority in their oversight of executives, among other complaints.

The bill would alter the balance of power between minority shareholders and hard-charging corporate leaders like Musk, giving individual investors less leverage in court in many cases. That has drawn its own share of criticism.

'Capitulation' to Musk

"The bill appears to be a total capitulation to Mr. Musk and other controlling shareholders who are similarly situated," said Charles Elson, a retired University of Delaware professor who formerly headed the school's Weinberg Center for Corporate Governance. "This is terrible for the state and its incorporation business."

Neither Musk nor officials of Tesla Inc. or his social media platform X immediately responded to emails Wednesday seeking comment on the legislation.



Elon Musk

Photographer: Stefani Reynolds/Bloomberg

Delaware has a lot at stake in protecting its commanding lead in the nation's incorporation business, whose fees generate over a fourth of the state's more than \$6 billion annual budget. It is the corporate home to more than 2 million businesses, including more than 60% of Fortune 500 companies. The bill comes as Nevada and Texas have begun to cut into that advantage by offering corporate statutes that give directors more investor lawsuit protections and corporate titans like Musk more say in organizing and running their companies.

If signed into law, the bill would change the way the state's business court judges evaluate the independence of corporate directors from controlling shareholders when deciding legal issues such as mergers and executive compensation plans. It also would spell out what defines a controlling shareholder.

The move follows Dropbox Inc.'s and fund manager **Bill Ackman**'s recent decisions to shift their incorporation out of Delaware. It's all part of the fallout from a Delaware Chancery Court judge's decision last year to reject Musk's multibillion-dollar Tesla Inc. compensation deal, which had been backed twice by the electric vehicle company's investors.

Overreaction or Restoration?

Defenders of the state's existing corporate approach say the proposed changes are an overreaction to complaints from Musk and other business leaders. They warn that the legislation would permanently damage the state's reputation for fairness and balance in adjudicating corporate governance disputes.

Jill Fisch, a University of Pennsylvania corporate law professor who specializes in Delaware cases, said the legislation was imprecise and excessive, driven by fears of further corporate defections from Delaware.

"I think some of the changes have been proposed in a hasty, sloppy way and they are overbroad to address the problems" critics have identified with recent Delaware decisions, Fisch said. She added: "It's not a good look for the state."

In a statement, the lawmakers said the changes were necessary to restore "the balance and consistency that has been the key" to the state's corporate laws and to redeem Delaware's business-friendly reputation.

The bill's sponsors are led by Senate Majority Leader Bryan Townsend and Representative Krista Griffith, both Democrats, along with Republicans including Senate Minority Whip Brian Pettyjohn and House Minority Leader Tim Dukes, according to the statement. Democrats control both legislative chambers, as well as the governorship.

Lawmakers moved quickly on the bill because "we believe ourselves to be in an urgent situation where swift action is necessary," Townsend said in an interview. He is also a lawyer who handles Chancery cases for both companies and shareholders.

Musk vs. Delaware

Musk, the world's richest person, launched his online [assault](#) on Delaware's status as the nation's most popular incorporation site after Chancellor Kathaleen St. J. McCormick found that conflicts of interest among Tesla directors had [tainted](#) their decision to award the billionaire the largest corporate pay package in history. Musk [yanked](#) Tesla's and his other companies' incorporations from Delaware and sent them to Texas, which recently opened a new business court system, and Nevada.

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

Richards, Layton & Finger, a Wilmington-based law firm that represents Musk, was among various expert and professional parties that made suggestions to a panel that drafted the new legislation. Rudy Koch, one of the firm's partners, is listed in court dockets among those representing Musk in his appeal of McCormick's pay decision to the Delaware Supreme Court.

The firm said in a statement that it has "played critical roles in drafting and amending many of the state's business statutes, including the original Delaware General Corporation Law" and that it was "proud to have been part of a group, including highly respected lawyers, professors, and former jurists, assembled by elected officials to recommend language included in the proposed legislation." It said it made its proposals based on issues that go back years and not on behalf of any client.

In an interview, retired University of Pennsylvania law professor **Larry Hamermesh**, one of the panel's members, said that Musk's criticisms of Delaware law didn't drive the panel's discussion and that some of the proposed changes had been recommended more than a decade ago.

"The real motivation here is not to make Mr. Musk happy, but to address the concerns of major corporate law firms and their clients," he said. He noted that since Musk had moved his companies out of the state, he wouldn't benefit from the changes.

What's in the Bill

Under the new legislation, McCormick and other Chancery judges must presume corporate directors are independent when shareholders challenge their actions. That presumption could be overcome only by "substantial and particularized facts" showing close personal ties to a controlling shareholder or dynamic CEO, according to a copy of the bill.

The bill also takes aim at a Delaware Supreme Court [decision](#) last year endorsing heightened scrutiny of "insider transactions" to bolster protections for minority investors.

The decision was heavily criticized for shifting too much sway to investors in merger-and-acquisition cases by widening the number of deals subject to shareholder protections, rather than limiting it to transactions in which minority investors are forced to sell their stakes at a price set by a controller. The new legislation would restore that limit to so-called cash-out deals.

And the proposed changes would limit controlling-shareholder status to one who owns at least a third of a company's shares and exercises effective control over the company. That status can limit a businessperson's legally permitted acts over corporate transactions and pay.

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Viacom, NAI Insurers Lose Related Claims Dispute in Merger Row

By Olivia Alafriz

- Merger lawsuits not related to prior claims, judge says
- Del. state court grants summary judgment to policyholders

Directors and officers insurers who covered Viacom Inc. and its parent company National Amusements Inc. should treat claims for merger litigation as separate from corporate governance lawsuits filed several years prior, a Delaware judge ruled.

Delaware Superior Court Judge Sheldon K. Rennie's orders Monday in related coverage disputes follow a ruling earlier this month by the state's high court, affirming the application of a "meaningful linkage" standard to determine whether claims are related for insurance coverage purposes. Counsel for the policyholders as well as the insurers, which include units of Sampo Holdings Inc., Loews Corp., and American International Group Inc., submitted letters to the court notifying it of the ruling.

Rennie granted motions for summary judgment by NAI, Viacom, and one of its directors in companion cases over coverage for litigation stemming from Viacom's 2019 merger with CBS Corp. in two orders and a confidential opinion which is set to be made public within 14 days.

The merger litigation wasn't barred by prior notice exclusions because it wasn't meaningfully linked to any previously noticed claims, Rennie said. The merger litigation should be treated as a claim first made under policies covering the companies in 2018 and 2019, he said.

Whether claims are related can impact which policies—and their accompanying terms, exclusions, and limits—apply to a claim, and such disputes are common. However, because fact patterns in these cases often vary, insurers and policyholders both stand to benefit from different interpretations of how relatedness should be assessed.

NAI, Viacom, and then-Viacom director Shari Redstone separately sued several of NAI and Viacom's insurance carriers in June 2022, seeking coverage for shareholder litigation over the Viacom-CBS merger.

The Viacom insurers, which covered defense costs but denied any duty to indemnify Redstone or Viacom for a judgment or settlement in the underlying litigation, have disputed which policy period was implicated by the claim. The insurers argued that a so-called “bump-up exclusion” in the policies barred coverage for a potential settlement.

But the court held in 2023 that the bump-up exclusion—a controversial policy provision intended to ensure carriers don’t have to cover an “increase in consideration” to shareholders resulting from settlements in merger litigation—was ambiguous and didn’t preclude coverage under the Viacom policies.

Another Delaware trial court judge in January ruled on the exclusion in a different case, also concluding that it didn’t bar coverage. That ruling prompted a widely anticipated appeal to the state’s high court by AIG and Chubb Ltd. units.

As disputes over the exclusion have piled up in Delaware, insurers have leaned on the suits to seek definitive answers on whether they’ll have to cover costly claims for post-transaction litigation.

NAI’s insurers, unlike the Viacom carriers, also denied defense cost coverage. They argued that there was no coverage because the merger suits were related to the corporate governance litigation brought in 2016 and the claim should be considered first made in that policy period, rather than under the 2018-2019 policies.

In a letter to the court last week, counsel for the NAI insurers argued the Delaware Supreme Court’s ruling on the meaningful linkage standard supported their position.

Potter Anderson & Corroon LLP and Covington & Burling LLP represent Redstone. Potter Anderson & Corroon also represents NAI. Berger McDermott LLP and Cohen Ziffer Frenchman & McKenna LLP represent Viacom. Kaufman Dolowich represents the Sompco unit. Kennedys Law LLP represents the Loews unit. Heyman Enerio Gattuso & Hirzel LLP represents the AIG unit.

The cases are National Amusements Inc. v. Endurance American Specialty Ins. Co. , Del. Super. Ct., No. N22C-06-018, 2/17/25 , Redstone v. Ace American Ins. Co. , Del. Super. Ct., No. N22C-06-020, 2/17/25 , and Viacom Inc. v. US Specialty Ins. Co. , Del. Super. Ct., No. N22C-06-016, 2/17/25 .

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Alaska asks state Supreme Court to revive suit claiming pharmacies fueled opioid crisis

 [courthousenews.com/alaska-asks-state-supreme-court-to-revive-suit-claiming-pharmacies-fueled-opioid-crisis](https://www.courthousenews.com/alaska-asks-state-supreme-court-to-revive-suit-claiming-pharmacies-fueled-opioid-crisis)

Overdose deaths from fentanyl rose 193% between 2019 and 2020 in Alaska, and the state wants another chance to try to prove Albertsons and Kroger knowingly contributed to the public health emergency.

Monique Merrill / February 18, 2025

A welcome sign on an Alaskan highway. (James Brooks/Flickr via Courthouse News)

(CN) — Alaska reignited its effort to hold two of the nation's largest retail pharmacies accountable for their role in the state's opioid epidemic before the state Supreme Court Tuesday.

The state accuses four national retail pharmacy chains of creating a public nuisance by shirking their legal duties to investigate and report suspicious orders. Before the state's highest court, Alaska argued that it is simply seeking recognition of a well-established common law legal principle.

"If the state can prove its case, which it hasn't even had the chance to try to do here, the pharmacy should help pitch in to help address the public health crisis they helped create," Laura Fox, assistant Alaska attorney general, said. "Cutting off that common law remedy would just shift costs back onto the public and away from those who are responsible."

Fox argued that the harms of the opioid epidemic don't impact solely individuals, but rather entire communities and the public at large, which is grounds for the state's public nuisance claim.

Justice Dario Borghesan noted that the harms argued by the state have more degrees of separation than other public nuisance claims and asked why the court should recognize public nuisance liability when it is less direct in this case.

"The complaint alleges a variety of harms that spill over from affecting discrete groups of people to the point where they could be affecting anyone, and the opioid epidemic is like that," Fox said.

For instance, the state argued in its complaint that responding to the public health crisis has strained its ability to provide services to residents as more resources are diverted. It also argued that the pharmacies contributed to lives lost from drug overdoses and families broken apart by addiction.

The state initially accused Walgreens, Walmart, Albertsons and Kroger in 2022 of contributing to the misuse of opioids and arguing that they had liability under the state's public nuisance law. Walmart and Walgreens both agreed to pay millions in settlements, but Kroger and Albertsons asked a state judge to dismiss the suit.

In March 2024, Alaska Superior Court Judge Una Gandbhir sided with the pharmacies, finding that Alaska law didn't support the state's public nuisance claims.

"The court must agree with defendants that plaintiff's argument, though emotionally compelling and clearly intended for the benefit of Alaskans, is a bridge too far," Gandbhir wrote in the order.

On Tuesday, Justice Susan Carney asked about the state's position on the pharmacies' argument that they are "selling a legal product legally to people who have medical prescriptions."

Fox argued that the issue lies within the state's accusation that the pharmacies shirked their legal responsibilities in selling the legal product.

"It alleges that they ignored red flags and refused to report suspicious orders despite actual knowledge of drug diversion," Fox said. "The complaint alleges much more than just lawfully selling a lawful product."

Frank Citera, Chicago-based attorney with the Greenberg Traurig law firm representing Albertsons and its subsidiary Safeway, argued that the state's assertion was far too broad to hold up under state law.

"To be clear, the public nuisance that's being alleged by the state is 'the opioid epidemic,' not a prescription opioid epidemic, but the general opioid epidemic," Citera said.

He further argued that the harms the state accused the pharmacies of don't add up to a collective harm, but rather an aggregation of individual harms.

Justice Jennifer Henderson questioned Citera about the nature of the pharmacies' arguments.

"On one hand, I've heard argument today that the state is alleging a harm or a violation of a public right or defining public right in a way that is too broad," Henderson said. "And then, on the other hand, I hear argument that the state is alleging essentially a collection of individual harms. Those seem like contradictory arguments to me."

The other justices peppered Citera with questions about where to draw the line between collective harm and individual harm — such as medical quality going down because the state has shifted resources to other areas in response to the crisis or parks becoming unusable

because they are littered with needles and people in the throes of addiction.

“All of these are acts by third parties and after the product has left the control of the pharmacy,” Citera said.

Rebecca Hozubin, with the Anchorage-based Hozubin Moberly & Associates firm representing Kroger, said that the pharmacies are regulated and therefore exempt from the state's claims under the Unfair Trade Practices and Consumer Protection Act.

“None of the acts being alleged fall out of the purview of the regulations that are over the pharmacies,” Hozubin said.

On rebuttal, Fox urged the court to reverse the dismissal and allow the state another chance to prove its case.

“Just because it's difficult to figure out how to abate a public harm doesn't mean that it's not a public harm that we can't try to remedy in various ways,” Fox said.

The state Supreme Court didn't indicate when it would rule.

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Pivotal Trial Begins in Texas: Will Johnson & Johnson's Third Talc Bankruptcy Survive?

 [law.com/texaslawyer/2025/02/18/pivotal-trial-begins-in-texas-will-johnson--johnsons-third-talc-bankruptcy-survive](https://www.law.com/texaslawyer/2025/02/18/pivotal-trial-begins-in-texas-will-johnson--johnsons-third-talc-bankruptcy-survive)

Amanda Bronstad

What You Need to Know

- Several lawyers argued to dismiss the Chapter 11 case and reject the \$10 billion plan.
- The trial, which is expected to last two weeks, will feature potentially 40 witnesses.
- Johnson & Johnson faces accusations that voting improprieties led 82% of an estimated 93,000 talc claimants to support the plan.

A critical trial in Johnson & Johnson's talcum powder bankruptcy began Tuesday, with several lawyers arguing to dismiss the Chapter 11 case and reject the \$10 billion plan.

The trial, which is expected to last two weeks, will feature potentially 40 witnesses. U.S. Bankruptcy Judge Christopher Lopez of the Southern District of Texas will decide whether Johnson & Johnson subsidiary Red River Talc filed the 2024 bankruptcy in bad faith, and if voting improprieties led 82% of an estimated 93,000 talc claimants to support the plan.

"The reason we're here today is because Johnson & Johnson doesn't trust the process," Adam Silverstein, of New York's Otterbourg, a lawyer for the Coalition of Counsel for Justice for Talc Claimants, told Lopez in an opening statement on Tuesday. "Johnson & Johnson chose to game the systems."

From filing bankruptcy, rather than negotiating a global talc settlement, to venue shopping for the best place to file a Chapter 11 case, then undergoing questionable voting procedures, he said, Johnson & Johnson made up the process as it went along. Also objecting to the plan was Travelers Casualty and Surety Co. and a lawyer for the U.S. Trustee, who cited the U.S. Supreme Court's 2024 decision *Harrington v. Purdue Pharma*, which unraveled Purdue Pharma's \$6 billion bankruptcy plan based on its invalid nonconsensual releases.

Johnson & Johnson attorney Greg Gordon defended his client's actions, including its use of the controversial "Texas two-step" merger.

"The evidence will show this is not a case where a company was trying to delay, avoid liability," Gordon, of Jones Day in Dallas, said in his opening statement. "It's trying to do the exact opposite."

Another lawyer for Johnson & Johnson, Allison Brown, of Kirkland & Ellis in Philadelphia, pushed back against accusations that her client agreed to pay additional gynecological claims, not just those involving ovarian cancer, in order to bolster votes in support of the plan.

"This excuse of ballot stuffing does not hold up to the evidence or the truth," she told Lopez. "The coalition is on an island, Your Honor. There is enormous support for a historic and unprecedented plan."

'Turning Point' in the Negotiations

The hearing addresses critical motions filed in the Chapter 11 case, which is Johnson & Johnson's third talc bankruptcy. In a 2021 bankruptcy involving another subsidiary, LTL Management, U.S. Bankruptcy Judge Michael Kaplan of the District of New Jersey refused to dismiss the case, but the U.S. Court of Appeals for the Third Circuit found in 2023 there was no financial distress justifying a Chapter 11 filing. With a revised funding agreement, LTL filed a second bankruptcy, which Kaplan dismissed, citing the Third Circuit's decision.

Allison Brown, with Kirkland & Ellis.

In an opening statement on Tuesday, Andy Birchfield, of Montgomery, Alabama's Beasley Allen, a staunch opponent of all three bankruptcies, described two of his clients who he said had their votes switched by R. Allen Smith, of the Smith Law Firm in Ridgeland, Mississippi. Birchfield and Smith shared the same 11,000 talc clients, but Smith switched the votes in favor of the plan last year after he negotiated to increase Johnson & Johnson's payout by another \$1.1 billion.

But, unlike in the past two talc bankruptcies, a group called the Ad Hoc Committee of Supporting Counsel, which represents 18 law firms with 75,000 talc clients, spoke out in favor of Johnson & Johnson's bankruptcy plan.

Committee lawyer Lenard Parkins, of Houston-based Parkins & Rubio, told Lopez that after years of fighting, there was a "turning point" in the negotiations with Johnson & Johnson.

Parkins said, "After 10 years of not getting a dime for their clients, with many of their clients dying over the time period they were engaged, it was time to see if a deal could be struck."

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Mastercard landmark deal challenged in test for UK class action funding

 [reuters.com/business/finance/mastercard-landmark-deal-challenged-test-uk-class-action-funding-2025-02-19](https://www.reuters.com/business/finance/mastercard-landmark-deal-challenged-test-uk-class-action-funding-2025-02-19)

Sam Tobin

By Sam Tobin

February 19, 2025 5:33 AM PST Updated 3 hours ago

Credit card is seen in front of displayed Master Card logo in this illustration taken, July 15, 2021. REUTERS/Dado Ruvic/Illustration/File Photo Purchase Licensing Rights , opens new tab

LONDON, Feb 19 (Reuters) - Mastercard's (MA.N) , opens new tab agreement to settle a landmark lawsuit brought on behalf of British consumers drew criticism on Wednesday, in a dispute that could deter funders from involvement in Britain's burgeoning class action sector. The global payments processor in December announced an agreement to settle long-running litigation over card fees for 200 million pounds, far below the 10 billion-pound (\$12.6 billion) valuation previously put on the lawsuit.

This means that, in the unlikely event that every member of the 44 million-strong claimant class sought payment, they would receive roughly 2.27 pounds each.

The deal is being opposed by funder Innsworth Capital that stands to receive half of the settlement sum, with the other 100 million pounds going to consumers.

The Competition Appeal Tribunal in London must now rule on the first contested settlement in the short history of Britain's class action-style regime.

Uncertainty was already hanging over the sector after a 2023 Supreme Court , opens new tab ruling rendered many funding agreements void.

In another test for funders, the Court of Appeal is due to consider the lawfulness of agreements to fund cases against Apple and Sony later this year.

Innsworth says it spent more than 45 million pounds funding the litigation against Mastercard and that the deal, under which it will receive its costs plus 55 million pounds, is "clearly unfair".

But consumer champion Walter Merricks, who led the case, and Mastercard say economic analysts value the claim at below 200 million pounds, after adverse rulings knocked out the vast majority of the lawsuit.

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Class Action

Feb. 19, 2025, 9:38 AM PST

FCA, Cummins \$6 Million Deal Ending Engine Suit Gets Final Nod

By [Shweta Watwe](#)

A \$6 million deal between FCA US LLC, Cummins Inc., and consumers resolving a lawsuit alleging certain Dodge and Ram trucks with diesel engines were defective got final approval from a federal judge.

The US District Court for the Eastern District of Michigan granted final approval Tuesday. The court certified a settlement class of people who bought or leased a 2013 to 2015 Dodge Ram 2500 or 3500 truck containing a Cummins Diesel Engine between November 2014 and July 2016.

- The settlement class includes more than 33,000 people who can receive just over \$100
- According to the settlement agreement, Cummins will pay \$4.8 million while FCA will pay \$1.2 million
- The lawsuit alleged both companies concealed defects in the engines and misrepresented the trucks' emissions performance

The consumers were represented by Carella Byrne Cecchi Olstein Brody & Agnello PC, Seeger Weiss LLP, The Miller Law Firm and Hagens Berman Sobol Shapiro LLP. FCA was represented by Klein Thomas Lee & Freesard. Cummins was represented by Foley & Lardner LLP.

The case is Raymo v. FCA US LLC , E.D. Mich., No. 2:17-cv-12168, 2/18/25 .

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Class Action

Feb. 19, 2025, 8:48 AM PST

Equifax Loses Motion to Toss Income Verification Services Claims

By Katie Arcieri

- **Equifax accused of exclusive deals to maintain monopoly**
- **Federal judge says plaintiff had plausible antitrust claims**

Credit reporting agency Equifax Inc. failed to convince a federal judge to dismiss antitrust claims that it schemed to monopolize the electronic income and employment verification market.

Judge John F. Murphy of the US District Court for the Eastern District of Pennsylvania said Tuesday that lender Greystone Mortgage Inc. plausibly alleged that Equifax's conduct foreclosed at least 40 percent of the market through multiyear and de facto exclusive deals.

"There are a variety of reasons that these deals, on balance, may be more procompetitive than anticompetitive," Murphy said. "But that is dispute for a different day."

The case reflects the scrutiny of the business practices of Equifax and other credit reporting agencies, which have been sued by private plaintiffs on other antitrust grounds. The Federal Trade Commission also has examined how the agencies collect and process data for credit reports.

In this case, Equifax is accused of making exclusive deals with data providers including ADP and Paychex, which allowed it to dominate the electronic income and employment verification market.

As a result of Equifax's dominance, the company allegedly charged inflated prices to such mortgage company customers as Greystone and others who sought to verify applicants' income and employment information.

Murphy said Greystone sufficiently alleges that Equifax charged verifiers more than it could charge if it hadn't undertaken an anticompetitive scheme to exclude competitors from the market.

Hobbled Rivals?

Equifax argued that increased prices may be offset by verifiers receiving a higher-quality offering, making antitrust injury speculative.

Murphy disagreed, saying that while Equifax may have a "fair counterpoint," all Greystone must do at this stage of the case is plausibly allege that anticompetitive effects outweigh procompetitive virtues.

"And Greystone does that—Greystone alleges that Equifax 'hobble[d] rivals,' hampered competition, and did not make 'its product better,'" Murphy said.

Equifax also said Greystone didn't meet its burden of pleading the overall effect of the alleged conduct after considering whether both sides of the alleged market—matching employment data from providers on one side with verifiers seeking that data on the other—harmed competition.

Greystone didn't need to allege a two-sided transaction platform characterized by two sets of consumers on opposite sides of the platform, Murphy said.

"Equifax is not merely an intermediary—it provides a materially different product to verifiers than it receives from data providers," Murphy said. "Accordingly, we find that Greystone plausibly alleges a one-sided market. Therefore, we do not analyze whether Greystone has pled harm to data providers, rather than just harm to verifiers, for the purposes of this motion."

Greystone is represented by Hausfeld LLP. Equifax is represented by Cleary Gottlieb Steen & Hamilton LLP and Duane Morris LLP.

The case is Greystone Mortg. Inc. v. Equifax Workforce Sols. LLC , E.D. Pa., No. 2:24-cv-02260, 2/18/25 .

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AI 'hallucinations' in court papers spell trouble for lawyers

 [reuters.com/technology/artificial-intelligence/ai-hallucinations-court-papers-spell-trouble-lawyers-2025-02-18](https://www.reuters.com/technology/artificial-intelligence/ai-hallucinations-court-papers-spell-trouble-lawyers-2025-02-18)

Sara Merken

A message reading "AI artificial intelligence", a keyboard, and robot hands are seen in this illustration taken January 27, 2025. REUTERS/Dado Ruvic/Illustration/File Photo Purchase Licensing Rights , opens new tab

Feb 18 (Reuters) - U.S. personal injury law firm Morgan & Morgan sent an urgent email , opens new tab this month to its more than 1,000 lawyers: Artificial intelligence can invent fake case law, and using made-up information in a court filing could get you fired.

A federal judge in Wyoming had just threatened to sanction two lawyers at the firm who included fictitious case citations in a lawsuit against Walmart (WMT.N) , opens new tab.

One of the lawyers admitted in court filings last week that he used an AI program that "hallucinated" the cases and apologized for what he called an inadvertent mistake.

AI's penchant for generating legal fiction in case filings has led courts around the country to question or discipline lawyers in at least seven cases over the last two years, and created a new high-tech headache for litigants and judges, Reuters found.

The Walmart case stands out because it involves a well-known law firm and a big corporate defendant. But examples like it have cropped up in all kinds of lawsuits since chatbots like ChatGPT ushered in the AI era, highlighting a new litigation risk.

A Morgan & Morgan spokesperson did not respond to a request for comment. Walmart declined to comment. The judge has not yet ruled whether to discipline the lawyers in the Walmart case, which involved an allegedly defective hoverboard toy.

Advances in generative AI are helping reduce the time lawyers need to research and draft legal briefs, leading many law firms to contract with AI vendors or build their own AI tools. Sixty-three percent of lawyers , opens new tab surveyed by Reuters' parent company Thomson Reuters last year said they have used AI for work, and 12% said they use it regularly.

Generative AI, however, is known to confidently make up facts, and lawyers who use it must take caution, legal experts said. AI sometimes produces false information, known as "hallucinations" in the industry, because the models generate responses based on statistical patterns learned from large datasets rather than by verifying facts in those datasets.

Attorney ethics rules require lawyers to vet and stand by their court filings or risk being disciplined. The American Bar Association told its 400,000 members last year that those obligations extend to "even an unintentional misstatement" produced through AI.

The consequences have not changed just because legal research tools have evolved, said Andrew Perlman, dean of Suffolk University's law school and an advocate of using AI to enhance legal work.

"When lawyers are caught using ChatGPT or any generative AI tool to create citations without checking them, that's incompetence, just pure and simple," Perlman said.

'LACK OF AI LITERACY'

In one of the earliest court rebukes over attorneys' use of AI, a federal judge in Manhattan in June 2023 fined two New York lawyers \$5,000 for citing cases that were invented by AI in a personal injury case against an airline.

A different New York federal judge last year considered imposing sanctions in a case involving Michael Cohen, the former lawyer and fixer for Donald Trump, who said he mistakenly gave his own attorney fake case citations that the attorney submitted in Cohen's criminal tax and campaign finance case.

Cohen, who used Google's AI chatbot Bard, and his lawyer were not sanctioned, but the judge called the episode "embarrassing."

In November, a Texas federal judge ordered a lawyer who cited nonexistent cases and quotations in a wrongful termination lawsuit to pay a \$2,000 penalty and attend a course about generative AI in the legal field.

A federal judge in Minnesota last month said a misinformation expert had destroyed his credibility with the court after he admitted to unintentionally citing fake, AI-generated citations in a case involving a "deepfake" parody of Vice President Kamala Harris.

Harry Surden, a law professor at the University of Colorado's law school who studies AI and the law, said he recommends lawyers spend time learning "the strengths and weaknesses of the tools." He said the mounting examples show a "lack of AI literacy" in the profession, but the technology itself is not the problem.

"Lawyers have always made mistakes in their filings before AI," he said. "This is not new."

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Reporting by Sara Merken in New York; Editing by David Bario and Aurora Ellis

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'The problem with these cases is that none exist': AI troubles hit Morgan & Morgan

 legalnewsline.com/stories/669908166-the-problem-with-these-cases-is-that-none-exist-ai-troubles-hit-morgan-morgan

February 19, 2025

Attorneys & Judges

Ayala | <https://www.forthethepeople.com/>

CHEYENNE, Wyo. (Legal Newsline) - With "great embarrassment," the nation's largest plaintiff firm is trying to explain why it is using made-up cases to bolster its arguments.

The culprit is an internal Artificial Intelligence tool used at Morgan & Morgan, the firm says in recent federal court documents in Wyoming. There, Judge Kelly Rankin has ordered it to show why it shouldn't be punished for citing cases that never existed.

In a routine Jan. 22 motion, Morgan & Morgan, as it pursues property damage and injuries claims against Walmart and Jetson Electrics over a hoverboard battery that allegedly caught fire, cited nine cases to back its arguments.

"The problem with these cases is that none exist, except *United States v. Caraway*," Judge Rankin wrote Feb. 6.

"The cases are not identifiable by their Westlaw cite, and the Court cannot locate the District of Wyoming cases by their case name in its local Electronic Court Filing System."

Rankin cites three other (presumably real) cases in which courts have asked lawyers to explain why AI has led to these errors. A federal appeals court a year ago punished a lawyer who used ChatGPT and had the same problem, dismissing her client's case and subjecting her to a possible \$8,000 penalty.

Another New York lawyer was ordered to pay \$5,000 for citing a nonexistent case in 2023.

Two attorneys at Morgan & Morgan and their local counsel were ordered to explain how their mistakes occurred. Mike Morgan wrote Feb. 10, "This matter comes with great embarrassment and has prompted discussion and action regarding the training, implementation and future use of artificial intelligence within our firm."

It only took two months for the AI tool to become a problem. The firm conducted initial training in November.

Morgan reached out to opposing counsel to apologize, convened a team of the firm's ethics counsel and added a "click box" for attorneys using AI that requires acknowledgement of the "limitations of artificial intelligence."

The ethics team issued a written statement sent to every lawyer in the firm, which says it has offices in all 50 states.

Morgan & Morgan lawyer Rudwin Ayala prepared the motion. He said he received little to no involvement from his co-counsel when doing so.

He used the AI tool for finding additional case support and uploaded his motion to it, with instructions to add information.

"This was the first time in my career that I ever used AI for queries of this nature," he wrote Feb. 13.

"My reliance on the query results was misplaced, and I failed to verify that the case citations resulted were in fact accurate as I expected them to be. As a result, I have come to learn the term 'AI hallucinations' and take full and sole responsibility for the resulting misinformation to this Court, as unintentional as it was."

Local counsel Taly Goody of Goody Law Group says she never saw the motion before it was submitted to the court. She had referred the case to Morgan & Morgan because her husband has an interest in trying a case with its lead trial attorney.

Goody doesn't use AI, she says.

"Had the motion been sent for review, it is my hope that I would have noticed the oddity of seven District of Wyoming cases cited in the motion and would have inquired about the same," she said, asking that no sanctions be entered against her.

ORGANIZATIONS IN THIS STORY

U.S. District Court for the District of Wyoming

Trump administration dismisses top federal prosecutor Ken Parker

 [cincinnati.com/story/news/crime/2025/02/18/trump-administration-dismisses-top-federal-prosecutor-ken-parker/77553154007](https://www.cincinnati.com/story/news/crime/2025/02/18/trump-administration-dismisses-top-federal-prosecutor-ken-parker/77553154007)

CRIME

Federal prosecutor in Ohio who took Larry Householder to trial fired by Trump administration



Laura A. Bischoff

Cincinnati Enquirer

- Parker, a Biden appointee, oversaw the convictions of former Ohio House Speaker Larry Householder and former Cincinnati City Council member P.G. Sittenfeld.
- U.S. attorneys are often replaced when a new president takes office.
- First Assistant U.S. Attorney Kelly A. Norris will serve as acting U.S. Attorney for the district.

The top federal prosecutor for the southern district of Ohio was fired Tuesday, clearing the way for President Donald Trump to appoint a new U.S. attorney.

Kenneth L. Parker spent nearly his entire legal career as a federal prosecutor in Cincinnati, his hometown. The news release did not disclose his next career move.

“It has been my highest honor to serve the people of the Southern District of Ohio as the United States Attorney. There is no better feeling than to come to the office every day knowing I, along with all the prosecutors, trial attorneys, and staff, work to protect the rights, safety, and interests of the public with excellence and integrity,” Parker said in a news release.



U.S. attorneys are nominated by the president and confirmed by the U.S. Senate. They often move on with a change in administrations, either by choice or dismissal.

The U.S. attorney for the Southern District oversees federal cases in 48 counties and supervises a staff of 135, including 65 prosecutors. First Assistant U.S. Attorney Kelly A. Norris is now serving as acting U.S. attorney for the district.

On his watch, Parker and his team won convictions against Larry Householder, the former speaker of the Ohio House, and Matt Borges, the former chairman of the Ohio GOP.



Householder, who is now serving 20 years in prison, operated a massive pay-to-play scheme that involved \$61 million in bribes in exchange for a \$1.3 billion bailout bill to benefit Akron-based FirstEnergy.

Trump appointee David DeVillers, who resigned February 2021, first brought the charges against Householder and his co-conspirators. Parker, a Joe Biden appointee, took the case to trial.

Parker and his team also won a conviction against former Cincinnati City Council member P.G. Sittenfeld, who was released from prison in 2024 while appealing his case. Sittenfeld later lost his appeal.

Who is Ken Parker?

Parker graduated from Walnut Hills High School, Tuskegee University and Indiana University. After clerking for the late U.S. District Court Judge Arthur Spiegel, Parker made a two-year commitment to work at the U.S. Attorney's office starting in 1999.

He's been a federal prosecutor ever since. Much of his career has focused on prosecuting cases against organized crime, drug dealers and gangs.

In 2015, doctors diagnosed Parker with advanced liver and colon cancer. Five years later, he got a liver transplant.

Laura Bischoff is a reporter for the USA TODAY Network Ohio Bureau, which serves the Columbus Dispatch, Cincinnati Enquirer, Akron Beacon Journal and 18 other affiliated news organizations across Ohio.

This story was updated to add a video.

Why Won't Husted Explain Role in Bribery Scandal?

ohiodems.org/why-wont-husted-explain-role-in-bribery-scandal

February 19, 2025



News

February 19, 2025

Columbus, Ohio- One week ago, we outlined four questions that Senator Husted must answer to Ohioans. Unsurprisingly, Husted has stayed silent on his involvement in Ohio's biggest scandal in state history.

While Husted refuses to answer questions from Ohioans, Democrats are making sure that voters are aware of his role in a scandal that raised energy bills and led to Ohio's status as the "most corrupt state for public corruption.

Husted *claimed* he had no role in the legislative process surrounding HB6, but texts from FirstEnergy executives revealed that he was deeply involved in passing the legislation. Now indicted lobbyist Chuck Jones called Husted "very accessible and easy to work with" and said "without question, he is a good friend of FirstEnergy."

Fellow indicted FirstEnergy lobbyist Mike Dowling said in an email that the details of HB6 were left to Husted and other politicians, and discussed Husted's role in negotiations over the bill. He even complained about Husted's ability to get their desired provisions in the senate version of the bill.

"While Husted runs from the corruption scandal he created in Washington, Ohioans are still paying for the scandal he created," said Ohio Democratic Party spokeswoman Katie Seewer **"Ohioans deserve to know who their senator really works for as he once again asks for their vote."**

READ MORE about Husted's undeniable role in Ohio's largest corruption scandal at stateofficialtwo.com

First-Day IPO Trading Flops Threaten Next Wave of US Debuts

By Bailey Lipschultz

- The biggest, Venture Global, is down 35% from its IPO price
- Only two US IPOs over \$300 million are up more than 15%

Wall Street loves a perfectly choreographed IPO, with more shares offered and prices increased in the lead-up to the deal, to signal rising demand. At the climax, shares of newly-listed companies pop on their first trading day, priming the market for even more hyped-up debuts.

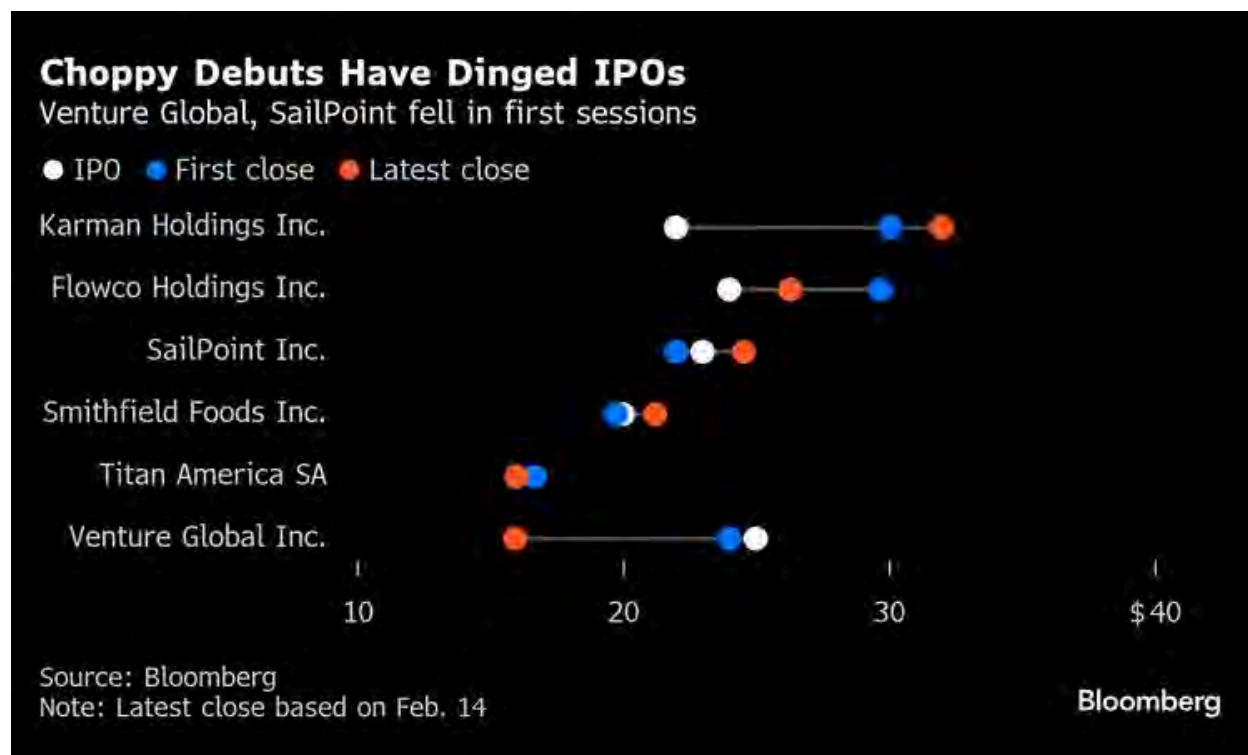
Instead, three of the US's four largest initial public offerings this year have traded below their offer price in their first session — a black mark on any deal, never mind while stock benchmarks flirt with record highs.

"The secondary trading shows that investors remain cautious about valuation," said **Rob Stowe**, head of Americas equity capital markets at Barclays Plc. "What does this mean going forward? The next set of companies will have to be thoughtful about how they approach investors and how they think about valuation."

Just two of the US IPOs raising more than \$300 million have seen shares rise more than 15% from the offer price — while Venture Global Inc., the year's biggest, remains down 35% from its IPO price ahead of its Jan. 24 debut. The single-digit returns over a span of days and weeks are well short of what investors expect from IPOs — which are typically sold at a discount to already public peers given their inherent risks.

Venture Global, a liquefied natural gas exporter that initially pitched prospective investors on a \$110 billion valuation before slashing expectations, has erased about \$24 billion in paper value since its debut last month. Thoma Bravo-backed SailPoint Inc. tumbled as much as 9.7% in its first day and closed \$1 below its \$23 IPO price. It has traded higher in the subsequent sessions.

Read More: Venture Global, Smithfield IPO Flops Threaten 2025 Bull Case



The eight companies whose US IPOs this year brought in more than \$300 million saw a median day-one return of less than 5%, data compiled by Bloomberg shows. That compares to a median gain of about 12% in the three years prior, the data show.

With artificial intelligence optimism driving equity investors to look past geopolitical risks, powering markets back near record highs, active money managers are forced to find ways to outperform their benchmarks and earn their keep. That's fueled an increased appetite for new deals, in part because IPOs are typically sold at a discount to their intrinsic value, according to **Paul Abrahamzadeh**, Citigroup Inc.'s co-head of ECM for North America.

The demand is granting IPO issuers the option of seeking higher prices, and achieving tighter discounts to certain estimates of value, which has resulted in some deals trading below their respective issue prices, Abrahamzadeh said in an interview.

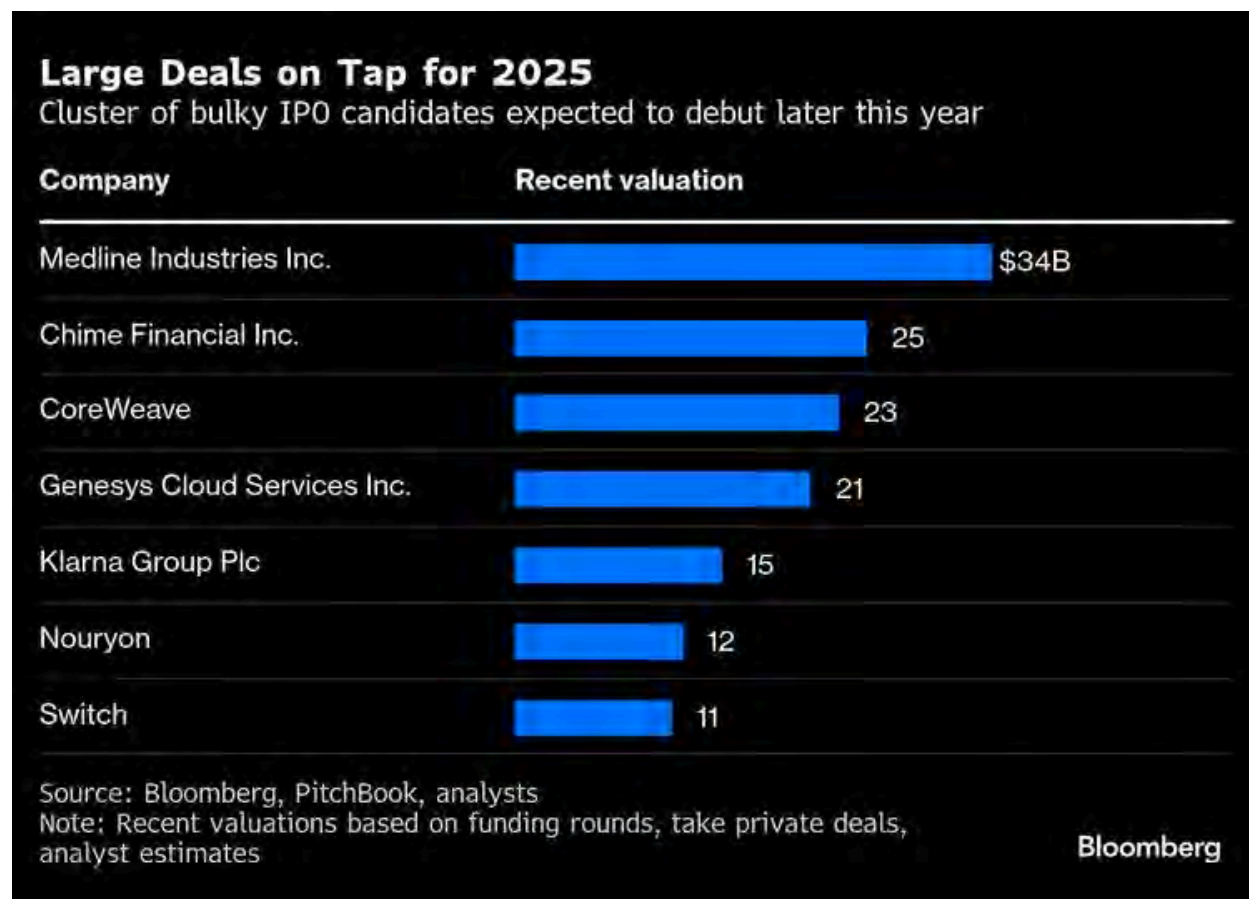
"The fact that some recent IPOs have broken issue price has nothing to do with the strength of the IPO market or the quality of companies going public," he said. "It has everything to do with the way IPOs are being executed."

'There's a disconnect'

After a three-year dearth of deals, Wall Street was gearing up for more debuts, anticipating that a more pro-business administration would open the IPO floodgates for industries like cryptocurrencies. Stock benchmarks like the S&P 500 have been rising for years with few interruptions, and the VIX, Wall Street's so-called fear gauge, remains largely under control.

“The green light should be flashing to say ‘go, go, go’ but oftentimes when people have gone the results aren’t what many of us would’ve expected,” said **Clay Hale**, co-head of ECM at Wells Fargo & Co. “There’s a disconnect between the metrics that should indicate a strong IPO market and the proof points of low deal activity and some underperformance.”

That’s a concern for the firms poised to move ahead with sizable listings. Companies including CoreWeave and Klarna Group Plc, along with large private equity owned firms like Genesys Cloud Services Inc. and Medline Inc., are weighing going public as soon as in the coming months, and could be valued above \$10 billion — if investors agree.



“Activity is being somewhat restrained by an imbalance between what a company and its sponsors think is a fair value and what the market is willing to pay,” said **Seth Rubin**, head of global ECM at Stifel Financial Corp. “And if the market and companies aren’t aligned then there shouldn’t be an IPO.”

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You think Donald Trump is a Paramount+ subscriber who watches "Landman"? If so, maybe he must arbitrate his claim over "60 Minutes." Oh, and CBS hints he'll have to share info on \$Trump too. Guess it might not be settled after all.

Defendants' Position: Defendants believe discovery is needed into President Trump's personal financials, as well as the financials of Donald Trump's 2024 campaign organizations and of Trump Media & Technology Group, including with respect to Truth Social and the \$TRUMP meme crypto project. Defendants further anticipate that discovery will be needed into President Trump's legal relationship, if any, with the Donald J. Trump for President 2024 campaign and the Trump Media & Technology Group. Discovery is also needed into, *inter alia*, whether Plaintiffs have purchased goods or services from Defendants (and whether Rep. Jackson agreed to arbitrate claims relating to CBS' services); what confusion (if any) was created by the interview and actions taken in connection with such confusion; whether Plaintiffs relied upon any alleged misrepresentation in taking any action or failing to take any action; and the basis for the damages alleged.

February 19, 2025 at 6:31 AM 🗨️ Everybody can reply

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Barron's Releases Audio of Jamie Dimon Cursing Out His Workers at a Town Hall, as Dimon Plans to Dump Another One Million JPM Shares

 wallstreetonparade.com/2025/02/barrons-releases-audio-of-jamie-dimon-cursing-out-his-workers-at-a-town-hall-as-dimon-plans-to-dump-another-one-million-jpm-shares

By Pam Martens and Russ Martens: February 19, 2025 ~

Something is seriously wrong in the House of Dimon – also known as JPMorgan Chase, the largest bank in the United States.

Barron's, part of the Dow Jones Company that publishes the Wall Street Journal, has released an audio of the Chairman and CEO of JPMorgan Chase, Jamie Dimon, dropping F-bombs in a profanity-laced tirade during a Town Hall with his employees last Wednesday.

We carefully transcribed a portion of that audio. Dimon said this:

“We also had—and you know I’m right about this one—a lot of you on the f***ing Zoom and you were doing the following, okay: looking at your mail; sending texts to each other about what an a**hole the other person is, okay; not paying attention; not reading your stuff, you know. And if you don’t think that slows down efficiency, creativity, creates rudeness — it does. Okay.”

Apparently, in Jamie Dimon’s billionaire brain, projectile vomiting a stream of profanities at your employees during the workday is not rude – especially if you are making an average of 366 times their compensation.

Dimon continues:

“And when I found out that people were doing that—you don’t do that in my goddamn meetings. If you’re going to meet with me, you’ve got my attention, you’ve got my focus. I don’t bring my goddamn phone. I’m not sending texts to people. It simply doesn’t work. And it doesn’t work for creativity. It slows down decision-making.



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

“And don’t give me this sh*t that work-from-home-Friday works. I call a lot of people on Friday, and there’s not a goddamn person you can get ahold of.”

Barron's has delivered a great public service with this audio. It confirms what we have been telling our readers for the past 15 years: Jamie Dimon is not the great statesman of Wall Street. He's a closet potty mouth running a very dangerous megabank.

One of the things that has Dimon so highly agitated is that he is getting pushback, in a very public way, about his mandate for workers to “RTO,” shorthand for Return to Office, and give up their hybrid work arrangements.

Workers have set up an online petition to lobby to keep hybrid or WFH (Work from Home) arrangements. They are also posting comments when they sign the petition, raising the possibility that JPMorgan's internal secrets might spill out. As of this morning, 1,692 workers have signed the petition.

According to Reuters, Dimon dismissed the petition with this statement during the Town Hall: “I don’t care how many people sign that f**king petition.”

Causing more angst among JPMorgan Chase shareholders is the bank's recent filing with the Securities and Exchange Commission (see page 2 here), revealing that, for the second year in a row, Dimon and his family plan to sell one million shares of JPMorgan Chase stock. (It is not customary for a long-tenured Chairman and CEO of a company to dump large amounts of shares in the company he heads before he retires.)

Dimon and his family cashed out approximately \$182.8 million in JPMorgan Chase stock last year. At the current stock price, this year's haul could add approximately \$279 million more to the family's wealth, bringing the two-year cash out to close to half a billion dollars.

The same SEC filing also revealed that the Board of Directors had raised Dimon's total compensation for 2024 to \$39 million from \$36 million the prior year. The Board called out the bank's “fortress balance sheet,” its “fortress principles,” and Dimon's “longstanding exemplary leadership of a premier financial services firm....”

Compare that assessment to the facts on the ground. Under Dimon's “leadership,” JPMorgan Chase has racked up five felony counts and a rap sheet that resembles a mob operation. The U.S. Department of Justice, instead of reining in the recidivist crime wave, has doled out non-prosecution and deferred-prosecution agreements to the bank for crimes to which it admitted. The bank spent much of 2023 generating scandalous headlines for a decade of funneling tens of thousands of dollars per month, *in hard cash*, to the international sex trafficker of children, Jeffrey Epstein. (See JPMorgan's Settlements Reach \$365 Million Over Civil Claims It Banked Jeffrey Epstein's Sex Trafficking of Minors; Criminal Charges Could Lie Ahead.)

If you are scratching your head as to why the Board of Directors of JPMorgan Chase hasn't sacked Dimon and why it chooses to live inside this delusion that the bank has "fortress principles," you might want to read this.

Norinchukin CEO Plans to Resign After Massive Bond Losses (3)

By Taiga Uranaka and Bernadette Toh

- CFO will be nominated to replace Oku, says person familiar
- Japanese agricultural lender reported wider losses this month

Norinchukin Bank Chief Executive Officer **Kazuto Oku** plans to resign to take responsibility for the Japanese lender's billions of dollars of losses from wrong-way bets on foreign bonds, according to a person familiar with the matter.

Oku, 65, will step down at the end of March, the person said, asking not to be identified discussing the private information. Chief Financial Officer **Taro Kitabayashi**, 54, will be nominated to replace him effective April 1, according to the person. The agricultural bank's supervisory committee is scheduled to meet on Thursday to decide the changes, the person added.

A spokesperson for Norinchukin said nothing has been decided, declining to comment further. Nikkei first reported on the management change late Tuesday.



Kazuto Oku, left, and Taro Kitabayashi in Tokyo in Nov. 2024.

Photographer: Akio Kon/Bloomberg

Norinchukin became one of the most prominent victims of a surge in US interest rates, which drove down the value of its foreign bond holdings and pushed its dollar-funding costs higher than the returns from these securities. The new chief faces calls to diversify the bank's \$300 billion, bond-heavy investment portfolio and bring in more outside talent.

Kitabayashi, who is also a managing executive officer, joined the bank in 1994 after graduating from the University of Tokyo. He rose through the ranks working in various corporate roles including planning and general affairs before becoming CFO in April 2023.

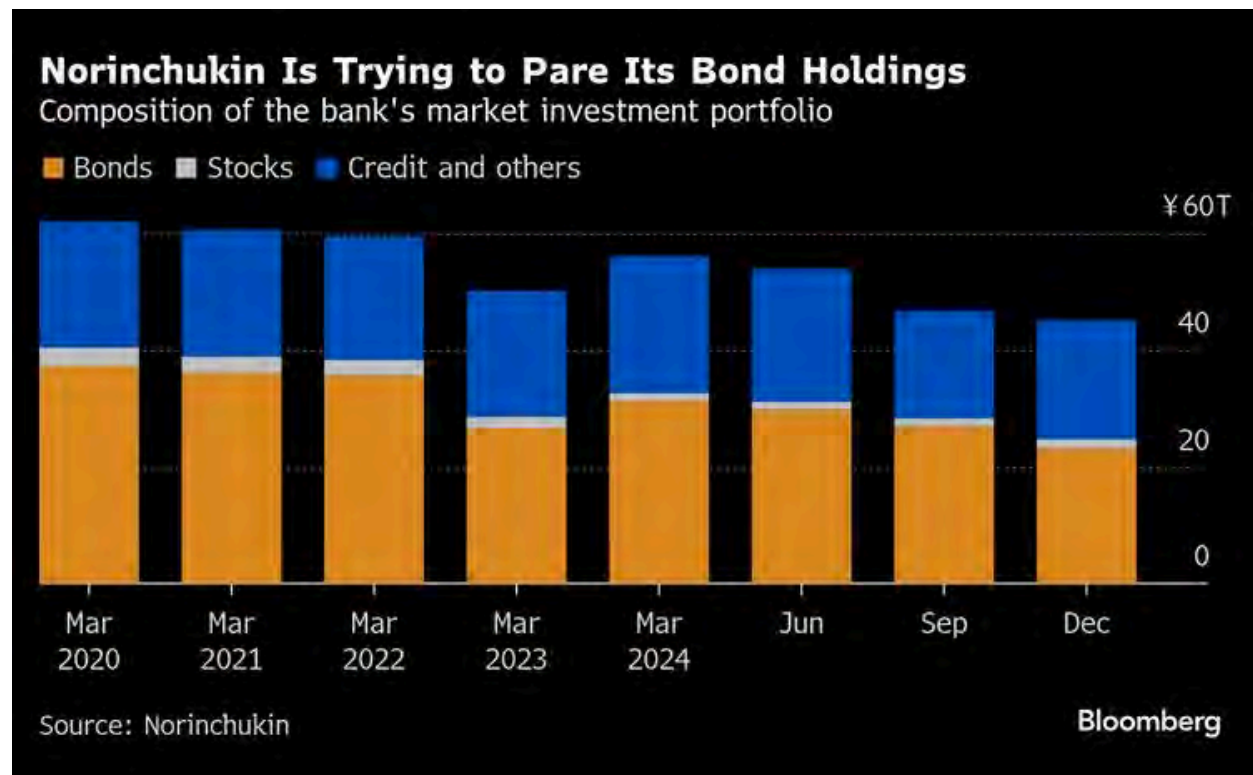
A government panel last month urged Norinchukin to diversify its portfolio, boost risk management and increase board members with experience in financial markets, including outsiders.

But more sweeping changes to the business model are unlikely. The unlisted bank acts more like an investor, with only a small portion of its balance sheet dedicated to lending. It's owned by the country's roughly 3,300 agricultural cooperatives, which depend on returns from the bank because of limited demand for loans in the countryside.

"Norinchukin Bank is a financial institution with limited lending functions and primarily manages securities," said **Hideyasu Ban**, Bloomberg Intelligence senior analyst. "The new management team must not only strengthen operations, but also have the ability to monitor them."

Read more: Norinchukin's Second Investing Debacle Followed Clear Warning

Norinchukin reported wider losses this month as it boosted investments in riskier leveraged loans and sought additional capital. Its losses of ¥1.4 trillion (\$9.2 billion) in the first nine months of its fiscal year ending in March were close to the ¥1.5 trillion annual loss it had previously projected. The bank also reported ¥1.57 trillion in paper losses on its bond holdings.



Global markets have been fixated on how big the losses will end up, as the lender's own estimates grew along with the cleanup of its portfolio. As part of the overhaul, the bank has said it plans to invest in bonds, stocks and project finance, as well as securitized products such as collateralized loan obligations.

Under Oku, who has been president since June 2018, Norinchukin was one of the biggest investors in CLOs, before paring back the investments amid growing regulatory scrutiny in Japan. Now it is returning to the market, with its holdings of the packaged leveraged loans jumping to ¥8.2 trillion last quarter, a 26% increase on the previous three months.

It's not the first time for Norinchukin to change its leadership following investment missteps. CEO **Hirofumi Ueno** stepped down in 2009 after the bank lost money on asset-backed securities during the global financial crisis.

(Updates with comment from analyst in the eighth paragraph)

--With assistance from **Hideki Suzuki** and **David Scanlan**.

Companies Fall Short Reporting Intangible Assets, Survey Finds

By Michael Kapoor

Investors typically find companies present inadequate information about intangible assets like software and intellectual property in their financial statements, according to a new survey.

Some 83% of investors had to adjust the figure for intangibles given in the financial statements when preparing their own investment analyses of a company, the International Accounting Standards Board found in its survey of 71 investors and other users of company balance sheets worldwide.

The standard-setter is researching whether, and how, to modernize the current accounting rules for intangible assets, which are increasingly important to companies' bottom lines. The board conducted the survey to understand if present accounting rules yield useful information on intangible assets.

- "Eighty-three percent is a ridiculous number," Bruce Mackenzie, the IASB member representing Africa, said at a meeting Tuesday where the board discussed the survey results.
- The most common reasons for adjusting the accounting figure for intangible assets were that investors used their own estimates instead of those in financial statements, or simply removed the intangibles figures from their analyses. More than three-quarters (76%) of respondents said the audited financial statements were their first or second most important source of information on intangibles, followed by the management commentary—the narrative section of the annual report that provides context for financial results.
- International Accounting Standard 38 Intangible Assets was issued in 1998 and focuses on intangibles acquired when buying another firm. This means that internally generated assets such as software or investment assets such as cryptocurrencies can be under-reported.

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Securities Group Of The Year: Robbins Geller

By **Emily Johnson**

Law360 (February 18, 2025, 4:03 PM EST) -- Robbins Geller Rudman & Dowd LLP guided investors in securing a \$490 million settlement from Apple Inc. in California federal court after alleging CEO Tim Cook had misled them, and obtained a \$434 million settlement with Under Armour Inc. in Maryland federal court to settle claims the company had artificially inflated stock prices, earning it a spot among the **2024 Law360 Securities Groups of the Year**.



Daniel S. Drosman, a San Diego-based partner, said he thinks "it's no coincidence" the firm obtained the eight largest securities fraud settlements last year, according to the National Economic Research Associates Inc.

"We have that capability," Drosman said. "The defendants know that we are legitimate trial lawyers, and so at the end of the day, that makes a difference in obtaining these settlements."

The securities-focused firm boasts many attorneys with a background in prosecution. Drosman served as an assistant U.S. attorney in the Southern District of California and an assistant district attorney in Manhattan.

"It enables us to secure results that we wouldn't otherwise be able to secure, and I think most firms wouldn't be able to touch, because we have the ability to try a case and win a case that most other firms in our space — in the plaintiff securities bar — just don't have," Drosman said.

Robbins Geller guided a class of Apple stockholders in suing the tech giant for allegedly misleading investors about iPhone sales in China. U.S. District Judge Yvonne Gonzalez Rogers approved the settlement in September.

In the suit, which **was consolidated** in 2019, investors alleged Apple's CEO misled them about iPhone sales in China in late 2018. When Apple "slashed" its previously announced quarterly revenue forecast for the first time in 15 years in January 2019, the company's stock decreased more than 9%, the firm said.

Apple attempted to obtain an early win in the matter, but a California federal judge **rejected its summary judgment bid** in June 2023. Before the scheduled trial — moved to September 2024 after originally slated for May — the parties **struck the \$490 million settlement** in March ahead of a pretrial conference.

Darren Robbins, the founding partner of Robbins Geller who is based in San Diego, gave credit to Sam S. Sheldon, another San Diego-based partner, for strengthening the firm's trial team in a separate case against Under Armour, representing investors who claimed the company inflated stock prices by hiding declining demand for its products. Sheldon previously presided over securities and other cases as a U.S. magistrate judge in the Southern District of Texas.

Under Armour **agreed in June** to settle the suit for \$434 million, weeks before a 12-day jury trial was set to kick off in Maryland federal court. The sports apparel company said the settlement "is not an admission of fault or wrongdoing."

Before the settlement, U.S. District Judge Richard D. Bennett **had rejected** Under Armour's summary judgment bid in February 2024, ruling that the investors had shown a marked discrepancy between the company's attestations about its financial health and what key players in the company were saying behind closed doors.

For Robbins, the firm's securities expertise boils down to creativity, tenacity and a dedication to excellence.

"Perhaps the most significant fact is not that my partners were able to represent clients who achieved eight of the 10 largest recoveries last year, but that four of the recoveries that were obtained were in cases which had previously been dismissed and required our trial teams to work with our appellate department to appeal those cases successfully through various courts of appeals," Robbins said.

Robbins said the firm, which boasts more than 200 attorneys who primarily focus on securities matters, had "a stellar year" in 2024.

"I would say we view our team as one that is seamless, from the most junior partner to the most senior," Robbins said. "It allows for effective and efficient prosecution."

In the last handful of years, "there's been only maybe one year in which we haven't recovered more than a billion for investors," Robbins said.

"In some cases, not only did we end up getting these outsized recoveries, but we were able to favorably advance the law as part of the prosecution of the case in either district court or in the court of appeals," Robbins said.

In one such case where the firm overcame a trial court's initial dismissal, the firm **represented a proposed class** of investors in inking a \$350 million settlement — the largest privacy- or cybersecurity-related securities class action recovery — with Google's parent company, Alphabet Inc., in February 2024.

The firm secured a unanimous reversal of the trial court's dismissal from the Ninth Circuit. The settlement with Alphabet ended claims that the company deceived investors about a 2018 software glitch that allegedly gave third-party app developers the ability to access the private profile data of 500,000 users of the Google Plus social media site.

Robbins said these kinds of cases have "a double benefit." While the settlements involve millions of dollars for investors, "it also moves the law favorably for all other investors in the future," he said.

--Additional reporting by Dorothy Atkins, Bonnie Eslinger, Hailey Konnath and Katryna Perera. Editing by Kelly Duncan.

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Coinbase Brass Face Investor Suit Over Firm's Legal Liabilities

By **Aislinn Keely**

Law360 (February 18, 2025, 10:11 PM EST) -- A Coinbase shareholder has sued the crypto exchange's executive officers and board members in New Jersey federal court on allegations they breached their fiduciary duties with disclosure failures and securities law violations that left the firm open to lawsuits and other events that jeopardized its financial condition to the detriment of shareholders.

Coinbase shareholder Wenduo Guo filed the **stockholder derivative action** on Tuesday, accusing a slew of Coinbase executives and board members of aiding and abetting the issuance of materially false and misleading information through filings with the U.S. Securities and Exchange Commission and other public statements. According to Guo, the executives and the board exposed Coinbase "to massive potential liability to the class, as well as the significant defense costs" arising from a separate securities class action.

The suit names CEO Brian Armstrong, Chief Financial Officer Alesia J. Haas, Chief Operating Officer Emilie Choi, Chief Legal Officer Paul Grewal and Chief Accounting Officer Jennifer N. Jones, as well as co-founder and board member Frederick Ernest Ehrsam III. It also names board members Fred Wilson, Marc Andreessen, Kelly Kramer, Gokul Rajaram and Tobias Lütke, as well as former board member Kathryn Haun.

Guo argued the executives and board members violated securities laws, breached their fiduciary duties, wasted corporate assets and unjustly enriched themselves when they misled the public on multiple issues that left the firm open to liability and had a negative financial impact on the business.

According to Guo, the leadership led retail customers to believe their assets held in custody would be shielded from the bankruptcy process in the event of a collapse, when they would actually be treated as unsecured creditor claims. The firm also maintained it didn't engage in proprietary trading, though the Wall Street Journal would ultimately publish a report to the contrary, Guo said.

Coinbase leadership also repeatedly contended the platform didn't list unregistered securities, but it ultimately received a June 2023 complaint from the SEC alleging it failed to register as a broker-dealer.

"As the truth gradually emerged, revealing to the public that customer assets were at risk in the event of bankruptcy, the company engaged in proprietary trading, and the company listed unregistered securities, the price of Coinbase stock declined precipitously, harming shareholders and the company," Guo argued.

Guo also accused Armstrong, Choi, Haas, Grewal, Jones, Andreessen, Ehrsam, Haun and Wilson of each making "unusually timed sales of company stock while in possession of material non-public information," moves that collectively made the defendants billions of dollars.

Guo argued that Coinbase has "incurred significant financial losses" from the alleged conduct, including the cost of defending itself in a separate consolidated investor class action *In re Coinbase Global Inc. Securities Litigation*. Guo's suit incorporates some of the **same allegations** from the class action, which included the obfuscation of the potential treatment of customer assets during bankruptcy, the concealment of the proprietary trading business and the risk of an SEC enforcement action.

In addition to facing the possibility of classwide damages in that suit, shareholders could also be harmed by the costs and penalties associated with the SEC action, Guo argued. These events could also harm stockholders through "losses in market capitalization, reputational harm, and the loss of goodwill" arising from the suits.

A Coinbase spokesperson said in a statement to Law360 that the suit is "meritless" and the firm looks forward to defending itself.

"As the most popular and only publicly traded crypto exchange in the U.S., we are at times the target of meritless litigation like this," said Coinbase. "We are confident in our position and look forward to defeating this lawsuit."

Counsel for Guo did not immediately respond to a request for comment.

Guo is represented by Gina M. Serra, Timothy J. MacFall and Samir Aougab of Rigradsky Law PA.

Counsel information for the defendants was not immediately available on Tuesday.

The case is Guo v. Armstrong et al., case number 2:25-cv-01309, in the U.S. District Court for the District of New Jersey.

--Editing by Michael Watanabe.

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Web Data Co. Hid Customer Usage Slowdown, Suit Says

By **Sydney Price**

Law360 (February 18, 2025, 8:26 PM EST) -- Web data collection solutions company Alarum has been hit with a proposed shareholder class action in New Jersey federal court alleging the company failed to disclose its struggles in keeping and expanding customer engagements, which led to reduced customer spending.

According to the complaint filed by shareholder Niv Velvart on Friday, Israel-based Alarum is a software-as-a-service provider that offers internet data storage software and a private internet browsing platform. It operates under a consumption-based business model, which means customers are charged for Alarum's products and services based on how much they use them, according to the suit.

The suit alleges Alarum failed to disclose to investors it was experiencing difficulties retaining and expanding its customer engagements. By June 2024, Alarum began seeing reduced customer spending, which ultimately resulted in a 20% revenue decrease from the previous month, according to the complaint.

Alarum did not reveal the negative impact reduced customer spending was having on its financial results until August 2024, the complaint alleges.

In addition to Alarum, its CEO Shachar Daniel, Chief Financial Officer Shai Avnit and chairman Chen Katz are individual defendants in the suit.

The class period begins March 14, 2024, the day Alarum announced it achieved "efficient operational execution" during the last quarter of 2023. For the remainder of the class period, Alarum assured investors it was witnessing a growing demand for its new products, including its Web Unblocker, which allows automated data collection tools to access public web data without being tagged by anti-bot programs.

The truth emerged, the suit alleges, on Aug. 26, 2024, when Alarum announced "disappointing" revenue guidance of \$7 million for the third quarter of the year, which was short of the \$9.2 million projection by analysts. Alarum attributed the discrepancy to a "slowdown" in usage by some of its customers, according to the suit.

Given Alarum's concentrated customer base, the spending patterns of even a small number of customers can substantially impact growth, the suit states.

On this news, Alarum's American Depositary Receipt price fell \$6.77 per ADR, or 31%, to close at \$14.83 per ADR on Aug. 26, 2024.

According to the complaint, the market had an immediate negative reaction to the news. Investing analysis website Seeking Alpha said on Aug. 27 that Alarum's disclosures the previous day could imply "competition or customer-specific weakness" and are "likely the result of lost market share."

The suit accuses Alarum and the individual defendants of acting with scienter, or actual knowledge of wrongdoing or reckless disregard, and violating the Exchange Act.

Counsel for Velvart and a representative of Alarum did not immediately respond to requests for

comment on Tuesday.

Velvart is represented by Thomas H. Przybylowski and Jeremy A. Lieberman of Pomerantz LLP and Jacob Sabo of The Law Office of Jacob Sabo.

Counsel information for Alarum and the individual defendants was not immediately available on Tuesday.

The case is Velvart v. Alarum Technologies Ltd. et al., case number 1:25-cv-01263, in the U.S. District Court for the District of New Jersey.

--Editing by Vaqas Asghar.

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Gas Co. Venture Global Faces Suit Over IPO Disclosures

By **Sydney Price**

Law360 (February 18, 2025, 8:11 PM EST) -- Liquefied natural gas company Venture Global was hit with a proposed class action alleging the company raised \$1.75 billion in its initial public offering last month without disclosing legal issues it is facing from oil companies Shell and BP.

According to the complaint filed by shareholder Gerald Bowes on Monday, Venture touted its "innovative and disruptive approach" to bring liquefied natural gas to the global market ahead of its January IPO. Venture had plans to develop five natural gas liquefaction and export projects, and its IPO represented to the public that Venture had the customer backing to implement these projects, the suit alleges.

The company, however, did not disclose in its IPO registration statement that it is facing legal challenges from its existing clients, BP and Shell. These issues were revealed earlier this month when TotalEnergies, a target customer of Venture, rejected opportunities to become a long-term customer of Venture and publicly expressed a "lack of trust" in the company, the suit alleges.

Venture completed its IPO on Jan. 27, 2025, selling 70 million shares at \$25 per share for \$1.75 billion, according to the complaint.

In addition to Venture, its CEO, Michael Sabel, and several other signatories of the December 2024 registration statement are individual defendants in the suit.

"Given the fact that Defendants' ability to deliver LNG to the world and to continue development of Venture's five natural gas liquefaction and export projects depends on customer contracts, such as those mentioned above, Defendants' failure to account for and address these issues caused statements in Venture's registration statement to be false and/or materially misleading at the time of the initial public offering," the suit states.

According to the suit, TotalEnergies CEO Patrick Pouyanne announced earlier this month that Venture had approached him regarding a long-term supply contract for liquefied natural gas from the Calcasieu Pass terminal in Louisiana. Pouyanne said he rejected the offer because it would put him in "the middle of a dispute with my friends, with Shell and BP," the complaint states.

The suit also states that Pouyanne implied that the price of Venture's liquefied natural gas was too low to be believable "I said to my colleague, 'How is it possible to pay \$1 less than the rest of the market? What is the trick,'" Pouyanne said, according to the complaint.

On this news, Venture's stock price declined from \$2.20 per share, or about 11%, to close at \$17.48 per share on Feb. 6, 2025, the suit states.

When the suit was filed, shares of Venture were trading around \$16 — about two-thirds of the IPO price, according to the complaint.

The suit accuses the defendants of violations of the Securities Act. Bowes seeks damages on behalf of the class.

Counsel for Bowes and a representative of Venture did not immediately respond to requests for comment on Tuesday.

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

Counsel information for Venture and the individual defendants was not immediately available on Tuesday.

The case is Bowes v. Venture Global Inc. et al., case number 1:25-cv-01364, in the U.S. District Court for the Southern District of New York.

--Editing by Vaqas Asghar.

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Wells Fargo Fights Class Cert. Bid In 'Sham' Hiring Case

By **Jessica Corso**

Law360 (February 18, 2025, 10:00 PM EST) -- Wells Fargo & Co. is seeking to avoid class claims in a lawsuit accusing it of deceiving investors about its hiring practices, arguing that suing shareholders have not shown how a downturn in the bank's stock price was caused by the supposedly "sham" job interviews rather than a challenging interest rate environment.

In its latest effort to beat back a lawsuit accusing it of conducting faux job interviews to fill diversity quotas, Wells Fargo told a California federal judge on Friday that shareholders have not provided sufficient evidence to win their class certification bid.

Investors face "unique challenges" in attempting to tie Wells Fargo's June 2022 stock downturn to reporting about its job hiring practices because the decline coincided with a general market downturn caused by rising interest rates, Wells Fargo said.

"Ignoring the wider trend in bank stocks, plaintiffs opportunistically seized on a New York Times article published on June 9, 2022 regarding Wells Fargo's Diverse Slates Guidelines and labeled it a 'corrective disclosure,'" the bank **said in its opposition**.

Wells Fargo also said the Times' article followed earlier reporting on its hiring practices, putting into question whether the June fall in the bank's stock price was really caused by the revelation of the alleged "sham" interviews.

Investors sued shortly after the stock price fell, alleging Wells Fargo lost \$17 billion in market capitalization — a 10% downturn in its stock price — over the two-day period after its hiring practices came to light.

The bank **has been accused** of setting up phony job interviews for positions that didn't exist or that had already been filled in order to meet a stated goal of diversifying its pool of job candidates.

Shareholders moved to certify the class action in January after U.S. District Judge Trina L. Thompson **declined to dismiss** the suit last year, saying in July the investors sufficiently plead that Wells Fargo made material misrepresentations about its diverse search requirement.

The suing investors have said they intend to demonstrate that Wells Fargo's stock price was artificially inflated between February 2021 and June 2022 due to the bank's misrepresentations about its commitment to diversity hiring.

According to the Jan. 17 motion for class certification, the policy "was put in place following a succession of damaging public scandals for Wells Fargo, including with respect to discriminatory practices, that had resulted in onerous and costly regulatory responses and scrutiny."

"Throughout the class period, defendants repeatedly lauded the diverse search requirement to investors and stressed that it was a centerpiece of the company's efforts to improve diversity and inclusion," the suing investors said.

In addition to requesting certification, the investors have also asked that Kessler Topaz Meltzer & Check LLP be appointed class counsel.

Wells Fargo is represented by Brendan P. Cullen, Sverker K. Högberg, Alexis C. Holmes, Christopher M. Viapiano and Leonid Traps of Sullivan & Cromwell LLP.

The suing investors are represented by Jennifer L. Joost, Stacey M. Kaplan, Gregory M. Castaldo, Sharan Nirmul, Joshua A. Materese and Evan Hoey of Kessler Topaz Meltzer & Check LLP, David R. Kaplan, Marti L. Worms, Emily R. Bishop, Lester R. Hooker, Alexander L. Strohmeyer and Dianne M. Pitre of Saxena White PA, and Robert D. Klausner and Bonni S. Jensen of Klausner Kaufman Jensen & Levinson.

The case is SEB Investment Management AB et al. v. Wells Fargo & Co. et al., case number 3:22-cv-03811, in the U.S. District Court for the Northern District of California.

--Additional reporting by Sidney Price. Editing by Lakshna Mehta.

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Vanguard Investors Object To \$40M Settlement Proposal

By **Anna Scott Farrell**

Law360 (February 18, 2025, 4:08 PM EST) -- A handful of the investors claiming Vanguard breached its fiduciary duty when it triggered an asset sell-off that stuck them with big tax bills objected to a proposed \$40 million settlement, with some saying attorneys in the underlying class action could get too much money for making the deal.

In a flurry of objections filed as recently as Monday, individual investors objected to a settlement embraced by the lead plaintiffs in a class action and the leaders' **proposal** to award their attorneys more than \$13 million in fees. The investors are represented by lawyers from multiple firms, including The Rosen Law Firm PA and Dovel & Luner LLP.

Chicago investor Michael Chernoff said in a **letter** to the court that the 15% of estimated damages that investors stand to recover under the proposal is too low if attorneys are going to take roughly a third plus additional costs.

An investor hit with \$60,000 in surprise capital gains under Vanguard's sell-off would recover only about \$1,700 after paying attorneys under the proposed settlement, Chernoff said.

"That's insufficient and unreasonable," he said in the letter.

Investors Eric May and Kelly Welchans said in a letter to the court that they **unexpectedly received** a capital gains distribution in 2021 from a Vanguard retirement fund that caused them to owe tens of thousands of dollars in additional state and federal taxes. A review of the docket showed the class attorneys "did not perform \$13 million worth of legal services," the couple said in the letter, suggesting the attorneys should instead be awarded only \$4 million, or 10% of the recovery.

"The settlement value shows that plaintiff's counsel did not take on much risk because the case would easily settle if Vanguard were offered an 85% discount," the couple said in the letter. "A multimillion-dollar [attorney] fees award would be a huge windfall for plaintiff's counsel to the detriment of the class."

A Pennsylvania federal judge **gave initial approval** to the proposed \$40 million settlement in November, saying in an order that the deal reached between Vanguard and the class leaders was fair to investors. The lead class members pushed for final approval this month and asked for \$20,000 for each lead plaintiff plus one-third of the settlement amount for their attorneys plus about \$877,000 plus interest for litigation expenses.

A hearing on the settlement and attorney fees is scheduled for March.

The lead plaintiffs said the attorney fees were reasonable and supported by the size of the fund and benefit to class members. The attorneys took the case on contingency and have not been paid, according to the Feb. 4 filing.

Many courts in the Third Circuit, including in the Eastern District of Pennsylvania, have awarded attorney fees of one-third of the recovery even in cases with larger settlements, the lead class members said.

The investors filed a putative class action against Vanguard in 2022, saying it failed to protect its

smaller investors in an attempt to lower fees. Investors in what are known as set-it-and-forget-it funds were forced to sell off as much as 15% of their assets, leaving those with taxable accounts holding the bag, they said.

Vanguard agreed to settle the suit in September after mediation.

In a **letter** Monday, investor John Hughes outlined a host of problems with the proposed deal, saying the settlement "epitomizes class action abuse."

Class members receive no benefit under the proposal because Vanguard is already required to pay the \$40 million settlement amount to investor victims under a January **regulatory settlement** by the Securities and Exchange Commission, Hughes said. Dozens of state regulators joined the SEC in announcing the more than \$100 million deal.

Hughes also said that the proposal fails to treat class members equally, with elderly class members losing out because the settlement's allocation plan is based on fund maturity dates. Furthermore, the process for notifying investors "was remarkably thin for a case of this magnitude," Hughes said. Only one email was sent, and near Christmas, with a misleading subject line, he said. Hughes said he overlooked it and learned of the case only through news coverage.

The investors told the court in November that they faced "significant obstacles" to continuing litigation, including getting class certification and proving damages.

Their best case would have netted them \$260 million in damages, the investors said. They considered the \$40 million, a roughly 15% recovery of their claimed losses, "an excellent result," according to a Nov. 6 filing.

A federal judge allowed the suit to move forward last year, saying investors' claims that the trustees overseeing the funds had "adopted a 'we don't care about the risks' attitude" were plausible. When Vanguard lowered the minimum investment amount required to access its institutional, lower-fee funds in December 2020, about 8,500 401(k) retirement plans, with 3.2 million participants, left its retail fund to join, according to the opinion.

An attorney for the investors declined to comment.

An attorney for Vanguard did not immediately respond to a request for comment.

The plaintiff investors are represented by Gregory Dovel, Julien Adams, Jonas B. Jacobson, Christin Cho and Simon Carlo Franzini of Dovel & Luner LLP, by Joshua Baker, Philip Kim, Jonathan Stern, Erica L. Stone and Jacob A. Goldberg of The Rosen Law Firm, by Kenneth J. Grunfeld of Kopelowitz Ostrow Ferguson Weiselberg Gilbert, by Mark C. Rifkin and Matthew M. Guiney of Wolf Haldenstein Adler Freeman & Herz, by Richard M. Golomb and Kevin W. Fay of Golomb Legal, by W. Daniel Miles III and James B. Eubank of Beasley Allen Crow Methvin Portis & Miles and by Timothy Brown of The Brown Law Firm.

Vanguard and its officers are represented by Brandon Fetzer, Elliot Greenfield and Maeve O'Connor of Debevoise & Plimpton LLP and Samuel W. Silver of Welsh & Recker PC.

The trustees are represented by Andrew J. Ehrlich and Daniel J. Kramer of Paul Weiss Rifkind Wharton & Garrison LLP and Francis P. Devine III and Michael E. Baughman of Troutman Pepper Hamilton Sanders LLP.

The case is In re: Vanguard Chester Funds Litigation, case number 2:22-cv-00955, in the U.S. District Court for the Eastern District of Pennsylvania.

-- Additional reporting by Jessica Corso. Editing by Neil Cohen.



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Chancery Tosses Class Suit Challenging Trade Desk CEO Pay

By **Jeff Montgomery**

Law360 (February 18, 2025, 2:24 PM EST) -- Stockholders who sued to block an up to \$5.2 billion, multiyear chairman's compensation package for global digital marketing venture The Trade Desk failed to show a required inference of director liability or bad faith, a Delaware vice chancellor has ruled.

Vice Chancellor Paul A. Fioravanti, in an 86-page dismissal ruling issued late Friday, found a 102-page, consolidated amended class complaint lacked reasonably conceivable claims that at least four of Trade Desk's directors were too conflicted to fairly consider the eight-step equity package for CEO, president, co-founder and controlling stockholder Jeffrey T. Green.

Cleared away was potential legal baggage left in Delaware after the vice chancellor ruled on Nov. 6 that company stockholders could authorize rechartering of the company in Nevada with a simple majority vote, as opposed to a super-majority approval standard asserted in a separate stockholder suit.

The case was one of several that have heated up debate over Court of Chancery corporate governance rulings and liability awards allegedly tilted toward stockholders. State lawmakers in June 2024 rushed through Delaware General Corporation Law amendments after a decision that invalidated agreements delegating some board governance authority to chosen shareholders and controlling investors.

Recently elected Delaware Gov. Matt Meyer has indicated his administration is considering changes in light of the furor in the corporate bar and among corporations, which account for a large share of the state's general fund through franchise fees.

According to the Trade Desk compensation complaint, first filed by stockholder Leroy Huizenga in May 2022 and later consolidated with others, the "mega grant" was worth \$819 million on approval in October 2021 and \$3.5 billion to \$5.2 billion at full vesting if Trade Desk met all eight price targets. According to the complaint, Green allegedly directed the board to approve the package, approved by five conflicted directors out of the seven members voting.

Vice Chancellor Fioravanti found the Trade Desk directors' conduct "pales in comparison" to allegations raised in other high-profile controller compensation cases, including Chancellor Kathaleen St. J. McCormick's finding — in two separate decisions — that Tesla directors unfairly awarded Elon Musk a \$56 billion pay package.

The suit failed to allege specific conduct "on a director-by-director basis, giving rise to an inference of bad faith conduct," the vice chancellor wrote. Instead, they relied on a "controlled mindset," extreme facts and "much more controller interference and resulting influence than what can be reasonably inferred here."

Leroy Huizenga, a Trade Desk shareholder, sued in May 2022 on the company's behalf, seeking to recover a purportedly "grossly excessive" award. The suit named Green and five of the company's eight board members — Lise J. Buyer, Kathryn E. Falberg, Eric B. Paley, Gokul Rajaram and David B. Wells.

While reasonable to infer that Green may have stayed at Trade Desk for less, the vice chancellor

wrote, it was unreasonable based on the claims to infer that bad faith drove the board's compensation committee to provide much more or that directors faced a substantial, collective risk of liability.

"Plaintiffs rely on authorities addressing extreme facts not present here," the vice chancellor wrote, observing the argument "largely boils down to gesturing at the nature of the award and Green's having been present for portions of the compensation committee's meetings and discussing a framework for the award."

Unsupported in the complaint and subsequent briefs, the opinion found, was the presence of a "controlled mindset" on the board — "a latent inability to perceive a conflict that is, at its core, a process failure" that potentially would have supported a finding of director bad faith.

Evidence in the case showed a member of the board or compensation consultant Compensia proposed the award some time in 2020, the opinion said, rather than Green.

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

Proposed lead plaintiff locals of the International Union of Operating Engineers are represented by Stephen E. Jenkins and Marie M. Degnan of Ashby & Geddes PA and Frank R. Shirripa, Daniel B. Rehns, Kurt Hunciker, Kathryn Hettler and Isaac G. Netzer of Hach Rose Schirripa & Cheverie LLP.

Stockholder Milton Pfeiffer is represented by Stephen E. Jenkins and Marie M. Degnan of Ashby & Geddes PA and Gregory Mark Nespole, Daniel Tepper and Correy A. Suk of Levi & Korsinsky LLP.

Stockholder Leroy Huizenga is represented by David A. Jenkins, Neal C. Belgam and Jason Z. Miller of Smith Katzenstein & Jenkins LLP and Steven J. Purcell, Robert H. Lefkowitz and Anisha Mirchandani of Purcell & Lefkowitz LLP.

Trade Desk board members named in the suit and The Trade Desk Inc. are represented by Peter J. Walsh and Jacqueline A. Rogers of Potter Anderson & Corroon LLP and Matthew Rawlinson, Colleen C. Smith and Kristin N. Murphy of Latham & Watkins LLP.

Jeffrey Green is represented by Bradley D. Sorrels, Andrew D. Cordo, Lauren G. DeBona, David J. Berger and S. Toni Wormald of Wilson Sonsini Goodrich & Rosati PC.

The case is In Re The Trade Desk Inc. Derivative Litigation, Consolidated, case number 2022-0461, in the Court of Chancery of the State of Delaware.

--Editing by Philip Shea.



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Stablecoin Firm Gets Securities Claim Cut From Class Action

By **Aislinn Keely**

Law360 (February 18, 2025, 6:32 PM EST) -- A New York federal judge has trimmed the securities claim from a putative class action brought by buyers of GMO-Z.com Trust's GYEN stablecoin who argued they suffered losses when the value of the digital asset temporarily fluctuated, but allowed the bulk of the consumer protection claims to move forward.

U.S. District Judge Analisa Torres said in a **Monday order** that the buyers had adequately shown that the company, referred in court documents as GMO Trust, a subsidiary of internet conglomerate GMO Internet Group Inc., had represented that its GYEN stablecoin would always maintain a consistent value pegged to the Japanese yen and omitted the risks of possible de-pegging events.

Plaintiffs Kenneth Donovan, John Brambl and Hussien Kassfy claimed they felt the fallout of those alleged omissions when they each spent hundreds of thousands of dollars buying GYEN on public crypto exchanges at temporarily inflated prices, leading them to lose significant value when the asset returned to matching the value of the Japanese currency.

"If such allegations are true, as the court must assume them to be on a motion to dismiss, it reasonably follows that plaintiffs saw GMO Trust's misleading statements, purchased GYEN on the basis of such statements, and were denied the full value of the product they were promised," said Judge Torres.

Donovan claimed he lost more than 90% of the more than \$335,000 he put into GYEN when it listed on Binance in 2021, while Brambl and Kassfy said they similarly lost a large swath of funds when they bought GYEN on Coinbase that same year. In both instances, the activity around GYEN's listing temporarily pushed the price of the stablecoin above that of the yen, leading many to suffer losses when GYEN returned to its peg.

The buyers argued that GYEN amounted to an unregistered security under the high court precedent known as the **Howey** test, which defines investment contracts as an investment of money in a common enterprise made with the reasonable expectation of profits brought about by the efforts of others. But Judge Torres agreed with GMO-Z.com Trust's argument that it never led buyers to expect a profit brought about by its efforts.

Buyers couldn't have reasonably expected to make a speculative profit off the asset through the growth of the issuer since GMO-Z.com Trust said it marketed GYEN as maintaining a stable value pegged to the yen, the order said. No matter how many purchased the asset, its value would "be wholly dependent on the value of [the yen], a fiat currency subject to market forces and national and international monetary policy," rather than any entrepreneurial or managerial effort by GMO-Z.com Trust or other third parties, said Judge Torres.

Allegations that the coin was touted as a store of value to hedge against volatility or engage in arbitrage also aren't enough to create an expectation of profits based on a third party's efforts, according to Judge Torres. General maintenance done by the issuer to keep the token operational also doesn't amount to a managerial effort under established case law.

"Any asset — including minerals, commodities, real estate, or fiat currency — can be used for hedging or arbitrage purposes without converting the sale or purchase of the asset into an investment contract," said the order.

The financial incentives or rewards that may come from purchasing GYEN on a particular platform also doesn't mean GMO-Z.com Trust offered GYEN as an investment contract since the rewards were isolated to each individual platform rather than being part of a profit-seeking "ecosystem" spanning across the secondary market, said the order.

But Judge Torres made clear that she was not opining on whether investment contracts were created in those instances where secondary platforms allegedly offered yields or rewards to certain customers. While those types of arrangements could constitute an unregistered offering, the buyers don't allege they were harmed by such an arrangement, said Judge Torres.

"It may be the case that the third-party exchanges that advertised special 'yields' or incentives associated with GYEN were offering investment contracts, which may have been solicited by GMO Trust," the order said. "That issue is not before the court. Plaintiffs are not the [the U.S. Securities and Exchange Commission], and they are not entitled to enforce the securities laws as applied to investment contracts into which they did not enter."

The buyers had initially sued Coinbase and GMO-Z.com Trust in California federal court in May 2022, but Coinbase had the claims against it transferred to arbitration shortly after. The remaining claims against GMO-Z.com Trust were severed from the case and sent to New York federal court in 2023.

While Judge Torres' order trimmed the securities claim from the suit, it kept claims under New York and California law in play. The buyers sufficiently claimed GMO-Z.com Trust violated New York's General Business Law and California's Unfair Competition and False Advertising laws by advertising that GYEN would always remain at the value of the yen and failing to disclose the risks of market events like those on Coinbase and Binance, the judge said.

Counsel for the class declined to comment Tuesday. Counsel for GMO Trust did not immediately respond to a request for comment.

The class is represented Elizabeth A. Kramer, Julie C. Erickson and Kevin M. Osborne of Erickson Kramer Osborne LLP and by Daniel E. Barenbaum of Berman Tabacco.

GMO-Z.com Trust is represented by Nowell D. Bamberger, Heather S. Nyong'o and Samuel Levander of Cleary Gottlieb Steen & Hamilton LLP.

The case is Donovan et al v. GMO-Z.com Trust Company Inc., case number 1:23-cv-08431, in the U.S. District Court for the Southern District of New York.

--Editing by Michael Watanabe.



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Proposed Tweaks To Del. Chancery Law Ignite DExit Firestorm

By **Jeff Montgomery**

Law360 (February 18, 2025, 3:59 PM EST) -- Stockholder attorneys in Delaware pushed back immediately against two state Senate measures that would amend corporation law provisions at the center of recent debate over shareholder class lawsuits, big court awards and recent corporate moves to purportedly more business-friendly states such as Texas and Nevada.

Senate and House sponsors who introduced S.B. 21 and Senate Concurrent Resolution 17 said in a statement Monday that the measures would restore Delaware law "to what it was historically known for being: balanced as to the relevant stakeholders, protective of stockholder rights and interests, workable for corporate leaders, and empowering of directors who act in good faith with appropriate process and in accordance with their fiduciary duties."

Delaware Democratic Gov. Matt Meyer and legislators had acknowledged a workup to the effort in recent weeks, citing concern that purported stockholder-tilted decisions and big class settlements approved by Delaware's Court of Chancery would trigger more companies to follow Tesla, SpaceX and Dropbox to other states, spurred by what has been branded as DExit.

The measure drew pointed responses from some members of firms that regularly represent stockholders who frequently go to court to police compliance with Delaware General Corporation Law and flag fiduciary duty breaches and corporate law failures

"This is an outrageous assault on the last half-century or so of Delaware leadership in overseeing fiduciary responsibilities of public company directors," said Gregory V. Varallo of Bernstein Litowitz Berger & Grossmann LLP, which has represented stockholders in a string of major corporation law compliance and fiduciary breach cases.

The concurrent resolution called on the Corporation Law Section of the Delaware State Bar Association to complete a report by March 31 that would recommend legislative action to "ensure that awards of attorney's fees provide incentives for litigation appropriately protective of stockholders but not so excessive as to act as a counterproductive toll on Delaware companies and their stockholders that threatens to make the overall 'benefit-to-cost' ratio of corporate litigation negative."

S.B. 21 was described in a joint statement by lawmakers as addressing "specific concerns that lawmakers have received since late January's flurry of reincorporation announcements regarding the importance of certainty as companies undertake efforts to have unconflicted directors make key corporate decisions."

Meyer's office referred questions on the issue Tuesday morning to a statement released by lawmakers.

The bill's prime sponsor, Sen. Majority Leader Bryan Townsend, D-Westover Woods, along with three other House and Senate sponsors said in a statement that "uncertain standards or barriers to responsible options that cause widespread frustration among Delaware companies are not helpful to anyone, especially to the stockholders who would not enjoy the value of Delaware's legal protections at all if companies feel forced to relocate to less-balanced jurisdictions."

Richards Layton & Finger PA, which has represented Elon Musk on corporate matters in Delaware and

had a role in drafting the legislative proposals, said in a statement Tuesday that its "role in the process was not on behalf of or otherwise influenced by any firm client."

Peter B. Andrews of shareholder plaintiffs firm Andrews & Springer LLC noted comments in a response published Tuesday by Columbia Law School professor Eric Talley, University of Michigan Law School professor Gabriel V. Rauterberg and Yale Law School professor Sarath Sanga, who noted that the legislation would "mark the most significant single-year revision of Delaware's corporate code since at least 1967, reshaping everything from how controlling stockholders negotiate major transactions to the mechanics of derivative litigation and shareholder access to corporate records."

In a joint statement on the concurrent resolution, four House and Senate leaders, both Democrat and Republican, said "responsible development of corporate law. Uncertain standards or barriers to responsible options that cause widespread frustration among Delaware companies are not helpful to anyone, especially to the stockholders who would not enjoy the value of Delaware's legal protections at all if companies feel forced to relocate to less balanced jurisdictions."

The group included Townsend and Rep. Krista Griffith, D-North Wilmington, an attorney former deputy attorney general

The long-simmering issue came to boil after Vice Chancellor J. Travis Laster kept alive a shareholder suit last year seeking damages after directors rechartered Tripadvisor and an affiliate in Nevada. On Tuesday, Delaware's Supreme Court recently reversed his decision, finding that business judgment deference should govern the court challenge

Concern already had surged after Musk's high-profile battles in recent years in Delaware's business courts and the recent reincorporation of Tesla in Texas, followed closely by other cases focused on tensions between board, stockholder and controller interests.

The controversy heated up sharply last year when Delaware lawmakers overwhelmingly approved a bill that allows corporate boards to cede some governance rights to chosen stockholders.

Final approval came after a former state chancellor and top corporate law attorney warned House members on the floor that "the corporate market is not feeling good" about recent rulings in Delaware, home to nearly 68% of the nation's Fortune 500 corporate charters and 2 million corporate entities overall.

University of Arkansas School of Law professor Robert Anderson described the measure on X, formerly known as Twitter, as creating safe harbor procedures for controlling stockholder transactions. He cited "the creeping definition of 'controlling shareholder'" as one of the best parts of the proposal.

Tulane University Law School professor Ann Lipton wrote about the legislation in the Business Law Professors Blog, stating in a post from Monday titled "Delaware Decides Delaware Law Has No Value" that because of the threat of a corporate exodus, the proposed law changes "undo certainly the last 10 years of Delaware jurisprudence, if not the last 50, in favor of a model of corporate self-policing."

--Editing by Adam LoBelia.

Update: This story has been updated with a response from Richards Layton & Finger PA.



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Discover Can't Get Judge To Rethink Decision In Risk Case

By **Katryna Perera**

Law360 (February 18, 2025, 9:39 PM EST) -- A New York federal judge will not rethink her decision denying Discover a quick win in a lawsuit over whether it and several other credit card companies conspired to dump fraud risk onto retailers, ruling that the suing retailers can continue their claims.

U.S. District Judge Margot K. Brodie issued a **memorandum and order** last week denying Discover's motion for reconsideration of the judge's ruling on the company's summary judgment motion.

Discover, Visa Inc., MasterCard International Corp. and American Express stand accused of simultaneously implementing nearly identical changes to their rules that shifted the costs of potentially billions of dollars in fraud-related chargebacks onto merchants that did not have certified terminals compliant with so-called EMV — Europay, MasterCard, Visa — microchip technology by October 2015.

Judge Brodie declined in September to grant Discover an early win in the suit, finding that the retailers offered enough evidence "to raise a triable question of fact" regarding Discover's alleged involvement in the conspiracy.

According to the order, Discover moved for reconsideration, arguing that the court, generally, "did not consider controlling and undisputed facts," showing that Discover was not a part of any alleged conspiracy and that there is no circumstantial evidence of value in the case record.

However, Judge Brodie said Discover has not demonstrated that she failed to consider "controlling and undisputed facts."

The judge admitted that she mistakenly stated in a footnote in her summary judgment decision that merchants were not part of the Payment Security Taskforce, an industry group that the defendants say was created to develop "an integrated industry roadmap for payments security."

"However, this does not alter the court's conclusion that the June 11, 2014, email from an Amex executive [to colleagues and Discover] that the PST was 'loud and clear that everyone should hold firm' to the [fraud liability shift] date is 'strong circumstantial evidence from which a jury could reasonably infer that Discover was a participant in the conspiracy,'" the order states.

Discover's and the other credit company defendants' participation in the task force and communication through it with each other remains undisputed, the judge added.

Discover also fails to present any "overlooked" facts about an internal company presentation that occurred in August 2013, suggesting that Discover might "begin negotiations with [Visa] and [Mastercard] to extend fraud liability shift dates" and that it was "not recommended to announce a revised FLS until all brands agree."

According to the order, in her summary judgment ruling, Judge Brodie noted that while the presentation does not establish that Discover actually approached Visa and Mastercard to align on the fraud liability shift, "the fact that Discover executives considered it an option lends itself to the reasonable inference that Discover may actually have done so."

The judge also explicitly noted in her ruling that the presentation's recommendation to delay

announcing a revised fraud liability shift date until all the networks agreed was only one option among many that Discover executives considered.

The court also did not overlook that the presentation referred to Discover's "[d]ebit plan of attack" but "made the reasonable inference that what Discover considered for its debit plans it could also have considered for its credit plans," the judge said last week.

"Discover's disagreement with the court's analysis of the August 2013 presentation does not constitute overlooked facts warranting reconsideration," the order states. "The court has not overlooked any undisputed facts about the August 2013 presentation and denies reconsideration on this basis."

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

The merchants are represented by George C. Aguilar, Michael J. Nicoud and Jacob W. Ogbozo of Robbins LLP, John W. Devine of Devine Goodman & Rasco LLP and Thomas G. Amon of the Law Offices of Thomas G. Amon.

Discover is represented by James F. Herbison, Johanna Rae Hudgens, Jeanifer E. Parsigian and Dana L. Cook-Milligan of Winston & Strawn LLP.

The case is B&R Supermarket Inc. et al. v. Visa Inc. et al., case number 1:17-cv-02738, in the U.S. District Court for the Eastern District of New York.

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Amazon Says Stalking Happened Before It Linked With Tile

By **Hailey Konnath**

Law360 (February 18, 2025, 10:27 PM EST) -- Amazon has asked a California federal court to throw out a proposed class action alleging that Bluetooth tracking devices sold via a partnership with Tile Inc. are dangerous because they empower stalkers, saying Amazon "played no role whatsoever" in the alleged conduct, which happened before Tile started working with it.

In its **motion** to dismiss from Friday, Amazon called the suit a "misplaced effort to hold Amazon legally responsible for third parties' intentional misuse" of the trackers. Under the partnership, the devices are manufactured by Tile and use Amazon's nationwide location-tracking program, Sidewalk.

Notably, Amazon said that plaintiffs Shannon and Stephanie Ireland-Gordy can't go after it for the stalking they say they experienced because it is "undisputed that the Amazon Sidewalk network was in no way involved." The Ireland-Gordys say the stalking happened in 2016 and 2017. However, Amazon's Sidewalk network didn't work with Tile devices until 2021, according to its motion.

"So, by their own admission, it is impossible for plaintiffs to establish any connection between their claimed harms and the operability of the Sidewalk network," Amazon said. "Thus, plaintiffs have alleged no injury-in-fact 'fairly traceable' to Amazon, nor have they pointed to any damages proximately caused by Amazon."

Tile lodged its own **dismissal bid** last week, similarly pointing to a timing issue with the plaintiffs' claims. The Ireland-Gordys say they discovered the stalking in March 2017, and that means they brought their claims too late, the company said.

"By their own admission, the Ireland-Gordys discovered the alleged misuse almost seven years before they filed this action, long after the statutes of limitation applicable to all their claims had run," Tile said. "Because these facts are clear on the face of the operative complaint, the Ireland-Gordys' claims must be dismissed."

In their suit, the Ireland-Gordys claim that the Amazon and Tile partnership has resulted in a **"dangerous" product** that lacks safeguards to prevent stalkers from using the quarter-size tracker to prey on victims.

Tile allows its customers to sync the tracker to a smartphone app where they can easily locate its whereabouts, and such trackers have been around for more than a decade. The company joined forces with Amazon in 2021, allowing Tile to take advantage of Sidewalk by tapping into Bluetooth networks created by Amazon's home device, Echo.

The suit was first filed in August 2023, with the Ireland-Gordys alleging negligence, design defects, unjust enrichment, intrusion, and violations of California's constitutional right to privacy and its Invasion of Privacy Act.

In its motion, Amazon argued that the timing issue with the Ireland-Gordys' claims is enough to warrant dismissal. But even beyond that, it said its role providing the Sidewalk network is "far too attenuated from the alleged injury" to justify holding it liable. The plaintiffs' only claim related to Amazon is that the Sidewalk network "expanded the reach and efficacy of the Tile tracker," the motion states. That connection is "simply too remote to support liability of any kind," Amazon said.

Finally, Amazon said the Sidewalk network is neither a "product" nor a "device" under California law.

"It is a service," it said. "Amazon cannot be held liable under product liability law for a product it did not manufacture, nor under California Penal Code [Section] 637.7 for a device it neither controlled or owned, did not attach to plaintiffs' vehicle, and did not use to 'determine the location or movement' of any person."

Tile outlined more purported issues with the claims in its motion. For one, the company said the Ireland-Gordys are Texas residents and say the stalking happened in Texas. That means they should've sued in Texas, not in California federal court, it said.

On top of that, they haven't stated a claim, Tile added.

"The Ireland-Gordys' claims are years too late, brought under the wrong state's laws, and otherwise defective," it said.

David Slade, one of the attorneys representing the Ireland-Gordys, told Law360 on Tuesday, "We have reviewed the defendants' respective motions, we believe that each is wrong on both the law and the facts, and we are eager to oppose both motions in due course."

Amazon and Tile didn't immediately respond to requests for comment late Tuesday.

The Ireland-Gordys are represented by Gillian L. Wade, Sara D. Avila, Marc A. Castaneda, David Slade and Lucy L. Holifield of Wade Kilpela Slade LLP, Brandon Haubert and Jessica Hall of WH Law, and Mark A. Milstein of Milstein Jackson Fairchild & Wade LLP.

Amazon is represented by Charles C. Sipos, Ellie F. Chapman and Julie L. Hussey of Perkins Coie LLP.

Tile is represented by Travis LeBlanc, Jeffrey M. Gutkin, Max A. Bernstein and Amanda A. Main of Cooley LLP.

The case is Ireland-Gordy et al. v. Tile Inc. et al., case number 3:23-cv-04119, in the U.S. District Court for the Northern District of California.

--Additional reporting by Bonnie Eslinger. Editing by Adam LoBelia.



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Class Action Group Of The Year: Quinn Emanuel

By **Beverly Banks**

Law360 (February 18, 2025, 4:03 PM EST) -- Quinn Emanuel Urquhart & Sullivan LLP counseled Hyundai and Kia in the face of consumer claims related to a TikTok trend involving vehicle thefts and attained a \$580 million settlement for a proposed class of investors in a collusion dispute with major banks, earning it a top spot among the **2024 Law360 Class Action Groups of the Year**.



Quinn Emanuel's class action practice helped clients defeat class certification and notch major settlements, including a federal judge's final approval for a multimillion-dollar deal to end litigation with consumers against Hyundai and Kia, as well as nonmonetary injunctive relief in a \$580 million cash settlement with major banks.

Shon Morgan, chair of the national class action practice group, which represents plaintiffs and defendants, said the firm isn't viewing cases with a "one-size-fits-all strategy."

"Every case has its own features that demand creativity and innovation," Morgan said. "There's no one set way to defend a case and no one way to settle a case."

Eric Lyttle, a partner in Washington, D.C., said the practice group doesn't "bring a playbook."

"We're looking at what's the best outcome long term for the client," Lyttle said, adding that "may produce advice that is somewhat unorthodox, but usually successful."

More than 100 attorneys in the firm's U.S. and international offices are involved with work on class action cases, Morgan said.

The practice group notched a significant win in September with a New York federal judge's final approval of a **\$580 million cash settlement** and nonmonetary injunctive relief for a proposed class of investors accusing major banks of colluding to eschew modernization of the stock loan market.

Dan Brockett, a partner in New York, said "powerful and strong" evidence of collusion was a driving factor in reaching the settlement.

The nonmonetary relief, which included banks agreeing to industry reforms, was "very important and very rare," Brockett said.

"It's one of the largest antitrust settlements in history," Brockett said, applauding the damages models the team crafted as "some of the more sophisticated I've ever seen in any class action lawsuit and were convincing to the court that we had met our burden."

The practice group handled multidistrict litigation against Hyundai and Kia after consumers filed more than 50 class actions alleging the companies sold cars susceptible to theft propagated by a viral TikTok trend in which people stole certain vehicle models using a USB cable.

In October, a California federal judge **granted final approval** of a settlement with a \$145 million common fund for cash payments to consumers who experience out-of-pocket losses and a free anti-theft software upgrade for certain class vehicles.

The practice group wanted to help create a "win-win" for customers, Morgan said, noting "there wasn't really a model for a settlement like this."

"Our role was, frankly, less about defense counsel than partnering with them from a business perspective, to develop a suite of remedies that would help address the problem, but didn't necessarily make the companies an insurer for all of this crime wave," Morgan said.

The government track of the case, in which cities alleged nuisance allegations, is still pending, Morgan said.

Last year, the practice group also guided Express Scripts to topple related class actions in Illinois federal court claiming the company conspired with drugmaker Mallinckrodt to increase the price of Acthar, which is a medication used to treat infantile spasms.

The practice group convinced the judge to exclude the damages models from experts presented by the plaintiffs, the **city of Rockford** in one case and MSP Recovery Claims **in another proceeding**. The judge's exclusion of these experts sank class certification bids in both cases.

Quinn Emanuel focused on showing that "there is no way for their plaintiff to ever replicate what the price would have been if they could ultimately prove the merits because that expert had not taken into account the monopoly pricing power that Mallinckrodt had," Lytle said.

In a separate case, the practice group convinced a Minnesota federal court in June to deny certification to a proposed class of drug wholesalers that brought a Racketeer Influenced and Corrupt Organizations Act claim against Express Scripts involving the cost of the EpiPen.

Following nearly a decade of litigation, the practice group also resolved a class action against their client HomeAdvisor, which faced a request for more than \$4 billion in damages over claims the online marketplace sent out "bogus" home repair job leads and other allegations that the site did not remove profiles for service professionals who are no longer paying members. After **partly denying** class certification in early 2024, a Colorado federal judge in September granted the company's summary judgment bid, tossing a group of service professionals' allegations under the Lanham Act and state laws.

The service professionals paid HomeAdvisor Inc. membership fees in order to connect with home and property owners in need of services.

"It was critical to get a win here, both in terms of eliminating that exposure and preserving, what, by most accounts, has been a very successful business partnership with these entities," Morgan said.



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Google Can't Stop Mass Arbitration Opt-Outs In Privacy Row

By **Allison Grande**

Law360 (February 18, 2025, 11:08 PM EST) -- A California federal judge has refused to block more than 69,000 consumers from opting out of a certified class action over the audio recording practices of Google's home devices in order to pursue their claims in individual arbitration, finding that the claimants had properly excluded themselves from the dispute.

In an order issued Friday, U.S. District Judge Beth Labson Freeman said that she had "little hesitation" in denying a motion filed by Google LLC and its parent company Alphabet Inc. to reject a mass exclusion request filed by law firm Labaton Keller Sucharow LLP in August on behalf of 69,507 individuals who have elected to pursue individual arbitration claims against Google rather than remain part of the long-running class action alleging Google Assistant-enabled devices surreptitiously recorded conversations.

Google had argued in a November filing that attempting to exclude class members en masse or on a representative basis would "risk infringing" those individuals' due process rights by "usurping their rights to make an informed, individualized decision" about whether to opt out. The tech giant also contended that the mass opt-out letter submitted by Labaton Keller should be rejected because it didn't conform with the instructions in the long-form notice provided to class members that such exclusion requests should be accompanied by a signature.

Noting that she found neither of these arguments to be persuasive, Judge Freeman sided with Labaton Keller's argument that rejecting the opt-out requests would actually violate the arbitration claimants' rights by negating their decisions to exclude themselves from the certified class, which consists of at least 30 million Google-made device purchasers who are pursuing breach of contract and unfair competition law claims against the company.

Judge Freeman found that the absent plaintiffs "received precisely" the notice that due process requires that they get about their right to opt out of a class and that Labaton Keller had adequately represented both in court filings and at a hearing held earlier this month that arbitration claimants had authorized the law firm to opt them out of the class and represent them to pursue individual claims against Google, including statutory wiretapping claims that the district court declined to include in its class certification definition.

"Here, Labaton has represented under oath that each of the arbitration claimants did make an individualized decision to retain Labaton's legal services and to opt out from the class in order to pursue claims in arbitration," Judge Freeman ruled. "The court sees no reason why the arbitration claimants may not act through their attorneys in executing those requests to opt out of the class."

The judge added that, if it turns out that any of these excluded individuals didn't actually retain and authorize the law firm to act on its behalf, "those individuals would have a malpractice remedy," and that Labaton Keller has additionally confirmed that it will represent any opt-out claimant who doesn't have an arbitration agreement with Google in "their pursue of their claims in other judicial forums."

Judge Freeman also rejected Google's other argument that Labaton Keller's opt-out letter didn't adequately conform to the opt-out procedural requirements, finding that "enforcing adherence to the individual signature requirement is not necessary."

"Specifically, common though that requirement may be, the court does not think such a technical

detail should operate to defeat the arbitration claimants' expressed intention to exclude themselves from a class," the judge held, noting that courts are able to "accept non-conforming exclusion requests where there are sufficiently clear indicia of an intent to opt out."

Given that the arbitration claimants, according to a declaration submitted by Labaton Keller, had authorized the law firm to opt out of the class on their behalf so they could pursue individual arbitration, this move establishes the "clear" indication of their intent to exclude themselves from the class, Judge Freeman concluded.

Friday's ruling marks the latest development in the long-running dispute, which was first filed in **July 2019** and accuses Google and its parent company of concealing that its Google Assistant-enabled devices could be accidentally activated and record users' conversation at home.

The consumer class alleges that Google uses the recorded data to improve its technology and shares with third parties for advertising purposes, even if users never used "hot words" to activate their devices.

After multiple rounds of pleading, **in 2022**, Judge Freeman trimmed some claims, and **later certified** one of three proposed classes of consumers who bought a Google-made device, while **slamming Google** for its "offensive" eleventh-hour request to seal the hearing on the class certification motion.

Google asked Judge Freeman in **February 2023** to send the dispute to arbitration. But last January, the judge rejected the request, finding the company waived its right to arbitration by waiting four years into the heated litigation to ask.

In responding to Google's bid to exclude the opt-out requests, which came amid ongoing discovery fights that have caused delays that **have irked** the magistrate judge overseeing them, the remaining consumer class members in a December filing called the attempt to "extinguish" the nearly 70,000 individual arbitration claims "yet another gambit by Google to limit its liability via procedural gamesmanship."

Google is expected to soon file a motion for summary judgment in the dispute, with Judge Freeman issuing an order Thursday directing the company to file its brief by Feb. 28.

Counsel for the parties couldn't be reached for comment Tuesday.

The plaintiffs are represented by Vincent Briganti, Christian Levis, Margaret MacLean and Andrea Farah of Lowey Dannenberg PC, Erin Green Comite, Joseph P. Guglielmo and John T. Jasnoch of Scott + Scott Attorneys At Law LLP, and Mark N. Todzo of Lexington Law Group.

The arbitration claimants are represented by Jonathan Waisnor, Alexander F. Schlow and Brandon Heitmann of Labaton Keller Sucharow LLP.

Google is represented by Bobbie J. Wilson, Sunita Bali and Erin K. Earl of Perkins Coie LLP.

The case is In re: Google Assistant Privacy Litigation, case number 5:19-cv-04286, in the U.S. District Court for the Northern District of California.

--Additional reporting by Dorothy Atkins. Editing by Jay Jackson Jr.



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Inconsistent Injury-In-Fact Rules Hinder Federal Practice

By **Eric Dwoskin** (February 14, 2025, 4:43 PM EST)

One party violates another party's legal rights — say, by breaching an important contract, defrauding them into making a purchase or discriminating against them in violation of federal law. The aggrieved party files a lawsuit in federal court seeking to remedy the violation. Does the federal court have jurisdiction to hear the dispute?

This threshold jurisdiction question is fundamental to every lawsuit, and the answer, one would hope, should be clear. Sadly, in modern federal practice, it is not.

For instance, on Nov. 7 in *Huertas v. Bayer US LLC*,^[1] the U.S. Court of Appeals for the Third Circuit held that the plaintiffs **had standing** to seek economic damages for benzene contamination in consumer products, even though six years earlier in the *In re: Johnson & Johnson Talcum Powder Products Marketing, Sales Practices & Liability Litigation*,^[2] the same court rejected the plaintiffs' standing to seek economic damages for lead contamination in consumer products.



Eric Dwoskin

The answer is found in Article III of the U.S. Constitution, under which federal courts have jurisdiction to resolve cases and controversies. That seems simple enough, and one would think that all the disputes posited above are "cases" as that word is commonly understood, as long as the victim alleges that their legal rights were violated and that the law authorizes them to seek judicial relief — i.e., that they have a cause of action. And, for most of the nation's history, federal courts interpreted Article III consistent with that intuition.

These days it's not so simple. Over the last two decades, the U.S. Supreme Court has added a vague additional layer to the analysis. Now, before a victim can ask a federal court for relief, they must show both (1) that their legal rights were violated and that the law authorizes them to seek judicial relief; and (2) that they suffered an "injury in fact."^[3]

The new injury-in-fact requirement appears nowhere in the Constitution. And the question it presupposes is almost tautological. After all, if someone's legal rights are violated, aren't they necessarily injured? Of course — but, according to the Supreme Court, perhaps not injured in fact.

So how, then, do judges and lawyers determine whether any particular injury is an injury in fact that can be litigated in federal court? The answer is, quite frankly, a mess.

In the 2016 case of *Spokeo Inc. v. Robins*, the Supreme Court told us that to qualify as an injury in fact, the victim's injury must be: (1) "concrete," not "abstract"; (2) "particularized," not "generalized"; and (3) "actual or imminent, not conjectural or hypothetical."^[4]

These rules are anything but bright lines, and even judges struggle to apply them. For example:

- In different cases, the U.S. Court of Appeals for the Eleventh Circuit held that (1) receiving an unwanted phone call in violation of the Telephone Consumer Protection Act is a concrete injury, but (2) receiving an unwanted text message in violation of the act is not.^[5]

- In different cases, the Third Circuit held that (1) purchasing eye drops that came in a bottle that dispensed unnecessarily oversized drops was a concrete injury, but (2) purchasing baby food that was contaminated with lead was not.[6]
- The U.S. Court of Appeals for the District of Columbia Circuit held that printing 16 digits of a customer's credit card on a receipt in violation of the Fair and Accurate Credit Transactions Act gives rise to a concrete injury, but the Eleventh Circuit held that printing 10 digits does not.[7]
- The U.S. Court of Appeals for the Second Circuit and the U.S. Court of Appeals for the Sixth Circuit have held that any plaintiff who receives an objectively misleading debt collection letter in violation of the Federal Debt Collection Practices Act suffers a concrete injury, but the Eleventh and D.C. Circuits have held that there is no concrete injury unless the letter actually misled the plaintiff.[8]

The list of seemingly inconsistent injury-in-fact determinations is a long one — and one can find within that corpus federal judges openly lamenting the all-but-impossible task of attempting to distinguish concrete and particularized injuries from the abstract and generalized.

Attempting to pour water on the fire created by the new injury-in-fact requirement, the Supreme Court in *Spokeo* provided some additional guideposts. In particular, courts addressing the issue are directed to consider: (1) whether a plaintiff's alleged harm has "a close relationship to a harm that has traditionally been regarded as providing a basis for a lawsuit in English or American courts"; and (2) whether Congress has identified concrete interests underlying the statutory injury.[9]

These amorphous concepts, however, have done little to help the problem.

Consider, for example, the U.S. Court of Appeals for the Seventh Circuit's 2023 decision in *Dinerstein v. Google*.^[10] There, a patient alleged that the University of Chicago and its affiliated medical center breached a contract by disclosing his medical records to Google without permission. The court held that a mere breach of contract, without a particularized showing of money damages, was not an injury in fact.

The *Dinerstein* decision is striking for several reasons. First, if a breach of contract is not, as the *Spokeo* decision told the courts to consider, "a harm that has traditionally been regarded as providing a basis for a lawsuit in English or American courts," then what is?

Second, since when are money damages a necessary prerequisite to federal jurisdiction? For hundreds of years, both English and American courts have consistently recognized their jurisdiction to hear claims for nominal damages — i.e., violations of legal rights without provable money damages.

Indeed, only two years before *Dinerstein* was decided, the Supreme Court held in *Uzuegbunam v. Preczewski* that where a student's rights were violated by a public college, and he could not or would not quantify his injury in economic terms, for "purpose[s] of Article III standing, nominal damages provide the necessary redress."^[11] Why nominal damages were generally sufficient in early English and American courts, specifically sufficient for the Supreme Court as recently as 2021, but insufficient for the Seventh Circuit in 2023, is anyone's guess.

The ambiguity created by the injury-in-fact standard imposes significant costs on federal litigation. Many federal cases now begin with a multimonth — and sometimes multiyear — battle over whether the alleged injury is sufficiently concrete to be heard in federal court. During this time, each side can easily expend hundreds of thousands of dollars in fees arguing about an issue that ought to be reasonably clear.

Equally problematic, a "wrong" answer to the question by the district court is a reversible error on appeal covering every subsequent decision in the case. Thus, even where the plaintiff wins the initial argument at the start of the litigation, the ambiguity in the injury-in-fact standard will often leave the defendant room to appeal the entire case after years of subsequent litigation. At that time, a new set of judges will reassess the concreteness of the plaintiff's injury and decide whether the litigation up to that point was all in vain.

Some lawyers prefer to file cases in federal court for a variety of reasons. I'm one such lawyer, and I typically prefer a federal forum because:

- The administrative systems, such as the federal electronic filing system, are typically better than those employed by state courts, some of which still use carbon paper in the courtroom;
- I like the federal procedural rules;
- I prefer the orderly and formal hearings that typically occur in federal court to the rushed and crowded "cattle calls" that often occur in state court;
- I like the near-universal federal practice of assigning a dedicated and highly qualified magistrate judge to manage discovery disputes; and
- In my experience, federal judges often issue detailed and reasoned opinions on important case decisions, in part due to their ability to attract high-quality legal clerks.

But I'm coming to believe that none of these perceived benefits outweigh the significant costs imposed by the ambiguous — and, frankly, sometimes incoherent — injury-in-fact standard, which has come to play an outsized role in many of my federal cases.

If my choices are between filing in state court and dealing with the cattle call, or spending months or years — and hundreds of thousands of dollars — litigating whether my client's injury is concrete or abstract prior to getting the case past "go" in federal court, I'm starting to prefer state court.

Given the weight and durability of Supreme Court precedent, we're likely stuck with the injury-in-fact standard for the foreseeable future. That's a shame. Federal judges and practitioners deserve a simpler — and less expensive — answer to the fundamental question of whether a case can be heard in federal court in the first place.

Indeed, scholars continue to debate what this simpler answer looks like.

To make a long story short, the injury-in-fact requirement originated from a concern about which parties have standing to litigate public rights claims.^[12] If the only question was who had a legal right, as defined by statute, to bring a claim, then that would open the courthouse doors to limitless public rights organizations with standing to bring impact litigation.

The Supreme Court thought it was prudent to limit standing to those organizations that had a real interest — i.e., those that had suffered an injury by the violation of a public right. But because the Supreme Court located this limit in Article III, that required parties to analyze injury in fact in private claims too. And therein lies the rub.

For this practitioner, a simple solution would be to return standing for private claims to those with a legal right, to engage in an intensive injury-in-fact analysis for public rights claims only and to base this analysis on prudential concerns rather than Article III.

Unfortunately, that would require a change in Supreme Court doctrine. However, perhaps Huertas is an early signal that courts may move in this direction in practice.

Eric Dwoskin is a partner and co-founder at Dwoskin Wasdin LLP.

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[1] **Huertas v. Bayer US LLC** , 120 F.4th 1169 (3d Cir. 2024).

- [2] *In re: Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. & Liab. Litig.* , 903 F.3d 278 (3d Cir. 2018).
- [3] *Lujan v. Defenders of Wildlife* , 504 U.S. 555 (1992).
- [4] *Spokeo Inc. v. Robins* , 136 S. Ct. 1540, 1548 (2016).
- [5] Compare *Cordoba v. DIRECTV LLC* , 942 F.3d 1259, 1270 (11th Cir. 2019), with *Salcedo v. Hanna* , 936 F.3d 1162, 1169-70 (11th Cir. 2019).
- [6] See *In re: Johnson & Johnson Talcum Powder Prod. Mktg., Sales Pracs. & Liab. Litig.* , 903 F.3d 278, 286 (3d Cir. 2018) (discussing cases).
- [7] Compare *Muransky v. Godiva Chocolatier Inc.* , 979 F.3d 917, 922, 934 (11th Cir. 2020) (en banc), with *Jeffries v. Volume Servs. Am. Inc.* , 928 F.3d 1059, 1066-67 (D.C. Cir. 2019).
- [8] Compare *Cohen v. Rosicki, Rosicki & Assocs. P.C.* , 897 F.3d 75, 81-82 (2d Cir. 2018); *Macy v. GC Servs. Ltd. P'ship* , 897 F.3d 747, 756-58 (6th Cir. 2018) with *Trichell v. Midland Credit Mgmt. Inc.* , 964 F.3d 990, 1001-02 (11th Cir. 2020); *Frank v. Autovest LLC* , 961 F.3d 1185, 1188 (D.C. Cir. 2020).
- [9] *Spokeo*, 136 S. Ct. at 1549.
- [10] *Dinerstein v. Google* , 73 F.4th 502 (7th Cir. 2023).
- [11] *Uzuegbunam v. Preczewski* , 592 U.S. 279 (2021).
- [12] See *Sierra v. City of Hallandale Beach, Fla.* , 996 F.3d 1110, 1118 (11th Cir. 2021) (describing history).



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iPhone Buyers Can't Get Apple DOJ Docs Before Discovery

By **Nadia Dreid**

Law360 (February 18, 2025, 9:25 PM EST) -- Apple doesn't have to turn over the millions of documents it gave the U.S. Department of Justice as part of a private monopolization suit brought by iPhone and Apple Watch buyers, at least not until discovery, a judge overseeing the recently created multidistrict litigation has said.

The Apple product owners were hoping to convince U.S. Magistrate Judge Leda D. Wettre to compel Apple to turn over the already-produced documents in an effort to streamline the discovery process, something that the tech titan refused to do. Ultimately, Judge Wettre agreed Friday that the iPhone and Apple Watch buyers were asking for too much too soon.

She said the plaintiffs were asking for "millions of documents" from Apple before they had even filed their consolidated complaints, "which will solidify the factual allegations and claims at issue," let Apple respond to those complaints or had an initial MDL case management conference. There haven't even been discovery requests yet, the **order** said.

"The court encourages the parties to continue to meet and confer in an effort to streamline the discovery process, but it does not intend to adjudicate this or any other discovery disputes prior to the commencement of formal discovery in this MDL," she said.

The Justice Department is in the middle of its own lawsuit with Apple over how the tech behemoth deals with iPhone app developers, something Apple has rebutted by arguing that the government seeks to restrict who it can and can't do business with.

The court is considering Apple's motion to dismiss, which has been before it since November.

The proposed classes are represented by Kellogg Hansen Todd Figel & Frederick PLLC, Korein Tillery, MoloLamken, Schneider Wallace Cottrell Konecky LLP, Berger Montague, Lockridge Grindal Nauen PLLP and Spector Roseman & Kodroff PC.

Apple is represented by Kirkland & Ellis LLP and Walsh Pizzi O'Reilly Falanga LLP.

The case is In re: Apple Inc. Smartphone Antitrust Litigation, case number 2:24-md-03113, in the U.S. District Court for the District of New Jersey.

--Editing by Rich Mills.

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Meta Repeats Push To Halt Social Media Coverage Row In Del.

By **Ganesh Setty**

Law360 (February 18, 2025, 7:37 PM EST) -- Meta urged a Delaware federal court again to stay coverage proceedings over underlying claims it deliberately designed its platforms to be addictive to adolescents, noting the Judicial Panel on Multidistrict Litigation may soon transfer the case to California federal court, where the underlying litigation is taking place.

Following Hartford and Chubb units' briefs opposing a stay, Meta Platforms Inc. **countered Friday** that the Delaware federal court has "inherent discretion" to decide on a stay before ruling on their bid to remand the coverage litigation back to Delaware state court instead.

Earlier this month, the Hartford units — Hartford Casualty Insurance Co. and Sentinel Insurance Co. Ltd. — **maintained that** the court "has no power to enact a stay in a case where it lacks jurisdiction," saying the court should first rule on the remand issue.

"Insurers have no response regarding the inefficiencies and prejudice that would result from adjudicating the remand (and other) motions now rather than allowing the MDL court to address them in the first instance," Meta responded Friday. "By contrast, staying this case will allow the court most familiar with the relevant facts and law to resolve pending and future motions."

After joining the Hartford units' separate motion to remand, the Chubb units — Federal Insurance Co., Westchester Fire Insurance Co., Westchester Surplus Lines Insurance Co. and Ace Property and Casualty Insurance Co. — also filed their own brief challenging Meta's original motion for a stay earlier this month, records show.

The jurisdictional battle followed Meta's December removal of Hartford's declaratory action, filed a **month before**, which sought a no-coverage ruling over numerous underlying lawsuits accusing Meta of making its social media platforms more addictive for adolescents in order to drive advertising revenue. The various lawsuits have been brought by individuals seeking to recover damages for injury to a specific person, along with state attorneys general, governments and school districts that have further asserted public nuisance claims in their own lawsuits.

Many of the underlying lawsuits have been consolidated into **multidistrict proceedings** in California federal court, where Meta has further argued that coverage litigation with its insurers, including Hartford and Chubb, should take place, too.

After it removed Hartford's suit in December, Meta filed its **own action** in January against Hartford and other insurers in California federal court, similarly seeking a stay of coverage litigation over the pendency of the underlying lawsuits. It warned that it faces "serious prejudice" if the coverage litigation continues in Delaware, before liability in the underlying lawsuits is determined.

Meta first urged the Delaware federal court **to delay** its forthcoming decision on Hartford's remand motion earlier this month, given that the Judicial Panel on Multidistrict Litigation conditionally granted Meta's transfer's bid.

On Friday, Meta said a stay is warranted not only in the interest of judicial economy and preventing litigation of "overlapping issues in multiple forums," but also because the JPML's transfer decision is "likely to be adjudicated within two months."

"The MDL court's experience with complex jurisdictional remand issues merely demonstrates that it is well suited to adjudicate another such motion expeditiously," Meta continued, adding that it will "litigate against its insurers at the right time — i.e., after the underlying litigation is completed and the prospect of prejudice and inconsistent rulings abates."

Representatives of the parties did not immediately respond to a request for comment Tuesday.

The Hartford insurers are represented by Thad J. Bracegirdle, Sarah T. Andrade and Emily L. Skaug of Bayard PA and James P. Ruggeri and Sara K. Hunkler of Ruggeri Parks Weinberg LLP.

The Chubb insurers are represented by Stamatios Stamoulis of Stamoulis & Weinblatt LLC and Michael S. Shuster, Blair E. Kaminsky and Daniel M. Horowitz of Holwell Shuster & Goldberg LLP.

Meta is represented by David J. Baldwin and Peter C. McGivney of Berger McDermott LLP and Martin H. Myers, Heather Habes and Emile J. Katz of Covington & Burling LLP.

The 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 District of Delaware.

--Additional reporting by Hope Patti and Dorothy Atkins. Editing by Emma Brauer.

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Penn State Inks 'Largest Ever' COVID Tuition Deal For \$17M

By **Matthew Santoni**

Law360 (February 18, 2025, 5:56 PM EST) -- The Pennsylvania State University will pay \$17 million in what the plaintiffs' attorneys have called the biggest settlement of pandemic-related tuition class action claims to date, and the firms representing the students are taking home \$5.7 million in attorney fees after a federal judge granted final settlement approval Tuesday.

Approximately 72,000 students who were enrolled for in-person classes at Penn State when the COVID-19 pandemic struck in the spring of 2020 will get to split the settlement fund, which U.S. District Judge Robert J. Colville granted final approval of and class certification for Tuesday afternoon.

"This settlement represents the largest settlement against a university in the wake of COVID-19," said Gary Lynch of Lynch Carpenter LLP, representing the plaintiffs, in Tuesday's video hearing over the deal's final approval. The other firms representing the students are Poulin Willey Anastopoulos LLC and Bursor & Fisher PA.

The settlement closes the book on yet another proposed class action against colleges and universities that had converted to online-only classes at the outset of the pandemic but had still charged students the full tuition and fees, spurring complaints that the money was supposed to pay for in-person classes and on-campus experiences.

Carnegie Mellon University in Pittsburgh, for example, just consented Friday to a **\$4.8 million deal** to settle a similar lawsuit.

Judge Colville noted the procedural history of the case: filed in late spring of 2020 like many others, then put on hold while the Third Circuit considered appeals of similar cases filed against the University of Pittsburgh and Temple University.

The case was unfrozen after the Third Circuit's **ruling in August 2023**, and it went through discovery and mediation — with the latter ultimately leading to the proposed settlement being reached last year. The parties **requested final approval** of the settlement Feb. 7, according to court records.

Lynch said all the class members will get an equal share of what's left in the settlement fund after payment of the attorneys' \$5.67 million in fees, \$18,000 in costs and \$5,000 each in service awards for class representatives Benjamin Ramey, Jeffrey Binet and Tyler Thomson. The only exception will be students who were enrolled at Penn State in the spring 2020 semester but withdrew early due to medical reasons; they will get \$50 each, Lynch said.

The settlement the parties reached was a good deal when weighed against the risks of pressing toward class certification and trial, Lynch noted. In particular, it would be difficult to get a jury to pin down a monetary value for the damages that students suffered, when offset by the value of the online instruction and class credits that students were able to get, he said.

"They get some credit for what they did do ... but that's not the same as providing what was promised," Lynch said. "To try and determine what that on-campus experience was worth, in terms of damages, that was the challenge."

The attorneys' **petition for fees** filed in December said they worked nearly 840 hours on the case.

Penn State still denies any wrongdoing in how it moved classes online, but it did not oppose the deal.

"Penn State stands by the conduct it undertook in response to the pandemic," said Aaron M. Healey of Jones Day, representing the university at Tuesday's hearing. "This is the largest settlement in dollar value, but we are also the largest class, at 72,000."

The settlement administrator had successfully reached 99.9% of the class members, and the only two objections to the deal had been dropped prior to Tuesday's hearing, Lynch said. Most class members who were students when the pandemic first hit have graduated by now, he added.

Judge Colville granted the final approval from the bench at the conclusion of Tuesday's hearing, listing all the prerequisites for approval that the deal had met, and dismissed the case with prejudice as part of the deal.

The students are represented by Gary F. Lynch and Nicholas A. Colella of Lynch Carpenter LLP, Eric M. Poulin, Roy T. Willey IV and Paul Doolittle of Poulin Willey Anastopoulos LLC, and Joseph I. Marchese of Bursor & Fisher PA.

Penn State is represented by Aaron M. Healey, Matthew A. Kairis and Leon F. DeJulius Jr. of Jones Day.

The case is Ramey et al. v. The Pennsylvania State University, case number 2:20-cv-00753, in the U.S. District Court for the Western District of Pennsylvania.

--Editing by Lakshna Mehta.

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Trump Media Blames Rising Loss Partly On SEC Legal Bills

By Tom Zanki

Law360 (February 18, 2025, 5:25 PM EST) -- The owner of President Donald Trump's social media platform attributed its widening losses in part to rising legal costs from the Biden-era U.S. Securities and Exchange Commission's investigations of the merger that took the company public, according to a statement.

Trump Media and Technology Group Corp. disclosed a \$400.86 million loss on revenue of \$3.6 million, according to its annual SEC report filed on Friday. Last year's loss by Trump Media, which owns Truth Social, exceeded its 2023 deficit of \$58.2 million by more than sixfold, while its annual revenue fell 12% from \$4.1 million reported in 2023.

Sarasota, Florida-based Trump Media released a statement accompanying its annual report, stating that about half its net cash dedicated to operating activities — \$61 million total — was spent on legal fees relating to SEC investigations of its merger with special purpose acquisition company Digital World Acquisition Corp., through which it **obtained its stock listing** last March.

Trump Media said the expenses came about "partly as a result of obstruction by the Biden-era Securities and Exchange Commission, which turned the process into one of the longest SPAC mergers in history," adding that "TMTG incurred significant legal expenses related to its merger and has brought litigation seeking to recoup its damages."

Securities regulators investigated whether Digital World considered other acquisition targets besides Trump Media. SPACs are not permitted to have a particular target in mind when they launch their initial public offering, which Digital World **completed** in September 2021. Digital World one month later said it **planned to merge** with Trump Media, triggering scrutiny by the SEC and the U.S. Department of Justice.

Digital World in July 2023 **settled charges** that it filed to disclose ties with Trump Media after paying an \$18 million fine to the SEC, which **cleared the merger** last February. SPAC deals provide companies an alternative path to going public, by which a shell vehicle — in this case Digital World — completes an IPO and then merges with an operating business.

The SEC did not immediately respond to a request for comment. Trump Media's criticism of the agency also comes amid reports that the so-called Department of Governmental Efficiency, an initiative led by Trump ally and billionaire entrepreneur Elon Musk, is about to focus its cost-cutting crusade on the securities regulator.

Trump Media also disclosed large losses that contributed far more to its annual deficit last year than did SEC legal fees, including a noncash \$107.4 million loss in stock-based compensation expenses, plus a \$225.9 million accounting loss related to changes in the fair value of derivative liabilities.

Trump Media's net sales of \$3.6 million in 2024 are also scant as the company lags other social media giants in advertising revenue. The company has historically funded itself through sales of private convertible notes and other capital.

Trump Media said it retains \$776 million in cash and short-term investments, which it plans to use to expand its platform to include video streaming and other capabilities aimed at ending "Big Tech's assault on free speech by opening up the Internet and giving people their voices back," according to

the report.

"We will continue to explore opportunities to partner, merge with, and acquire other entities that are able to function effectively if TMTG evolves into a holding company with subsidiaries spanning several industries," Trump Media CEO Devin Nunes, also a former Republican congressman and ally of Trump, said in a statement. "Americans proved in 2024 that they're looking for an alternative to cancel culture — they want to conduct their business and commerce free from debanking, political retaliation, and obnoxious corporate messaging that violates their values."

Shares of Trump Media fell \$1.16, or 3.8%, to \$29.23 in Nasdaq trading on Monday.

--Additional reporting by Renee Hickman and Al Barbarino. Editing by Linda Voorhis.

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