

A Risky Campaign

 10b5daily.com/2025/02/25/a-risky-campaign

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Last year, the U.S. Supreme Court had the opportunity in the Facebook case to address the extent to which corporate risk disclosures can form the basis for securities fraud liability. After oral argument, however, the Court decided to dismiss the appeal as improvidently granted. That has left the door open for a wide range of potential decisions from the lower courts.

In *Craig v. Target Corp.*, 2024 WL 4979234 (M.D. Fla. Dec. 4, 2024), the court considered whether Target's risk disclosures in its 2021 and 2022 annual reports about ESG and DEI initiatives were false and misleading because they failed to disclose that the company would embark on a Pride Month Campaign in May 2023 that could result in customer boycotts and loss of sales. Target generally had disclosed that negative reputational incidents could adversely affect its results and that it faced varied stakeholder expectations regarding how it addressed environmental, social, and governance matters. In addition, Target previously had been the subject of a customer boycott as the result of its opposition to North Carolina's 2016 transgender bathroom law.

The court found, however, that Target had failed "to mention the specific risk of its upcoming 2023 Pride Month Campaign" and that the company knew or should have known that this particular campaign "posed a risk of backlash and financial repercussions."

Holding: Motion to dismiss denied.

Quote of note: "Target's plan to enact a new campaign – i.e., placing controversial merchandise at the center of its stores – *could* be construed as a change to their ESG/DEI campaigns in prior years. Upon review of the amended complaint and the parties' briefing, it is unclear whether this information was publicly available and it is further unclear how much information investors and Plaintiffs knew about the plans for the new campaign. Thus, Plaintiffs have adequately pleaded that information revealed in the 2021 and 2022 risk disclosures may not have been complete."

Wahlberg, Fitness Brand F45 Face Lawsuit Over IPO Statements

F45 Training Holdings Inc., its board member Mark Wahlberg, and others lost a bid for full dismissal of a proposed securities class action alleging the fitness franchise company overstated its growth potential.

The investors adequately alleged registration statement and prospectus misstatements, though the lead plaintiff lacks standing for the prospectus claim, Judge David Alan Ezra said Feb. 21 for the US District Court for the Western District of Texas. The shareholders didn't succeed in stating securities fraud claims, but will have a chance to re-plead, Ezra said.

- The investors alleged F45 and its leadership defined a growth metric in a way that allowed overreporting of franchise agreements and used other techniques to mislead investors about its business model
- The defendants include actor Wahlberg—an early F45 investor, according to the complaint—and other members of leadership, along with Goldman Sachs & Co. and other underwriters
- The investors' securities fraud claims under the Securities Exchange Act fail because they didn't adequately show fraudulent intent, Ezra said

Labaton Sucharow LLP is lead counsel for the investors. Gibson, Dunn & Crutcher LLP represents F45. Akin Gump Strauss Hauer & Feld LLP is among the firms representing the individual defendants. O'Melveny & Myers LLP represents the underwriters.

The case is *In re F45 Training Holdings, Inc. Sec. Litig.*, W.D. Tex., No. 1:22-cv-01291, 2/21/25.

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Investors Say Alcon Trying to Engineer 'Fire Sale' of Aurion (1)

- Investors say Alcon, Aurion executives breached fiduciary duty
- They also allege Alcon influenced Aurion CEO's resignation

Alcon Research LLC is trying to engineer a cheap acquisition of Aurion Biotech Inc. by blocking Aurion's other funding options and improperly gaining influence on its board, Aurion investors claim in a lawsuit.

The investors—two funds affiliated with Deerfield Management Co.—filed their complaint in Delaware's Chancery Court Monday. They allege Alcon has waged an “unrelenting campaign” to orchestrate a “fire sale” of biotechnology company Aurion to Alcon, the world's largest eye care company.

After Aurion rejected Alcon's proposals, Alcon delayed Aurion's planned public offering through litigation, the complaint says. The eye care company then entered into an agreement with another Aurion shareholder to obtain a majority of Aurion's voting stock without notifying Deerfield or Aurion of the transaction.

“In support of its end goal of engineering an acquisition of Aurion on the cheap, Alcon has sought to cut off Aurion's ability to obtain financing from sources other than Alcon and sued to block Aurion's initial public offering,” the investors said.

Alcon allegedly influenced the resignation of Aurion's CEO Thomas Frinzi, leading to a three-to-three split on Aurion's board of directors between Alcon and non-Alcon designees.

Alcon then executed a written consent agreement to amend Aurion's bylaws, according to the complaint. The amendments dissolved a special committee on Aurion's board, revoked the power of the company's officers to engage in activities related to debt or equity financing, and required approval of the majority of directors to take a wide range of actions.

The investors allege that Alcon breached its fiduciary duty and aided and abetted a breach, according to the complaint. They also allege Frinzi and three members of Aurion's board of directors breached their fiduciary duties.

The investors want Alcon and its three designated board of director members enjoined from engaging in any conduct that interferes with “Aurion’s ability to pursue an IPO or any other strategic transaction,” according to the complaint. They also are seeking damages, fees and costs.

An Alcon spokesperson said: “We are aware of the suit and will be responding accordingly. As Aurion’s largest stockholder, Alcon remains committed to the long-term interests of Aurion and its promising technology.”.

Sullivan & Cromwell LLP and Ross Aronstam & Moritz LLP represent the investors.

The case is Deerfield Private Design Fund V LP v. Alcon Research LLC , Del. Ch., No. 2025-0201, complaint 2/24/25 .

(Updates Feb. 24th story with Alcon response in ninth paragraph)

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Class Action

Feb. 25, 2025, 9:39 AM PST

Rain Oncology Investors Advance Securities Suit Via Narrow PathBy [Martina Barash](#)

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- **Drugmaker allegedly misled investors about skipped trial**
 - **Phase 3 trial's failure allegedly caused 88% stock drop**

Rain Oncology Inc. investors sufficiently alleged a misleading statement about the basis for a clinical trial in connection with the drug developer's initial public offering, a federal court ruled in a proposed class action.

But the investors, who filed suit over an 88% stock drop, failed to show that other statements were improper, Judge Edward J. Davila said Monday for the US District Court for the Northern District of California.

The shareholders also can't proceed with securities fraud claims under the Securities Exchange Act for post-IPO statements because they didn't adequately allege that key executives had fraudulent intent, Davila said.

The suit says Rain went directly from a Phase 1 trial of a cancer drug, milademetan, to a Phase 3 trial. But the drug's characteristics allegedly didn't fit the typical criteria for skipping a Phase 2 trial. Nevertheless, the company painted its plans in a positive light and didn't disclose the heightened risk of failure in a Phase 3 trial, the investors said.

Among the six categories of allegedly misleading statements were ones that said Rain planned to commence, or had commenced, a Phase 3 trial of milademetan "based on" the Phase 1 data.

When Rain announced the Phase 3 trial's failure on May 22, 2023, its stock plunged 88% to close at \$1.22 per share. That was the largest selloff in its history, according to data compiled by Bloomberg.



The investors showed the “commencement” statements were misleading, Davila said. “Rain disclosed only the general risk attendant to any Phase 3 trial, whether Phase 2 was skipped or not,” he said. Rain allegedly failed to disclose “atypically high risks unknown to investors,” he said. “At this early stage, that is enough.”

The investors will have a chance to amend their complaint.

A derivative suit over the same issues was voluntarily dismissed after Rain was acquired by Pathos AI Inc. and the plaintiff lost her standing to sue on behalf of Rain.

Levi & Korsinsky LLP is lead counsel for the investors. Gibson, Dunn & Crutcher LLP represents Rain.

The case is *Thant v. Rain Oncology Inc.*, 2025 BL 59468, N.D. Cal., No. 5:23-CV-03518, 2/24/25.

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Litigation

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Sequential Brands \$9.8 Million Investor Settlement Has Court Nod

By Gillian R. Brassil

- **Sequential leaders to pay \$6.25 million; auditors owe \$3.5 million**
- **Bankrupted Sequential faced SEC accounting investigation**

A Sequential Brands Group Inc. investor's \$9.75 million settlement over the bankrupted fashion company's accounting garnered final court approval, including 25% of the sum in attorney's fees.

The settlement created a fund of over \$9.8 million in cash already on deposit, Judge J. Paul Oetken said in the US District Court for the Southern District of New York on Monday. Lead counsel will also get expenses of almost \$39,000 paid as well as interest, he said in an order. Lead plaintiff CJD Property Finance Company LLC will get a \$3,000 award.

Former leaders of Sequential—the ex-Jessica Simpson brand owner that filed for bankruptcy in 2021, went out of business, and thus is no longer party to this lawsuit—paid \$6.25 million after the court offered preliminary approval of the settlement. Auditor defendants including CohnReznick LLP agreed to pay \$3.5 million.

The class, approved for settlement purposes, includes those who got Sequential stock from Nov. 9, 2016, through Dec. 11, 2020. The defendants denied wrongdoing and liability in agreeing to settle, and claims were dismissed with prejudice, Oetken said.

The 2021 suit says the company misled investors about a \$304 million goodwill impairment; it was filed after the Securities and Exchange Commission had charged Sequential with filing fraudulent financial statements in 2020. The stock price fell multiple times, the most recent complaint said—when Sequential disclosed the impairment in 2018, after the SEC investigation was revealed in 2020, and after the agency filed its December 2020 complaint.

Sequential settled with the SEC in 2021 without admitting or denying the allegations it overstated its goodwill. Sequential's former chief financial officer agreed to pay a \$20,000 fine in 2021 for allegedly failing to write down the \$304 million worth of goodwill. In 2022, CohnReznick agreed to pay \$1.9 million to resolve SEC allegations of improper conduct in 2017 in audits of Sequential and another client. Three then-partners of CohnReznick also settled with the SEC.

The lead plaintiff in this action agreed to settle with the individual Sequential leaders and auditors in 2023.

Freedman Normand Friedland LLP represented the lead plaintiff. Gibson, Dunn & Crutcher LLP, Proskauer Rose LLP, Allen Overy Shearman Sterling US LLP, and Cyrulnik Fattarusio LLP represented different Sequential leaders. Hogan Lovells US LLP represented CohnReznick and previously dismissed then-partners. None of these firms immediately responded to emails seeking comment.

The case was Peter D'Arcy v. Sequential Brands Grp., Inc. , S.D.N.Y., No. 1:21-cv-07296, final judgment entered 2/24/25 .

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Class Action Fraudster's \$31.2 Million Restitution Order Tossed

- Government didn't impermissibly alter its theory at trial
- District court must decide if mandatory restitution applies

Alpha Plus Portfolio Recovery co-founder Joseph Cammarata lost his bid Monday to overturn convictions for a scheme to submit false claims under securities class action settlements, but the trial court must reconsider its \$31.2 million restitution order.

Cammarata argued unsuccessfully that the government impermissibly changed its theory at the close of its case, and that it shouldn't have been allowed to cross-examine him about his purchase of a private island, among other things.

The US Court of Appeals for the Third Circuit also upheld Cammarata's 10-year sentence, but vacated the district court's restitution order, saying it doesn't appear to fully compensate the victims of the scheme.

The indictment alleged that Alpha Plus, a claims aggregator that recovers funds from securities class action settlements on behalf of its clients, submitted phony claims on behalf of three shell companies.

Prosecutors charged Cammarata with deceiving claims administrators as to whether those companies had actually made the trades that were the subject of submissions AlphaPlus made on their behalf.

The sentencing judge found a \$40 million actual loss to class members but awarded just \$31.2 million in restitution to be paid to claims administrators tasked with distributing class member funds.

That's problematic because the Mandatory Victims Restitution Act contemplates an "all-or-nothing approach" to restitution, the Third Circuit said.

The appeals court said the he district court on remand will need to determine whether 18 USC 3663A(c)(3) bars awarding restitution under the MVRA. That provision states that mandatory restitution "shall not apply" if either "the number of identifiable victims is so large as to make restitution impracticable," or determining complex issues of fact related to victim's losses "would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process."

The district court must also “explicitly identify in its restitution order the victim classes to which restitution is owed” and “outline its plan for distributing restitution funds to the victims,” the court said.

Camarrata also challenged the appropriateness of relying on claims administrators—entities charged with distributing class member funds—to distribute restitution.

But relying on “an entity with the means and expertise required to distribute restitution under circumstances similar to those presented in this case is not only appropriate but well-advised,” the court said.

Judge D. Brooks Smith authored the decision, joined by judges L. Felipe Restrepo and Theodore A. McKee.

Cammarata is represented by Peter Goldberger in Ardmore, Pa.

The case is United States v. Cammarata, 3d Cir., No. 23-02110, 9/30/24 .

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California AG Bonta pushes for tougher antitrust penalties

DJ [dailyjournal.com/articles/383719-california-ag-bonta-pushes-for-tougher-antitrust-penalties](https://www.dailyjournal.com/articles/383719-california-ag-bonta-pushes-for-tougher-antitrust-penalties)

Criminal,

Constitutional Law

Feb. 25, 2025

SB 763 would dramatically increase penalties under the state's Cartwright Act, bringing them in line with federal antitrust laws. The proposed changes include raising the maximum criminal fines for corporations from \$1 million to \$100 million and extending prison sentences for felony antitrust violations.



Attorney General Rob Bonta

Attorney General Rob Bonta is pushing an effort to drastically increase penalties under California's main antitrust law. SB 763 could give the state new tools to pursue mergers and corporate collusion.

But the debate over the bill won't occur against a backdrop of the federal government abandoning antitrust enforcement, as some critics of the new administration of President Donald Trump had feared. Antitrust attorneys say the proclamation by some in Trump's camp that they were "Khan-servatives"-- conservative fans of now-former Federal Trade Commission Chair Lina Khan--may have been more than campaign rhetoric.

"I do think that there's still a stated focus on antitrust, especially in big tech and some of the other major antitrust litigation style matters that will be continued from the Biden administration," said Michelle S. Lowery, who focuses on antitrust and competition as a partner with McDermott Will & Emery in Los Angeles. "I don't think those are going away."

"There's not a wholesale retreat or retrenchment from enforcing the antitrust laws," said Kenneth Racowski, a partner with Holland & Knight LLP in Philadelphia. "I think that the new administration certainly has different policy goals and enforcement priorities than the Biden

administration's enforcers, but in terms of merger reviews and conduct investigations and litigation, I think it's incorrect that there's going to be any kind of noticeable pullback."

Sen. Melissa Hurtado, D-Bakersfield, introduced SB 763 on Friday with Bonta's backing. It would raise the cap for criminal fines under the state's Cartwright Act from \$1 million to \$100 million. They would also increase potential criminal fines for an individual from \$250,000 to \$1 million per violation and add one to two years to prison terms for a felony antitrust violation. The cap for one offense would jump from three years behind bars to five.

"For too long, Californians have shouldered the burden of an economy where those who break the rules profit while honest businesses and working families struggle," Hurtado said in a news release. "That ends now. SB 763 ensures that violating antitrust laws comes with real consequences, not just a slap on the wrist."

The numbers proposed in SB 763 closely mimic the penalties in the federal Sherman Antitrust Act, said Dylan Carson, a partner with Manatt, Phelps & Phillips, LLP in Washington, D.C. If passed, they would be among the strongest state-level penalties in the country and put the state "effectively on the same footing" as federal law.

"California historically has been one of the more aggressive states at the forefront of enforcing states antitrust laws," Carson said.

During the campaign, Vice President J.D. Vance and some others in Trump's orbit praised Khan, who President Joe Biden appointed to lead the commission after she came to prominence by advocating for greater antitrust enforcement on technology platforms. Some dismissed this as a campaign ploy, but early signs suggest their comments may have been genuine.

"J.D. Vance signaled while he was a senator that it appeared that antitrust enforcement was the only thing the Biden administration did right," Carson said.

He added that antitrust is an area where states are free to act on their own, no matter that the federal government does.

"There is not preemption issue," Carson said. "The state is essentially sovereign. They can impose their own penalties."

"Typically, state antitrust laws are not preempted by federal antitrust laws," Racowski said. "The system is designed to sort of work together."

If passed and signed, the new law could give Bonta a way to fill in any gaps where federal enforcement wanes. Racowski said there have been signs the Trump administration could be more lenient with vertical mergers, in which one or just a few companies gain control of a

supply chain from beginning to end. But last week new commission Chairman Andrew N. Ferguson and leaders in the federal Department of Justice said they would keep tougher new merger guidelines put in place by the Biden administration in 2023.

Lowery said she would not be surprised if there was less antitrust action against mergers and acquisitions in the coming years. She also expects consumer protection to play less of a role in any cases brought.

But Lowery said many Republicans want to keep a focus on big tech--and so does the state of California. SB 763 could make it a lot easier for Bonta to bring significant enforcement actions or get his way by threatening to do so.

"You need big fines to deter big companies," Lowery said. "At least it seems like that's what they're thinking."

#383719

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Union sues state over hiring of private attorneys for Exxon climate case

DJ [dailyjournal.com/articles/383720-union-sues-state-over-hiring-of-private-attorneys-for-exxon-climate-case](https://www.dailyjournal.com/articles/383720-union-sues-state-over-hiring-of-private-attorneys-for-exxon-climate-case)

Government

Feb. 25, 2025

Union President Tim O'Connor argues the case is not too complex for state-employed lawyers and criticizes the slow pace of litigation. The lawsuit is the latest in a series of legal battles over the state's reliance on costly outside counsel.



The union representing attorneys working for the state has sued the State Personnel Board again over hiring outside attorneys. The complaint challenges AB Rob Bonta's hiring of Lieff Cabraser Heimann & Bernstein LLP to sue five oil companies in 2023 over climate change statements.

The writ is one of several the California Attorneys, Administrative Law Judges and Hearing Officers in State Employment has filed in recent years claiming state agencies have become overly reliant on expensive outside counsel. Reached on Monday, union President Tim O'Connor rejected the idea that the litigation against Exxon Mobile Corp. was "too big or complicated" for deputy attorneys general to handle.

"This case is moving at a snail's pace," O'Connor said. "There's really not much going on with it. I didn't see hearings I didn't see complex motions. I saw basically housekeeping routine matters."

Sacramento attorney Patrick J. Whalen, who has represented CASE in numerous similar matters, filed the writ on Friday after the union exhausted its administrative remedies. *California Attorneys, Administrative Law Judges and Hearing Officers in State Employment v. California State Personnel Board*, 25WM000029 (Sac. Super. Ct., filed Feb. 21, 2025).

"CASE is the exclusive collective bargaining representative of approximately 4,500 legal professionals in State Bargaining Unit 2 ('BU 2') pursuant to Government Code §3520.5. BU 2 members are attorneys, administrative law judges, and other legal professionals employed

in more than 110 different State departments, agencies, boards and commissions," Whalen wrote.

Whalen argued the contact with the firm are illegal "it authorizes the outsourcing of legal work that could and should be performed by CASE members, who are rank-and-file civil service attorneys employed by the State of California."

The California Department of Justice did not respond on the record by press deadline. In briefs before the administrative case, it argued that because of the "number of vacant attorney positions within the Department of Justice and the complexity, urgency, and magnitude of the case, this would not be feasible within the necessary time frame."

The case at issue in the writ is *People of the State of California, ex rel. v. Exxon Mobile Corporation*, CGC23609134 (S.F. Super. Ct, filed Sept. 15, 2023). It is now moving forward with complaints brought by several counties and cities against oil companies. *Fuel Industry Climate Cases*, CJC24005310 (S.F. Super. Ct, filed March 19, 2024).

O'Connor said CASE has won "most" of the concluded challenges to outside counsel it has brought, though several cases remain outstanding.

#383720

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Litigation

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Exxon Loses Bid to Move California Plastic Suit to Federal Court

By [Drew Hutchinson](#)

- **Exxon's wartime rubber manufacturing irrelevant, court says**
- **Decision marks win for state, which sued over plastics crisis**

California's plastics recycling deception case against ExxonMobil Corp. will proceed in state court after a judge shut down the company's attempt to prove federal jurisdiction.

The oil and petrochemical giant failed to prove that the case had maritime, federal enclave, or federal officer jurisdiction, Judge Richard G. Seeborg said in an order filed Monday in the US District Court for the Northern District of California.

The decision is a win for California, which argued that the case should remain in state court since it doesn't make any claims under federal law. State Attorney General Rob Bonta (D) sued Exxon in September, alleging the company fueled a plastic pollution crisis by promoting plastics as recyclable when few were.

"We are pleased with the Court's decision to remand our plastic deception case against ExxonMobil to state court where it rightfully belongs," Bonta said in a press release. "At the California Department of Justice, we stand ready to litigate this case, which directly affects California's laws and its residents, and hold ExxonMobil fully accountable for its role in actively creating and exacerbating the plastic pollution crisis through its campaign of deception."

Exxon and other fossil fuel companies have tried and failed multiple times to move certain climate and environment cases to federal courts using the federal officer removal statute.

The federal contractor defense can shield companies from liability for activities taken under the federal government's direction. Exxon argued that the California plastics case belonged in federal court partially because company predecessors had manufactured rubber for the federal government during World War II.

But that claim "verges on the fanciful," Seeborg said.

"Rubber is not the product at issue in the complaint—plastic is," according to the court order. "The claims in this case are not about pollution in the abstract; they concern Exxon's allegedly self-interested and deceptive promotion of plastics recycling programs that it knew would fail to prevent the current pollution crisis."

Exxon also argued that the case involved navigable waters and should be handled by a federal court. But California's claims are not maritime in nature, Seeborg said.

"A close reading of the claims reveals that the alleged tort is 'deception,' not the actual depositing of plastic into navigable water," according to the order.

A similar plastics recycling deception case filed by environmental nonprofits will remain in federal court, however, because it's "undeniably subject to federal jurisdiction due to diversity of citizenship," Seeborg ruled. The plaintiffs, which also originally sued in California state court, are free to voluntarily dismiss their case if they're worried about the same matter being litigated in state and federal courts, he said.

Exxon and Bonta's office did not immediately respond to a request for comment.

O'Melveny & Myers LLP and Weil, Gotshal & Manges LLP represent the company.

The California Department of Justice represents the state.

The case is California v. ExxonMobil Corp. , N.D. Cal., No. 3:24-cv-07594, order 2/24/25 .

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Want to hire Elon Musk's lawyer? That will be \$3,000 an hour

 [reuters.com/legal/want-hire-elon-musks-lawyer-that-will-be-3000-an-hour-2025-02-25](https://www.reuters.com/legal/want-hire-elon-musks-lawyer-that-will-be-3000-an-hour-2025-02-25)

Mike Scarcella

Attorney Alex Spiro speaks during a news conference regarding his client New York City Mayor Eric Adams, at law offices in New York City, U.S. September 30, 2024.

REUTERS/Brendan McDermid/File Photo Purchase Licensing Rights  , opens new tab

- Alex Spiro's \$3,000 hourly rate among highest in Manhattan
- Spiro one of two lawyers at Quinn Emanuel's charging \$3,000, source says
- Law firm revenue grows with rising billing rates, Wells Fargo reports

Feb 25 (Reuters) - A leading attorney for billionaire Tesla (TSLA.O)  , opens new tab CEO Elon Musk and embattled New York Mayor Eric Adams now has a standard billing rate of \$3,000 an hour, placing him on the top shelf among even the priciest of Manhattan lawyers. Alex Spiro, known for his high-profile clientele and relentless litigation style, is among a small group of lawyers at his law firm now billing the \$3,000 rate, according to a source familiar with the firm's billing practices.

Spiro's firm, 1,000-lawyer Quinn Emanuel Urquhart & Sullivan, disclosed a range of new billing rates in court filings in recent days. The source said the top rate applies to Spiro and to William Burck, the firm's global co-managing partner.

Top rates for the most in-demand U.S. lawyers have skyrocketed in recent years, with the most senior partners regularly charging more than \$2,000 an hour and commanding millions of dollars in annual pay.

Law firms sometimes tailor individual rates for clients or apply discounts. It was unclear how much Spiro or Burck are charging specific clients.

A spokesperson for Los Angeles-founded Quinn Emanuel declined to comment. In addition to Musk and Adams, the firm's clients include Alphabet's Google (GOOGL.O)  , opens new tab. In January, the Trump Organization said it had hired Burck as an outside ethics adviser. Spokespeople for Musk, Adams and the companies did not immediately respond to requests for comment.

Spiro has represented Musk in several lawsuits, including defamation and shareholder cases and litigation brought by the U.S. Securities and Exchange Commission. He did not immediately respond to a request for comment.

Spiro is currently defending Adams against criminal allegations that the mayor took bribes from Turkish officials. Adams has pleaded not guilty.

Burck, a longtime Republican insider, has defended Trump's former political strategist Steve Bannon.

RATES ON THE RISE

Quinn Emanuel's \$3,000 top rate marks a milestone for leading U.S. law firms as lawyers' hourly fees continue to soar.

Law firms routinely raise their rates each year, and top rates at some of the largest U.S. firms have pushed past \$2,500 an hour or higher in recent years, court records show.

Quinn Emanuel said in its court filings that its partners now bill between \$1,860 and \$3,000 an hour. It said it will charge between \$1,775 and \$2,725 an hour for “of counsel” attorneys at the firm, and between \$1,035 and \$1,665 for associates.

Billing rate increases helped drive growing revenue and profits for U.S. law firms in 2024, Wells Fargo's Legal Specialty Group said in a recent report.

Clients have been willing to accept “dramatic increases” in rates, according to a report last month by the Thomson Reuters Institute and the Georgetown Law Center on Ethics and the Legal Profession. The institute and Reuters share the same parent company, Thomson Reuters.

Court records show top rates at Quinn Emanuel have grown about 34% since 2022, when partners billed up to \$2,130 an hour.

Quinn Emanuel disclosed last year that it earned more than \$2 billion in revenue in 2023, according to industry publication The American Lawyer.

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Reporting by Mike Scarcella; Editing by David Bario and Leslie Adler

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

'This Is an Anathema': Talc Bankruptcy Testimony Spotlights Plaintiffs' Bar Fractures



law.com/texaslawyer/2025/02/24/this-is-an-anathema-talc-bankruptcy-testimony-spotlights-plaintiffs-bar-fractures

Amanda Bronstad

What You Need to Know

- Birchfield called the entire debacle the 'most sickening thing in my entire career.'
- Smith, however, had a different take: 'I was being threatened with litigation for fulfilling my fiduciary and ethical obligation of keeping my clients informed,' Smith said.
- The hearing will decide a flurry of motions focused on whether Johnson & Johnson subsidiary filed the Sept. 16 bankruptcy in bad faith, and if voting improprieties led 82% of an estimated 93,000 talc claimants to support the plan.

After weeks of negotiations about Johnson & Johnson's proposed \$10 billion bankruptcy plan, R. Allen Smith needed to get Andy Birchfield, with whom he shared nearly 12,000 talcum powder clients, on board.

Birchfield, of Beasley Allen in Montgomery, Alabama, was adamantly opposed to the plan. Smith suggested they send a joint letter to their clients, laying out their opposing positions, but Birchfield rejected the idea.

Smith, of the much smaller Smith Law Firm, in Ridgeland, Mississippi, then asked for the contact information to their clients. But Birchfield, after consulting ethics experts, refused to comply.

Then Birchfield sued Smith, accusing him of breaching their 2013 joint venture agreement by switching the votes of their talc clients in favor of the bankruptcy plan. In Feb. 21 testimony in Houston, Birchfield called the entire debacle the "most sickening thing in my entire career."

"If we didn't make a stand, then J&J's plan would be forced upon our clients, ovarian cancer victims, on unfair terms and unreasonable values," he testified. "Everything is trying to hold the plaintiffs' bar together on behalf of our clients. This is an anathema."

Smith, however, had a different take on what he described as a "professional disagreement."

"I was being threatened with litigation for fulfilling my fiduciary and ethical obligation of keeping my clients informed," he said in testimony, which became heated at times. "No one is ever going to stop me, ever, ever, ever, from communicating with my clients and fulfilling my fiduciary duty to them."

Both men testified as part of a hearing that began Feb. 18 before U.S. Bankruptcy Judge Christopher Lopez of the Southern District of Texas to determine whether Johnson & Johnson's talc bankruptcy could be dismissed or its \$10 billion plan confirmed.

The hearing, which is set to wrap up on Friday, could feature as many as 40 witnesses, many of them prominent plaintiffs attorneys pitted against one another over whether to support the bankruptcy plan.

"We hold the people together, we stand together as a plaintiffs' bar," Birchfield testified. "To see the division, to see the wedges driven in the plaintiffs' bar, it's terrible."

'I Was Pissed'

Lopez called the hearing to decide a flurry of motions focused on whether Johnson & Johnson subsidiary Red River Talc filed the Sept. 16 bankruptcy in bad faith, and if voting improprieties led 82% of an estimated 93,000 talc claimants to support the plan.

Much of the testimony centered on the weeks after the initial July 26 vote, during which about a dozen lawyers crammed into law offices for last-ditch negotiations in New York and Florida.

In Feb. 20 testimony, Mikal Watts, of Watts Law Firm in Austin, said he set up a meeting on Sept. 9 after Smith had negotiated a memorandum of understanding that provided the plan with an additional \$1.1 billion for talc claimants and \$650 million in common benefit fees.

The next day, Birchfield sued Smith.

Mikal Watts, partner at Watts Guerra.
Photo©Mark Sobhani Photography

"That was the one time I've ever cussed about my friend Andy Birchfield," Watts said. "I was pissed. I just spent two days to get this deal together."

Birchfield, in his testimony, said Smith was "undermining our client's position, our negotiating position."

"I was terribly upset that that was afoot," he said. "We're the ones who had authority to cast the votes."

On cross examination, Birchfield fended off accusations from Johnson & Johnson attorney Allison Brown, of Kirkland & Ellis in Philadelphia, that there were other reasons for his unflinching opposition to the plan. Birchfield admitted his clients hadn't been paid after

obtaining \$724 million in talc verdicts but that's because most were reversed on appeal. He also admitted that his firm is owed common benefit fees for its work in the talc multidistrict litigation.

Lawyers for the Coalition of Counsel for Justice for Talc Claimants, which opposes the plan, noted the numerous mass tort cases that Beasley Allen has handled while questioning the expertise of Smith.

But Smith insisted he only intervened in the negotiations after finding out the level of toxicity between Birchfield and Johnson & Johnson's negotiating attorney, Jim Murdica, had boiled over.

"We got such toxicity and personality conflicts we can't even get in a room to see if there are terms to agree with that," Smith testified. "When I heard that, I was kind of beside myself."

He called Birchfield's demands a "deal killer" and "poison pill." That's why Smith sent his own Sept. 11 letter informing their clients that he would be supporting the plan, as revised.

He insisted he had the power of attorney to cast votes for nearly 12,000 clients on a \$9.1 billion offer, as opposed to the settlement of an individual client's case, although he acknowledged its imperfections.

"I thought it was sufficient," he said. "Not ideal."

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Litigation

Feb. 25, 2025, 8:02 AM PST

Bloomingdales.com Hit With Class Action Over TikTok Data Sharing

By [Christopher Brown](#)

- **COURT:** C.D. Cal.
- **TRACK DOCKET:** [No. 5:25-cv-00494](#) (Bloomberg Law subscription)

Bloomingdales.com LLC used online surveillance technology from TikTok Inc. to collect the sensitive information of website visitors without their consent in violation of the California Invasion of Privacy Act, a proposed federal class action said.

Lead plaintiff Kirra Hanson alleged that Bloomingdale's installed the TikTok pixel on its website, a snippet of code that operates as a "trap-and-trace device" that collects the dialing, routing, addressing and signaling information generated by users.

The CIPA imposes civil liability and statutory penalties for the installation of trap-and-trace software without consent or a court order, according to a complaint filed Monday in the US District Court for the Central District of California.

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

The lawsuit comes two months after the US Court of Appeals for the Ninth Circuit affirmed the dismissal of a lawsuit against the company under the wiretapping provisions of the CIPA after finding that the plaintiff didn't show she suffered a concrete injury from Bloomingdale's use of online tracking tools on its website.

Hanson said the TikTok software on the website "scans every website for information, such as name, phone number and address, and simultaneously sends the information to TikTok in order to isolate with certainty the individual to be targeted."

TikTok also shares the information with the Chinese government, she said.

"By sharing plaintiff's and class members' personal and de-anonymized data with TikTok, defendant effectively 'doxed' them to America's most formidable geopolitical adversary," the complaint said.

Hanson seeks to represent a class of California residents whose identifying information was sent to TikTok.

The lawsuit brings a single claim of violations of CIPA's trap-and-trace provisions.

Hanson is seeking statutory penalties, injunctive relief, attorneys' fees and costs, and pre-judgment interest.

Manning Law APC, Reuben D. Nathan of Newport Beach, Calif., and Ross Cornell of Big Bear Lake, Calif. represent Hanson and the proposed class.

The case is Hanson v. Bloomingdales.com LLC, C.D. Cal., No. 5:25-cv-00494, complaint filed 2/24/25.

Meta Latest Company to Be Hit With Geolocation Privacy Class Action

 [law.com/therecorder/2025/02/24/meta-latest-company-to-be-hit-with-geolocation-privacy-class-action-](https://www.law.com/therecorder/2025/02/24/meta-latest-company-to-be-hit-with-geolocation-privacy-class-action-)

Kat Black

What You Need to Know

- Meta was hit with a class action for allegedly collecting users' geolocation data without their consent.
- Both Amazon and Allstate were sued on similar claims in Washington, California and Illinois federal courts this year.
- The complaints contend that the companies illegally harvest consumers' personal information through SDKs installed on third-party apps.

Meta Platforms Inc. is the latest Big Tech company to be accused of illegally collecting consumers' geolocation data without their consent through a software tool embedded in mobile apps.

Bursor & Fisher, which is backing a similar privacy claim against insurance giant Allstate Corp., filed a class action against Meta, formerly known as Facebook, on Feb. 14 in the U.S. District Court for the Northern District of California. The complaint alleges invasion of privacy, unjust enrichment and violations of California's "wiretapping" statute and Computer Data Access and Fraud Act. Counsel has not yet appeared for Meta.

The complaint contends that Meta's software development kit (SDK), which has been installed by "tens of thousands" of mobile apps and downloaded onto "hundreds of millions" of devices, unlawfully harvests and monetizes the sensitive information of third-party app users, including their precise location. Meta allegedly does not adequately obtain consent to collect this information from users, nor does it notify them about its intentions to use it for its own marketing purposes. Meta could potentially use that data, it said, to make deductions about other elements of users' personal lives, such as political and religious affiliations or medical conditions.

This action was surfaced by Law.com Radar.

Meta's Facebook SDK, per the claim, enables mobile app developers to deliver targeted ads to Facebook users, providing Meta with "backdoor access" to a pipeline of user information such as time-stamped geolocation data, unique device IDs and device fingerprint data.

By capturing their whereabouts "in real time," Meta creates "comprehensive" profiles of consumers based on information that could expose details about "where they work," "where they worship," "where their children go to school or obtain child care," "where they received medical treatment" and "whether they went to rallies, demonstrations, or protests," it said.

Allstate and Amazon.com Inc. have both fielded a wave of litigation targeting their alleged misuse of SDKs in Illinois, California and Washington federal courts this year. Allstate and its driving analytics subsidiary, Arity, were flooded last month with class actions claiming they paid mobile app developers to install Arity's SDK on their apps and siphoned data about 45 million users' driving habits to sell to third-party auto insurers and inform their own decisions about whether to deny or cover insurance claims.

The complaints against Amazon, brought under the Federal Wiretap Act, California's Computer Data Access and Fraud Act and Washington's novel My Health My Data Act, which was passed in 2023 to prevent the dissemination of consumers' sensitive health data, alleged the e-commerce titan collected users' time and location information through the Amazon Ads SDK, which licenses app-building software to mobile app developers. In exchange for purchasing these companies' ads, they said, Amazon was effectively granted unfettered access to "millions" of consumers' geolocation data.

Plaintiffs are seeking injunctive relief and statutory damages under Section 637 of California law, which prohibits the disclosure of "telegraphic or telephonic" communications to other parties without the senders' permission and awards up to \$5,000 per violation.

Meta and Bursor & Fisher did not immediately respond to requests for comment.

Law.com Radar

This action was surfaced by Law.com Radar, which delivers real-time alerting on new litigation across more than 2,600 state and federal courts. Click here to get started and be first to act on opportunities in your region, practice area or client sector.

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Meta must face lawsuit claiming it prefers cheaper foreign workers

 [reuters.com/legal/meta-must-face-lawsuit-claiming-it-prefers-cheaper-foreign-workers-2025-02-25](https://www.reuters.com/legal/meta-must-face-lawsuit-claiming-it-prefers-cheaper-foreign-workers-2025-02-25)

Jonathan Stempel

Meta, U.S. flag and Judge gavel are seen in this illustration taken, August 6, 2024.

REUTERS/Dado Ruvic/Illustration/File Photo Purchase Licensing Rights , opens new tab

- Meta accused of 'systematic preference' for visa holders
- Judge cites statistics, Meta settlement in 2021
- Meta not immediately available for comment

Feb 25 (Reuters) - A federal judge on Tuesday said Meta Platforms (META.O) , opens new tab must face a lawsuit claiming that the Facebook and Instagram parent prefers to hire foreign workers because it can pay them less than American workers.

U.S. Magistrate Judge Laurel Beeler in San Francisco said three U.S. citizens who accused Meta of refusing to hire them though they were qualified may pursue a proposed class action.

Meta and its lawyers did not immediately respond to requests for comment.

The plaintiffs -- information technology worker Purushothaman Rajaram and software engineer Ekta Bhatia, both naturalized U.S. citizens, and data scientist Qun Wang -- said they each applied for several Meta jobs between 2020 and 2024, but were turned down because of Meta's "systematic preference" for visa holders.

Meta, based in Menlo Park, California, said there was no proof it intended to discriminate, or would have hired the plaintiffs if they were not U.S. citizens.

But the judge cited statistics that 15% of Meta's U.S. workforce holds H-1B visas, which typically go to foreign professionals, compared with 0.5% of the overall workforce.

She also cited Meta's October 2021 agreement to pay up to \$14.25 million, including a civil fine, to settle federal government claims , opens new tab it routinely refused to consider American workers for jobs it reserved for temporary visa holders.

"These allegations support the plaintiffs' overall complaint that they were not hired because Meta favors H-1B visa holders," Beeler wrote.

The government had sued Meta in December 2020, seven weeks before President Donald Trump ended his first White House term.

"We are hopeful that the lawsuit will help remedy the favoritism towards visa workers that is common in the tech industry," Daniel Low, a lawyer for the three plaintiffs, said in an email. "Fully addressing the issue will require additional enforcement or legislative reform."

Beeler had dismissed an earlier version of the lawsuit, which named only Rajaram as a plaintiff, in November 2022.

A divided federal appeals court revived the case last June, saying a Civil War-era law barring discrimination in contracts based on "alienage" protected U.S. citizens from bias.

Many conservative groups have cited that law, Section 1981 of the Civil Rights Act of 1866, in challenging diversity initiatives in the workplace, which Trump also opposes.

The case is Rajaram et al v Meta Platforms Inc, U.S. District Court, Northern District of California, No. 22-02920.

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Reporting by Jonathan Stempel in New York Editing by Bill Berkrot

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\$27M Thomson Reuters software settlement approved

DJ [dailyjournal.com/articles/383723-27m-thomson-reuters-software-settlement-approved](https://www.dailyjournal.com/articles/383723-27m-thomson-reuters-software-settlement-approved)

Feb. 25, 2025

The plaintiffs claimed that Thomson Reuters committed fraudulent or unfair business practices by taking the proprietary information of "hundreds of millions of people" without consent or compensation to create the "comprehensive cradle-to-grave dossiers" that CLEAR users develop using the software.



U.S. District Judge Edward Chen

A federal judge in San Francisco finalized a \$27 million settlement between Thomson Reuters Corp. and Californians who accused the company of illegally collecting and selling phone records, location data, photographs and other sensitive personal information to customers of its investigative research software, CLEAR.

Thomson Reuters' media relations office and legal team from Perkins Coie LLP could not be reached for comment Friday but denied wrongdoing throughout the four year-long legal battle.

The plaintiffs claimed that Thomson Reuters committed fraudulent or unfair business practices by taking the proprietary information of "hundreds of millions of people" without consent or compensation to create the "comprehensive cradle-to-grave dossiers" that CLEAR users develop with the software.

One of the lead plaintiffs, Cat Brooks, a civil rights activist and co-founder of the Anti-Police Terror Project in Oakland, claimed that the CLEAR software was able to provide users reports containing information she said she had purposely scrubbed from the internet in fear of being targeted by white supremacists' groups.

According to its website Thomson Reuters -- the company behind the legal research software Westlaw and the British based news service, Reuters -- CLEAR users access its records database and research algorithm to create reports using "public and proprietary"

information. Government agencies, corporate investigators, and law enforcement officials are the primary users.

Under the terms of the settlement, the company agreed to implement changes to its privacy infrastructure and opt-out procedures for Californians, including allowing them to submit a single deletion request without having to provide more confidential information such as their driver's licenses.

Ezekial S. Wald, an associate for Gibbs Law Group LLP in Oakland and one of the lead attorneys for the plaintiffs, touted the settlement and Chen's approval as a "milestone victory" in an email Friday. *Brooks v. Thomson Reuters Corp.*, 3:21-cv-01418 (N.D. Cal. filed Feb. 26, 2021).

"We think Judge Chen's order approving the settlement is a milestone victory for Californians, who will be able to receive a financial share of the profits earned from the use of their data, and benefit from a series of changes to the way Thomson Reuters operates CLEAR that will enhance privacy and transparency going forward," Wald wrote. "The claims here were grounded in Californians' right to control the commercial use of their personal information, and this settlement affirms the power of that right as a bedrock principle of Californians' digital privacy."

In his order granting final approval of the settlement published Friday, U.S. District Judge Edward Chen ruled that the settlement was "the result of serious, informed, non-collusive negotiations" between the parties and summarized the turbulent history of the case.

"The court further observes that the settlement agreement is the product of almost four years of litigation, including a motion to dismiss, contested class certification, a motion for interlocutory appeal, several discovery motions, and the completion of fact discovery, with substantial expert discovery already completed," Chen wrote.

While Thomson Reuters did not oppose the settlement, the company defended its CLEAR software in the answer to the amended complaint.

"The type of information that is available through CLEAR may differ from business to business and person to person and may differ even for the same business or person depending on the customer conducting the search, the search conducted, the passage of time, and other factors," the defense team wrote.

Chen had been critical of the CLEAR software in an August 2021 order partially dismissing some of the plaintiffs' claims.

"The harm to plaintiffs is tremendous: an all-encompassing invasion of plaintiffs' privacy, whereby virtually everything about them -- including their contact information, partially redacted social security number, criminal history, family history, and even whether they got an abortion, to name just a few --is transmitted to strangers without their knowledge, let alone their consent," Chen wrote.

Andre M. Mura of Gibbs Law Group also represented the plaintiffs along with Cohen Milstein Sellers & Toll PLLC attorneys Geoffrey A. Graber and Karina G. Puttieva.

The following Perkins Coie attorneys represented Thomson Reuters: Gabriella Gallego of Palo Alto, Susan D. Fahringer, Nicola C. Menaldo, Erin K. Earl, Anna M. Thompson of Seattle, and Hayden M. Schottlaender of Dallas.

#383723

Wisdom Howell

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Thomson Reuters to Pay \$27.5 Million Over Sale of Personal Data

B [bloomberglaw.com/product/blaw/bloomberglawnews/class-action/X41QQI1S000000](https://www.bloomberglaw.com/product/blaw/bloomberglawnews/class-action/X41QQI1S000000)

Christopher Brown

Thomson Reuters Corp. will pay \$27.5 million to settle a lawsuit alleging it collected and sold publicly available information about consumers without their knowledge or consent in violation of California privacy laws, under a deal given final approval in federal court.

Class members are eligible for a proportionate share of the net settlement fund after deduction of attorneys' fees and costs, the costs of administration, and service awards to the class representatives, according to the plaintiffs' motion for final approval of the deal.

Judge Edward M. Chen of the US District Court for the Northern District of California granted the plaintiffs' motion Feb. 21.

The settlement requires Thomson Reuters to make it easier for California residents to request deletion of data from its CLEAR investigation platform by removing a requirement that they provide a driver's license first, and also requires the company to direct deletion requests to its data suppliers so that they too can remove the information, the motion said.

Data-privacy laws generally don't provide protection for the use of data that is already publicly available, and other courts have dismissed suits seeking relief against such practices, the plaintiffs said in an earlier court filing. "This proposed settlement, on the other hand, provides current and former California residents with financial and injunctive relief for a corporation's use of certain data *about* them," they said.

Sale of Data

At issue in the settlement were alleged privacy violations by Thomson Reuters related to CLEAR, which the company used to sell reports on people featuring information from public sources and from sources not otherwise available to the general public, according to the complaint.

California-based civil-rights activists Cat Brooks and Rasheed Shabazz filed the lawsuit in February 2021, bringing claims of common law right of publicity, unjust enrichment, and violations of the California Unfair Competition Law. They alleged the CLEAR platform included live mobile-phone records, location data from license-plate detections, credit information, utility records, and even records indicating whether a person has had an abortion.

Chen previously denied in part Thomson Reuters' motion to dismiss the lawsuit, and later in a July 2023 ruling certified a class of California residents whose information was made available for sale through the CLEAR platform.

Chen also approved nearly \$6.8 million in fees for class counsel, more than \$670,000 in litigation costs, \$545,000 in administrative costs, and service awards of \$5,000 each to the two class representatives.

Gibbs Law Group LLP and Cohen Milstein Sellers & Toll PLLC represent the plaintiffs and the class. Perkins Coie LLP represents Thomson Reuters.

The case is *Brooks v. Thomson Reuters Corp.*, N.D. Cal., No. 3:21-cv-01418, 2/21/25 .

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10 takeaways for addressing artificial intelligence in 10-Ks

 [reuters.com/legal/legalindustry/10-takeaways-addressing-artificial-intelligence-10-ks-2025-02-21](https://www.reuters.com/legal/legalindustry/10-takeaways-addressing-artificial-intelligence-10-ks-2025-02-21)

Daniel Forman

Inteligência artificial 31/3/2023 REUTERS/Dado Ruvic/Ilustração/Arquivo Purchase
Licensing Rights , opens new tab

February 21, 2025 - Over the past year, many companies have begun or continued to incorporate sophisticated artificial intelligence (AI) tools into their business operations and products and services. AI is having a transformative impact across many industries and has the potential to significantly impact a company's financial performance, competitive position, risk exposures, and strategic direction.

In response to this growing importance, the U.S. Securities and Exchange Commission (the SEC) has reminded public companies, through guidance, commentary, and enforcement, that AI-related disclosures must carefully adhere to the fundamental principles of the federal securities laws so that they provide investors with material information and are grounded in reasonable bases.

This article provides 10 key disclosure considerations for companies as they prepare and finalize their Form 10-K filings for the fiscal year ended Dec. 31, 2024.

1. Clearly define AI and describe why material

The SEC has requested in comment letters that companies clearly define "artificial intelligence" and related concepts, including "AI," "generative AI," "deep learning," "large language models," and "neural networks,".

Any of these and related concepts that are used in public disclosures should be defined in the context of the specific business and its operations. The SEC may also focus on whether, based on disclosure in a company's annual report and other public statements in press releases and investor presentations, a company's AI use is really material to its business or not.

2. Impact on business strategy, operations, and prospects

In crafting and reviewing AI-related business disclosures, companies should be mindful (and potentially comforted) that, while there are no specific AI-disclosure requirements, the fundamentals of good securities disclosures apply. Any AI-related disclosures should be focused and targeted on how a company's current or proposed use of AI will impact its business strategy, operations, and prospects. Disclosure should not consist of generic or boilerplate statements.

The SEC has frequently requested that companies provide greater specificity and detail when making AI claims. It has been particularly focused, including through enforcement actions, on the issue of "AI washing," where a company overstates its AI capabilities, uses, or impacts.

Companies should have a reasonable basis for any claims that are made when discussing AI prospects and consider appropriate corresponding risk factors and forward-looking statement disclosures.

3. Research and development

Companies should disclose if they are conducting material research and development in support of developing AI technologies. Companies should be specific about these research and development activities and whether they are meant to improve business operations or are intended to be incorporated into or used in the company's products and services.

For example, if a life sciences company is expending material resources on building an AI platform for drug discovery or a tech company is devoting significant resources to purchase computer services and train proprietary AI systems, it should provide sufficiently detailed disclosures with a reasonable and rational explanation for expected outcomes and risks.

To avoid AI-washing concerns, companies should be mindful not to overstate how much research and development they are doing or the potential results of these activities.

4. Competitive position

In reflecting on their competitive position in an annual report, companies often describe their competitors, the competitive landscape, and how the competition may impact their business.

A company should reflect on how AI may impact its competitive position, either providing it with advantages or putting it at a disadvantage in relation to competitors. In addition, in describing how the company competes in its market, it may be helpful to consider how AI may change both the ways it competes with other businesses and the behaviors of its customers.

5. Regulatory developments

AI has come under regulatory scrutiny, and various jurisdictions have taken different approaches to regulation. Companies should address how emerging AI-specific regulations affect or could affect operations or compliance requirements.

Consider, for example, the European Union's Artificial Intelligence Act (the AI Act) that was formally entered into in August 2024 and that recently started coming into effect by banning certain applications of AI that it deems pose an unacceptable risk to its citizens. Additional

provisions are scheduled to come into effect in 2026, with the AI Act being fully operational by 2027.

In the United States, there is currently a patchwork of state and local regulations, including many that touch on specific areas of law and activities, such as the use of AI in employment decisions and the handling of personal data.

6. Risk factors

If the use of AI is material to a company's business operations, products, or services, it should disclose the associated risks fully and clearly in the risk factors section of its annual report. There are a variety of risk categories that AI use could fall under, and companies should consider the following, among others:

- Competition risks;
- Operational and business risks;
- Intellectual property risks;
- Cybersecurity and privacy risks;
- Dependence on third-party AI providers and risks related to their operations;
- Legal, regulatory, and reputational risks.

It's important that companies not only consider whether stand-alone AI risk factors are advisable and should be added but, perhaps more importantly, whether the impact of AI would necessitate changes in existing risk factors that touch upon the above-mentioned areas.

7. Management's discussion and analysis (MD&A) and financial statements

The SEC has consistently focused on MD&A in its reviews of periodic reports. Given this scrutiny, companies should emphasize discussing and analyzing known trends, demands, commitments, events, and uncertainties in their MD&A.

If operational plans include significant capital investments in AI capabilities — whether through in-house development or third-party licensing — companies should evaluate whether these investments represent a "trend" and if further discussion of material AI investments or usage that has, or may in the future, materially impact the financial position or operational results is necessary.

Additionally, companies should consider whether there has been a material impact on revenues or income from continuing operations, as well as any events that could significantly alter the relationship between costs and revenues. For instance, if relevant, a company might disclose information about the costs associated with AI research and development, deployment, and maintenance, as well as the revenue generated from AI-driven products or services. If AI usage is altering the nature of expenses or profit margins within the business or its segments, providing this context to investors could be valuable.

8. Cybersecurity disclosures

Companies should consider whether their AI use impacts cybersecurity disclosures that are now required under the SEC's rules and regulations. For example, if a company's AI systems rely heavily on large datasets that include personal or otherwise sensitive data, it may be important to address how risks particularized to such use are assessed, identified, and managed. A company should also consider the processes it has in place to monitor and manage cybersecurity threats with third parties that provide its AI services. Additionally, if AI is utilized as a tool to better secure data or protect against cyber threats, it may be helpful to provide that information to investors, including the relevant expertise of officers responsible for overseeing such processes.

9. Corporate governance and human capital

Perhaps certain elements are better saved for the proxy statement, but companies should begin considering as part of their annual reporting process what AI disclosures are advisable in the areas of corporate governance and human capital. If AI has become a material part of business operations, consideration should be given as to whether investors would be well served by a disclosure about the company's risk oversight framework for AI and relevant director and management qualifications. Institutional investors have already begun to monitor these areas.

In addition, companies may disclose whether they have adopted ethical guidelines, principles, or policies for AI usage, or have set up governance frameworks for responsible AI deployment (e.g., minimizing bias or ensuring transparency). These disclosures may be appropriately situated in the broader context of the company's ESG and human capital initiatives.

10. Process considerations

In order to produce accurate disclosures, it's important to have the right disclosure controls and procedures in place. Companies should consider reviewing their existing disclosure controls and procedures to assess whether they are appropriately covering new and evolving AI use.

For example, there may be new internal functions or senior management teams relating to AI use that should be included in the disclosure process. New personnel may need to be added to disclosure committees. Further, there may be additional steps and/or certification procedures to validate and support the accuracy and completeness of the company's AI-related public disclosures.

Conclusion

By addressing these considerations, companies can be more comfortable that their disclosures comply with SEC requirements and provide investors with a clear understanding of the potential opportunities and risks associated with the use of AI in their business.

Kate Basmagian, a partner, and Daniel C. Porco, a counsel, with Lowenstein Sandler LLP, contributed to this article.

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- Attorney Analysis
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Daniel L. Forman

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AI woes: Judge boots Morgan & Morgan lawyer for citing nonexistent cases

 legalnewsline.com/stories/670014847-ai-woes-judge-boots-morgan-morgan-lawyer-for-citing-nonexistent-cases

February 25, 2025

Attorneys & Judges

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

CHEYENNE, Wyo. (Legal Newsline) - A personal injury lawyer who fell victim to the shortcomings of artificial intelligence will be kicked off a case as it heads to trial.

Wyoming federal judge Kelly Rankin on Feb. 24 handed down her punishment for being given a motion that used made-up cases to bolster its argument. Rudwin Ayala, a lawyer in one of Morgan & Morgan's Florida offices, will not get to see his lawsuit against Walmart through.

Ayala was hit with a \$3,000 penalty plus the revocation of his temporary admission to practice in Wyoming. Two other lawyers on the case, scheduled for a March 3 trial start, are to each pay \$1,000.

"While technology continues to evolve, one thing remains the same - checking and verifying the source," Judge Rankin wrote.

The head of Morgan & Morgan's product safety department, Mike Morgan, said the matter came with "great embarrassment" and led to an inspection of how an AI program the firm started to use in November should be used.

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 cited three other 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.

Before the digital age, attorneys had to cross-reference case citations in books to make sure those cases were still applicable. Rankin wrote that process has been simplified through database signals.

"Yet one still cannot run a natural language or 'Boolean' search through a database and immediately cite the highlighted excerpt that appears under a case," she wrote.

"The researcher must still read the case to ensure the excerpt is existing law to support their propositions and arguments. After all, the excerpt could very well be a losing party's argument, the court explaining an overruled case, dicta, etc.

"As attorneys transition to the world of AI, the duty to check their sources and make a reasonable inquiry into existing law remains unchanged."

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.

She is the other lawyer hit with a \$1,000 penalty.

The same day in the same case, Magistrate Judge Scott Klosterman decided to let Walmart's experts testify the Wadsworth family's fire wasn't caused by a defective hoverboard battery.

Three experts will testify at an upcoming trial, if there is no settlement, that a cigarette butt near a "smoking shed" was the culprit. Klosterman is also striking the testimony of the plaintiffs' expert who wanted to speak to the cost of future health care.

Dr. Ronald Snyder is a physiatrist who prepared a life care plan for Stephanie Wadsworth, but he won't be allowed to tell jurors what those costs will be. He said a lifetime total would be near \$3.7 million.

ORGANIZATIONS IN THIS STORY

U.S. District Court for the District of Wyoming

Litigation

Feb. 25, 2025, 6:42 AM PST

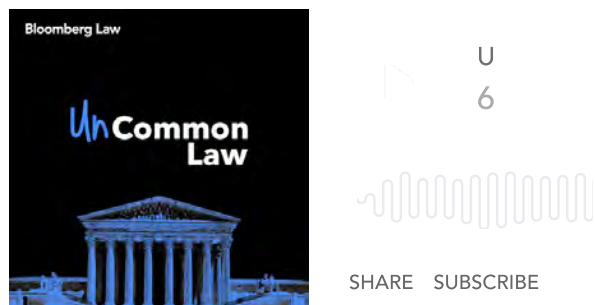
Morgan & Morgan Lawyers Fined for 'Hallucinated' AI Citations

By [Bernie Pazanowski](#)

- Attorney had duty to insure AI-generated cites were valid
- Lawyers who only signed motion also fined for rule violation

Three Morgan & Morgan PA attorneys were sanctioned by a federal court in Wyoming for filing a motion that contained eight AI-generated cites for cases that didn't exist.

Lawyers still have an ethical duty to check the cites used in their legal filings and "read the case to ensure the excerpt is existing law to support their propositions and arguments," Judge Kelly H. Rankin said Monday for the US District Court for the District of Wyoming.



LISTEN: Can AI Transform the Practice of Law?

While representing a client in a suit against Walmart Inc., Rudwin Ayala drafted the motion in limine and submitted it to the court. The signatures of T. Michael Morgan and Taly Goody were also on the motion, but neither person was involved in creating the motion and there was no indication that they saw it before it was filed, Rankin said.

After the court noted the cites weren't valid, Morgan & Morgan acknowledged that they were "hallucinated" by its AI program, apologized, withdrew the motion, implemented new training protocols for using AI, and paid opposing counsel's fees for defending the motion, Rankin said.

The three attorneys nevertheless violated Federal Rule of Civil Procedure 11 by presenting to the court a motion certifying that its arguments are warranted by existing law or by a nonfrivolous argument for changing the law, Rankin said.

A fake cite is neither, he said. By signing a document, an attorney certifies that they conducted a reasonable inquiry into existing law, and blind reliance on another attorney can be an improper delegation of that duty, he said.

Ayala had his pro hac vice status in the case revoked and he was fined \$3,000. Morgan and Goody were each fined \$1,000, but Morgan & Morgan wasn't sanctioned, because it already took steps to insure that its lawyers in the future independently verify any AI-generated information before relying on it.

Technology hasn't changed the fact that a lawyer that signs a document certifies that he made a reasonable inquiry into the existing law, Rankin said.

Crowley Fleck PLLP and McCoy Leavitt Laskey LLC represent Walmart.

The case is Wadsworth v. Walmart Inc. , D. Wyo., No. 2:23-cv-118-KHR, sanction order issued 2/24/25 .

—with assistance from Seamus Hughes

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Apple Confronts Investor Pressure to Abolish DEI, Scrutinize AI

- Proposal cites Alphabet and Meta's recent DEI reversals
- Another bid seeks more details on AI data privacy

Apple Inc. is the latest company to wrestle with an investor bid at its annual meeting aiming to reel in its diversity initiatives.

The proposal from the National Center for Public Policy Research, a group that says corporate diversity programs can discriminate against White men, asks the tech giant to cut its inclusion and diversity programs, as well as its broader diversity policies, department, and goals. The group specifically referenced Apple's inclusion and diversity program and its supplier diversity program.

The bid, which will be presented at Apple's annual shareholder meeting Tuesday, marks the first time the group is calling for a company to completely shut down its DEI efforts. Similar proposals at other companies including Costco and Boeing have only garnered support in the single digits.

The proposal at Costco asked the big-box retail chain to detail the risks of maintaining its diversity initiatives, while the bid at Boeing last year asked for a report on the risks diversity efforts pose to the business.

The Apple bid points out that Google parent Alphabet Inc. and social media giant Meta Platforms Inc. rolled back diversity, equity, and inclusion efforts in recent months following a conservative backlash against such corporate initiatives. That pressure has ramped up as President Donald Trump ordered federal agencies to identify and potentially to investigate what the administration describes as illegal diversity programs in the private sector.

"It's clear that DEI poses litigation, reputational and financial risks to companies, and therefore financial risks to their shareholders, and therefore further risks to companies for not abiding by their fiduciary duties," the proposal said.

Apple pushed back against the proposal, asserting in its proxy statement that it has well-established legal checks and balances.

"We strive to create a culture of belonging where everyone can do their best work," the company said, adding that "Apple is an equal opportunity employer and does not discriminate in recruiting, hiring, training, or promoting on any basis protected by law."

Other companies have more defiantly backed DEI in response to such proposals: Costco Wholesale Corp. emphasized how important diversity is throughout its business when fending off the shareholder bid from the same group at the company's annual meeting in January.

John Deere, which announced in the summer that it would roll back certain diversity initiatives, faces another proposal from the center scrutinizing its diversity efforts. The bid to be considered at the company's annual meeting on Wednesday asks for a report on hiring statistics to prove Deere isn't discriminating against White employees and applicants.

AI Ethics

The tech giant faces another proposal at its annual meeting asking it to report on the risks of potentially using personal or proprietary data to develop and train artificial intelligence models.

The bid, from the National Legal and Policy Center, comes amid growing disquiet from shareholders and the public about data privacy and AI. The group filed similar proposals at tech companies including Alphabet and Meta.

"Trove of data openly available via the Internet still may not be enough to quench developers' insatiable thirst for high-quality AI training data," the bid said.

Apple said in its proxy statement that the company "has a strong track record on protecting user privacy and a robust approach to integrating ethical considerations into our technology."

The report sought in the proposal is unnecessary because the company "already provides all the information requested regarding Apple's strong AI data privacy practices," Apple said.

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Deere Shareholder Withdraws Bid for Workforce Diversity Data

- Investor advocate pushed company for worker details
- Group dropped proxy proposal following talks with firm

A John Deere shareholder has pulled its request for the tractor manufacturer to report on workforce diversity as it rolls back DEI programs.

The proposal filed by shareholder advocacy group As You Sow will no longer get a vote at the Deere & Co. annual meeting Wednesday, the company said in a corporate filing Monday. As You Sow, representing an Amalgamated Bank index fund, “unilaterally withdrew” the resolution, Deere said in the filing.

As You Sow decided to ditch its proposal after discussions with Deere over its workforce management, according to the group. The organization plans to hold Deere accountable for statements it made backing a diverse workforce after the company stopped supporting cultural awareness events and scaled back other diversity, equity, and inclusion initiatives in 2024, the shareholder advocate said.

A Deere spokesperson didn’t immediately respond to a request for comment. As You Sow didn’t disclose any actions Deere said it would take during the group’s discussions with the company and a representative of the group didn’t have an immediate comment, beyond remarks in a press release.

“Free markets rely on investors being able to independently evaluate company performance on a range of financial and non-financial performance metrics, including workforce composition and other human capital data,” Meredith Benton, As You Sow Program manager and founder of Whistle Stop Capital, said in a statement in the press release.

Deere was one of several companies last year to distance themselves from DEI programs following pressure from right-wing influencer Robby Starbuck. More companies have joined in the trend following pressure from the Trump administration to eliminate what the White House characterizes as “illegal” diversity programs, arguing they discriminate against White men.

As You Sow sought hiring, promotion, and retention data related to Deere employees' gender, race, and ethnicity as part of its proposal. The farm equipment manufacturer had said last year before the proposal's release that it still valued a diverse workforce and will "continue to track and advance the diversity of our organization."

Deere had urged shareholders to vote against the As You Sow proposal, saying the company is "committed to treating our employees, who propel us toward achieving our business ambitions, fairly and inclusively."

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Companies With Dual-Class Equity Face Governance Challenges

- *Olshan Frome Wolosky attorneys assess rising M&A activity*
- *Dual-class structures face possible benefits and voting control*

The Trump administration is already ushering in a number of regulatory changes, and mergers and acquisitions activity is forecasted to increase this year. Rising M&A activity may result in companies with dual-class equity structures being among those targeted to be acquired.

Dual-class companies raise unique governance challenges and possible benefits in the M&A context. Such companies typically have one class of common stock held by the investing public (one vote per share) and one class that isn't publicly traded that has super-voting rights (multiple votes per share) held by founders, pre-IPO investors or a combination thereof.

Dual-class structures tend to be popular with founder-led companies that can raise money by leveraging public interest in the business, while continuing to maintain voting control by the founders. Given this rationale behind issuing privately held, super-voting stock to businesses' visionaries/leaders, a common feature of super-voting stock is that upon their transfer, the shares automatically convert into shares of the same class of common stock held by public investors.

These super-voting rights come into play in the M&A context when potential acquirors seek deal protection through support from significant stockholders in the form of voting agreements, support agreements, tender agreements, and so on, that contractually obligate the stockholders party to such agreements to support the proposed transaction.

These support arrangements generally terminate if the proposed transaction isn't approved and consummated. Depending on the specific language describing the conversion mechanics of the super-voting stock set forth in the target's charter, the conversion mechanism could be triggered (or alleged to have been triggered by stockholders who aren't in favor of the proposed transaction) upon execution of the support agreement.

Without an exception from the automatic conversion feature of super-voting stock for entering into a support arrangement in connection with a proposed exit or liquidity transaction, the value of obtaining such an agreement from a holder of super-voting stock may be significantly diminished.

Mindful consideration of a dual-class structure is also warranted during the negotiation of a proposed M&A transaction. A suitor may be tempted to woo the holders of super-voting stock by proposing different or additional consideration compared to what the holders of single-vote common stock may receive. However, if the holder of super-voting stock is considered a controlling stockholder, the standard of review of the proposed transaction, if challenged through litigation, may be heightened.

By law in Delaware, the leading jurisdiction of formation of US-formed public companies, proposed M&A transactions that involve conflicted controlling stockholders are subject to an “entire fairness” standard—the highest level of scrutiny.

To meet the “entire fairness” standard, a court must determine that the transaction was objectively fair to stockholders and find that there was “fair dealing” (how a transaction was timed, initiated, structured, negotiated, and disclosed by the target’s management to its directors, and how board and stockholder approval were obtained). In addition, the court must determine whether a “fair price” was paid (after reviewing all relevant factors: assets, market value, earnings, future prospects, and any other element that affects the intrinsic value of a target’s stock).

A controlling stockholder that’s offered different or additional consideration that isn’t shared by and is to the detriment of other stockholders, whether as part of the transaction or in a side arrangement, could become conflicted.

Under Delaware law, a stockholder is deemed a “controlling stockholder” if they either own 50% or more of the voting power of or exercise control over the business and affairs of the target. However, the burden of proving a lack of entire fairness can be shifted to a plaintiff objecting to the transaction by either using a “well-functioning” special committee of independent directors to negotiate the proposed transaction, or obtaining the informed, uncoerced approval of a majority of the unaffiliated minority stockholders. If a special committee were used, it would need to stay active through the entire course of the transaction from negotiation through closing.

Public companies with dual-class structures aren’t the majority, nor are they outliers. The pending merger between Skydance Media and Paramount Global and the merger of World Wrestling Entertainment and Endeavor Group Holdings are examples of recent transactions involving dual-class structures.

Careful consideration of the special characteristics of a dual-class structure, the consideration that may be offered, and how a transaction is negotiated is recommended for a suitor to be in the best position to reel in a target successfully.

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

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Write for Us: Author Guidelines

Nasdaq Adds Safety Concerns for Its Leaders as New Investor Risk

Nasdaq Inc., in the aftermath of the high-profile shooting of a UnitedHealth Group leader, warned investors about the potential risk of an attack on its executives or offices.

“Given our position in the global capital markets and our brand, we may be more likely than other companies to be a target for malicious disruption activities or physical attacks on our senior leadership team and/or our office locations,” the stock exchange operator said in its latest 10-K report. The same sentence in previous reports specified that it could be a target for “malicious disruption,” but did not specify the risk of physical attacks.

Nasdaq did not immediately respond to a request for comment.

- The warning in the company’s Feb. 21 annual report comes just over two months after Brian Thompson, the CEO of UnitedHealth Group Inc.’s insurance unit, was shot and killed outside a hotel in New York City.
- Numerous other businesses, particularly in the health-care industry, took additional security measures in the wake of the shooting.
- The new language about safety was added to the “general risk factors” section of the annual report that typically explains any possible unforeseen or catastrophic events, for example that a business could be affected by terrorist attacks, natural disasters or pandemics.

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Citadel Securities Plots Crypto Trading Move After Trump Embrace

- Ken Griffin's firm has had limited presence in crypto trading
- Wave of crypto activity expected under Trump administration

Ken Griffin's market-making giant Citadel Securities is looking to become a liquidity provider for cryptocurrencies, betting President Donald Trump's embrace of the industry will usher in a boom for the asset class.

It's a clear pivot from the firm's previously cautious stance on crypto market-making. Citadel Securities has had a limited presence in crypto trading, having steered clear of exchanges frequented by retail investors due to a lack of regulations around it in the US.



Ken Griffin

Photographer: Christopher Pike/Bloomberg

The firm aims to get added to the roster of market makers on various exchanges, including those run by Coinbase Global Inc., Binance Holdings and Crypto.com, according to people familiar with the matter.

Once the firm is approved on exchanges, it initially plans to set up market-making teams outside the US, the people said, asking not to be identified as the plans aren't public. The extent of the push and Citadel's desire could change based on how or if new regulations roll out in the coming months.

Miami-based Citadel Securities didn't have an immediate comment.

Read More: Binance CEO Teng Sees 'Fresh Reset' for Crypto in New US Regime

Until now, Citadel Securities has stayed off major crypto venues frequented by retail traders. After the collapse of Sam Bankman-Fried's FTX in 2022, crypto exchanges drew criticism for a failure to separate businesses — including custody, market-making and trading — that can result in conflicts of interest and in the manipulation of funds.

To create some certainty and serve institutional clients, Citadel Securities teamed up with brokerage firms, including Charles Schwab and Fidelity Investments, to form an institution-only crypto exchange that mirrored the way assets are held and settled in stock and bond markets. That venue, EDX Markets, went live in 2023, and offers trading in crypto products only for institutional investors.

Citadel Securities and other financial firms have been pushing for regulators to establish rules around investing in digital assets, creating a roadmap for institutions to get involved. If the US does that, the firm wants to be ready to provide liquidity, buying and selling digital assets like they do in other asset classes like equities and fixed income, the people said.

'Crypto Capital'

The financial industry is gearing up for more activity in digital assets under the Trump administration.

As a candidate, Trump pledged to make the US the "crypto capital of the planet" and since taking power, he has sought to overhaul rules that chilled activity under President Joe Biden. Trump quickly issued an executive order on digital assets and the US Securities and Exchange Commission launched a task force on crypto headed by Hester Peirce, a longtime advocate for the industry.

Read More: Wall Street Banks Plot Their Crypto Future in Bet on IPO Boom

Citadel Securities has grown from a small group built alongside Griffin's hedge fund into a global trading behemoth not only in US-listed markets but also international ones, pushing into investment banks' favored products under the leadership of Chief Executive Officer **Peng Zhao**. It's a market maker in equities, options, corporate bonds, Treasuries and exchange-traded funds.

But unlike its trading peers, the firm stayed away from crypto market-making. Jane Street Group, known for its dominance in markets such as ETFs and corporate bonds — which account for the majority of its business — has been executing crypto trades since 2017. Jump Crypto built out its own crypto unit to become one of the world's top market-making firms for digital assets.

But both of those firms pulled back from trading digital assets in the US amid a regulatory crackdown in 2023. A spate of crypto probes in the US prompted companies to look toward financial hubs overseas, including Dubai, Singapore and Hong Kong. Jump and Jane Street continued market making in crypto, though on a smaller scale, never abandoning the asset class entirely.

Read More: Robinhood Says SEC Closes Crypto Probe Without Enforcement

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<https://www.wsj.com/health/healthcare/sen-grassley-launches-inquiry-into-unitedhealth-groups-medicare-billing-practices-ad63a53c>

EXCLUSIVE HEALTHCARE

Sen. Grassley Opens Inquiry Into UnitedHealth's Medicare Billing Practices

The Iowa Republican's letter to the company cites findings from a series of Wall Street Journal articles

By [Christopher Weaver](#) [Follow](#) and [Anna Wilde Mathews](#) [Follow](#)

Feb. 25, 2025 11:53 am ET



Sen. Charles Grassley, as he arrived at the U.S. Capitol last week. The Iowa Republican is demanding that UnitedHealth turn over documents.. PHOTO: CHIP SOMODEVILLA/GETTY IMAGES

Sen. Chuck Grassley, chairman of the Senate Judiciary Committee, sent UnitedHealth Group Chief Executive Andrew Witty a letter demanding detailed information on the company's Medicare billing practices Monday.

The letter—which cited findings from a series of Wall Street Journal articles published over the past year—said “the apparent fraud, waste, and abuse at issue is simply unacceptable and harms not only Medicare beneficiaries, but also the American taxpayer.”

A Journal data analysis found UnitedHealth was paid billions of dollars based on diagnoses the company added to patients' Medicare records, even though their doctors hadn't treated the conditions. Under Medicare Advantage, the private version of the federal program, the insurers that oversee patients' benefits get bigger payments when people are diagnosed with certain illnesses.

The Iowa Republican demanded that UnitedHealth turn over training manuals and guidance documents around certain practices that, the Journal's reporting showed, can lead to extra payments. Those included in-home visits by nurses working for the company as well as reviews of medical charts. He also requested details of UnitedHealth's compliance program, audit results, lists of software used and other documents.

The Journal data analysis found Medicare Advantage insurers collectively received \$50 billion in payments for insurer-driven diagnoses that weren't listed in claims by any treating doctors or hospitals from 2019 to 2021.

The request comes as Republicans begin zeroing in on federal healthcare spending as a potential path to meeting President Trump's pledge to cut the budget. Grassley gave the company a March 10 deadline to turn over the documents.

In a statement Tuesday, UnitedHealth said: "We welcome the opportunity to share the facts with Senator Grassley, especially given the ongoing misinformation campaign by" the Journal, adding that the company holds itself to the "highest ethical standards of quality and integrity in our practices." The statement also said UnitedHealth's Medicare Advantage plans deliver better health outcomes and lower costs, and that it performs well in audits.

After the Journal reported Friday that the Justice Department was investigating UnitedHealth's Medicare billing practices, the company said "any suggestion that our practices are fraudulent is outrageous and false." UnitedHealth shares dropped more than 7% that day.

A spokeswoman for the Journal said: "We stand by our reporting."

With Republicans back in power in Washington, Wall Street had been signaling optimism that the Medicare Advantage companies might see improved margins,

after a year when earnings were hurt by higher medical costs and Biden administration policies that reined in some industry billing practices. Trump's nominee to run the Medicare agency, Dr. Mehmet Oz, has been publicly supportive of Medicare Advantage, at one point writing that uninsured Americans should be covered through such plans.

Analysts said that last week's sharp drop in UnitedHealth's usually buoyant shares, along with declines in the stock prices of its major competitors, showed investors' worry that the ride for Medicare managed-care companies might be bumpier than expected.

Shares of UnitedHealth remained about 7% below their Thursday close.

While Oz remains upbeat about Medicare Advantage, he has also repeatedly expressed concern behind the scenes about whether the companies are being overpaid based on diagnoses, according to people who have met with him.

UnitedHealth CEO Andrew Witty testifies during a Senate Finance Committee hearing last May.

PHOTO: U.S. SENATE/REUTERS

A spokesman for Oz declined to comment.

The GOP-led Congress is attempting to cut billions of dollars in federal spending. Though Republicans have largely focused on Medicaid, they are running into disputes over the impact that deep cuts to the program for lower-income Americans could have on voters. Though Trump has pledged not to cut Medicare benefits, some Republican lawmakers are considering insurers' Medicare Advantage billing practices as a potential area for savings.

“We’re seeing such abuse to the system that nobody really can turn a blind eye to this,” said Rep. Greg Murphy, a North Carolina Republican, of Medicare Advantage. “In this environment, where we’re talking about accountability and cost savings, these abuses are definitely under the microscope.”

Murphy, a urologist, said he believed Medicare Advantage insurers’ practice of adding diagnoses to patients’ records is “immoral,” and could be a target for future legislative action.

He said Medicare Advantage payment arrangements that can reward medical providers who diagnose more conditions—another practice reported by the Journal—need “to be outlawed.”

The Congressional Budget Office recently said a proposal to cut off payments for diagnoses detected only during home visits would save \$124 billion over 10 years.

UnitedHealth and other insurers have said their practices lead to more accurate diagnoses. They say additional revenue from such practices covers richer benefits and lower out-of-pocket costs for patients by helping reduce copays and premiums.

Last year, the House Ways and Means Committee began an inquiry into Medicare Advantage business practices. In letters to potential witnesses that cited the Journal’s findings, Rep. David Schweikert, an Arizona Republican who chairs the Ways and Means oversight subcommittee, requested information about insurers’ tactics.

“The alleged practice of private insurers taking advantage of the Medicare Advantage system for the benefit of their bottom line by misdiagnosing patients, sometimes without their doctors’ awareness, not only hurts the taxpayer by wasting resources, but it also betrays the trust of patients,” the letters said.

In an interview Tuesday, Schweikert said his team is examining overhauling the Medicare Advantage payment system. He said the goal is to “make the incentive that the way you gain profit is by making your population healthier,” rather than by adding more diagnoses.

“It is really complex politics,” Schweikert acknowledged. “This is almost impossible.”

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Videos

Securities Law

Feb. 25, 2025, 6:08 AM PST

SEC Official Sought Staff's No-Politics Pledge on Musk Lawsuit

By Anthony Cormier, Nicola M White, Jason Leopold and Lydia Beyoud

A high-ranking official at the Securities and Exchange Commission asked enforcement staff members in January to declare that a case they wanted to bring against Elon Musk was not motivated by politics, an unusual request that the staffers refused, according to three people familiar with the matter.

The [case](#) went forward, but that request from Commissioner Mark Uyeda , a Republican who is now serving as the commission's acting chairman, has contributed to a growing sense of unease inside an SEC division that handles high-stakes securities cases, according to the people, who asked not to be named for fear of retaliation.

Uyeda's request came shortly before the SEC met behind closed doors to vote on whether to follow the enforcement staff's recommendation to sue Musk in a case related to his acquisition of the social media platform Twitter in 2022, the people said. The staff's case alleged that in March of that year, Musk missed a deadline to disclose that he'd amassed a significant stake in the company, a failure that kept share prices low for several additional days as he bought more.



Commissioner Mark Uyeda asked SEC enforcement staffers to declare that a case they were recommending against Musk wasn't motivated by politics.

Photographer: Samuel Corum/Bloomberg

After the enforcement team of lawyers and supervisors declined to comply with Uyeda's request, the agency's five appointed commissioners met privately to decide the fate of their case in early January. The SEC filed the lawsuit against Musk the following week, days before President Donald Trump took the oath of office. Votes of SEC members are decided by simple majority and generally kept confidential until any resulting litigation is resolved in court.

Several former SEC staffers said Uyeda's request was highly unusual. The enforcement division investigates insider trading and major frauds, regularly dealing with high-profile companies, public figures and sensitive subjects. Two former senior SEC enforcement attorneys said front-line staffers approach their work objectively and questioning their political motivations would be inappropriate.

Adam Pritchard, a securities law professor at Michigan Law School and a former attorney in the SEC's general counsel's office, called Uyeda's request "very unusual."

"This is getting close to questioning the integrity of the staff," Pritchard said. "Just asking the question is very confrontational."

In response to questions that were sent to the SEC for Uyeda, a spokesperson declined to comment. Musk also didn't respond to requests for comment. Trump appointed Uyeda on Jan. 20 to serve as the SEC's acting chairman. Paul Atkins, Trump's official nominee to permanently lead the commission, has not been confirmed by the US Senate.

The episode underscores the tension inside the SEC and across Washington, where Trump has granted Musk, the world's richest man, enormous power to reshape federal agencies, including those that can award his companies lucrative contracts or investigate his business practices. As the SEC enforcement staffers prepared to present their case against Musk, Trump had already signaled a more relaxed posture toward financial regulation. Gary Gensler, the SEC chairman who had drawn the ire of bankers and cryptocurrency enthusiasts alike for his aggressive oversight, was on his way out. The head of the agency's enforcement division had decamped for the private sector.

Meanwhile, Musk, who contributed about a quarter billion dollars to help elect Trump, was preparing his Department of Government Efficiency initiative, which has demanded access to sensitive files in several federal agencies and led to the firing of thousands of public employees.

In December, Musk had taken to X, his renamed social-media platform – the very one that SEC staff members had been investigating since 2022 – to publicly taunt Gensler. The billionaire posted a letter from his attorney, Alex Spiro, to the chairman that suggested the SEC was seeking a settlement and was engaged in "an improperly motivated campaign" against Musk.

"We demand to know who directed these actions – whether it was you or the White House," Spiro wrote. In his post, Musk directed a question to Gensler: "Oh Gary, how could you do this to me?" Gensler declined to comment for this story.



Former SEC Chairman Gary Gensler drew Musk's attention on X.

Photographer: Al Drago/Bloomberg

To the SEC's enforcement division, Musk's failure to file a disclosure on time was more than just a clerical error; it allowed him to build a stockpile of Twitter shares at an artificially low price. Had the public been made aware of his growing stake, the SEC argued, the share price would have jumped, making his takeover more expensive. The agency estimated Musk saved \$150 million by failing to disclose at the moment his ownership stake hit a 5% threshold.

Shortly before the SEC's January meeting, the San Francisco-based team that had been investigating the matter shared its findings with the commissioners. The team needed approval to file the complaint in court and move ahead with the case. Commissioners regularly get time to scrutinize enforcement cases, to look at their merits and the substance of the inquiries behind them. But in this instance, Uyeda wanted answers to the same sort of question Musk's attorney asked.

A staff member for Uyeda asked the team in San Francisco and another in enforcement if they would be willing to sign off on a declaration that they had not been motivated by politics, three people familiar with the matter said. It was such a jarring request that multiple officials filed complaints with the SEC's inspector general, according to two people who've monitored the situation.

After a public announcement that the case was filed, Musk tweeted again. "Totally broken organization," he wrote on X. "They spend their time on s--- like this when there are so many actual crimes that go unpunished."

Deadline Passed

The agency's case against Musk stems from a federal securities rule: Any investor who takes an ownership stake of 5% or more in a public company has 10 days to file a form alerting the public. Musk blew the deadline in March 2022 and continued privately to gather more shares of the social media company, the SEC alleges. By the time he acknowledged his holdings, Musk was 11 days beyond the rule's deadline and had amassed 9% of the outstanding shares.

The SEC started asking Musk [questions](#) about the timing of his disclosures in April 2022, regulatory filings show. The billionaire appeared for two half-days of testimony with the SEC's enforcement staff that summer but balked when the agency called for a second round of questioning after analyzing thousands of records.

The fight stretched into the fall of 2023, when the SEC [asked a court to intervene](#) to require Musk to comply. Musk at the time said the SEC was using its subpoena power to "harass" him.



Musk's DOGE team may now have the SEC on its agenda.

Photographer: Jason C. Andrew/Bloomberg

In September 2024, Musk stood up SEC lawyers who flew to Los Angeles to take his deposition, saying he needed to attend a rocket launch for his SpaceX company. He [offered](#) to pay a few thousand dollars to cover the officials' travel expenses.

As Trump's inauguration grew nearer, the SEC's enforcement team approached Musk about settling the case. His attorney wrote in the letter to Gensler that Musk had been given 48 hours to respond.

One person familiar with the Twitter matter acknowledged that the optics of filing a lawsuit against a Trump ally after the election were bad, and there was internal debate by staff members about whether to submit the case to the SEC commissioners only after the new administration took over. But the enforcement staffers who investigated it argued that not filing the case would be a political decision in and of itself, the person said.

'Return Normalcy'

Trump's election and early moves by administration officials have signaled wider changes inside the SEC.

Uyeda has used his time as acting chairman to restructure its divisions and pull back from cryptocurrency cases. Many members of a team dedicated to investigating digital assets have been dispatched to other units, two people said, including an 11-year veteran who led crypto-related litigation and has been reassigned to a role in the agency's information technology department. The Wall Street Journal first reported on the changes.

Even the name of the crypto team has been amended; it is now called the "Cyber and Emerging Technologies" unit. The SEC also established a task force to study the rules governing digital assets, leading agency lawyers to ask for a pause in litigation with crypto exchanges, including Binance. On Feb. 21, Coinbase announced that the SEC had agreed to settle its case against the company for failing to register. Coinbase said in a filing that the dismissal was "with prejudice," meaning the agency wouldn't be able to bring similar charges against it in the future.

Musk's DOGE team, which has swept across other government agencies, may now have the SEC on its agenda. An executive order last week gave the White House direct power over independent agencies such as the SEC, and a DOGE account on X called on the public to send tips with "insights on finding and fixing waste, fraud and abuse" at the commission.

For his part, Uyeda has said his approach to leading the agency is to revert to what it was before the Biden administration. "My first priority is to return normalcy to the Commission," he said in a Feb. 24 speech in Florida.

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Exclusive: US SEC plans to cut regional directors as agency prepares for DOGE scrutiny, sources say

 [reuters.com/world/us/us-securities-regulator-plans-cut-regional-directors-due-trump-administration-2025-02-24](https://www.reuters.com/world/us/us-securities-regulator-plans-cut-regional-directors-due-trump-administration-2025-02-24)

Chris Prentice, Douglas Gillison

The U.S. Securities and Exchange Commission (SEC) headquarters in Washington, DC, U.S., November 25, 2024. REUTERS/Benoit Tessier/File Photo Purchase Licensing Rights , opens new tab

- SEC to eliminate directors across 10 regional offices, sources say
- Move requires vote of the three-person commission
- SEC has scaled back crypto enforcement, tightened oversight of investigations

NEW YORK/WASHINGTON, Feb 24 (Reuters) - The U.S. Securities and Exchange Commission plans to remove the top leaders at regional offices across the country as part of its cost-cutting recommendations to the Trump administration, according to two sources familiar with the matter.

The SEC on Friday told directors across its 10 regional offices that their roles will be eliminated as part of the plan the agency submits next month, the sources told Reuters.

The plan is the latest in a series of changes at the top U.S. markets regulator since Republicans took the helm at the commission and is part of a broader effort by Republican President Donald Trump, alongside special adviser and billionaire Elon Musk, to purge the federal workforce.

The people spoke on condition of anonymity as the discussions are not public. A spokesperson for the SEC declined to comment.

The SEC, which oversees the more than \$100 trillion U.S. capital markets, is under pressure from Republican President Donald Trump to fire staff and slash costs. Agency leaders have been told to submit recommendations for steep cuts to the administration. Some of the government's cost-cutting efforts have involved the new Department of Government Efficiency, or DOGE, and Musk.

The administration has already begun firing thousands of people across federal agencies. Musk on Saturday demanded employees across the federal government list their accomplishments for the last week or face firing. The SEC is embroiled in litigation against Musk for allegedly violating securities regulations.

Spokespeople for the White House did not respond to request for comment.

Many of the SEC's staff are based in its headquarters in Washington, but the agency also has officials in offices from San Francisco to Miami who deal with examinations and investigations into public companies, brokers and investment advisers in their jurisdictions. They often lead agency investigations and lawsuits in high-profile matters.

"The regional leadership is what the home office has always looked to for making decisions about enforcement cases and exams. This is a difficult layer to remove," said Andrew M. Calamari, a partner with Finn Dixon & Herling LLP and former director of the SEC's New York office.

Eliminating the regional directors, a move that requires the vote of the three-person commission, is part of a larger cost-cutting effort. Reuters could not ascertain other aspects of the plan, and any taxpayer benefit from potential cuts is unclear as the SEC benefits from industry fees and is "deficit neutral," according to the SEC's latest budget report to Congress.

The SEC in June 2024 closed its regional hub in Salt Lake City. But one of the sources indicated there was no plan to shutter offices at this time.

On Thursday, senior employees across the agency joined a call during which leaders at the SEC said several of the agency's staff were liaising with DOGE, according to one of the people and another source with knowledge of the discussion.

Divisions and offices have to report to the Acting Chairman Mark Uyeda with recommendations for reorganization on Tuesday, said the source with knowledge of the discussion. Uyeda is leading the agency alongside fellow Republican Hester Peirce and Democrat Caroline Crenshaw. Trump's appointee to lead the agency Paul Atkins has yet to be confirmed.

Already, though, the Republicans at the SEC have begun shifting the agency's focus. The regulator has scaled back and refocused its crypto enforcement unit, reassigned certain staff and tightened oversight of investigations.

Regarding changes to the agency's crypto enforcement unit, Uyeda previously said in a statement the new unit would complement the agency's efforts to create new policy for the sector and "allow the SEC to deploy enforcement resources judiciously."

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Reporting by Chris Prentice in New York and Douglas Gillison in Washington Additional reporting by Lawrence Delevingne in Boston; editing by Megan Davies and Nick Zieminski

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News from Bloomberg Terminal

Feb. 25, 2025, 10:31AM PST

URGENT: Federal technology staffers resign rather than help Musk and DOGE

URGENT: Federal technology staffers resign rather than help Musk and DOGE

By BRIAN SLODYSKO and BYRON TAU

WASHINGTON (AP) - More than 20 civil service employees resigned Tuesday from billionaire Trump adviser Elon Musk's Department of Government Efficiency, saying they were refusing to use their technical expertise to "dismantle critical public services."

"We swore to serve the American people and uphold our oath to the Constitution across presidential administrations," the 21 staffers wrote in a joint resignation letter, a copy of which was obtained by The Associated Press. "However, it has become clear that we can no longer honor those commitments."

The employees also warned that many of those enlisted by Musk to help him slash the size of the federal government under President Donald Trump's administration were political ideologues who did not have the necessary skills or experience for the task ahead of them.

The mass resignation of engineers, data scientists and product managers is a temporary setback for Musk and the Republican president's tech-driven purge of the federal workforce. It comes amid a flurry of court challenges that have sought to stall, stop or unwind their efforts to fire or coerce thousands of government workers out of jobs.

In a statement, White House press secretary Karoline Leavitt was dismissive of the mass resignation.

"Anyone who thinks protests, lawsuits, and lawfare will deter President Trump must have been sleeping under a rock for the past several years," Leavitt said. "President Trump will not be deterred from delivering on the promises he made to make our federal government more efficient and more accountable to the hardworking American taxpayers."

The staffers who resigned worked for what was once known as the United States Digital Service, an office established during President Barack Obama's administration after the botched rollout of Healthcare.gov, the web portal that millions of Americans use to sign up for insurance plans through the Democrat's signature health care law.

All had previously held senior roles at such tech companies as Google and Amazon and wrote in their resignation letter that they joined the government out of a sense of duty to public service.

Trump's empowerment of Musk upended that. The day after Trump's inauguration, the staffers wrote, they were called into a series of interviews that foreshadowed the secretive and disruptive work of Musk's Department of Government Efficiency, or DOGE.

According to the staffers, people wearing White House visitors' badges, some of whom would not give their names, grilled the nonpartisan employees about their qualifications and politics. Some made statements that indicated they had a limited technical understanding. Many were young and seemed guided by ideology and fandom of Musk - not improving government technology.

"Several of these interviewers refused to identify themselves, asked questions about political loyalty, attempted to pit colleagues against each other, and demonstrated limited technical ability," the staffers wrote in their letter. "This process created significant security risks."

Earlier this month, about 40 staffers in the office were laid off. The firings dealt a devastating blow to the government's ability to administer and safeguard its own technological footprint, they wrote.

"These highly skilled civil servants were working to modernize Social Security, veterans' services, tax filing, health care, disaster relief, student aid, and other critical services," the resignation letter states. "Their removal endangers millions of Americans who rely on these services every day. The sudden loss of their technology expertise makes critical systems and American's data less safe."

Those who remained, about 65 staffers, were integrated into DOGE's government-slashing effort. About a third of them quit Tuesday.

"We will not use our skills as technologists to compromise core government systems, jeopardize Americans' sensitive data, or dismantle critical public services," they wrote. "We will not lend our expertise to carry out or legitimize DOGE's actions."

The slash-and-burn effort Musk is leading diverges from what was initially outlined by Trump during the 2024 presidential campaign. DOGE, a nod to Musk's favorite cryptocurrency meme coin, was initially presented as a blue-ribbon commission that would exist outside government.

After the election, however, Musk hinted there was more to come, posting to his social media site, X, "Threat to democracy? Nope, threat to BUREAUCRACY!!!" He has leaned aggressively into the role since.

Last week he stood on stage at the Conservative Political Action Conference gathering outside Washington, where he boasted of his exploits and hoisted a blinged-out, Chinese-made chainsaw above his head that was gifted by Argentinian President Javier Milei.

"This is the chainsaw for bureaucracy," Musk bellowed from the stage.

Still, Musk has tried to keep technical talent in place, with the bulk of the layoffs in the Digital Service office focused on people in roles like designers, product managers, human resources and contracting staff, according to interviews with current and former staff.

Of the 40 people let go earlier this month, only one was an engineer - an outspoken and politically active staffer name Jonathan Kamens, who said in an interview with the AP that he believes he was fired for publicly endorsing Vice President Kamala Harris, a Democrat, on his personal blog and being critical of Musk in chats with colleagues.

"I believe that Elon Musk is up to no good. And I believe that any data that he gains access to is going to be used for purposes that are inappropriate and harmful to Americans," Kamens said.

U.S. Digital Service veterans, who spoke on the condition of anonymity out of fear of reprisal, recalled experiencing a similar sort of shock about how government processes worked that Musk and his team are discovering. Over time, many developed an appreciation for why certain things in government had to be treated with more care than in the private sector.

"Move fast and break things' may be acceptable to someone who owns a business and owns the risk. And if things don't go well, the damage is compartmentalized. But when you break things in government, you're breaking things that belong to people who didn't sign up for that," said Cordell Schachter, who until last month was the chief information officer at the U.S. Department of Transportation.

USDS was established over a decade ago to do things like improving services for veterans, and it helped create a free government-run portal so tax filers did not have to go through third parties like TurboTax. It also devised systems to improve the way the federal government purchased technology.

It has been embroiled in its fair share of bureaucracy fights and agency turf wars with chief information officers across government who resented interlopers treading in their agency's systems. USDS' power across government stemmed from the imprimatur of acting on behalf of the White House and its founding mission of improving service for the American people.

Leavitt, the White House press secretary, is one of three administration officials who face a lawsuit from The Associated Press on first- and fifth-amendment grounds. The AP says the three are punishing the news agency for editorial decisions they oppose. The White House says the AP is not following an executive order to refer to the Gulf of Mexico as the Gulf of America.

AP video journalist Rodrique Ngowi contributed from Boston.

Contact AP's global investigative team at Investigative@ap.org or <https://www.ap.org/tips/>.

[Editor notes: Eds: UPDATES: adds graf at end for context of AP lawsuit]

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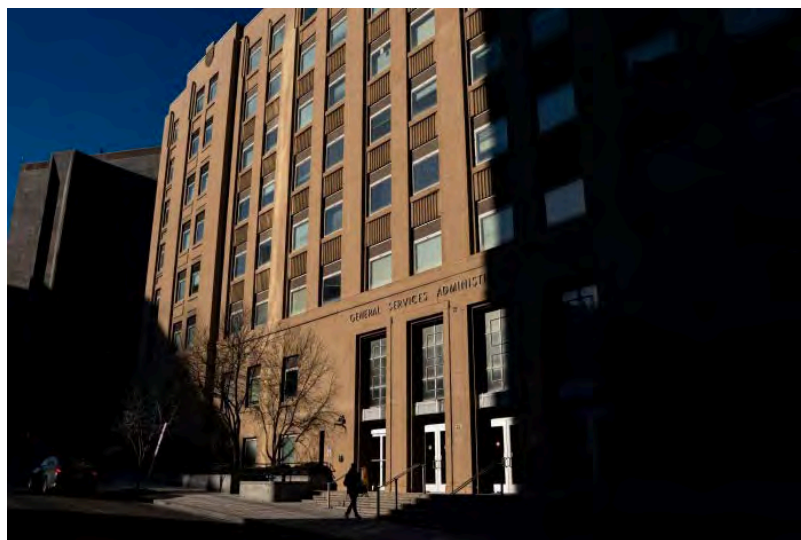
REAL ESTATE

DOGE Move to Slash Federal Leases Threatens Office-Market Recovery

The District of Columbia's office market has been one of the hardest hit in the country

By [Peter Grant](#) [Follow](#) and [Deborah Acosta](#) [Follow](#)

Feb. 25, 2025 5:30 am ET



The General Services Administration building in Washington, D.C. PHOTO: AL DRAGO/BLOOMBERG NEWS

Key Points

What's This? ⓘ

- The Trump administration's plan to terminate federal leases and sell government buildings threatens to weaken the recovery in the U.S. office market, particularly in cities with a notable federal-government presence.
- Washington, D.C., faces the greatest number of initial closures, with 11 leases totaling 1.4 million square feet, according to a Barclays analysis.
- The federal government's lease terminations will more than offset the positive impact of the Trump administration's requirement that more workers return to the office, analysts say. When government agencies move out of buildings, it might not be as easy to find similar tenants, especially for some of the older buildings.

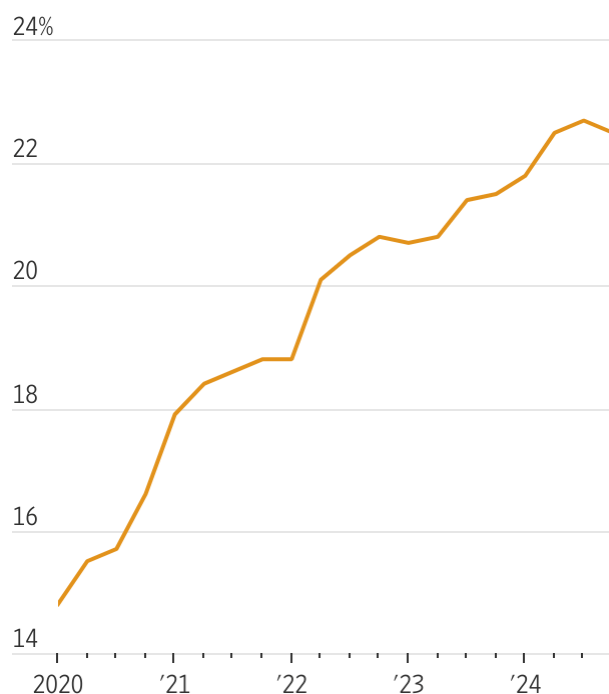
The Trump administration's move to terminate millions of square feet of federal leases and sell government buildings threatens to weaken a fledgling recovery in the U.S. office market, from California to Washington, D.C.

Elon Musk's Department of Government Efficiency has targeted nearly 100 leases at government agency offices for termination or consolidation. The Trump administration is also considering selling two-thirds of the federally owned office buildings that are empty or underused.

While DOGE is focusing on federal buildings throughout the country, Washington, D.C., is in the bull's-eye. The District of Columbia faces the greatest number of closures, with 11 leases totaling 1.4 million square feet, according to a Barclays analysis released last week. That is just the first wave of cuts in a city where the federal government is the primary employer.

"You will see there's a lot of buildings in Washington that are going to go away," said Darrell Crate, chief executive of Easterly Government Properties, a real-estate investment trust that leases office space to the federal government.

Washington, D.C., office-vacancy rate



Source: CBRE Group

The District's office market has been one of the hardest hit in the country, with a vacancy rate peaking at nearly 23% last year, according to CBRE Group. It started to show signs of stabilization last year, but a fresh wave of closures would renew pressure on the market.

The federal government leases about 150 million square feet of office space and owns over 450 million square feet. A large amount of the owned space is underused and badly in need of maintenance.

The federal government typically isn't able to end property leases before their maturity dates, so DOGE is focusing on leases with near expirations or those that include options to get out of leases

early. That gives the government the ability to negotiate a more immediate departure, brokers say.

DOGE is expected to pick up the pace of office closures as the Trump administration moves to shrink the size of the federal government. The administration is also expected to accelerate the sale of surplus federal buildings, an effort that has been under way for years but is now expected to be a higher priority.

While government-owned or -operated space represents a small portion of the overall U.S. office market, the closures are expected to have an outsized effect in cities with a notable federal-government presence.

Washington, D.C.'s office market has been one of the hardest hit. PHOTO: AL DRAGO/BLOOMBERG NEWS

Government building sales and lease cancellations are another setback for the U.S. office market, which has been suffering one of its worst downturns since World War II because of high interest rates and looser workplace strategies.

In recent months, the market has shown signs of recovery as some companies have required more office attendance. But the government's termination of leases this year alone would have negative impacts in the New York, Los Angeles, Atlanta, Hagerstown, Md., and Martinsburg, W.Va., regions, according to an analysis by data firm Trepp. Ohio, which Barclays said has the second-highest concentration with 10 leases, could also take a hit.

For cities dependent on government workers, “this could lengthen the recovery timeline, cause a stall out in the rental rate recovery and cause vacancy rates to stay elevated longer than what we had hoped,” said Stephen Buschbom, Trepp research director.

Building owners with many federal tenants already have felt the pinch—and not just in the District. Easterly Government’s stock is trading below \$11 a share compared with over \$14 in mid-October. The company leases space in a Buffalo, N.Y., building to multiple federal agencies. Two of those leases, with more than 50,000 square feet combined, were terminated.

A building in downtown Buffalo, N.Y., owned by Easterly Government Properties. PHOTO: EAGLEVIEW

“When I think about the government trying to be more efficient, they should get rid of space like that,” Easterly Government’s Crate said.

But clearly Washington, D.C., landlords are among the most vulnerable. Shares of JBG Smith, a real-estate investment trust that focuses on the D.C. region, underperformed the company’s peers by about 11.5 percentage points in the fourth quarter of last year, according to real-estate-analytics firm Green Street.

Tenants in the District leased about 300,000 square feet more space than they gave back in the fourth quarter, the first time there was so-called positive absorption since the first quarter of 2022, according to CBRE.

But analysts say that they think the federal government’s lease terminations will more than offset the positive effect of the Trump administration’s requirement

that more workers return to the office. When government agencies move out of buildings “it might not be as easy to find similar tenants especially for some of the older buildings,” Barclays said.

At least one major real-estate project planned by the federal government might also be derailed. In 2023, the U.S. General Services Administration decided—after a 15-year planning process—to move the headquarters of the Federal Bureau of Investigation to Greenbelt, Md.

FBI headquarters in Washington, D.C. PHOTO: JOSE LUIS MAGANA/ASSOCIATED PRESS

But President Trump made clear during his first term in office that he didn’t want the FBI to move to the suburbs. Last year he posted on Truth Social that keeping the building in the District was “the centerpiece of my plan to totally renovate and rebuild our capital city into the most beautiful and safest anywhere in the world.”

Since starting his second term this year, Trump has promised to become even more involved with the future of the District of Columbia. Speaking on Air Force One last week, he called for the federal government to take over the governance of the district.

“We should run it strong, run it with law and order, make it absolutely flawlessly beautiful,” Trump said.

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Tesla's market value tumbles below \$1 trillion as its Europe sales slump

 [reuters.com/business/autos-transportation/teslas-market-value-tumbles-below-1-trillion-its-europe-sales-slump-2025-02-25](https://www.reuters.com/business/autos-transportation/teslas-market-value-tumbles-below-1-trillion-its-europe-sales-slump-2025-02-25)

Noel Randewich

A Tesla Model S electric car is displayed on media day at the 2024 Paris Auto Show in Paris, France, October 14, 2024. REUTERS/Benoit Tessier/File Photo Purchase Licensing Rights [↗](#), opens new tab

Feb 25 (Reuters) - Tesla's (TSLA.O) [↗](#), opens new tab stock tumbled 8% on Tuesday, pushing its market value below \$1 trillion for the first time since November after data showed the electric car maker's sales slumped in Europe in January.

The European Automobile Manufacturers Association reported that Tesla sales dropped 45% in Europe, compared with a 37% jump in overall sales of EVs in Europe.

The sales decline underscores Tesla's challenges following a dip in global deliveries last year that has raised pressure on CEO Elon Musk to roll out lower-priced models as well as the autonomous cars that he says underpin Tesla's future.

Tesla shares dropped to \$305, leaving the company with a market capitalization of \$981 billion, still over twice the combined value of General Motors (GM.N) [↗](#), opens new tab, Ford Motor (F.N) [↗](#), opens new tab, Volkswagen, Toyota Motor (7203.T) [↗](#), opens new tab, Hyundai Motor (005380.KS) [↗](#), opens new tab and BMW (BMWG.DE) [↗](#), opens new tab. Some investors are also worried that Musk's role overseeing a radical downsizing of the federal government, at the behest of U.S. President Donald Trump, is potentially distracting his attention from Tesla as well as damaging the company's brand appeal to some consumers. Musk also heads privately held space rocket maker SpaceX and other private companies.

"He's a very hands-on operator, and if you're spending that much time in an office in the White House, how much time are you spending running all of your other companies, including the one that's publicly traded?" said Art Hogan, chief market strategist at B. Riley Wealth in Boston.

Concerns about potential over-investment in artificial intelligence are also weighing on Tesla, as well as Microsoft (MSFT.O) [↗](#), opens new tab and Meta Platforms (META.O) [↗](#), opens new tab ahead of AI chip heavyweight Nvidia's (NVDA.O) [↗](#), opens new tab quarterly report on Wednesday, Hogan said.

Tesla's stock recently traded at 112 times expected earnings, above its five-year average PE of 93, according to LSEG. By comparison, Ford's stock is valued at eight times earnings, and GM's is at seven.

Tesla bulls point to the company's plan to launch a new, cheaper electric vehicle and to Musk's promises to launch a paid autonomous car service.

With Tuesday's drop, Tesla shares remain up 51% over the past 12 months. Year-to-date, the stock is down 24%.

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Reporting by Noel Randewich; Editing by Leslie Adler

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Trump Media Lost \$401 Million Last Year — But CEO Devin Nunes Made \$47 Million

F [forbes.com/sites/zacheverson/2025/02/24/truth-social-devin-nunes-donald-trump-media-salary](https://www.forbes.com/sites/zacheverson/2025/02/24/truth-social-devin-nunes-donald-trump-media-salary)

Zach Everson

February 24, 2025



Topline

Devin Nunes earned \$47 million in total compensation as CEO of Trump Media & Technology Group last year, although he won't be able to get his hands on all of it until March 2027, according to a filing the company made with the Securities and Exchange Commission on Friday.

President Donald Trump talks with Trump Media CEO Devin Nunes at the Republican National Convention ... [+]

CQ-Roll Call, Inc via Getty Images

Key Facts

In addition to his \$1 million base salary, the former Republican congressman received a \$600,000 bonus, \$44.1 million in stock awards and \$1.2 million in additional stock compensation for running the parent company of President Donald Trump's Truth Social platform.

Nunes received 25% of that \$44.1 million stock award in December 2024.

The remaining stock will vest quarterly in nine payments, contingent on Nunes remaining the company's CEO.

Nunes' 2024 compensation marks a 6,200% increase from the \$750,000 he earned in 2023, before the company went public.

A spokesperson for Trump Media did respond to an inquiry.

Key Background

Before joining Trump Media, Nunes was a ten-term congressman from a rural California district, earning \$174,000 annually. Trump tapped him to be CEO and a director of the company in December 2021, despite his business experience appearing to be limited to his family's dairy farm. Trump Media touted Nunes to investors as a leader with "familiarity with public scrutiny and media savvy." Before Friday's filing revealed his stock compensation, Forbes had estimated his total earnings from Trump Media at \$6.3 million through September 2024.

Big Number

\$401 million: Trump Media's net loss in 2024, on \$3.6 million in sales, according to an SEC filing made earlier this month.

PROMOTED

Crucial Quote

"Typically there's some sort of correlation between how well a company is doing and the CEO's pay, said Michelle Leder, the editor footnoted.com and an expert on SEC filings. "When a company loses over \$400 million and gives its CEO a \$44 million grant, you have to wonder what they're being rewarded for."

Surprising Fact

Nunes left Congress three years ago, though his campaign is still sitting on \$13.4 million in cash, records with the Federal Election Commission show.

Tangent

Trump Media's chief technology officer Vladimir Novachki's compensation totaled \$20 million, while chief financial officer Phillip Juhan made \$14.2 million, according to Friday's filing. Board members—including Donald Trump Jr. and Linda McMahon—received more than \$800,000 each for their work, mostly in stock, though Kash Patel declined compensation.

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Further Viewing

Editor's Note

In November 2023, Trump Media sued 20 media outlets, including Forbes, for reporting that included calculations of its financial results while still a private company. The defendants have moved to dismiss the claims.

Further Reading

Trump Media Sues Brazilian Judge—And Musk Foe—For Alleged Censorship (Forbes)

Trump's Sons Invest In AI Data Centers After He Touts Billions In Industry Expansion (Forbes)

Trump Media Shares Rise After Planning Fintech Brand—Trump's Net Worth Spikes Over \$200 Million (Forbes)

Senate Confirms Kash Patel With 2 Republicans Opposing—What To Know About Trump's New FBI Director (Forbes)

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Zach Everson

Zach Everson is a Washington, DC-based staff writer at Forbes, reporting on money and politics. He's written about Donald Trump's legal problems and businesses,

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Larry Ellison's Dark Vision for OUR Future

 [nakedcapitalism.com/2025/02/larry-ellisons-dark-designs-for-the-united-states-and-the-united-kingdom.html](https://www.nakedcapitalism.com/2025/02/larry-ellisons-dark-designs-for-the-united-states-and-the-united-kingdom.html)

By Nick Corbishley

February 25, 2025

One of the few things that the Trump 2.0 administration and Keir Starmer government have in common is the amount of influence Ellison has over both of them.

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The world's fourth richest man, Larry Ellison, has a vision for the future, and it is one that most of us would never vote for if given the chance (which, of course, we won't be). It essentially involves harvesting and storing all of a nation's data, including all of its citizens' most personal data, in one place, and then letting AI programs scour all over it. That data, he says, should include economic data, electronic healthcare records, including our genomic data, spatial information, agricultural data and info about infrastructure.

"I have to tell [the] AI model as much about my country as I can," Ellison said in a recent onstage discussion with his old friend Tony Blair at the World Governments Summit. "We need to unify all the national data, put it into a database where it's easily consumable by the AI model, and then ask whatever question you like. That's the missing link."

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

Ellison believes that the benefits of such a system will include improved healthcare, thanks to treatments tailored to individuals, as well as the ability for governments to increase food production by better predicting crop yields. And he was touting those benefits to senior representatives of many of the world's governments, with Blair by his side helping to lubricate the sales pitch.

The octogenarian tech titan has an almost religious faith in AI, describing it as "maybe" the most important discovery in the entire history of humankind. He is also aggressively pushing for governments, particularly the US and the UK, to embrace AI-enabled control and surveillance technologies, with a significant onus on biometric identifiers — something that both countries have already been doing for some time, with a certain amount of help from Ellison.

In fact, Oracle, the company Ellison co-founded in 1977 and of which he is still CEO, has been so busy amassing the online data of the world's citizens that in 2022 it faced a class action suit in California over its worldwide surveillance machine. According to the Irish Council for Civil Liberties (ICCL), one of the three class representatives, Oracle has claimed to have amassed detailed dossiers on 5 billion people:

Oracle's dossiers about people include names, home addresses, emails, purchases online and in the real world, physical movements in the real world, income, interests and political views, and a detailed account of online activity: [4] for example, one Oracle database included a record of a German man who used a prepaid debit card to place a €10 bet on an esports betting site.[5]

The class action suit was eventually settled in 2024 after Oracle agreed to pay \$115 million to the more than 3.2 million people who had submitted claims. In the end, eligible class members received around \$25 each, while lawyers for the plaintiffs walked away with \$28 million in fees.

A World Without Passwords and PINs

Now, Ellison wants to take AI-enabled digital surveillance and control systems to a new level by totally centralising them, despite the obvious security implications. He also envisions a world without passwords and personal identification numbers (PINs) in which access to IT systems and tech platforms will be based purely on our biometric identifiers. As he says in the clip below of his recent chat with Blair, "this is the last year you will ever log onto an Oracle system with a password... biometric logins are the future."

Tony Blair: How important is Digital Public Infrastructure [Digital ID, Fast Payments, Data Sharing]?

Larry Ellison: Biometric logins are the future. No more passwords. Keep the data in the country.

World Governments Summit, #WGS25 #WorldGovSummit <https://t.co/OSWTWvEjM6>
pic.twitter.com/eH0A4bXX06

— Tim Hinchliffe (@TimHinchliffe) February 12, 2025

Ellison also talks about the need for national governments to have their own "sovereign" data centres to power their AI systems, which will provide Oracle lots of new business opportunities given it is the world's largest database management company. In an Oracle financial analysts meeting in September, he told investors that AI will usher in a new era of surveillance that he gleefully said will ensure "citizens will be on their best behaviour." From *Business Insider*:

Ellison said AI would be used in the future to constantly watch and analyze vast surveillance systems, like security cameras, police body cameras, doorbell cameras, and vehicle dashboard cameras.

“We’re going to have supervision,” Ellison said. “Every police officer is going to be supervised at all times, and if there’s a problem, AI will report that problem and report it to the appropriate person. Citizens will be on their best behavior because we are constantly recording and reporting everything that’s going on.”

Ellison also expects AI drones to replace police cars in high-speed chases. “You just have a drone follow the car,” Ellison said. “It’s very simple in the age of autonomous drones.” He did not say if those drones would broadcast the chases on network news.

Ellison’s company, Oracle, like almost every company these days, is aggressively pursuing opportunities in the AI industry. It already has several projects in the works, including one in partnership with Elon Musk’s SpaceX.

Like his friend and business associate Elon Musk, Ellison has taken up a prominent place within the new Trump administration, with the two-term president describing him as a “sort of CEO of everything, ... an amazing man.” Unlike most Silicon Valley CEOs including Musk, Ellison was on board with the MAGA project during Trump’s first term. He was even at the White House on Trump’s first full day back in office last month where he unveiled the \$500 billion “Stargate” AI infrastructure project alongside OpenAI’s Sam Altman and SoftBank’s Masayoshi Son.

“AI holds incredible promise for all of us,” Ellison said. “We’ve been working with OpenAI for awhile. The data centers are actually under construction, the first of them are under construction in Texas... Each building is half a million square feet. There are 10 buildings currently being built, but that will expand to 20 and other locations.”

Like Peter Thiel, a fellow Trump supporter who helped enable JD Vance’s rapid rise to the vice presidency, Ellison owes a large part of his success to a simple business model: spinning off a sprawling CIA tech project into a giant private-sector business. This part of his success story is often ignored or played down by mainstream media. In September last year, for example, Gizmodo pilloried Vox for publishing an entire in-depth article about Oracle and its founder without “even once” mentioning the CIA:

Which is pretty astounding, given the fact that Oracle takes its name from a 1977 CIA project codename. And that the CIA was Oracle's first customer.

Vox simply says that Oracle was founded in "the late 1970s" and "sells a line of software products that help large and medium-sized companies manage their operations." All of which is true! But as the article continues, it somehow ignores the fact that Oracle has always been a significant player in the national security industry. And that its founder would not have made his billions without helping to build the tools of our modern surveillance state.

"Recognizing the potential demand for a commercial database product, [Ellison] founded the company that became Oracle in 1977," Vox writes, conspicuously omitting the whole "because CIA wanted a relational database" part of the history.

Which isn't to say that Oracle's work with the US government should necessarily be frowned upon. The CIA needs databases, just like any large organization. But not mentioning just how reliant Oracle has been on government contracts since its inception is downright strange and seems to feed this narrative that Ellison simply created a product that companies wanted and private enterprise did the rest.

Straddling Two Governments

Today, Ellison is determined to turn his dystopian vision of the future into reality through his deep connections with two markedly different governments: Donald Trump's second administration in the US and Kier Starmer's Labour government in the UK.

In the US, not only will Ellison be spearheading the Trump administration's AI agenda; his company, Oracle, is among the potential buyers of the Chinese social media giant Tik Tok's US operations. And Oracle has an important head-start over many of its rivals: during Trump's first term, it played a pivotal role in negotiations over stripping TikTok from its Chinese ownership, in the process becoming a trusted provider of the company's data storage in the United States, a role it continues to play to this day.

In the UK, Ellison wields arguably even more political influence than in the US. As we have reported before, and as the Daily Mail (of all places) confirmed this past weekend, that influence is largely thanks to Ellison's close ties with former Prime Minister, Tony Blair, which date all the way back to Blair's early years in Downing Street when, as *The Register* reports, Oracle became a significant supplier of technology to the government":

In fact, Oracle still runs more than half of the UK central government's financial and planning software, including the Department for Work & Pensions, Ministry of Justice, Department for Environment, Food & Rural Affairs, Cabinet Office, Home Office, HM Treasury, and Ministry of Defence.

The Home Office migrated to Oracle during Blair's tenure as prime minister. In 2006, a damning NAO said the department's inability to deliver its accounts on time were down to a problem with the system. Once a fix was implemented, it led to an adjustment of the bank account and creditor balances by £67 million (\$85 million), according to Parliamentary records.

Ellison is also far and away the largest backer of Blair's modestly named foundation, the Tony Blair Institute for Global Change (often shortened to TBI). From the *Daily Mail* piece:

The Ellison foundation bankrolled Sir Tony's not-for-profit institute, known as TBI, with £43million in 2023 and £36million in 2022. Newly-released figures show it has set aside £178million more for TBI 'to support effective governance work in Africa'.

Such largesse has helped TBI balloon in size. Founded in 2017, it now employs more than 800 people across 40 countries, with some executives earning as much as £540,000 a year, although Sir Tony does not take a salary.

This month, six months after Sir Tony's jaunt on Ellison's yacht, the pair were reunited at the World Governments Summit in Dubai. Appearing via a video link, with the image of Ellison's face dwarfing Sir Tony as he sat on stage, the pair discussed artificial intelligence, with Ellison declaring that AI is a 'much bigger deal' than the invention of electricity or the Industrial Revolution.

As the Daily Mail article notes, Blair's bromance with Ellison has "sparked accusations of a 'conflict of interest' as Sir Tony urges the Government to embrace artificial intelligence (AI) and digital health records: two technological revolutions worth millions to Ellison's empire."

The money from Ellison to TBI appears to be flowing in ever larger volumes, as Aaron Bastani points out in the interview below:

Tony Blair wants the NHS to sell patient data.

Larry Ellison, the co-founder of Oracle and world's 5th wealthiest person, has given over \$100 million to the Tony Blair Institute.

Oracle wants to be a world leader in digital health data.

Follow the money. pic.twitter.com/LmXnp8qkFE

— Aaron Bastani (@AaronBastani) January 26, 2024

Blair already appears to wield significant influence over the Starmer government's operations, with many of the key positions already occupied by members of the Blairite wing of the Labour Party, which has spent the past four years purging the party of its genuine left-wing politicians and members, including former party leader, Jeremy Corbyn, and the veteran British filmmaker Ken Loach.

Starmer's government includes former employees and board members of TBI. As the veteran US journalist Robert Kuttner wrote before last year's election, Starmer "has virtually outsourced his entire program to Tony Blair" and TBI. That is particularly true of the government's AI agenda, with TBI insiders such as Patrick Vallance, Jeegar Kakkad and Kirsty Innes serving as ministers, advisors and influencers helping to shape the government's tech policy.

Just four days ago, the FT reported, with a hint of irony, that Starmer has been warning his cabinet about the dangers of Blairism while bringing in more and more New Labour era staff:

The prime minister wrote a memo to his cabinet saying that the public are “hungry for change and disruption”.

In the letter, seen by the Financial Times, he repudiates ideas associated with Blairism, including the concept that “globalisation held all the answers”, an alleged “complacency” about the role of the market, and the idea that immigration is “an untrammelled good”...

Yet... the scale of the Blair revival is striking. Jonathan Powell, Blair’s former chief of staff, is now Starmer’s national security adviser, while Liz Lloyd, deputy chief of staff in Downing Street from 2005-07, oversees domestic policy in Number 10.

Meanwhile, Lord Peter Mandelson, architect of Blair’s election triumphs, has the top diplomatic role of UK ambassador to the US, while Claire Reynolds, Starmer’s political director, smoothed party relations for Blair.

Douglas Alexander, the trade minister who prepped Blair for prime minister’s questions, was this month given a new Cabinet Office role, where he joins the influential Pat McFadden, Blair’s former political secretary.

As his influence expands on both sides of the Atlantic, it seems likely that Larry Ellison will get much of what he wants. He already has a \$500 billion commitment from Trump to build a vast network of data centres across the US, many of which will be provided by Oracle. Meanwhile, the Starmer government has pledged to “turbocharge” AI across the UK. The proposed Data Use and Access Bill, which is speeding through parliament, will be instrumental in making this happen, by, among other things, relaxing the use of automated decision making technologies.

Since coming to power just eight months ago, the Starmer government has also:

- **Ordered Apple, citing the Investigatory Powers Act 2016, to provide “back door” access to its devices**, which would allow UK intelligence agencies to spy on British users. In response, Apple has removed its Advanced Data Protection (ADP) system, which encrypts user files uploaded to the cloud, from its iPhone systems in the UK. Interestingly, Forbes ran a piece yesterday claiming that the FBI wants much the same thing stateside: “lawful” access to any encrypted data.
- **Announced plans to launch a digital identity system later this year**. Veteran cards for former military personnel will be the first documents supported, followed by a pilot for mobile driver’s licenses (just as in the US). The government is also considering introducing a digital Voter Authority Certificate (VAC) that will “allow” voters to use digital versions of identification documents stored in the Gov.uk wallet at the polling stations. But as we’ve been warning for the past three years, privacy groups in the UK are claiming that the Gov.uk app could lead to a mandatory digital ID scheme.

- ***Unveiled plans to further expand the use of live facial recognition technology***, on the same day that an EU-wide law largely banning real-time surveillance technology came into force;
- ***Called for the creation of digital health passports for NHS patients***, prompting a backlash over concerns about digital privacy and the possible sale of patient data to third-party companies — a policy that Tony Blair and former Conservative Party leader William Hague lobbied for just before the elections.
- ***Resurrected old Tory plans to grant inspectors at the Department of Work and Pensions increased powers to snoop on claimants' bank accounts***. Big Brother Watch warned that the increased powers could be used to spy on not only the accounts of pensioners and welfare claimants but ALL bank accounts. It was one of 18 NGOs and charities that signed a letter to the government warning that “imposing suspicionless algorithmic surveillance on the entire public has the makings of a Horizon-style scandal – with vulnerable people most likely to bear the brunt when these systems go wrong.”
- ***Announced plans to pilot a Central Bank Digital Currency by 2025***, carrying on Rishi Sunak's controversial Digital Pound plans, with a “blueprint” expected by Christmas. As we reported last week, the proposal is not just opposed by most members of the British public, according to one of the few public surveys conducted on the matter, but also prominent figures within the City of London.
- ***Launched a crackdown on lawful speech***. After the riots in the summer, the Home Office is planning new non-crime “hate” measures. Again, this was a policy that was eventually dropped by the Tories, out of fears it would curtail free speech, but is now being resurrected by Starmer's Labour Party.

The Starmer government's latest dangerous idea is to relax UK property laws in order to eliminate obstacles for “innovators”. Put simply, the government wants to give Silicon Valley tech companies, including presumably Oracle, free reign to feast on the intellectual property of writers, artists, musicians, filmmakers, journalists, publishers, poets, documentary makers, authors, scriptwriters and anyone else who produces original creative works, including the 2.4 million people who make a living from it.

The one silver lining is that by doing so, the government has enraged some very powerful, vocal and influential people, including Sir Paul McCartney and Sir Elton John who pointed out that the move jeopardises the UK's entire music industry, which is arguably one of the few industries left in the country still going reasonably strong. Perhaps, just perhaps, this backlash will bring much-needed public awareness and attention to the wider picture. This isn't just about the future of the UK's music industry; it's about the future of basic freedoms and rights in one of the world's oldest parliamentary democracies.

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<https://www.wsj.com/us-news/church-retirement-pensions-hospitals-89070d8c>

Church Retirement Plans Sidestep Federal Oversight—and Employees Pay the Price

Pension collapses at church-affiliated hospitals and other organizations upend retirees' plans

By *Theo Francis* [Follow](#)

Feb. 24, 2025 9:00 pm ET

Anne Hotaling joined St. Clare's hospital in Schenectady, N.Y., fresh out of nursing school in 1979. She came to see the Roman Catholic hospital and her fellow workers as a second family, an extension of the tightknit Catholic community in which she had grown up.

The job came with long-term financial security: a pension plan that eventually promised Hotaling, following her retirement, \$1,449 a month for life. It was one reason she turned down other jobs over the years. "I didn't want to go someplace else and start that process all over," she said.

Even after St. Clare's closed in 2008, Hotaling said, it continued to tell her and others their pensions were waiting. When she retired a decade later, she received her first \$1,400 check. It was the last one she ever got.

Months later, the pension fund informed her by letter that it was nearly insolvent. "There simply are not enough assets in the Plan to provide the benefits to all current and future participants," the letter said.

For the past half-century, the sweeping Employee Retirement Income Security Act of 1974 has governed retirement benefits, with the goal of protecting workers from exactly the kinds of disasters that befell Hotaling. Under the federal law, known as Erisa, pensions don't go up in smoke when employers fail because a federal insurance program kicks in.

But churches and other religious organizations can opt out of the federal system, which requires retirement plans and their sponsors to fund pensions well in advance and to set aside

retirement savings in dedicated accounts. That has left hundreds of thousands of workers vulnerable.

Hotaling, 68 years old, is one of 1,100 former St. Clare's hospital employees who have lost some or all of their pension benefits. Workers at other church-affiliated groups, including schools, hospitals and publishers, have experienced similar hardships. The retirement-account balances of ministers and other employees around the country of the African Methodist Episcopal Church plummeted after what church officials there describe as a two-decade-long fraud.



Mary Hartshorne, 74, worked for St. Clare's for 40 years. Now she is lead plaintiff in a lawsuit against it.

PHOTO: KATE WARREN FOR WSJ

Church plans, as they are called, can ignore Erisa requirements for funding plans, and in most states, they can avoid telling participants and regulators key details about their financial

health. Church plans also aren't required to participate in the federal insurance program by paying premiums to the Pension Benefit Guaranty Corp., or PBGC, which steps in when plans fail.

Church retirement plans of all kinds held more than \$89 billion in assets in recent years, one study found. An Internal Revenue Service analysis of 2019 data found nearly 600,000 church employees contributed \$1.8 billion to savings plans that year alone. The IRS figures don't include many who have already retired or work at church-affiliated groups such as hospitals.

As more Americans reach retirement age and begin drawing retirement benefits, more shortfalls are likely to surface, said Ali Naini, a lawyer with AARP Foundation's legal advocacy team. The problem of pensions running out with no federal backstop, he said, is "getting worse."

Until the 1970s, federal law did little to protect private-sector retirement benefits. But high-profile pension plan failures, including when Studebaker closed an auto plant in South Bend, Ind., prompted Congress to enact Erisa in 1974.

The new law carved out an exception for church employers. Lawmakers worried that regulating church plans could run afoul of the constitutional separation of church and state, and some expressed confidence that religious employers would stand by their retirement promises.

Churches still had the option to participate in Erisa, but that involves more paperwork and other hassles, including paying PBGC premiums for pension plans. So few churches have.

Erisa requires employers to put assets for retirement plans into financial accounts that they can't tap, even in bankruptcy. If a pension plan fails, the PBGC currently guarantees benefits up to about \$7,000 a month for someone who is 65 when the agency takes over, though the amount varies with age and other factors. According to the PBGC, more than 80% of retirees in plans it takes over receive their full benefit.

A 2019 hearing in New York state court about the company that ran St. Clare's hospital, which closed in 2008. PHOTO: PAUL BUCKOWSKI/ALBANY TIMES UNION/GETTY IMAGES

It's a different story for church plans. In 2017, a Rhode Island state court appointed Providence lawyer Stephen Del Sesto as receiver for an insolvent pension plan for about 2,700 nurses and other employees of St. Joseph's Hospital and Our Lady of Fatima Hospital, which had merged and eventually became St. Joseph's Health Services of Rhode Island.

At the time, the plan was \$59 million short of what it would need to pay participants' benefits under standard federal formulas. Retirees had been warned to expect 40% across-the-board benefit cuts—a move that would be illegal for plans covered by federal pension rules.

Del Sesto sued the hospital company and others, arguing the company had improperly hidden behind the church-plan exemption to avoid contributing funds for most of a decade and to mask the plan's perilous financial condition from participants and the state.

When the plan described its financial status to employees and others, Del Sesto alleged, it used higher interest-rate assumptions than would have been allowed under federal law, which enabled it to say it had more than 90% of the money it needed rather than about 50%.

Del Sesto alleged that hospital officials and the Roman Catholic Diocese of Providence improperly preserved the pension's church-plan status after the hospitals were sold in 2014 to an entity controlled by Prospect Medical Holdings, a California-based for-profit company, to help ensure the deal closed. A federal court later found that the plan hadn't qualified as a church plan since before the time of the sale.

A spokesman for the diocese said it didn't control the hospital company and "never had responsibility for funding the plan at any point, ever." He called the litigation an attempt to

“shake down” institutions and shore up the plan.

He said participants should have known the pension was in bad shape before 2017 because benefits had been frozen around the time of the global financial crisis, and news outlets had covered downgrades in the hospital company’s creditworthiness.

Prospect representatives didn’t respond to requests for comment.

Del Sesto has recouped about \$55 million for the plan through litigation and settlements, including infusions from the diocese and the buyer. In January, the PBGC agreed to take over pension payouts for the plan. All but one or two participants in the hospital’s pension plan will be able to collect their full benefit from the agency.

In response to the crisis, Rhode Island now requires church plans with more than 200 participants to disclose details about their financial health.

Barbara O’Neil, who became a certified public accountant during her 43 years working at St. Joseph’s hospitals, said she was so worried about the plan’s financial health that she decided to start drawing her pension several years earlier than planned, even though that meant she would collect \$6,000 less a year.

O’Neil said that she has stopped attending Mass because of the ordeal. “My religious leaders and the company I worked for most of my life betrayed me,” she said. “It will always be an open wound.”

Small changes, big consequences

Erisa originally defined church plans as those established and maintained directly by churches or church associations. Plans for hospitals, schools and other religiously affiliated organizations wouldn’t count after a grace period that ended in 1982. In 1980, though, Congress made changes following lobbying by churches and religiously affiliated employers.

One change meant that plans established by churches could also cover employees of affiliated

Barbara O’Neil, who worked at St. Joseph’s for 43 years, started drawing her pension early out of concern about the financial health of her retirement plan. PHOTO: BARBARA O’NEIL

hospitals, schools and other organizations. Another ensured that plans run by independent pension boards, which Protestant denominations often use to manage retirement benefits for separate congregations, would qualify as church plans.

Hundreds of religiously affiliated organizations sought private IRS rulings that their plans, too, were church plans, and hence not subject to Erisa requirements. Many sought and received refunds for premiums previously paid to the PBGC.

Retiree advocates said they didn't realize how widespread the practice had become until years later, when plans foundered. One plan that shut down unexpectedly in 2010 covered about 500 current and former employees of Augsburg Fortress, the publishing house of the Evangelical Lutheran Church in America.

Participants sued the church and the publisher, arguing the plans hadn't adhered to federal pension regulations. But a federal court threw out those claims, finding it was exempt as a church plan. In 2013, the church, the publishing house and other defendants settled litigation, without admitting wrongdoing, by agreeing to pay \$4.5 million to help fund the pension plan.

A spokeswoman for Augsburg Fortress declined to comment.

More lawsuits followed, many of them against Catholic and other religious hospital chains that had sought and received IRS letters confirming church-plan status. Lawyers for pension participants argued the IRS interpretation of federal law was wrong.

Some federal courts ruled in their favor, but in 2017, the Supreme Court concluded otherwise. In an 8-0 verdict, the high court ruled that plans set up and run by religiously affiliated organizations could qualify for the church-plan status.

Vulnerable to fraud

These days, more employees are covered by retirement savings plans such as 401(k)s than by pension funds, including at religious organizations. The church exemption still applies to such plans, letting employers, among other things, skip routine financial reports to federal regulators and participants.

Poor disclosure contributed to a crisis in the retirement program of the African Methodist Episcopal Church, one of the nation's largest Protestant denominations. The AME plan appears to have lost some \$90 million from 2000 to mid-2021—about 70% of contributions made by the church and the roughly 5,000 participants in the plan, participants allege in

lawsuits filed against the church and others after losses came to light. During that time, participants and church members received reports indicating steady investment gains.

The lawsuits allege that behind the scenes, the retirement savings were being routed through companies owned in part by a now-deceased church official who ran the plan. He invested in low-interest annuities that paid high commissions to a business associate of the church official, as well as a variety of risky ventures and undeveloped Florida real estate, they allege.

The retirement plan of the nationwide African Methodist Episcopal Church appears to have lost some \$90 million from 2000 to mid-2021. An AME church in Oak Grove, Mich. PHOTO: SYLVIA JARRUS FOR THE WALL STREET JOURNAL

After the church discovered the losses about three years ago, it froze participants' accounts and halted payouts to retirees. Federal authorities have opened a probe.

In August, the church and its affiliates signed a settlement with participants committing \$20 million to shore up participants' accounts. The church, which didn't admit wrongdoing and said it isn't responsible for any losses, also agreed to follow Erisa rules going forward.

Julie Nepveu, an AARP Foundation lawyer representing plan participants in the litigation, said the lack of financial reporting to federal regulators or other checks on fabrications make church plans vulnerable. "They're definitely at risk for this sort of fraud," she said.

In Schenectady in 2019, former employees of St. Clare's filed suit in New York state court against the Roman Catholic Diocese of Albany, its bishop and the hospital company. They want the diocese to help make up the pension plan's shortfall, arguing the hospital was little more than an arm of the church institution.

St. Clare's had requested an IRS ruling in 1991 that it qualified as a church plan. In 1994, the PBGC agreed to refund about \$88,000 in past premiums, ending any insurance coverage. Employees or retirees said they only learned of the change years later, when the plan said it was running out of money and would cut benefit payments.

"To me, that is devious," said Hotaling, the retired nurse. "I feel betrayed by leadership, by the board and by the bishop. I did my job, they didn't. Shame on them."

The plan said in 2018 that 661 participants under 65 would get nothing, and older ones—about 440 people—would get 70% of the benefit they thought was guaranteed.

In their lawsuit, the former employees say Bishop Edward Scharfenberger and his predecessor had presided over hospital board meetings. Two-thirds of the board were either priests reporting to the bishop or others approved by him.

Anne Hotaling, who saw the Roman Catholic hospital and her fellow workers as a second family, said she feels betrayed. PHOTO: ANNE HOTALING

The Albany diocese, which has sought bankruptcy-court protection amid lawsuits alleging sexual abuse by clergy, said it shouldn't be required to shore up the pension plan. Despite the bishop's role there, the diocese has argued, the hospital was an independent corporation, liable for its own debts.

A diocese spokeswoman said the diocese had never been involved in the hospital's daily operations or pension. "All decisions regarding pension eligibility and benefits were made by the St. Clare's Hospital pension trustees," she said. The bishop, she said, encouraged pension participants dealing with hardship to contact the diocese. "There are many wonderful and caring agencies," she said.

Mary Hartshorne, 74, began working at St. Clare's right out of high school and stayed for 40 years. Now she is the lead plaintiff in the employees' lawsuit against it.

Hartshorne said she sold her house on a lake in western Schenectady for financial reasons. "I can't imagine that any of the church teachings we ever had would approve of this," she said.

St. Clare's pensioners listen to the 2019 New York state court hearing. PHOTO: PAUL BUCKOWSKI/ALBANY TIMES UNION/GETTY IMAGES

Fellow retiree Leland Stanford, who worked his way up from housekeeping to drawing blood and echocardiograms in his years at St. Clare's, said he won't receive any of his pension benefits, just Social Security.

He turns 65 in late February and has given up on moving somewhere warmer, he said. Instead, he moved in with his daughter and her husband over the summer and helps look after his toddler grandson.

When he moved, he brought three things from St. Clare's: his pension paperwork, a crucifix and a rocking chair bearing his name on a plaque—a gift from the hospital after 20 years of service.

"That's like my prized possession," he said. "I worked there all those years, and it's all I have from that."

Write to Theo Francis at theo.francis@wsj.com

Strategy's Latest Convertible Bond Spurs Talk of Crypto Fatigue

- Crypto-related firms raised billions of dollars in four months
- Michael Saylor's Strategy sweetened terms of latest deal

When **Michael Saylor's Strategy** raised \$2 billion in a convertible debt deal last week, it seemed like another triumph for firms rapidly selling equity-linked notes to fund cryptocurrency purchases. Behind the headline number, Strategy's move to sweeten the deal's terms sent a different signal: the market for crypto-related paper is nearing saturation.

Strategy and its copycats have raised billions of dollars over the past four months, accounting for an ever-larger share of the broader US pool. MARA Holdings Inc. has tapped investors for nearly \$2 billion while Riot Platforms Inc. and Bitdeer Technologies Group have also been active. That's on top of Strategy's nearly \$9 billion haul.

The spike in activity means the crypto-tied market accounts for roughly 19% of US equity-linked issuance over the last 14 or so months, according to Bank of America Corp.

"That's bigger than energy, basic materials, consumer staples — we're getting to the point where this is a meaningful driver of performance and risk in the convertible space," **Michael Youngworth**, the bank's head of global convertibles and preferreds strategy, said in an interview.



The recent moves by Strategy, which until recently was called MicroStrategy Inc., to juice potential returns for buyers raised some eyebrows. Last week's convertible note deal saw the conversion premium the firm had offered revised lower, and a three-year put option, while the preferred stock offering in January came with a hefty discount.

The pricing of the deals suggests "that the market is experiencing MSTR/crypto fatigue," according to **Manoj Shivdasani**, founder and head of research at GSR Research, which is focused on equity-linked securities.

Read More: Saylor's Strategy Sweetens Terms of \$2 Billion Convertible Bond

Since the beginning of 2024, about \$17 billion has been raised via equity-linked products by firms whose business relates to digital assets or where the proceeds of the offering is earmarked to buy Bitcoin, calculations by Bank of America show. After hitting a peak in the fall, the terms of the deals have increasingly become investor friendly given the largest cryptocurrency hasn't hit a record in a month, with issuers either offering higher coupon payments or lower conversion premiums than they had in similar recent offerings.

"You risk saturating the market with crypto paper — at some point the market will get very selective in what they'll invest in and they'll only invest in companies that have the lowest cost of Bitcoin acquisition," said **Yan Jin**, a senior portfolio manager at Columbia Threadneedle Investments.

Even the companies that trade at a premium to the market value of their Bitcoin holdings, like Strategy, have been forced to offer new deals "at discounts to incentivize investors to participate," he said.

Strategy's share price premium to the value of its Bitcoin has compressed, from more than 300% in November to below 200% in recent weeks, data compiled by Bloomberg show — a change that's also affecting the volatility profile of the underlying stock.

Read More: Strategy Buys More Bitcoin With Proceeds From Bond Offering

The game plan for Saylor's company — and those mimicking him — is simple: Sell shares and, in this case, debt instruments to investors who either believe in your vision or want to profit from the stock's volatility. So long as the company's shares trade at a premium to its hoard of Bitcoin, it makes sense.

The question is whether Bitcoin can continue powering to records — it's up just 0.3% this year — and if Strategy and others like MARA can deliver volatility. Strategy's volatility has slumped nearly 60% from a December peak while Mara's has essentially mirrored the decline over the same stretch, data compiled by Bloomberg show.



Not everyone is worried about the risk of an over-saturated crypto convertible debt market, at least for now.

"The market has further appetite for crypto convertible bonds so long as pricing is attractive," said **Michael Gunner**, a portfolio manager with Acasta Partners. "The market has a preference for shorter dated structures, lower conversion premiums, cash coupons and longer lock-up periods."

Those dynamics showed up in the latest Strategy deal last week. The offering featured a three-year put option, which gives holders the option to redeem the bond before it matures. When the notes priced, the conversion premium was set at 35%, below the roughly 55% premium on a similar issue in November.

As Bitcoin hits resistance after a roughly 50% surge in less than six months, the path forward for Strategy and others selling convertible notes to bet on the token may prove uneven if investors shun risky assets.

Read More: Bitcoin Options Contango Suggests More Range-Bound Trading Ahead

Bitcoin's history is fraught with volatility. While Strategy has weathered the token's sharp swings in the wake of the FTX blowup, with the company's market value topping \$105 billion back in November, its current iteration as a turbo-charged bet on the cryptocurrency has not been tested by a sharp correction.

"They rely on the underlying shares and Bitcoin itself remaining at these lofty levels," said Bank of America's Youngworth. "If there's a meaningful selloff then the convertible bonds could draw down quite a bit and investors could feel the pain, and even the hedge funds may not perform."

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Investors Don't Have 'Shred' Of Fraud Evidence, Exxon Says

By **Elliot Weld**

Law360 (February 24, 2025, 5:48 PM EST) -- Exxon Mobil Corp. has told a Texas federal judge that an investor class doesn't have a "shred of evidence" that the company engaged in the stock inflation scheme the investors allege.

The oil and gas giant told U.S. District Judge Ed Kinkeade Friday that the case should be resolved in its favor since the only evidence that exists shows it followed the correct disclosure processes. The suit was first **launched** in 2016, when a group of investors claimed Exxon and a group of since-retired executives inflated stock prices by misleadingly representing that bitumen operations were making \$5 per barrel but were actually operating at a loss.

"To the contrary, as in the New York attorney general lawsuit on which plaintiff modeled its claims, the evidence shows that ExxonMobil and the individual defendants followed rigorous internal processes, thoughtfully considered and applied the relevant accounting guidance, were uniformly committed to making accurate public disclosures, and sought to appropriately inform investors by enhancing the company's disclosures in the relevant time period," the company said in its summary judgment **motion**.

Exxon said the investors claims had been reduced to a handful of flawed allegations, one of which was that Exxon failed to properly account for and disclose losses and reserve revisions related its operations of Kearl Lake, a Canadian oil sands deposit. Exxon argued that there was no way that it or anyone else could have known that de-booking of Kearl's reserves was certain, as the class alleged.

Evidence shows that Exxon did not know de-booking of those reserves was certain in February 2016, when the investors claim it did, the company said.

The investors have no proof in support of their theory that Exxon violated the Generally Accepted Accounting Principles related to its Canadian bitumen operations, the summary judgment motion said. An accounting expert's report submitted by the class was "completely silent" on the issue, and there is no evidence to show that Exxon knowingly violated accounting standards or that such a violation caused losses to the investors, the company said.

Nor had the investors adequately supported their allegation that Exxon had submitted a false disclosure about its Rocky Mountain dry gas assets in a form to the U.S. Securities and Exchange Commission in 2015, the company said. Exxon said it followed GAAP practices related to finding potential impairments in disclosures and said it performed an "exhaustive review" to evaluate whether a triggering event had occurred for an impairment of various assets.

The "undisputed" evidence shows that Exxon's impairment analysis complied with GAAP regulations, the company said.

"While no triggering event was determined to have occurred at Step 1, ExxonMobil nonetheless conducted a recoverability analysis that followed GAAP by using the cash flow assumptions from its internal plan that it used to run its business," the Friday motion said.

In December 2019, a New York state judge **ruled** that New York Attorney General Letitia James' office had failed to provide enough evidence that Exxon deceived investors about climate change-related risks to its business after a three-week bench trial. Following that ruling, Exxon **asked** Judge

Kinkeade to toss the investor suit outright, saying a lead investor plaintiff had "abandoned" its original claims to pursue ones that mirrored James' suit.

Judge Kinkeade said at an October 2021 hearing that the New York decision could "upset some things" in the Texas federal case but declined to dismiss the case outright.

In August 2023, Judge Kinkeade **granted** class certification to a group of investors but greatly reduced the class period after finding Exxon had "sufficiently rebutted" allegations related to carbon proxy costs.

Counsel for the Exxon and the investors did not immediately respond to requests for comment. An attorney for former Exxon CEO Rex Tillerson declined to comment.

The investors are represented by Joe Kendall of Kendall Law Group, Justin Oetting, Darren Robbins, Erika Oliver, John Herman, Jonah Goldstein, Mary Blasy, Michael Dowd, Nathan Lindell, Patrick Coughlin, Sam Sheldon, Samuel Rudman, Sara Polychron, Scott Saham, Timothy Folkerth and X. Jay Alvarez of Robbins Geller Rudman & Dowd LLP, Balon Bradley of Balon B. Bradley Law Firm and Jamie Gilmore of Scott Gilmore Thompson PLLC.

Exxon is represented by Daniel Toal, Theodore Wells Jr., Daniel Kramer, Audra Soloway, Paul Brachman, Matthew Stachel, Samuel Kleiner and Lyuba Shamailova of Paul Weiss Rifkind Wharton & Garrison LLP and Jason Bloom and Nina Cortell of Haynes Boone.

The case is Ramirez v. Exxon Mobil Corp. et al., case number 3:16-cv-03111, in the U.S. District Court for the Northern District of Texas.

--Additional reporting by Katryna Perera and Keith Goldberg. Editing by Rich Mills.

Update: This story has been updated to include Rex Tillerson's attorney declining to comment.

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Micron Faces Insider Trading Suit In New Court

By **Sarah Jarvis**

Law360 (February 24, 2025, 5:47 PM EST) -- A suit accusing Micron Technology Inc.'s brass of selling \$70 million worth of stock just before the release of disappointing financial results has been refiled in an Idaho federal court, after an earlier iteration of the suit in a Florida federal court was voluntarily dismissed.

Micron, which makes semiconductor devices, was hit with a shareholder derivative lawsuit **last month** in Florida's southern district. Investor Nathan C. Silva accused Micron CEO Sanjay Mehrotra and several board members of misappropriating "material non-public information" to keep shares overinflated, so Mehrotra could sell nearly 700,000 shares under "highly suspicious circumstances" before the company's share price dipped following the release of a December earnings report.

That suit was voluntarily dismissed on Feb. 19, court records show. Silva's notice of voluntary dismissal doesn't indicate why he was pulling the claims, but Friday's new suit filed in Idaho alleges that Micron is headquartered in the Gem State.

The now-dismissed Florida suit had alleged Micron's principal executive offices were in Palm Beach County, though the company's LinkedIn profile indicates it is based in Idaho.

Counsel for Silva did not immediately respond to requests for comment Monday, and a representative of Micron said the company does not comment on ongoing legal matters.

Silva is represented by Andrew LaPorta of Hepworth Holzer LLP, Seth D. Rigrodsky, Timothy J. MacFall and Vincent A. Licata of Rigrodsky Law PA, and Joshua H. Grabar of Grabar Law Office.

Counsel information for the defendants wasn't available Monday.

The case is Nathan C. Silva v. Sanjay Mehrotra et al., case number 1:25-cv-00096, in the U.S. District Court for the District of Idaho.

--Additional reporting by David Minsky. Editing by Emily Kokoll.

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Mining Co. Hit With Derivative Suit Over Stock Repurchases

By **Katryna Perera**

Law360 (February 24, 2025, 9:57 PM EST) -- A shareholder of Newmont Corp. has sued the Colorado-based gold mining company's top brass, alleging they misrepresented financial information that artificially inflated stock prices and caused the company to overpay for repurchases of its own stock, among other things.

Tyler Gunderson filed a derivative **complaint** Friday in Colorado federal court against Newmont CEO Thomas Palmer, Chief Financial Officer Karyn Ovelmen, Chief Operating Officer Natascha Viljoen and several other executives and board members.

According to the complaint, Newmont is a global leader in gold mining and the production of other metals such as copper, silver, zinc and lead.

Gunderson claims that from February through October 2024, the defendants made or caused Newmont to make several false and misleading statements about the company's financial guidance for fiscal year 2024.

According to the complaint, the guidance was based on Newmont's ability to deliver higher qualities of gold and other metals and its ability to improve its mining operations and cost profile so that Newmont could provide a consistent production volume while incurring lower all-in sustaining costs at its so-called "Tier 1" facilities.

Specifically, Gunderson said that during the relevant period, the defendants failed to disclose that Newmont's Tier 1 operations facilities did not see the mining and cost profile improvements that were expected and therefore, the company did not have reliable information to accurately predict its gold and mineral production levels or provide accurate revenue projections.

According to the complaint, the truth emerged on Oct. 23, 2024, when Newmont issued a press release announcing its financial and operational results from the third quarter of 2024, and revealed "disappointing" EBITDA — or earnings before interest, taxes, depreciation and amortization — results and decreases in production with simultaneous increases in costs.

"The Q3 2024 earnings release also revealed that the company's two Tier 1 assets were also expected to see lower production and higher costs than originally expected," the complaint states.

Gunderson said on this news Newmont's stock price fell by \$8.49 per share, or roughly 14.7%, from \$57.74 per share on Oct. 23, 2024, to \$49.25 per share on Oct. 24, 2024.

The complaint further alleges that the defendants' misleading statements and omissions caused Newmont to maintain inadequate internal controls and repurchase its own stock at artificially inflated prices.

"Between August 2024 and September 2024, approximately 3,782,250 shares of Newmont common stock were repurchased, costing the company approximately \$197.7 million," the complaint states. "As the company's stock was actually worth only \$49.25 per share, the price at which it was trading when markets closed on October 23, 2024, the company overpaid for repurchases of its own stock by approximately \$11.4 million in total."

Gunderson also claims that Palmer engaged in insider trades during the relevant period, gaining proceeds of approximately \$3.1 million.

As a result of the defendants' alleged misconduct, Gunderson said the company will have to expend millions of additional dollars to course-correct and defend itself against a related federal securities lawsuit.

The suit seeks damages, restitution, attorney fees, improvements and reforms to Newmont's corporate governance and internal procedures, and a jury trial.

Counsel for Gunderson declined to comment Monday, and Newmont did not immediately respond to requests for comment.

Gunderson is represented by Timothy Brown of The Brown Law Firm PC.

Counsel information for the defendants was not immediately available.

The case is Gunderson v. Palmer et al., case number 1:25-cv-00585, in the U.S. District Court for the District of Colorado.

--Editing by Michael Watanabe.

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Moves To Change Del. Corporate Law Spark Pushback

By **Jeff Montgomery**

Law360 (February 24, 2025, 4:48 PM EST) -- A public opposition campaign complete with website and street signs has surfaced to oppose corporation and bar-backed legislation that would overhaul Delaware stockholder litigation rights and fee awards, intensifying an already unprecedented political fight that broke out last year over corporate governance concessions.

The website for the group identified as behind the campaign, www.stopsb21.com, asserts that "Elon Musk's lawyers are pushing Delaware Senate Bill 21 — the Billionaires' Bill — a dangerous proposal that would strip away critical protections for pension funds and everyday investors."

Richards Layton & Finger PA, which has represented Elon Musk in Court of Chancery litigation in the past, denied drafting the legislation. A Richards Layton attorney did serve as the "scrivener" who compiled what became the bill, the firm said. The firm did not comment immediately on the legislative campaign, but asked for a link to the website.

Details on the genesis of the opposition were not immediately available, although its site describes it as a "coalition of advocates and experts dedicated to safeguarding the future of Delaware's corporate governance system." The multiple interests involved, including consumer rights organizations, legal scholars, corporate governance specialists, and public interest advocates, were described as "committed to defending the interests of everyday Americans."

Headlined on the group's home-page was an image of a chainsaw-wielding Elon Musk, saying: "Protect Delaware from Elon Musk. Save Your Pension."

"This bill [SB21] is not only a bad idea, but its mere proposal is. Even if it doesn't pass, the mere fact that it appeared creates serious problems," said Charles M. Elson, founding director of the University of Delaware's Weinberg Center for Corporate Governance and retired professor of finance and Edgar S. Woolard Chair in corporate governance.

"It directly overturns Supreme Court decisions," Elson said, referring to the Delaware Supreme Court. "Any time you inject political processes to overrule a legitimately decided Supreme Court ruling, you destroy national confidence in our courts."

Elon Musk, whose 10-year, nearly \$56 billion stock-based compensation plan with Tesla was voided by Chancellor Kathaleen St. J. McCormick in January 2024, has championed the so-called dump Delaware push, urging companies reincorporate in other states. It flared up after other decisions in other corporate power rulings, including *West Palm Beach Firefighters Pension Fund v. Moelis & Co.*, *Match Group derivative litigation*, and *Sjunde AP-Fonden v. Activision Blizzard*.

Moelis saw Vice Chancellor J. Travis Laster shoot down as "facially invalid" most provisions of a stockholder agreement that gave the company's controlling stockholder effective veto rights over many board decisions. In *Match.com*, Delaware's Supreme Court reversed a Chancery Court dismissal of a suit challenging a deal approved by a special committee with less than unanimous independence. And in *Activision*, Chancellor McCormick rejected a motion to dismiss a suit contesting board approval of draft merger agreement.

The Moelis decision led to a hotly debated, quickly approved Delaware bill that carved out protection for stockholder agreements like the one challenged in *Moelis*, and that allows court approval of provisions in less-than-final form and penalties for failures to consummate a merger agreement, among other changes.

Musk, meanwhile, subsequently won a drive to incorporate Tesla in Texas, although a Delaware Supreme Court appeal of his compensation decision is pending. Several other companies have followed suit, or indicated that they are in the process or considering it.

Provisions in SB21 — up for a first hearing in a Senate committee on March 12 — include new "safe harbor" protections for one or more directors, officers or controlling stockholders or control groups, shielding them from liability if they have interests or relationships that render them "not independent" with regard to deals or actions.

It also amends stockholder inspection rights involving corporate records and, among other provisions, establishes terms for deeming directors and stockholders independent and provides that controlling stockholders and control groups cannot be held liable for monetary damages for breaches of the duty of care.

Backers of the legislation include some of the nation's top corporate and commercial law firms.

Northern Delaware Democratic Sen. Bryan Townsend, an attorney and chairman of the state Senate Judiciary Committee to which the bill has been assigned, did not immediately reply to a request for comment on the "StopSB21" campaign.

On Friday, Martin Lipton, founding partner of Wachtell Lipton Rosen & Katz, posted in the Harvard Law School Forum on Corporate Governance that SB21 "will ensure that Delaware law gives full respect to the good-faith decisions of independent directors and recognizes the primacy of disinterested stockholders when they vote for a transaction."

Martin Lipton's written comments on the nine-page bill said the amendments "will also place sensible limits on requests for corporate books and records," restoring what were described as conventional rules and also "restoring confidence in Delaware's corporate law."

Ann M. Lipton, the Michael M. Fleishman Professor in Business Law and Entrepreneurship at Tulane University Law School and associate dean for faculty research, voiced surprise at the public push-back campaign against the legislation.

"Oh my god. I don't know anything about it and I've never seen anything like it. My only comment is, it's really bad for Delaware when the general public becomes concerned about the content of corporate law," Ann Lipton wrote in an email.

"Delaware's tried very hard to insulate its corporate law from politics, and this bill kind of wades into it in a big way. But insulation from politics was always Delaware's strength in terms of corporate lawmaking," Ann Lipton wrote.

The group posted comments from law firms, law professors and others, including Massachusetts Democratic U.S. Sen. Elizabeth Warren.

"Musk wants to write his own laws to take tens of billions of dollars from Tesla shareholders after the courts said he couldn't," Warren is quoted on the website as saying from a recent CNBC interview. "Corporate law protects minority shareholders' rights so that greedy controlling shareholders like Musk can't take away safeguards for Main Street investors."

The Council of Institutional Investors, one of the groups mentioned on the website as closely watching the issue, has yet to take a public position on the measure, a representative of the group said Monday.

A separate resolution, tabled for now, 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."

The intent, according to the measure, is a proposal "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."

On Monday, Sarath Sanga, professor of law and co-director of the Center for the Study of Corporate Law at Yale Law School, and Gabriel Rauterberg, a law professor at the University of Michigan Law School, wrote in a Harvard Law School forum post that the Moelis litigation, "has reignited a fundamental debate in corporate law: Whether core features of corporate governance should remain mandatory and inviolable, or whether sophisticated parties should be free to contract around them as they see fit."

A forthcoming paper, the two wrote, argues that current debates over shareholder contracting need to be reoriented. The current challenge, they wrote, "lies not in choosing between rigid mandatory rules or unfettered contractual freedom, but in appropriately designing the mechanisms — the altering rules — that structure how corporations opt out of default arrangements."

--Editing by Emily Kokoll.

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3rd Circ. Says \$31M Order To Refill Class Funds Isn't Enough

By **George Woolston**

Law360 (February 24, 2025, 6:29 PM EST) -- The Third Circuit on Monday vacated and sent back a district court's order for a New Jersey man convicted of stealing \$40 million from settlements in stockholder class actions to pay \$31 million in restitution, ruling the order didn't fully compensate each victim of the fraud.

The three-judge panel said in a **precedential opinion** Monday that the **\$31 million restitution** a trial court ordered Joseph Cammarata to pay ran afoul of the Mandatory Victims Restitution Act of 1996, directing the lower court to consider whether the number of victims is too large to make restitution practicable or whether determining the total amount of their losses would complicate or prolong sentencing.

The panel held that the trial court lacked the discretion to order restitution to only 115 of the 397 classes victimized by the fraudulent scheme, as well as award an amount "well below" the more than \$40 million in losses suffered by all the victim classes.

"At sentencing, the district court announced on the record the need to provide restitution, invoked its ability to forego restitution under [Section] 3663A(c)(3), yet ordered less than full restitution. In doing so, it considered that provision's application to a restitution award that did not fully compensate each victim of the defendants' fraud. And it acknowledged at least some semblance of impracticability when it noted that distributing restitution to some victims may not be economically feasible," U.S. Circuit Judge D. Brooks Smith wrote for the panel.

According to the opinion, a district court must order restitution to each victim in the full amount of their losses under the MVRA.

The panel further remanded the court's order directing Cammarata to forfeit his home in the Pocono Mountains, directing the government to amend the forfeiture order to reflect the property is forfeitable as "other property," and not as property derived from criminal proceeds.

"Insofar as Cammarata would have forfeited the Poconos property as substitute property in any event, it is highly probable that the procedural error did not contribute to the judgment. So reversal is not warranted," the Third Circuit said. "But we decline the government's invitation to affirm, without amendment to the forfeiture order, simply because Cammarata would have forfeited the Poconos property under a process distinct from the one it pursued before the district court."

The panel did, however, find that the trial court was right to determine that the class members were victims, and rejected Cammarata's arguments that evidence and the government's closing arguments constructively amended the superseding indictment; that the trial court violated the Federal Rules of Evidence by permitting the government to cross-examine him about his purchase of a private island and portions of his tax returns; and that the amount of losses caused by his conduct was erroneous.

Cammarata argued before the circuit court that the restitution order should be **tossed entirely** because he was ordered to pay the restitution to the class action settlement funds, arguing they had suffered no clearly identifiable loss. He also asserted that the government had expressly waived its opportunity to seek forfeiture of any parcel of real estate at the close of trial.

Cammarata was sentenced to 10 years in prison and ordered to pay \$31 million in restitution to a list

of settlement funds in June 2023 after a Pennsylvania federal jury found him **guilty** of wire fraud, money laundering and conspiracy charges. He and others were accused of stealing millions from funds created as a result of settled securities class actions and U.S. Securities and Exchange Commission enforcement actions by submitting false claims on behalf of bogus clients.

According to prosecutors, Cammarata and his co-conspirators Eric Cohen and David Punturieri formed Alpha Plus Recovery, a "claims aggregator" that would theoretically work with investors to help them recover lost funds by filing claims in applicable shareholder class action settlements or enforcement actions by the SEC.

However, Alpha Plus submitted claims to administrators on behalf of three sham clients they created by falsely stating they had bought shares in the securities at issue in the lawsuits and enforcement actions, prosecutors and the SEC said.

Cammarata received roughly \$18.9 million of the more than \$40 million total that the scheme collected, and he used a significant amount for trips on private jets, expensive homes, luxury cars and yachts, and even the maintenance of a private island in the Bahamas, the government said.

Punturieri and Cohen pled guilty to their criminal charges. Both were sentenced to 18 months in prison in late 2023 and early 2024 and ordered to pay \$31 million in restitution, according to court records.

Counsel for Cammarata declined to comment Monday. Representatives for the U.S. Department of Justice did not immediately respond to a request for comment.

The government is represented by Paul G. Shapiro of the U.S. Attorney's Office for the Eastern District of Pennsylvania.

Cammarata is represented by Peter Goldberger.

The case is U.S. v. Cammarata, case number 23-2110, in the U.S. Court of Appeals for the Third Circuit.

--Additional reporting by Sydney Price, Matthew Santoni and P.J. D'Annunzio. Editing by Adam LoBelia.



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Biotech Minority Investor Sues In Del. To Block Control Moves

By **Jeff Montgomery**

Law360 (February 24, 2025, 8:06 PM EST) -- A company control and takeover battle between Aurion Biotech Inc. and a large investor made its second landing in Delaware's Court of Chancery on Monday, in a minority stockholder's direct and derivative suit accusing Alcon Research Inc. and its board designates of multiple fiduciary breaches.

Deerfield Private Design Fund V LP and an affiliate, which together hold 34% of Alcon's shares, accused Alcon of "engineering an acquisition of Aurion on the cheap" by blocking the company's initial public offering and, through board appointments, seeking to gain majority share ownership and board control, blocking any new financing not provided by Alcon.

In addition to alleging breaches of fiduciary duty, Deerfield sued under a different Delaware General Corporation Law section, challenging the validity of an Aurion board appointment lined up by Alcon and seeking appointment of an independent director, among other counts and requests for court action.

For more than two years, according to the suit for rollback of Alcon-directed actions, Alcon "has waged an unrelenting campaign to take over nominal defendant Aurion Biotech Inc., a promising biotechnology company in which Deerfield and Alcon are investors, at a highly discounted valuation."

The four-count breach of fiduciary duty suit was docketed about two weeks after Alcon argued on appeal in Delaware's Supreme Court for reversal of a Chancery decision in a separate case. The lower court complaint, in part, involved Alcon claims that Aurion had breached Alcon's rights as a preferred stockholder to consent to or reject a reverse stock split that Alcon argued was unnecessary and dilutive of its preferred shares.

Aurion was described in court documents as a billion-dollar company potentially worth far more, pending approvals of a treatment — already cleared in Japan and under review in the U.S. — for corneal edema, a disease of the eye responsible for blindness in millions of people around the world.

On Monday, minority stockholder Deerfield accused Alcon in its complaint of seeking to limit most alternative financing sources needed for an IPO even as independent valuations "placed a multibillion-dollar value" on the business.

The complaint said Alcon-engineered changes in board makeup and a bylaws amendment, "if valid, will doom the company's ability to conduct an IPO, obtain alternative financing or assess the market value of the company by soliciting third parties, and also will impair the company's ordinary course business activity."

Alcon — which recently gained a prospective 55% controlling share of the business — allegedly designed its own funding proposals so that "if Aurion had accepted them, it would have been left in the financially precarious position of having no choice but ultimately to accept a lowball acquisition offer from Alcon far below the value the company could command in an IPO or other market transaction," the complaint said.

Alcon released a statement early Tuesday saying: "'We are aware of the suit and will be responding accordingly. As Aurion's largest stockholder, Alcon remains committed to the long-term interests of Aurion and its promising technology.'"

Deerfield did not immediately respond to requests for comment.

During state Supreme Court arguments on Feb. 12, Monica Loseman of Gibson Dunn & Crutcher LLP, counsel to Alcon, told Chief Justice Collins J. Seitz Jr. and Justices Gary F. Traynor and Abigail M. LeGrow that Aurion had attempted to line up a reverse stock split solely "to obtain what it did not have before, shares to sell in an IPO," without what Alcon argued were bargained-for approval rights.

Two days later, Alcon lined up what Aurion's complaint described as a "Valentine's Day Massacre," reaching an agreement to buy another investor group's 13.5% share of Aurion stock and giving it a nearly 55% majority once a 30-day federal waiting period ends.

The same evening, executive board chair Thomas Frinzi, who allegedly has a "close relationship with Alcon's CEO," resigned, leaving only six members on the board. An Alcon designee, meanwhile, took the seat of an investment firm that had recently given Alcon its shareholder majority minutes later, according to the complaint, creating a board vacancy and three-to-three deadlock.

Days later, according to the complaint, Alcon and the investors that sold Alcon shares that would give it a majority — Petrichor Opportunities Fund I LP and an affiliate — notified Aurion that, by written consent, a special committee formed to prepare for an initial public offering was dissolved, and authority of company officers to enter into debt or equity financing was revoked, with majority approval required for a wide range of actions.

Aurion, the complaint said, was told the IPO "was not going to happen and that Alcon would only provide financing that would allow Alcon to purchase the company on Alcon's terms and at a time that would be suitable for Alcon."

Accused of fiduciary breaches were Alcon, three Alcon-affiliated directors on Aurion's board, and former Aurion board chair Thomas Frinzi, who resigned his board seat shortly before Alcon and Petrichor announced an Alcon designee would take his place, creating a board deadlock.

Alcon also faces a count of aiding and abetting breaches of fiduciary duty.

The suit challenging Alcon's director actions seeks invalidation of the most recent Alcon board appointment and the invalidation of bylaw changes, as well as of its purchase of shares from Petrichor, among other requests.

Deerfield Private Design Fund V LP and Deerfield Healthcare Innovations Fund II LP are represented by David E. Ross, Eric D. Selden and Elizabeth M. Taylor of Ross Aronstam & Moritz LLP and John L. Hardiman, Matthew A. Schwartz, Justin J. DeCamp, Ari B. Blaut and Christopher A. Graham of Sullivan & Cromwell LLP.

Counsel information for Alcon Research LLC and the directors named in the suit and for Aurion Biotech Inc. as the nominal defendant in the direct and derivative suit was not immediately available.

The cases are Deerfield Private Design Fund V LP, et al. v. Alcon Research LLC et al., cases number 2025-0201 and 0204, in the Court of Chancery of the State of Delaware.

--Editing by Philip Shea.

Update: This story has been updated to include a comment from Alcon Biotech Inc.



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9th Circ. Axes Fee Award In California Pizza Kitchen Hack Deal

By **Allison Grande**

Law360 (February 24, 2025, 11:14 PM EST) -- The Ninth Circuit on Monday scrapped an attorney fee award of \$800,000 given to class counsel as part of a deal resolving data breach litigation against California Pizza Kitchen, finding that the lower court had failed to properly compare the "actual value" of the settlement — which the panel put around \$950,000 — to the requested fees.

While the three-judge appellate panel affirmed the district court's approval of the deal that a class of current and former California Pizza Kitchen workers reached with the restaurant chain over a 2021 data breach, the judges reversed the award of what it found to be "excessive" attorney fees and remanded "for the district court to determine the settlement's actual value to class members and award reasonable and proportionate attorneys' fees."

"The district court appeared disinclined to award fees 'clearly above the benchmark of 25% percentage-of-recovery,'" U.S. Circuit Judge Kenneth K. Lee wrote for the panel. "Yet its final award did just that — even though the attorneys' fees constitute around 45% of the settlement value to the class."

The judges dinged U.S. District Judge David O. Carter for appearing "to accept the consolidated plaintiffs' assertion that the class's claims were worth \$1.16 million, despite the substantial likelihood that many of these claims would be thrown out post-validation for exceeding the caps or failing to provide supporting documentation."

That figure, which was contested by a group of plaintiffs-turned-objectors who were once part of the consolidated dispute but refused to join the deal, was also at least \$208,000 too high, the Ninth Circuit panel found, since the settlement's \$1,000 cap on ordinary expense claims meant that the 176 of these claims that were filed were valued at \$176,000 and not the roughly \$384,000 that the plaintiffs have asserted that they're worth.

"So, at most, the monetary value of the class's claims is around \$950,000, not \$1.16 million," the panel held. "A fee award of \$800,000 would then constitute at most around 45% of settlement value, a significant departure from our 25% benchmark."

The panel instructed the district court on remand to "scrutinize the reasonableness of the consolidated plaintiffs' lodestar" and then proceed to "calculate the actual value of the settlement to the class and perform a crosscheck of the lodestar against the 25% percentage-of-recovery benchmark to ensure that fees are reasonable."

"Based on the record before us, that method will likely favor downward adjustment," the appellate panel ruled.

While the objectors also urged the Ninth Circuit to cut down Judge Carter's approval of the settlement due to his alleged failures to address their collusion allegations or their contention that the deal ignored the potential of the claims under California's Consumer Privacy Act, which they valued at \$77 million, the appellate panel upheld this ruling, finding that the district court "neither procedurally erred nor abused its discretion in finding the settlement substantively acceptable."

Echoing reservations that they voiced at oral arguments **in June**, the judges did note that Judge Carter's approval orders were "sparse — almost boilerplate — and memorialized little of the district

court's rationale."

"Usually, when we cannot determine the district court's reasoning, we remand the case for the court to explain its rationale," Judge Lee wrote. "But here, we can reasonably infer the district court's rationale from the record, which was unusually extensive with multiple hearings and supplemental briefs."

Based on this record, the appellate panel held that the lower court had properly applied the heightened standard to review the settlement for collusion that was established by the Ninth Circuit in its 2011 ruling in the case *In re Bluetooth Headset Product Liability Litigation*.

"Here, the district court gave the settlement provisions a hard look under the Bluetooth factors," Judge Lee wrote, noting that the lower court examined issues such as whether California Pizza Kitchen's decision to negotiate with the consolidated plaintiffs amounted to a "reverse action," whether the bid by counsel for the group of plaintiffs who chose not to participate in the deal was improper and whether a claims-made settlement was "inherently collusive."

"On this record, we cannot say that the district court ignored the Bluetooth factors or abused its discretion," the panel ruled.

The appellate court also refused to overturn the lower court's determination that the deal was fair, reasonable and adequate, concluding that, while there were concerns over only 1.8% of the settlement class filing claims, the settlement ultimately "does offer real benefits — not worthless coupons or imaginary injunctive relief — to the people who submitted claims."

While all three members of the appellate panel agreed on the decision to reverse and remand the lower court's approval of the attorney fee awards, U.S. Circuit Judge Daniel P. Collins penned a separate opinion dissenting from the majority's move to affirm the approval of the underlying settlement.

Judge Collins specifically took issue with the lower court signing off on the proposed deal before class certification, finding that this led Judge Carter to provide "little explanation" as to why he approved the settlement, even though the deal ended up having a final value that was nearly a fourth of the "conservative" \$3.7 million that the plaintiffs **put it at** and the proposed attorney fees award comprised nearly 46% of the entire settlement.

"The district court's failure to adequately examine any of these issues compels reversal and remand," Judge Collins wrote in his dissent. "The majority is simply wrong in concluding that the record here provides a sufficient basis for affirming the district court."

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

The parties' dispute stems from a data breach that California Pizza Kitchen, or CPK, began notifying current and former employees about in November 2021, after determining a month earlier that Social Security numbers and other information may have been stolen.

This disclosure led to the filing of five lawsuits connected to the attack, which affected about 100,000 of CPK's current and former employees.

One group of plaintiffs' lawyers quickly struck a settlement with CPK, which allowed for cash payments to those who filed valid claims of up to \$1,000 for "ordinary" expenses and up to \$5,000 for "extraordinary" expenses.

Counsel for the plaintiffs in the first four cases filed against CPK agreed to work together, and their cases were consolidated. However, those pressing the final case, led by Aviva Kirsten, refused to be included and instead **raised objections** to the settlement, telling the lower court that it was a "rotten deal" that appeared to be reached through collusion and ignored the potential of the claims that were only raised in their suit under California's novel consumer privacy law.

While the lower court acknowledged these concerns, it ultimately approved the deal, leading the Kirsten plaintiffs to take its challenge to the Ninth Circuit.

U.S. Circuit Judges Richard R. Clifton, Daniel P. Collins and Kenneth K. Lee decided the appeal.

The objectors are represented by Theodore Maya, Christopher Stiner and Tina Wolfson of Ahdoot & Wolfson PC, Todd S. Garber and Andrew C. White of Finkelstein Blankinship Frei-Pearson & Garber LLP and Seth A. Meyer of Meyer Law Firm.

The proposed class is represented by David K. Lietz of Milberg Coleman Bryson Phillips Grossman PLLC, Mason Barney of Siri & Glimstad LLP, Rachele R. Byrd of Wolf Haldenstein Adler Freeman & Herz LLP and Daniel O. Herrera of Cafferty Clobes Meriwether & Sprengel LLP.

California Pizza Kitchen is represented by Jon Peter Kardassakis and Michael K. Grimaldi of Lewis Brisbois Bisgaard & Smith LLP.

The case is In re: Aviva Kirsten et al. v. California Pizza Kitchen Inc., case number 23-55288, in the U.S. Court of Appeals for the Ninth Circuit.

--Additional reporting by Craig Clough. Editing by Michael Watanabe.

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Baby Bottle Cos. Get Parts Of Microplastics Suit Tossed

By **Jonathan Capriel**

Law360 (February 24, 2025, 8:19 PM EST) -- Parents who sued Philips over allegations that microplastics leach from its "BPA free" baby bottles and sippy cups saw their lawsuit partially trimmed, after a California federal judge said that the company's label isn't misleading because it doesn't promise the products are "devoid of all harmful plastic."

Labels that say "BPA free" should be considered by what they "actually" say as opposed to the "implied meaning" that the consumers claim to have taken away from it, said U.S. District Judge Rita F. Lin. In this case, Philips North America LLC is only promising that its bottles and cups do not contain one particular kind of plastic, Bisphenol A, the judge said.

"Such a statement that the Products are free of BPAs cannot be extrapolated to imply that the products are devoid of all harmful plastic byproducts," the judge said. "Accordingly, Plaintiffs have not identified a misleading representation as the basis for their claims."

In her Thursday order, Judge Lin found that the proposed class of consumers had failed to plead that the "BPA free" wording was an affirmative misrepresentation. She dismissed a number of buyer claims made under California's Unfair Competition Law, False Advertising Law, and Consumers Legal Remedies Act. She also denied the plaintiffs' bid for injunctive relief and their claim for breach of warranty.

But Judge Lin did find that the parents had adequately pled that Philips had made a "material omission" by failing to warn consumers that the bottles and cups, if heated up, could leach harmful microplastics.

"Plaintiffs have sufficiently alleged a plausible connection between the amount of microplastics potentially leached by the Products and the associated harms to infants — a particularly sensitive population," the judge said.

The lawsuit, filed in June, claims Philips engaged in deceitful marketing campaigns by advertising its bottles and plastic cups, which contain polypropylene, as safe to use for children, without mentioning on the products' labels that when the products are heated through the course of ordinary use, they can contaminate the contents with leached microplastics. The suit was one of **two** filed by California parents, both groups being represented by the Clarkson Law Firm PC, which made nearly identical claims.

Among the products identified in the suit included Avent branded bottles designed to be "anti-colic" and its "natural" line, which are supposed to imitate the pace of breastfeeding.

In October, Philips filed an opposition filing that argued that the parents understood the "BPA free" label to be "technically accurate." Philips also argued that the parents didn't actually test the bottles and cups in question and therefore can't actually allege how many microplastics the products leach or establish a plausible threshold for unsafe exposure.

While Judge Lin agreed that the consumers had gone too far out on a limb when inferring what the meaning of BPA free is, she rejected Philips' arguments for tossing the entire lawsuit. At this stage of litigation, the parents don't need to say what specific level of microplastics are actually harmful to babies and toddlers, the judge said. By leaning on number studies, the consumers have carried a

number of their claims to the court's satisfaction.

"Though [Philips] argues that plaintiffs failed to test the specific products at issue in the case — i.e., those manufactured by [Philips] — the studies that measure microplastic release rates of similar polypropylene products provides sufficient circumstantial evidence to infer that similar rates of release occur during the course of use of [Philips'] products," the judge said.

The parents are represented by Ryan J. Clarkson, Bahar Sodaify, Kelsey J. Elling and Alan Gudino of Clarkson Law Firm PC.

Philips is represented by Cortlin H. Lannin, Raymond G. Lu, and Megan L. Rodgers of Covington & Burling LLP.

The cases are Tuliisa Miller et al. v. Philips North America LLC, case number 3:24-cv-03781, in the U.S. District Court for the Northern District of California.

—Additional reporting by Gina Kim. Editing by Emily Kokoll.

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Bigelow Says Class Trial Is On 'Road To Nowhere'

By **Rachel Scharf**

Law360, Los Angeles (February 24, 2025, 8:34 PM EST) -- Counsel for R.C. Bigelow Inc. urged a California federal judge Monday to call off an upcoming class action damages trial over the tea-maker's "manufactured in the USA" labels, saying the proceeding would be a "road to nowhere" because of fatally flawed sales data.

A damages-only trial is scheduled to begin April 1 after U.S. District Judge Dean D. Pregerson **held Bigelow liable** this past summer for misleading California tea buyers about the products' overseas origins. But Bigelow is now trying to undo **class certification**, saying the group doesn't have a viable statewide damages model.

The class is seeking to introduce data from analytics company Information Resources Inc., which purportedly lays out Bigelow's California sales as reported by grocery stores and big box retailers. But Timothy Branson of Gordon Rees Scully Mansukhani LLP, who represents Bigelow, argued during a Monday hearing that this data is totally unreliable.

According to Branson, IRI mixes actual sales data with algorithm-based projections, and no viable expert can decipher this "black box" of numbers. The plaintiffs can't prove classwide damages without any admissible evidence, Branson argued, making the scheduled trial a waste of time.

"It's the road to nowhere, in my opinion," he said.

Aubry Wand of The Wand Law Firm PC, who represents the class, countered that IRI's sales data will indeed hold up under the scrutiny of trial.

Wand told Judge Pregerson that these numbers are reliable, pointing out that they're regularly cited in U.S. Securities and Exchange Commission filings and used by research institutions and government agencies.

"Bigelow's own economist has relied routinely on this same IRI retail data, including in this case," Wand argued Monday. "The data is sufficiently reliable to prove damages."

The judge ultimately took the matter under submission, saying he has to think about whether to make a ruling now or go forward with jury selection and deal with the evidence "on the fly" as it comes in.

Counsel for both sides declined to comment as they exited the courtroom.

The case, **dating back to 2020**, claims Bigelow grows and processes its black, green and oolong tea leaves in Sri Lanka and India, not "in the USA" as reflected on the products' labels.

Bigelow counters that "manufactured in the USA" refers to tea bags themselves, not the leaves inside. But Judge Pregerson sided with the class last July, holding that leaves are the core piece of the tea product, and Bigelow thus undisputedly deceived consumers.

The class is represented by Todd M. Schneider, Peter B. Schneider and Jason H. Kim of Schneider Wallace Cottrell Konecky LLP, and Aubry Wand of The Wand Law Firm PC.

Bigelow is represented by Timothy K. Branson, Thomas R. Watson and Patrick J. Mulkern of Gordon Rees Scully Mansukhani LLP.

The case is Kimberly Banks et al. v. R.C. Bigelow Inc. et al., case number 2:20-cv-06208, in the U.S. District Court for the Central District of California.

--Additional reporting by Craig Clough. Editing by Kristen Becker.

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Securities Group Of The Year: Bernstein Litowitz

By **Sydney Price**

Law360 (February 24, 2025, 4:03 PM EST) -- Bernstein Litowitz Berger & Grossmann LLP's attorneys recently secured over half a billion dollars for investors of government-sponsored mortgages in their suit against the federal government, and millions more for investors of publicly traded companies like Qualcomm and Perrigo, earning the firm a spot among the **2024 Law360 Securities Groups of the Year**.



Bernstein Litowitz partner John Rizio-Hamilton said the "boutique" securities practice is headquartered in New York but also has a "meaningful footprint" in Los Angeles.

"We go up against the largest and most experienced defense firms in the world and are successful despite being at a size disadvantage in terms of the number of lawyers," he said.

Rizio-Hamilton and Bernstein Litowitz partner Salvatore Graziano said they consider one of the practice's most significant wins this past year a **\$612 million judgment** for Fannie Mae and Freddie Mac shareholders, which involved a face-off against the federal government.

The suit was related to the fallout of the 2008 subprime mortgage crisis. Bernstein Litowitz initially filed the class action against the federal government in 2013, alleging that the Federal Housing Finance Agency acted arbitrarily and unreasonably by transferring Fannie and Freddie's profits to the U.S. Treasury.

"There came a point where the federal government just basically cut investors off from receiving dividends, causing great financial harm to all of the investors and sort of just taking away their ownership," Rizio-Hamilton said.

After a jury in the first trial was unable to reach a verdict, Bernstein Litowitz's clients achieved a victory at retrial in D.C. federal court.

The attorneys said Bernstein Litowitz convinced the jury that the value of Fannie and Freddie's stock was significantly decreased by the FHFA improperly transferring the companies' net worth.

"In the second trial, we took the lessons learned in the first and applied them and got a terrific result," Rizio-Hamilton said.

Another major win for Bernstein Litowitz last year, the attorneys said, was in its securities class action litigation against chipmaker Qualcomm Inc.

In September, a California federal court approved a **\$75 million deal** to end claims Qualcomm used its monopoly to force cellphone makers into unfair agreements. According to the settlement, it was the first time any U.S. plaintiff has achieved any recovery from the company in any of the proceedings related to the alleged anticompetitive conduct at issue.

The attorneys say the litigation involved taking and defending more than 37 fact and expert depositions and reviewing more than 60 million pages of documents.

Last year, after nearly seven years of litigation, Bernstein Litowitz's securities team also **secured \$97 million** for investors of pharmaceutical company Perrigo who claimed its executives made misrepresentations overvaluing the company to garner enough shareholder support to defeat a \$29 billion hostile takeover attempt by Mylan.

The case was brought in New Jersey for a class of investors who purchased shares on the Tel Aviv Stock Exchange under Israeli law. The suit represented the first time in years that a U.S. federal court certified a class of investors who purchased on a non-U.S. exchange.

Looking ahead, Rizio-Hamilton said that under the Trump administration, the public should expect to see less interest from the U.S. Supreme Court and U.S. Securities and Exchange Commission, which means private litigation may be the "predominant guardian of market integrity."

"What we do in terms of private enforcement becomes that much more important because we may be the main — and in some instances the only — check on corporate malfeasance," he said.

--Editing by Adam LoBelia.



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Class Action Group Of The Year: Lieff Cabraser

By **Tim Ryan**

Law360 (February 24, 2025, 4:03 PM EST) -- Lieff Cabraser Heimann & Bernstein LLP attorneys secured several multimillion-dollar settlements in high-profile class actions last year, including in a cutting-edge privacy case against the owner of Facebook and another over the 2023 East Palestine, Ohio, train derailment and toxic spill, earning the firm a spot among the **2024 Law360 Class Action Groups of the Year**.



The firm's sole focus is plaintiff-side class actions and other forms of mass litigation, which has been the case for the nearly 50 years that partner Elizabeth Cabraser has been at the firm. Cabraser said Lieff Cabraser has grown to roughly 125 attorneys, relatively large for a firm that focuses only on plaintiff-side mass litigation, and that the growth has always been in response to increasing demand for their type of work.

"If we need to grow in order to adequately service our clients and our cases, we will," Cabraser said. "And that's really how our growth has occurred, it's a response to the requirements of our cases."

Cabraser said one of the firm's most significant actions from the past year was serving as co-counsel in a group of class actions accusing video streamers and media companies of discreetly sharing users' watching habits with Facebook's owner, Meta Platforms Inc., through a software embedded on their websites. The settlements Lieff Cabraser attorneys negotiated, approved between March and July 2024, **included \$2.65 million** from FloSports Inc., \$8.3 million in a case involving AMC Networks and a deal with Epoch Times that did not include damages but that bound the company to remove tracking tools and delete user data.

The firm also won approval of a **\$115 million class action settlement** in a case accusing Oracle of a sweeping data collection scheme that potentially allowed the company to monitor and store

information about hundreds of millions of people. The suit, initially filed in 2022, claimed that the tech giant used software in web browsers and other tools to gather and keep consumer information without their consent. A federal judge granted preliminary approval for the deal in August and final approval in November.

Cabraser said the suits were early victories on the issue of online privacy. She expects the subject to only become more common as people live more of their lives online, and that the settlements are important warnings for tech companies.

"We're all exposed every second of the day, despite best efforts and despite the law," Cabraser said. "This is an early example of how we are really trying to stay not only abreast of, but ahead of the curve, and to protect privacy rights to try to change corporate culture so that all of the new high-tech brave new world of technology remembers that it is still serving human beings."

Lieff Cabraser was also co-counsel on a 2023 class action against Norfolk Southern over the derailment of a train in East Palestine, Ohio, that resulted in a fire and spill of toxic chemicals. The **\$600 million settlement**, which was approved in September, includes long-term medical monitoring, which Cabraser said was a crucial victory for the town's people, who she said were very invested in the case.

"People obviously really cared about rectifying the situation," Cabraser said. "They really needed to recover."

Community involvement was a common feature in other wins Lieff Cabraser attorneys struck in the past year, including settlements totaling \$122 million that the firm negotiated with major retailers and coffee suppliers accused of selling products falsely claiming to be grown from Hawaii's Kona region.

Partner Jason Lichtman, who was lead counsel on the Kona cases, said retailers could charge less by passing off non-Kona coffee with Kona branding, devaluing the genuine product and making the hard job of farming in the region even more difficult. Lichtman said the case was unique because instead of involving small amounts of damages spread across a large number of people, the suit was meant to remedy deep harms experienced by a small group of farmers.

He said a critical component of the settlement was that in addition to recovering almost all past damages, the companies committed to only using genuine Kona coffee going forward.

Lichtman said the farmers played an "active, constructive role" in the litigation, helping the legal team grasp the unique factors in the case and helping them understand what a good resolution would be.

"The focus of the class representatives was I want to make sure this is right in the future," Lichtman said.

Another group of active plaintiffs were those who brought a historic gender discrimination suit accusing Goldman Sachs of using review systems that systematically rated women lower than men. Lieff Cabraser served as co-lead counsel in the case, which ran for more than 13 years and resulted in a **\$215 million settlement in 2023** that the firm believes is the largest ever pre-trial settlement in a gender discrimination case.

Lieff Cabraser San Francisco office managing partner Kelly Dermody, who represented the class, said Goldman Sachs fought hard against the suit and the women who brought it had to stay the course for years longer than a typical case. Dermody said the plaintiffs were very involved in how the case developed and focused not just on their potential recovery, but also how the settlement would affect others in similar positions.

"Very special group. Very unique in their approach and extremely community-oriented," Dermody said. "That is, thinking about the community of women, not just at Goldman, but on Wall Street and what it means to be a professional on Wall Street."

--Editing by Michael Watanabe.



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Colo. Justices Toss Student's COVID Refund Class Action

By **Thy Vo**

Law360 (February 24, 2025, 7:11 PM EST) -- A Colorado State University student seeking classwide fee refunds for campus shutdowns during the coronavirus pandemic can't allege unjust enrichment after her breach of contract claims were tossed, according to a state Supreme Court decision Monday that found the student's position would "obliterate the difference" between the two claims.

A Colorado Court of Appeals panel revived Renee Alderman's unjust enrichment claim after concluding a proposed class of CSU students would be **unfairly left without rights** after two breach of contract claims were tossed. The student contended CSU should return fees for semesters in which campus amenities were never provided because classes were held remotely.

In a unanimous **decision** published Monday, the Colorado Supreme Court reversed the panel's decision reinstating the unjust enrichment claim.

Alderman's unjust enrichment claim involves the same issues covered by her "valid, enforceable contract" with the university, Justice Maria E. Berkenkotter wrote on behalf of the court.

While her lawyer **asserted at oral arguments** that the claim is an important "backstop" for when a contract lacks a material term, justices said the student provided no case law to support that proposition.

"She offers no principled limit to this expansion, which in our view would effectively obliterate the difference between breach of contract and unjust enrichment claims," Justice Berkenkotter wrote. "This, of course, is something we simply cannot do."

Alderman filed the proposed class action in 2020 seeking reimbursements for the spring 2020 semester, arguing students paid for an in-person experience and use of campus facilities but never got those services because of pandemic closures.

A trial court granted CSU's motion to dismiss the breach of contract claims, citing a statute that states the CSU board of governors "at any time may temporarily suspend a university in case of fire, the prevalence of fatal disease, or other unforeseen calamity."

The trial court later threw out unjust enrichment claims, citing case law that says unjust enrichment claims under an implied contract can't be brought if they cover the same subject matter as an express contract.

The Court of Appeals revived the unjust enrichment claim, contending the students would otherwise be left without relief. The statute authorizing CSU to temporarily suspend campus operations would make the breach of contract claims unenforceable, leaving unjust enrichment as Alderman's only option to enforce her rights, the panel found in a June 2023 decision.

On Monday, the high court said Alderman was basically arguing that an unjust enrichment claim "should serve as a gap-filler provision to provide a remedy when a contract is silent about a desired term."

Alderman asserted her demand for a fee refund wasn't covered by her contract with CSU because it had no mention of the public university system's obligations during a temporary campus closure.

But state statute, which was incorporated into the student's contract with the university system, explicitly gave CSU the authority to temporarily shut down operations during the pandemic, which is why the students can't state a breach of contract claim, according to Monday's ruling.

The fact that the contract doesn't "provide all the services and protections to which a party claims it is entitled" doesn't mean that contract becomes unenforceable, Justice Berkenkotter said.

Justice William W. Hood III did not participate in the case because his daughter was a student at CSU during the period in question.

CSU, through a spokesperson, celebrated the decision Monday.

"CSU is pleased with the Supreme Court's decision and remains proud of the efforts it took to support our students and employees which enabled the university to sustain its academic mission during a global pandemic," according to the university's statement to Law360.

Alderman's attorney, meanwhile, said the high court's ruling was "not unexpected, but nevertheless disappointing."

Alderman never challenged CSU's right to close down campuses during the pandemic, but sought refunds for services that were never provided, Igor Raykin of Kishinevsky & Raykin LLC told Law360.

CSU won "based on a legal technicality" and has been granted a protection that private businesses can't receive, Raykin said, citing as an example his law firm's shutting down for several months.

"If I don't do the work, I have to return the money," Raykin said. "Obviously, the court didn't agree with us."

Alderman is represented by Igor Raykin and Michael J. Nolt of Kishinevsky & Raykin LLC.

The state is represented by Philip J. Weiser, Jennifer H. Hunt, Kathleen L. Spalding, Michael D. McMaster and Erica Weston of the Office of the Colorado Attorney General.

The case is Board of Governors of the Colorado State University v. Alderman, case number 2023SC565, in the Colorado Supreme Court.

--Editing by Linda Voorhis.



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DraftKings Rips 'Flawed' Privacy Suit Over Meta Tracking Pixel

By **Elaine Briseño**

Law360 (February 24, 2025, 6:13 PM EST) -- DraftKings Inc. wants a New York federal judge to toss a "fundamentally flawed" suit that accuses the company of disclosing customer information to third parties for targeted advertising, arguing the plaintiff is attempting to expand the Video Privacy Protection Act beyond its intended purpose.

New York resident Jeffrey Wan alleged in a **lawsuit filed in December** that the sports betting platform, without his consent, shared his video viewing history and other information with Meta Platforms Inc. in violation of the Video Privacy Protection Act.

DraftKings said in a Friday **motion to dismiss** that the complaint presents a "tortured reading" of the VPPA, and Wan has failed to show how the company's alleged actions have breached the act.

"[Wan's] complaint ... is a fundamentally flawed attempt to expand the [VPPA] far beyond its intended scope," DraftKings said.

The act was created to protect consumers from having information about the video they requested or obtained from being disclosed and "not to regulate interactive online casino platforms," the company said. And the content addressed in Wan's complaint does not fall under the VPPA because it is not "prerecorded video cassette tapes or similar audiovisual materials" as defined in the act, according to DraftKings.

It argued that the sharing of information with Meta, the parent company of Instagram and Facebook, would still not fall under the VPPA's umbrella because DraftKings is not a video tape service provider as defined by the act. Any audiovisual content on its site "is peripheral to its business," according to the motion.

"Courts in similar circumstances have consistently held that businesses do not qualify as video tape service providers when video content is incidental rather than central to their operations," DraftKings said.

"Indeed, no court has applied the VPPA to online gaming platforms like DK Casino, which are dynamic and interactive and fall outside of what courts have defined as 'prerecorded' audiovisual materials under the VPPA," it said.

Wan had argued DraftKings used Facebook's tracking pixel on its website and app, which records the audiovisual content being watched by the betting platform's users. That information was then transmitted to Facebook, along with customers' personal identifying information, via the pixel, Wan alleged.

He added it was done all without customers' awareness because the process is completely invisible on DraftKings' website.

However, Wan has failed to even identify what content he allegedly watched on the app and what personally identifying information was actually disclosed, DraftKings said Friday.

"But the complaint fatally fails to contain any allegations sufficient to show that plaintiff's Facebook ID would allow an ordinary person to identify him," DraftKings said. "His complaint is thus insufficient

to plead a VPPA violation."

The parties did not respond to requests for comment Monday.

DraftKings is represented by James T. Sandnes of Skarzynski Marick & Black LLP, and Richard R. Patch, Scott C. Hall and Mari S. Clifford of Coblenz Patch Duffy & Bass LLP.

Wan is represented by Adrian Gucovschi, Benjamin Rozenshteyn and Nathaniel Haim Sari of Gucovschi Rozenshteyn PLLC.

The case is Wan v. DraftKings Inc., case number 1:24-cv-09557, in the U.S. District Court for the Southern District of New York.

--Editing by Lakshna Mehta.

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Norfolk Southern's Tank Car Co. Liability Claims Head To Trial

By **Linda Chiem**

Law360 (February 24, 2025, 8:08 PM EST) -- An Ohio federal judge said that Norfolk Southern can pursue its claims seeking to have tank car companies pay at least some of the damages over 2023's East Palestine derailment, teeing up for trial key questions of liability concerning the tank cars' maintenance and transport of toxic chemicals.

U.S. District Judge Benita Y. Pearson on Friday issued three rulings addressing summary judgment motions from Norfolk Southern Corp., and third-party defendants GATX Corp. and OxyVinyls LP.

The Atlanta-based rail giant **asserted** third-party negligence and joint and several liability claims against the owners of various tank cars that were among those that derailed Feb. 3, 2023, on the border of Ohio and Pennsylvania. Norfolk Southern contends that OxyVinyls and GATX **must shoulder** at least some of the **\$600 million settlement** that the railroad had **agreed** to pay residents, property owners, employees and businesses in **consolidated litigation** resulting from the derailment.

Judge Pearson **determined** that a jury should consider whether GATX had proximately caused the derailment by negligently maintaining Car No. 23, the railcar with an **overheated roller bearing** that accident investigators said likely triggered the derailment. Neither Norfolk Southern **nor GATX** are entitled to summary judgment on this issue, the judge said, noting that a jury will determine the full extent of GATX's liability, if any.

Norfolk Southern alleged GATX breached a duty of care in maintaining and inspecting the roller bearings on Car No. 23, a so-called hopper car that was leased to a customer transporting plastic pellets. The judge held that a key question to resolve at trial is whether GATX failed to properly inspect the roller bearing on Car No. 23, as Norfolk Southern claimed, after the railcar "sat outside — idle and unprotected from extreme wind and rain" during 2017's Hurricane Harvey.

"To establish GATX's liability in negligence, Norfolk Southern must prove, among other things, that GATX's 'conduct proximately caused [Norfolk Southern] to sustain actual loss or damage,' Judge Pearson said. "That the L1 roller bearing on GPLX 75465 (Car 23) — the railcar owned by GATX — allegedly failed and contributed to the derailment does not, alone, show that GATX's conduct was either a but-for or proximate cause of the derailment."

GATX had **countered** in court filings that Norfolk Southern couldn't prove that Car No. 23 had been stationary for months, or that the railcar's components were ever partially or totally submerged in water during Hurricane Harvey — roughly five-and-a-half years before the East Palestine derailment. But Judge Pearson said Friday that Norfolk Southern had sufficient evidence regarding Hurricane Harvey rainfall and water infiltration into Car No. 23's seals to take that issue to trial.

Norfolk Southern's claims against GATX subsidiary General American Marks Co. were dismissed, however.

In a separate **opinion**, Judge Pearson also said that a jury should take up the question of liability for OxyVinyls, the chemical subsidiary of oil and gas giant Occidental Petroleum Corp. whose vinyl chloride was in five tank cars that were among the total 38 tank cars that derailed.

Vinyl chloride is a toxic, colorless and flammable chemical used to make a variety of hard plastics.

OxyVinyls owned three of the five vinyl chloride-carrying cars, while GATX owned one, and another company, Trinity Industries Leasing Co., owned the other. Norfolk Southern's third-party claims against Trinity were dropped last year.

During the derailment's **chaotic aftermath**, Norfolk Southern and its contractors had recommended that on-the-ground emergency responders conduct a controversial controlled vent and burn of the highly flammable vinyl chloride.

The derailed cars were sitting in pool fires for hours and there were indications that unrelieved pressure was building inside them, which could set off a chemical process known as polymerization that would then spark a devastating explosion, according to the railroad.

The National Transportation Safety Board subsequently determined in June 2024 that the vent and burn was actually **"unnecessary."**

Norfolk Southern accused OxyVinyls of providing inaccurate information about the potential hazards of its vinyl chloride monomer, and making conflicting statements about the potential for polymerization in the tank cars.

Companies shipping hazardous materials by rail are federally required to have a so-called safety data sheet that details the chemical composition, handling and storage requirements, first-aid or accidental release measures, among other things.

According to the railroad, OxyVinyls' safety data sheet warned that air, sunlight, excessive heat, oxidizers, catalytic metals such as copper, aluminum, and their alloys, and certain catalytic impurities could result in explosive or violent polymerization. The tank cars in which OxyVinyls shipped the vinyl chloride monomer allegedly had aluminum components. So, OxyVinyls breached a duty owed to the railroad to draft and provide a complete and accurate safety data sheet, Norfolk Southern alleged.

"The court concludes there is a genuine dispute as to material facts regarding whether OxyVinyls' SDS [safety data sheet] breached its duty of care as indicated by Norfolk Southern's arguments about the SDS's scientific inaccuracies that VCM can polymerize from exposure to heat," Judge Pearson explained. "Because the issue of breach is a genuine dispute of material fact, OxyVinyls is not entitled to summary judgment on this element."

OxyVinyls countered in court documents that there is no evidence that its safety data sheet was the actual or proximate cause of the vent and burn. It has argued that Norfolk Southern's "brand-saving" story has shifted over time, culminating in the railroad claiming it was forced to conduct a vent and burn because OxyVinyls' safety data sheet included a warning about the risk of polymerization and/or because OxyVinyls did not update a two-page administrative certification form for each of the railcars.

OxyVinyls maintained in a Monday statement that it "did not cause the derailment, its tank cars did not breach, and it did not make the decision to vent and burn the VCM cars — in fact, OxyVinyls counseled against that decision."

"To date, Norfolk Southern has refused to accept full responsibility for the derailment or its decision to vent and burn the five VCM cars," OxyVinyls said in the statement. "Norfolk Southern has pointed the finger to try to justify its decision-making before, during, and after the derailment."

Meanwhile, Norfolk Southern said in a Monday statement that "the rulings show that there's ample evidence that other parties share in the responsibility for the East Palestine derailment. A Northern Ohio jury will now hear that evidence and decide on apportioning liability."

Representatives for GATX were not immediately available for comment Monday.

Norfolk Southern is represented by Alan Schoenfeld, Andrew Rhys Davies, Davina Pujari, Christopher Rheinheimer and Albinas Prizgintas of WilmerHale, and J. Lawson Johnston, Scott D. Clements, Aaron Ponzo and Paul Roman of Dickie McCamey & Chilcote PC.

OxyVinyls is represented by Kimberly Weber Herlihy and Alycia N. Broz of Vorys Sater Seymour and

Pease LLP.

GATX and General American Marks are represented by Hariklia Karis, Robert B. Ellis, Steven J. Lindsay, Jonathan O. Emmanuel, Aaron Stevenson and Sydne K. Collier of Kirkland & Ellis LLP, and Joseph A. Castrodale and Meggan A. Loudon of Benesch Friedlander Coplan & Aronoff LLP.

The case is In re: East Palestine Train Derailment, case number 4:23-cv-00242, in the U.S. District Court for the Northern District of Ohio.

--Editing by Kelly Duncan.

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Purdue's New Ch. 11 Plan Sidesteps Nonconsensual Releases

By Hilary Russ

Law360 (February 24, 2025, 6:03 PM EST) -- Mediators helping to craft a new settlement in the case of bankrupt OxyContin maker Purdue Pharma LP said in their latest update in New York bankruptcy court that the company's revised deal does not contain nonconsensual third-party waivers.

Instead, creditors with direct claims against members of the Sackler family, which owns Purdue, will only receive their share of new settlement money in the near term if they waive their right to sue, according to an update the mediators filed on Friday.

Talks between Sackler family members, the company, the creditors committee and thousands of other creditors both public and private have "definitively entered a new phase," the co-mediators said, as the parties work to finalize an agreement before an injunction holding back a flood of potential litigation expires, although the deadline has been **extended several times**.

The parties are now finalizing documents to memorialize a revised bankruptcy plan — on track for March — and to schedule a disclosure statement hearing, the mediators said.

Among the term sheet components outlined in the update is a stipulation that creditors who do provide releases to Sackler family members will get their pro rata share of the now \$7.4 billion settlement pool, \$6.5 billion of which is being provided by Sackler family members and \$900 million of which will come from Purdue.

If a claimant does not agree to release the Sacklers, they will have to wait to see if their claim is allowed before being eligible to receive their share, although they could launch lawsuits if they chose to.

The plan's previous liability waivers, which were crammed down onto all creditors, were **thrown out** by the U.S. Supreme Court in June. That sent the Purdue case back to the drawing board and changed the landscape for other large mass tort bankruptcy cases across the United States.

Under the new plan, the Sackler family member contributions are "designed to replicate a global settlement with consensual releases provided in exchange for payments, as litigation settlements typically do," the update said.

If any claimants decide not to sign on to the deal via the liability waivers, some of the Sacklers' contributions will be set aside as reserves to fund litigation costs, the mediators noted.

The Sacklers' \$6.5 billion payment into the settlement will be made over 15 years, front-loaded with larger payments in the near term, according to the terms.

After emergence from bankruptcy, Purdue would be wholly owned by a newly created foundation, with trustees initially selected by the U.S. states who have for years sought money from the case to help treat opioid addiction within their borders.

Purdue is represented by Marshall S. Huebner, Benjamin S. Kaminetzky, James I. McClammy, Marc J. Tobak and Joshua N. Shinbrot of Davis Polk & Wardwell LLP.

The case is In re: Purdue Pharma LP, case number 7:19-bk-23649, in the U.S. Bankruptcy Court for

the Southern District of New York.

--Editing by Alanna Weissman.

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Trump Media Seeks Shareholder Approval To Leave Delaware

By **Tom Zanki**

Law360 (February 24, 2025, 4:55 PM EST) -- The owner of Donald Trump's social media platform plans to hold a shareholder vote in April asking investors whether it should move its legal address to Florida, potentially joining a growing number of companies reincorporating outside of Delaware.

Trump Media & Technology Group Corp., which owns Truth Social, listed the reincorporation vote among six items scheduled for its annual meeting on April 30, according to a filing Friday with the U.S. Securities and Exchange Commission. Trump Media already maintains its operating headquarters in Sarasota, Florida.

"We are committed to Florida, which has an outstanding business climate and shows tremendous respect for free enterprise," Trump Media CEO Devin Nunes said in a statement. "We look forward to uniting our legal home with our physical home as we explore possibilities for mergers, acquisitions, partnerships, and other growth."

The development comes as several companies have begun or are considering moving out of Delaware, the legal home for most Fortune 500 companies. Critics perceive Delaware as increasingly friendly to shareholder litigation and states including Nevada and Texas are pitching themselves as business-friendly alternatives.

Facebook owner Meta Platforms Inc. is reportedly **considering moving** its legal address to Texas, following billionaire entrepreneur and Trump confidant Elon Musk's reincorporation of several of his companies to Texas, including Tesla and SpaceX. Musk's decision to exit Delaware followed a court's order that he **give up a Tesla compensation package** valued at \$55 billion.

Musk's brain implant company Neuralink Corp. also moved its legal home to Nevada last year, while file storage firm Dropbox gained approval in January from majority shareholders to move its incorporation from Delaware to Nevada.

Trump Media has experienced **shareholder litigation** in its brief life as a publicly traded company. A Delaware judge last September awarded ARC Global Investments II LLC – the sponsor of the blank check company that took Trump Media public in 2024 – a larger share of Trump Media stock after ARC Global alleged it was shortchanged in the deal.

Representatives of Trump Media did not immediately return a request for comment on Monday. The company expressed concerns about Delaware's "increasingly litigious environment facing companies with controlling shareholders" in its SEC filing.

"We believe the reincorporation will result in less unmeritorious litigation against the company, our directors and officers and our controlling stockholder, which in turn would better allow our directors and officers to focus on our business and save the company the costs of such litigation," Trump Media told the SEC.

Trump, through a trust held by his son Donald Trump Jr., owns an estimated 53% of his company's shares, which was worth about \$3 billion based on Monday's closing stock price of \$25.75.

Directors for Trump Media have already endorsed the reincorporation. Shareholders will also vote on board nominees and executive compensation on April 30, plus other items.

Trump Media, whose main asset is the Truth Social site where the president frequently posts, last week **reported an annual loss** of \$400.9 million on revenue of \$3.6 million.

--Editing by Patrick Reagan.

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