

The 2025 Lawdragon 500 Leading Plaintiff Consumer Lawyers

 [lawdragon.com/guides/2025-02-28-the-2025-lawdragon-500-leading-plaintiff-consumer-lawyers](https://www.lawdragon.com/guides/2025-02-28-the-2025-lawdragon-500-leading-plaintiff-consumer-lawyers)

February 28, 2025

By Katrina Dewey | February 28, 2025 | Guides, News & Features

This year's honorees include Julie Braman Kane of Colson Hicks, John Fiske of Baron & Budd and Michael Rosenberg of Seeger Weiss.

We are honored to introduce The 2025 Lawdragon 500 Leading Plaintiff Consumer Lawyers.

Nowhere in the American legal system's civil side does an individual have quite the same potential to change a life. Or many.

With more than 340 million people; 233 million licensed drivers; nearly 161,000 miles of highway; 45,000 daily flights taking off; more than 50 million annual surgeries, 1.2 million people living in nursing homes – what could possibly go wrong? And that's just in the U.S.

So when someone says we have too many lawyers, think about it. The truth is, most Americans have an incredibly difficult time finding a lawyer who is qualified – forget competent and caring – to represent them when they experience medical malpractice, a family member's tragic death, injury in a car crash, or become ill and die from a medication.

That's why we're so proud to present this amazing collection of coast-to-coast champions who dedicate their lives to helping people going through the hardest moments of their lives. Included here are the lawyers who specialize in airline crashes, oilfield accidents, workplace violence, sexual assault and abuse, human trafficking, premises liability, personal injury, wrongful death, product liability, toxic torts and other consumer-focused litigation.

It is true, as well, that many of these lawyers make a very good living when they win justice and compensation for their clients from companies and defendants who denied it to them, or insurers who would not pay. But if you spend time with any of these lawyers – and we're talking about the very most successful lawyers at the tippy top of this practice – you'd be amazed how much they care so much more about the people they help than any financial rewards they've earned.

We selected the Plaintiff Consumer 500 through our time-honed method combining journalistic research, peer discussion and an ever-growing number of submissions. Those noted with an asterisk are members of our Hall of Fame.

This is the seventh edition of this guide and we hope it's helpful to those who need a champion.

First	Last	Organization	Location	Practice
Dory P.	Antullis	Robbins Geller	Boca Raton, Fla.	Consumer Fraud, Data Privacy, Class Actions, Pharmaceuticals
Aelish Marie	Baig	Robbins Geller	San Francisco	Class Actions, Consumer Fraud, Pharmaceuticals
Nicolle	Brito	Robbins Geller	Boca Raton, Fla.	Class Actions, Consumer Fraud, Privacy, Pharmaceuticals
Desiree	Cummings	Robbins Geller	New York	Consumer Fraud, Data Privacy, Class Actions, Pharmaceuticals
Stuart A.	Davidson	Robbins Geller	Boca Raton, Fla.	Consumer Class Actions, Privacy, Data Breach
Mark J.	Dearman	Robbins Geller	Boca Raton, Fla.	Consumer Fraud, Mass Torts
Kathleen	Douglas	Robbins Geller	Boca Raton, Fla.	Consumer Fraud, Privacy, Class Actions
Paul J.	Geller	Robbins Geller	Boca Raton, Fla.	Class Actions, Consumer Fraud, Privacy, Pharmaceuticals

[Previous Post The 2025 Lawdragon 500 Leading Energy Lawyers](#)

US judge drops Beyond Meat from investor lawsuit

DJ [dailyjournal.com/articles/383954-us-judge-drops-beyond-meat-from-investor-lawsuit](https://www.dailyjournal.com/articles/383954-us-judge-drops-beyond-meat-from-investor-lawsuit)

Securities

Mar. 3, 2025

U.S. District Judge Michael W. Fitzgerald dismissed Beyond Meat from a securities lawsuit, ruling investor claims of misrepresentation lacked evidence. The case, narrowed after amendment, was ended with prejudice.



U.S. District Judge Michael W. Fitzgerald

A federal judge permanently dropped Beyond Meat from a securities action filed by investors who claimed they were misled by statements about the company's ability to scale production and run successful product testing with big chain fast food restaurants.

In an order on Thursday, U.S. District Judge Michael W. Fitzgerald in Los Angeles found the alleged statements in the pleadings were not strong enough to show a level of material misrepresentation by Beyond Meat and its CEO.

Latham & Watkins LLP partner Michele D. Johnson led the successful defense against a putative class of investors who claimed they were given false costs and manufacturing reassurance when they purchased the company's stock between 2021 and 2022.

"We are pleased with the court's comprehensive order dismissing all claims. Beyond Meat is glad to put this matter behind them and looks forward to continuing to innovate in the exciting plant-based food industry," Johnson said in a statement on Friday.

Robbins Geller Rudman & Dowd LLP partners Spencer A. Burkholz and Laurie L. Largent provided the opposition arguments for the investor plaintiffs against Beyond Meat's dismissal motion. Neither responded to emails by press deadline on Friday.

In Fitzgerald's order, the judge found the investors cherry-picked portions of statements made by Beyond Meat's CEO, Ethan Brown, while ignoring warnings he made to them about higher costs or the uncertainty and risks surrounding the company's strategies and scaling efforts.

"Plaintiffs argue that defendants' public statements concerning Beyond Meat's investments misleadingly reassured plaintiffs that the investments were reducing production costs and improving manufacturing, but in actuality, 'undisclosed production inefficiencies were adversely impacting new project sales and margins.' But the evidence of 'undisclosed production inefficiencies' cited by plaintiffs are generalized statements about production problems and critiques Brown's management style that are vaguely and loosely tied to the content of the challenged statements," Fitzgerald wrote.

The judge also found that some of the plaintiffs' allegations based on quotes from news articles were conclusory and not sufficient to explain how the challenged statements created a misleading impression at the time.

According to the complaint, the investors claimed Beyond Meat concealed a failing investment plan regarding its scale production and rushed to overspend on unnecessary manufacturing equipment that sat idle in its warehouses. The investors also claimed the company overbuilt its co-manufacture network and terminated most of its senior staff, replacing them with inexperienced employees who caused production to plummet, they alleged. *Saskatchewan Healthcare Employees' Pension Plan v. Beyond Meat Inc. et al.*, 2:23-cv-03602 (C.D. Cal, filed May 11, 2023).

As to challenged statements regarding Beyond Meat's fast-food partnerships, the investors challenged an earnings conference call where Brown stated the company was moving in a positive direction toward permanent menu placement with KFC and Taco Bell.

However, while quoting the plaintiffs' pleadings, Fitzgerald found there was not enough to demonstrate a showing that the defendants knew these efforts were "already doomed" at the time of that call.

Prior to the complaint's amendment last September, Fitzgerald dismissed the case with leave to amend on similar findings. However, he allowed the scope of the case to be narrowed. The investors removed some executive defendants from the case and reduced the challenged statements from 37 to 14.

However, in Fitzgerald's final ruling, he found any further amendment would be futile and dismissed the case with prejudice.

"Even in the absence of bad faith and undue delay ... Plaintiffs' FAC [first amended complaint] did not cure the deficiencies; Plaintiffs did not offer any amendments; and this court does not perceive what amendments would be possible," Fitzgerald wrote.

#383954

Devon Belcher

Daily Journal Staff Writer

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Beyond Meat Gets Investor Suit Over Scale-Up Remarks Tossed

A Beyond Meat Inc. investor failed to sufficiently allege securities fraud over statements about the company's ability to expand production of its food products to meet the needs of fast-food chains, a federal court ruled.

The investor, a Canadian pension fund, revised its complaint but still failed to show statements about the plant-based meat substitutes that were false when made, Judge Michael W. Fitzgerald said in an order docketed Thursday in the US District Court for the Central District of California. Other challenged statements reflected mere corporate optimism or opinion and thus weren't actionable, Fitzgerald said.

- The pension fund alleged that Beyond Meat's leaders misrepresented tests with fast food chains—including McDonald's, Kentucky Fried Chicken, Pizza Hut, and Taco Bell—knowing the company couldn't meet their demands
- Fitzgerald dismissed an earlier version of the complaint in August 2024
- The suit is now dismissed with finality, he said in the new opinion

Robbins Geller Rudman & Dowd LLP represented the Saskatchewan Healthcare Employees' Pension Plan. Latham & Watkins LLP represented Beyond Meat.

The case is Saskatchewan Healthcare Emps.' Pension Plan v. Beyond Meat, Inc. , 2025 BL 64771, C.D. Cal., No. 23-03602, docketed 2/27/25 .

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Litigation Trends to Watch: New Suits Center on 'Made in USA' Claims, Corporate Revenue Misses and Trump

 [law.com/2025/02/28/litigation-trends-to-watch-new-suits-center-on-made-in-usa-claims-corporate-revenue-misses-and-trump-](https://www.law.com/2025/02/28/litigation-trends-to-watch-new-suits-center-on-made-in-usa-claims-corporate-revenue-misses-and-trump-)

Mike Neighbors

Welcome to the Trend Detection Weekly Scan from [Law.com Radar](#). This weekly article highlights shifts and patterns in case filings that are surfaced by Law.com Radar's award-winning Trend Detection system.

New to Trend Detection? This proprietary system employs specialized algorithms to identify early signs of litigation trends in federal litigation filings. [Click here](#) to learn more about Law.com Radar's new suit alerting and trend detection capabilities.

Here are the highlights from our analysis of litigation during the week of Feb. 17:

- ▶ A string of class actions accuses businesses of mislabeling products as 'made in the USA.'
- ▶ Shareholder suits take aim at Fortune 500 companies for falling short of revenue projections.
- ▶ Food and beverage companies were hit with a wave of class actions.
- ▶ An environmental group is going after the Trump administration.
- ▶ Video game companies are cracking down on sales of counterfeit goods.

Litigation Surge - Consumer Protection | Kazerouni Law Group

The Kazerouni Law Group is backing a flurry of consumer class actions in California federal courts alleging that 'made in the USA' or similar labels on food items and consumer goods are deceptive because the products contain ingredients from other countries. For instance, PepsiCo is accused of mislabeling Pure Leaf Tea as 'brewed in USA' even though tea and other ingredients are not grown or sourced in the U.S., and It's a New 10 LLC was sued for labeling its hair care products as 'made in the USA' when the products allegedly contain foreign ingredients like palm oil, tea leaf extract and hydrolyzed silk. Other defendants include Goya Foods, McCormick & Co. and Mielle Organics.

[View Surge Data](#)

Litigation Surge - Fortune 500 | Securities

Major companies were hit with a swarm of federal securities lawsuits during the week of Feb. 17. At least nine securities cases targeting Fortune 500 businesses were initiated in federal court, triple the usual weekly average. What triggered the surge? Several lawsuits accuse companies of failing to disclose inventory backlogs and declining sales caused by weakening demand; for instance, memory and storage device producer Micron Technology was hit with a pair of lawsuits claiming that the company concealed a drop in revenue based on slow market activity in the semiconductor industry, and a Feb. 21 suit against Hasbro alleges that the business failed to disclose a decline in demand for toys after the COVID-19 pandemic.

[View Surge Data](#)

Litigation Surge - Food, Beverage & Tobacco | Class Actions

Major food and beverage companies were swarmed with class actions, according to Law.com Radar. Between Feb. 17 and Feb. 21, the platform surfaced 13 federal class actions targeting businesses on Radar's sector watchlist, four times higher than the typical weekly average. Several cases pursue false advertising claims, including a pair of lawsuits brought by the Kazerouni Law Group in California alleging that 'made in the USA' or similar labels on PepsiCo's iced tea products and McCormick's mustard products are deceptive because the products contain ingredients from other countries. PepsiCo was also hit with an antitrust class action on Feb. 17 claiming that the company engages in unlawful price discrimination by charging smaller convenience stores higher prices than it charges larger grocery chains for Frito-Lay products.

[View Surge Data](#)

Litigation Surge - Environmental | Center for Biological Diversity

The Center for Biological Diversity launched a cluster of environmental lawsuits against the Trump administration on Feb. 18 and Feb. 19. At least four federal cases were filed by the nonprofit organization in Alaska, Idaho, Oregon and Texas. The claims vary: One suit challenges President Donald Trump's recent executive order cancelling former President Joe Biden's protection of certain areas from oil and gas development, while another suit contends that the expansion of an open-pit mine in Idaho would eliminate local fish and wildlife habitats. Also, the U.S. Department of Agriculture is accused of failing to properly assess the impact of predator killing on mountain lion and black bear populations in Texas, and the National Marine Fisheries Service was sued for allegedly failing to list Chinook salmon as endangered.

[View Surge Data](#)

Litigation Surge - Gaming & Esports | Illinois

Law.com Radar detected a cluster of lawsuits in the gaming and esports industry in Illinois Northern District Court. Six cases were surfaced by the platform during the week of Feb. 17, more than half of which seek to enjoin e-commerce operators from selling counterfeit merchandise and other goods; plaintiffs include Atari, Mob Entertainment, P4S and Sony.

Also of note, a Feb. 19 class action accuses online casino platforms Zula Casino and Sportzino of deceptively marketing their websites as free-to-play 'sweepstakes' casinos when in fact the platforms are unlicensed gambling platforms. The complaint alleges that while 'Gold Coins' purchased by customers to play casino games on the platforms cannot be redeemed for real money, the coins are unlawfully bundled with 'Sweepstake Coins' which can be wagered on casino-style games and redeemed for cash. The suit is part of a string of cases targeting gambling platforms: DraftKings was hit with a similar swarm of lawsuits in January over allegedly misleading promotional statements, and on Feb. 26, Underdog Fantasy was hit with a class action claiming that its 'interactive fantasy' contests are actually unlicensed gambling operations.

[View Surge Data](#)

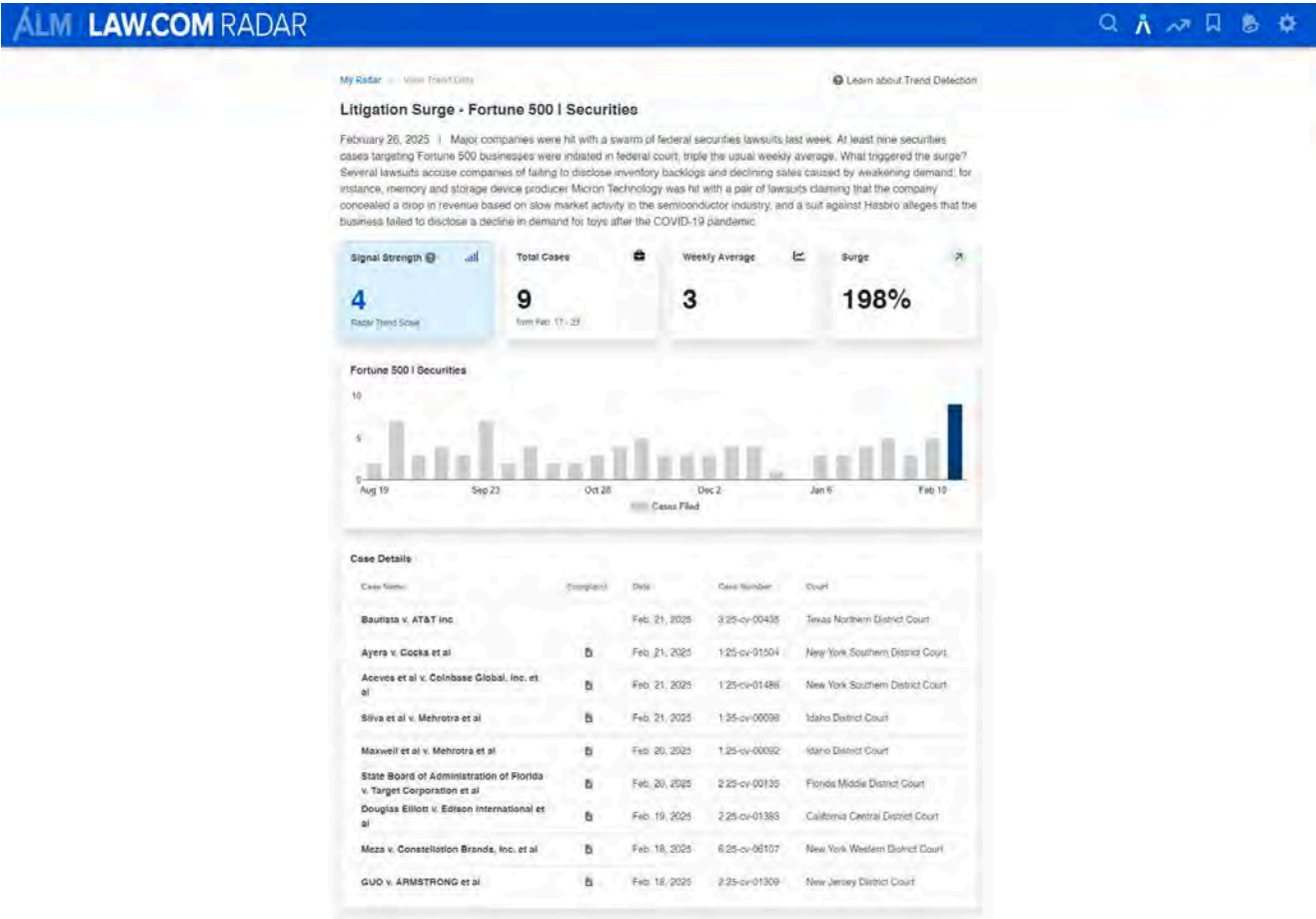
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AI Stock Swings Emerge as Legal Focal Point After DeepSeek Chaos

Deep Dive

- More artificial intelligence use spells more securities suits
- 'Washing' suits over claims about hot market themes aren't new

Investor lawsuits over companies' claims about artificial intelligence are expected to swell thanks to surprises such as DeepSeek, refocused regulators, and overall more organizations chattering about it, lawyers say.

The speed of AI development means market moves—and ensuing lawsuits. After DeepSeek's chatbot emergence stung stocks exposed to AI in January, questions of related litigation swirled.

"Whether that was foreseeable and should have been disclosed as a risk is a real question given that it seemed to take so many people by surprise," said Edward Best, a partner at Willkie Farr & Gallagher LLP, noting companies that acted in good faith shouldn't worry about liability.

AI washing, like greenwashing over environmental claims, is the overhyping of a company's AI capabilities or benefits. At least 43 securities cases over AI claims have been filed since March 2020, according to Stanford Law School. The latest companies targeted by such suits include industry bellwethers like The Trade Desk Inc., Telus International (CDA) Inc., and GitLab Inc.



Signals of a Securities and Exchange Commission crackdown on AI that started under the Biden administration are expected to survive the change in leadership, said Nili Moghaddam, a partner at Boies Schiller Flexner LLP.

"What we've seen in the government's regulatory inquiries and enforcement actions to date around AI is out-and-out fraud," said Moghaddam. "I can't imagine that the Trump administration would be in any way more relaxed about just basic fraud with the subject of the fraud being a new technology, in this case, AI."

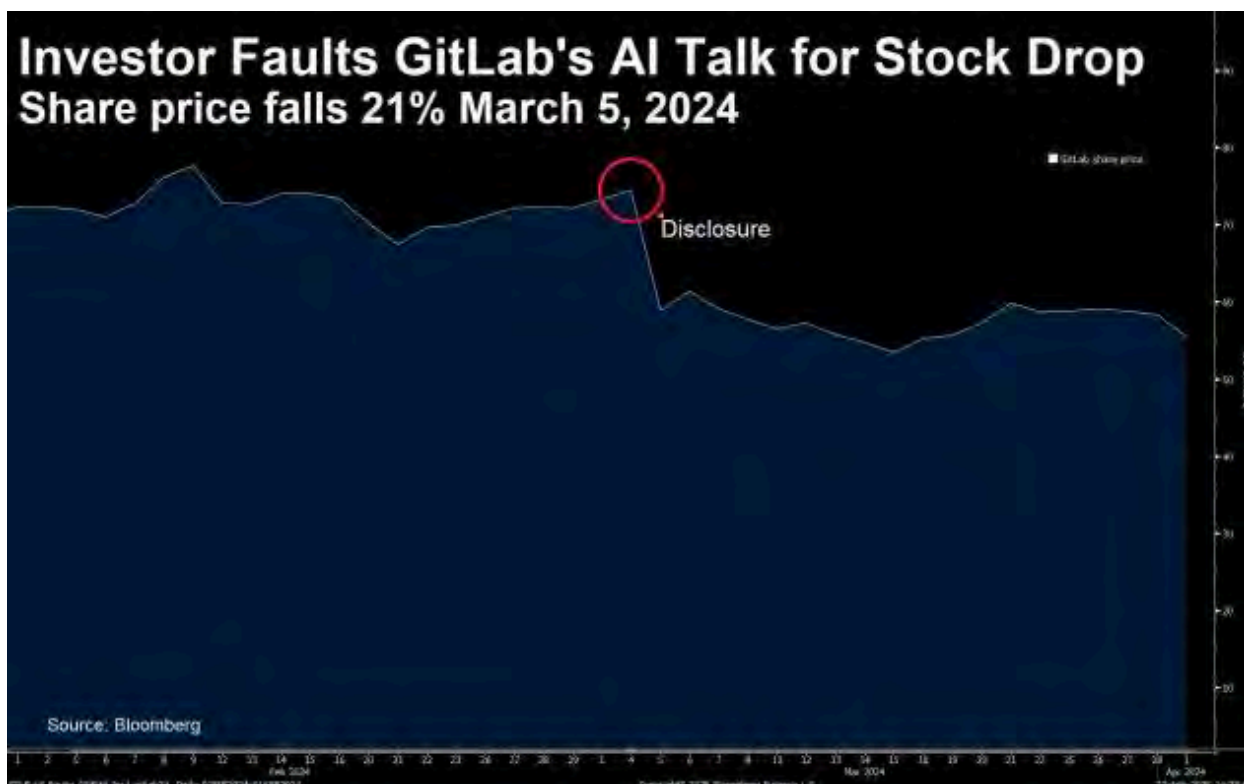
A narrower approach to SEC enforcement generally will probably leave more on private securities litigators to look into claims of AI washing, said James Christie, a partner at Labaton Keller Sucharow LLP.



Referencing the news surrounding DeepSeek's January announcement, Christie said questions around heavy investing in AI companies "is kind of where you may see some stock drops, where a company goes way over leveraged on buying into what's supposed to be this incredible technology and it turns out that a competitor is able to do it much more easily and cheaper."

Querying how companies plan to use and discuss AI can be tricky due to some of its "black box" nature, said Katherine Staba, a partner at K&L Gates LLP. But that doesn't change how leadership should think about mitigating the risk of overstatements. "The foundational questions are the same," she said. "There's just more to ask."

Do risk assessments, said Moghaddam, and have in-house counsel or compliance professionals study existing AI securities class actions. With heightened AI scrutiny, she said, "focus on building out the right governance framework and the right processes and procedures to ensure that they don't get ensnared in claims about misleading or false representations around AI, or claims about failures to disclose the risks attendant on AI, those are really the buckets of claims that we're seeing."



Christie said of companies listing on the market, it's worth noting that "AI washing is much more susceptible to claims under the Securities Act of 1933 because when it's an offering, the company is relatively new and you have that added factor of investors not having a full understanding of what a company does."

Misunderstandings will happen either way, particularly with new technology that companies and investors are figuring out how to discuss, said Charlene Liu, a partner at Haynes Boone who has a PhD in electrical engineering.

"When such cases come up at the district court or from the SEC, I see some of the cases are basically dismissed," Liu said. "Because, I guess it's really very hard to delineate: Was that an overstatement? Was that a lack of information, or is it a somewhat innocent disconnect between engineers and business people?"

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Extreme Networks Investor Says Leaders Misrepresented Demand

- **COURT:** N.D. Cal.
- **TRACK DOCKET:** [No. 3:25-cv-02101](#) (Bloomberg Law subscription)

Extreme Networks Inc. executives and directors pointed to the computer network company's equipment backlog as evidence of strong customer demand, even though the backlog was actually a byproduct of Covid-19 supply chain problems, an investor alleges.

"In reality, Extreme's distributor channel was stuffed with outdated and unwanted inventory, so the Company's financial results and backlog did not reflect true demand," Nathan Turner says on behalf of the company. Turner filed his derivative suit Thursday in the US District Court for the Northern District of California.

Subsequent revelations about falling backlog—and the company's announcement that it would discontinue reporting quarterly backlog figures—led to a series of stock drops over the course of a year, Turner says.

The harm to the company includes its repurchasing of more than \$150 million of its own stock at artificially inflated prices between July 2022 and the end of January 2024, he says. It also includes Extreme Networks' exposure to a securities class action and damage to its corporate image and goodwill, he says.

Turner brings claims for breach of fiduciary duty and securities fraud, and seeks damages, restitution, corporate governance reforms, and other injunctive relief.

Extreme Networks can't comment on ongoing litigation, the company said in response to an emailed request for comment on behalf of itself and the individual defendants.

Glancy Prongay & Murray LLP and RM Law PC represent Turner.

The case is *Turner v. Meyercord*, N.D. Cal., No. 3:25-cv-02101, complaint 2/27/25.

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Suit Against Renovaro Over Stock Resale Rights Trimmed By Court

Renovaro Biosciences Inc. must face part of a lawsuit from ex-majority shareholder Weird Science LLC claiming the biotech business breached an agreement to allow Weird Science to participate in certain sales of registered securities to the public.

Delaware Chancery Court Vice Chancellor Morgan T. Zurn trimmed Weird Science's lawsuit in a bench ruling Wednesday.

- Weird Science's contract breach claims that Renovaro—formerly known as Enochian Biosciences Inc.—failed to honor “piggyback” rights that Weird Science gained in a 2018 merger agreement can proceed, Zurn said
- The judge dismissed Weird Science's fraudulent inducement claims as time-barred
- Zurn also dismissed Weird Science's tortious interference claim against Renovaro's law firm, K&L Gates, saying the plaintiff hadn't shown the firm acted in “bad faith” advising Renovaro on its contract obligations

Phillips, McLaughlin & Hall PA represent Weird Science.

The case is Weird Sci. LLC v. Enochian Biosciences Inc. , Del. Ch., No. 2023-0599, bench ruling 2/26/25 .

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This Week in Chancery Court: NYC Seeks Paramount Global Bid War

New York City's public pension funds are trying to open a bidding war that could derail Paramount Global's \$8 billion merger with Skydance Media LLC. The chief judge of Delaware's Chancery Court will weigh a last-minute approach from an investor consortium that says it would pay \$5.5 billion more than Skydance.

Here's a look at the rest of the court calendar for the week ahead:

Monday: N.Y. City Emp. Ret. Sys. v. Byrne, Del. Ch., No. 2025-0126, motion hearing 3/3/25.

At issue: The NYC funds sued members of the Paramount board's special transaction committee in early February, seeking to invalidate terms of the Skydance merger agreement that prevent the committee from considering a \$13.5 billion topping bid by Project Rise Partners. The dispute is the latest legal hurdle to emerge as the transaction—handing Paramount's reins to producer David Ellison and backers led by his father, billionaire Oracle Corp. founder Larry Ellison—approaches the finish line. The deal faces a flurry of related challenges in Delaware, while the Trump administration is considering a fresh round of regulatory scrutiny over a CBS "60 Minutes" interview with former Vice President Kamala Harris that the president has called misleading. The pension funds are now asking Chancellor Kathaleen St. J. McCormick to fast-track their case and temporarily block the deal's closing in the meantime.

Court action: McCormick will hold a phone hearing on the pending motions.

NYC Funds Challenge Paramount-Skydance Deal, Seek Bidding War

Tuesday: S'holder Rep. Servs. LLC v. Alexion Pharms. Inc., Del. Ch., No. 2020-1069, oral argument 3/4/25.

At issue: Alexion Pharmaceuticals Inc. lost a \$130 million court ruling in September, when Vice Chancellor Morgan T. Zurn said the company had no valid reason for failing to make a post-deal payment tied to its acquisition of Syntimmune Inc. for up to \$1.2 billion. But the judge held off on calculating how much more the AstraZeneca subsidiary owes Syntimmune ex-investors on their separate claim targeting the company's lackluster efforts to commercialize a monoclonal antibody. She's now set to hear the supplemental arguments over the additional damages.

Court action: Oral argument in Wilmington, Del.

AstraZeneca's Alexion Hit With Damages Exceeding \$130 Million

Wednesday: Elec. Last Mile Sols. Inc. S'holder Litig., Del. Ch., No. 2022-0630, oral argument 3/5/25.

At issue: Investors in Electric Last Mile Solutions Inc., which collapsed into bankruptcy after its merger with a shell entity, sued the electric vehicle startup's founders over the deal in 2022. The case is part of a wave of litigation stemming from a frenzy over special purpose acquisition companies that crested in 2020 and 2021. As the sector underperformed in the open market, scores of shareholders challenged blank-check transactions designed to let early-stage businesses access capital markets without an initial public offering. The Electric Last Mile lawsuit fits the general mold, saying the deal's architects were driven by lopsided incentives to sell out ordinary investors. After McCormick let the case move forward against the co-founders in January 2024, the shareholders amended their complaint to add claims against an affiliate—SF Motors Inc., allegedly a subsidiary of China's Seres Group—and Jefferies LLC, the investment bank that advised the deal's sponsors. SF Motors and Jefferies are now seeking to exit the case.

Court action: Oral argument in Wilmington on the motions to dismiss.

Electric Last Mile Co-Founders Ordered to Face EV SPAC Deal Suit

Friday: Burkhardt v. Genworth Fin. Inc., Del. Ch., No. 2018-0691, motion hearing 3/7.

At issue: Genworth Financial Inc., facing a proposed class action over an alleged scheme to avoid paying out on long-term insurance, won an unusual court ruling last year ordering the policyholders behind the lawsuit to disclose their litigation finance arrangements. Vice Chancellor Nathan A. Cook ruled in August that the agreements created potential conflicts of interest involving improper influence by outside parties. The insurance giant is now asking the judge to postpone a June trial, saying the litigation finance disclosures have only amplified its conflict concerns. The filings suggest the policyholders improperly turned over much of the legal work—and shared confidential information with—attorneys representing the health insurers backing their claims, according to Genworth.

Court action: Cook will hear the rescheduling request by phone.

Genworth Wins Disclosure of Funders Backing Fraud Litigation

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Molina Healthcare Workers Appeal 401(k) Loss Causation Decision

- ERISA class action failed after six-day trial in California
- Workers say judge required too much when assessing loss

Molina Healthcare Inc. workers called on the Ninth Circuit to revive litigation over their retirement plan's investment options, saying the opinion handing them a post-trial defeat sets an "impossibly high bar" for employees challenging mismanagement.

The workers proved they suffered losses by producing evidence that the plan's Flexpath target date funds underperformed the Vanguard funds they replaced by more than \$9 million, they said in a brief filed Thursday in the US Court of Appeals for the Ninth Circuit. The district judge who rejected their case after a 6-day trial incorrectly ruled to the contrary, and he wrongly failed to place the burden on the defendants to show that their actions didn't cause loss, they said.

The class action challenges a 2016 redesign of Molina's retirement plan in which more than \$210 million—nearly half the plan's value at the time—was moved to a suite of newly established target date funds from Flexpath Strategies LLC. Molina employees said these funds were run by an inexperienced investment manager with no track record, and they followed a novel management style that "had never been used in any target date fund offered in a 401(k) plan."

Molina and Flexpath prevailed after trial when Judge Stanley Blumenfeld Jr. said the Flexpath funds outperformed most competitors and multiple benchmarks and therefore didn't cause the plan to suffer any losses.

Blumenfeld, who sits in the US District Court for the Central District of California, emphasized that his key conclusion in the case—that the participants failed to show they'd suffered a loss—didn't hinge on which party has the burden of establishing loss. This question, which has driven a circuit split under the Employee Retirement Income Security Act, didn't need to be resolved because the participants would lose either way, he said.

The workers object to this analysis as applying an "improper, heightened standard poorly suited to the nature of the breach."

"It should not be the rule in this circuit that ERISA fiduciaries can escape liability for their breaches so long as the investments they imprudently and disloyally select ultimately fare better than average, particularly when prudent investments were removed from the plan for disloyal reasons," the workers said.

They also urged the Ninth Circuit to rule that the defendants have the burden of showing their actions didn't cause plan losses once a loss has been established. This burden-shifting approach has long been a part of trust law, which informs how courts interpret ERISA, the workers said.

The workers are represented by Schlichter Bogard LLC. Molina is represented by King & Spalding LLP. Flexpath is represented by O'Melveny & Myers LLP.

The case is *Mills v. Molina Healthcare, Inc.*, 9th Cir., No. 24-6223, brief 2/27/25 .

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Arguing Class Actions: Discovery Efforts or Discovery Abuse? Corporate Defendants Blur the Line

 [law.com/nationallawjournal/2025/03/03/arguing-class-actions-discovery-efforts-or-discovery-abuse-corporate-defendants-blur-the-line](https://www.law.com/nationallawjournal/2025/03/03/arguing-class-actions-discovery-efforts-or-discovery-abuse-corporate-defendants-blur-the-line)

Adam J. Levitt

Adam J. Levitt, founding partner of DiCello Levitt. Courtesy photo

Commentary

Arguing Class Actions is a monthly column for the National Law Journal.

March 03, 2025 at 06:00 AM

Class Actions

By Adam J. Levitt



They say desperate times call for desperate measures, but lately, corporate defendants have been taking this sentiment to heart with respect to their discovery efforts. As state attorneys general play an increasingly vital role in holding powerful companies accountable for their corporate malfeasance, a concerning trend has emerged within the last year: Corporate defendants have now increasingly been seeking offensive discovery from state executive officials in response to state attorneys general filing suit. This tactic not only undermines the independence of state leadership but also threatens to derail the pursuit of justice. With abusive offensive discovery on the rise, the need for properly timed judicial intervention is imperative to preserve necessary litigation brought on behalf of state citizens.

As we know all too well, abusive offensive discovery is hardly a new phenomenon in private litigation, with defendants often using it as a tactic to overwhelm opponents, frustrate the courts, delay adjudication of key issues, and pull the focus away from the defendant's own conduct. Document requests that are overbroad and/or seek irrelevant information, excessive interrogatories, and depositions of witnesses with little to no relevant information create all-too-familiar hurdles for private plaintiffs trying to prosecute cases against defendants.

But this newfound abusive offensive discovery practice marks an even more troubling shift in litigation, because these discovery requests target state executives who lack both the knowledge of the subject matter of the case that would justify them and the knowledge of how state attorney general actions should work to better oppose them. Thus, such requests have shifted the focus of discovery away from standard, case-oriented information gathering, where it belongs, and have instead allowed discovery to devolve into a vehicle designed to dissuade state attorneys general from taking on cases that challenge corporate interests.

The problem is often compounded by confusion over the relationship between state attorneys general and their state agencies and the lack of control or access of state attorneys general in accessing the documents and/or witnesses which are within those state agencies' purview, resulting in unrealistic demands and expectations. By dragging state leaders into the litigation process, corporate defendants aim to create a burdensome distraction that weakens the resolve of state officials, ultimately stifling the enforcement of laws created to protect consumers, workers, and the public.

Take, for example, the case of *In re Social Media Adolescent Addiction/Personal Injury Products Liability Litigation*, No. 4:22-md-03047 (N.D. Cal.), where more than 30 state attorneys general initiated a lawsuit in their individual capacities against the tech giant Meta, accusing the company of exacerbating the mental and physical harm of school-aged children through its social media products. After numerous, unsuccessful attempts to have the case dismissed and amid mounting public criticism for its role in fomenting and facilitating adolescents' deteriorating mental health, Meta sought to shift the momentum in its favor by resorting to abusive discovery tactics, using Rule 34 and Rule 30(b)(6) to demand extensive information from over 200 state agencies through their respective attorneys general. In support of its folly, Meta contended that, because the attorneys general brought the case under their *parens patriae* authority, the state governments themselves, including their respective agencies, should be considered real parties in interest. Riffing wildly on that premise, Meta went on to claim that discovery obligations now extend to state governments as a whole, pulling in unrelated entities, such as governors' offices, and departments of finance, public health, consumer affairs, and housing—agencies that have no direct involvement in the litigation. Meta's sweeping discovery demand appears to be a calculated effort to overwhelm state governments and overextend the state attorneys general, who acted within their legal authority to bring the lawsuit against Meta.

In any event, the state attorneys general in the matter objected to Meta's discovery requests and claimed that executive officials should instead be classified as third parties who must be subpoenaed pursuant to Federal Rule of Civil Procedure 45. Doubling down, Meta contended that its discovery requests were properly designed to seek documents from the states as parties to the suit—a baseless assertion that deliberately conflates the role of executive officials in litigation brought independently by state attorneys general.

In response to the dispute, the magistrate judge issued an order, which the district court affirmed, requiring the state attorneys general to produce documents within the exclusive control of state executive officials—a clear misapprehension of the relationship between the sovereign and state agencies. Following the entry of the order, the People of the State of California, through the California attorney general, petitioned the U.S. Court of Appeals for the Ninth Circuit to issue a writ of mandamus “directing the district court to grant the People's objection to [the] discovery order[,] [alleging] that [it] violates core principles of federalism by

disregarding the constitutional structure of California's executive branch," in *People of the State of California v. U.S. District Court for the Northern District of California, Oakland*, No. 25-584 (9th Cir.).

Following Meta's outlandish discovery requests served on the attorneys general and the magistrate judge's order mandating cooperative resolution of the discovery disputes without further judicial intervention, multiple California executive agencies, including the Office of the Governor of California, filed an amicus curiae brief in *People of the State of California*, correctly explaining how statewide executive agencies are distinct legal entities from the California Attorney General's Office and that Meta's abusive discovery practices "threaten[] to effectively restructure California's constitutional order, rendering the governor and his agencies subordinate to the attorney general whenever he exercises his discretionary authority to bring affirmative litigation." *Brief of Office of the Governor of California as Amici Curiae Supporting Petitioner*. With the threat of sanctions now looming in the lower court, without relief from the Ninth Circuit, California agencies—and, indeed, all state attorneys general remaining in the litigation—are backed against a wall and have no choice but to comply with the magistrate judge's order and undertake review of hundreds of thousands of documents for a case in which they have no direct knowledge or relation. Certainly, California's executive agencies have more pressing matters that demand the fullest extent of their time and attention—helping communities rebuild after the devastating Los Angeles wildfires is just the most recent addition to a long list of pressing concerns that California faces. Meta's abusive discovery demands have no place on these agencies' to-do lists.

While California's executive agencies may be stretched thin, this sort of abusive discovery can—and has—pushed other states past the breaking point, simply because they do not have the resources needed to handle Meta's burdensome discovery requests. Notably, last November, in the face of these requests, Georgia Attorney General Christopher Carr chose to dismiss Georgia's lawsuit against Meta with prejudice. See *People of the State of California v. Meta Platforms*, No. 4:23-cv-05448 (N.D. Cal) (Dkt. 144). In a striking move, laying bare the cynicism of Meta's tactics, the Joint Stipulation of Dismissal with Prejudice revealed that the subpoenas Meta had issued just months earlier—to Georgia's Department of Behavioral Health and Developmental Disabilities, Department of Education, Board of Regents, Department of Public Health, Department of Human Services, and Department of Family and Children Services—were all immediately withdrawn. The attorney general of North Dakota also voluntarily dismissed his state's case against Meta one month earlier, without affirmative explanation, but with the timing of the withdrawal speaking volumes.

Corporate defendants, such as Meta, possess the time, financial resources, and manpower to purposely overwhelm both the executive and judicial branches of state governments with their aggressive and irrelevant discovery demands—an ironic, albeit unfortunate approach, since those very same corporate defendants, including Meta, are the first to claim the purported overbreadth of plaintiffs' discovery requests. If left unchecked, this tactic will serve

as an enduring demonstration of corporate manipulation and will effectively tie the hands of state government actors who are simply trying to execute their mission to enforce their states' laws.

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Thank you to DiCello Levitt associate Julia Veeseer for contributing to this column.

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Class Action

March 3, 2025, 8:36 AM PST

Social Media Insurance Dispute Belongs in MDL, Meta Tells Panel

By [Olivia Alafriz](#)

- **Meta asks panel to transfer Hartford's Delaware lawsuit to MDL**
- **Same issues as underlying suits, California case, Meta says**

Hartford Insurance Group Inc. units and other carriers are making a "meritless" bid to oppose transferring a coverage dispute into the underlying multidistrict litigation over social media addiction, Meta Platforms Inc. and its subsidiary Instagram LLC told the Judicial Panel on Multidistrict Litigation.

The social media giant has been locked in a fight with its insurers over where the insurance coverage issues should be litigated after the Hartford units sued in Delaware state court in November.

Meta removed that case, which it's pushing to transfer into the MDL, to federal court, and it filed its own suit in California seeking a pause on coverage litigation until the underlying cases have been resolved. The insurers, which also include units of Chubb Ltd., have opposed transfer, and are angling to stay in Delaware, where they could stand to benefit from favorable precedent.

In a Feb. 28 brief opposing the carriers' motion to vacate the panel's conditional transfer order, Meta argued the panel should transfer the Delaware case promptly without waiting for the US District Court for the District of Delaware to resolve insurers' motions to remand.

"Because the Panel can and routinely does defer jurisdictional issues to transferee courts, consistent with its purpose to promote justice and efficiency in the federal system, there is no need to 'grapple with' Hartford's argument," Meta said.

Additionally, Meta told the panel, the MDL already includes Meta's coverage action filed in the US District Court for the Northern District of California—also the court where the judge overseeing the MDL sits—and the factual and legal issues in that case are identical to those at stake in the Delaware lawsuit. Hartford's lawsuit also turns on many of the same issues as the underlying social media cases, Meta said.

Shooting back at insurers' assertion in their opening briefs that Meta intends to stop and delay coverage litigation, the tech company said it "does not seek to 'stop' the insurance litigation altogether as Insurers contend." Rather, the brief said, "Meta will ask the MDL to pause insurance litigation over the Social Media Cases as required by applicable law until the many overlapping issues have been decided in the MDL, in order to avoid the 'obvious' prejudice from such simultaneous litigation."

"While Insurers make much of the fact that Meta has initiated its own coverage action in the Northern District of California, they ignore the blatant injustice in their filing in Delaware in the first place," Meta said.

"Hartford filed its coverage action in Delaware Superior Court, also naming Chubb—against which it admittedly has no claims—in an attempt to defeat diversity, on the very same day that it sent its coverage decision via U.S. mail to a Meta risk manager in California," the brief continued. "Unlike California, Delaware has no connection whatsoever to the coverage issues. Indeed, Meta's 'sea of filings' exists only to respond to Insurers' apparent pre-emptive forum shopping."

Ruggeri Parks Weinberg LLP represents the Hartford insurers. Holwell Shuster & Goldberg LLP represents Chubb. Covington & Burling LLP represents Meta and Instagram.

The case is IN RE: Social Media Adolescent Addiction/Personal Injury Products Liability Litigation , J.P.M.L., No. 3047, brief filed 2/28/25 .

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AMC Gets Nod to Seek Loss Coverage in Insurer Settlement Dispute

- Delaware court says stock payout constitutes loss under policy
- Jury to decide whether AMC needed to seek consent to settle

AMC Entertainment Holdings Inc. got one step closer to getting an insurer to cover a settlement with investors, even though it issued the payout using shares of company stock, when a Delaware judge ruled the entertainment giant incurred losses from the deal.

Midvale Indemnity Co. argued it wasn't on the hook to cover part of AMC's settlement, which ended litigation challenging a plan to convert preferred equity units into common stock, but Judge Meghan A. Adams in the Delaware Superior Court rejected that argument in a Friday ruling.

Company-issued stock shares constitute losses subject to coverage by Midvale, Adams said, ruling that the last remaining insurer defendant out of nearly 20 sued by AMC could be required to pay for the settlement. Adams declined to resolve whether AMC first needed to seek Midvale's consent before reaching its settlement with investors, leaving that matter for a jury to decide.

The movie theater operator stipulated the dismissal of claims against all other defendants in the insurance dispute in 2023 and 2024, including units of American International Group Inc., W. R. Berkley Corp., and AXA SA.

AMC filed its lawsuit against the insurers in May 2023, seeking to compel them to carry out their coverage obligations by paying the entire defense and settlement costs from the underlying investor lawsuit. In that investor suit, a pension fund and two other shareholders sued over the plan to covert APE units to common stock, arguing the move would significantly dilute their stakes after a historic "meme stock" rally.

The stock-based deal had an estimated value of more than \$100 million at the time, providing each owner of common stock an additional share for every 7.5 shares they held, according to filings from the underlying case. The deal ended up being worth far less as the company's stock price dropped over time.

Spokespeople for AMC and Midvale didn't immediately respond to requests for comment.

AMC is represented by Berger McDermott LLP and Cohen Ziffer Frenchman & McKenna LLP. Midvale is represented by Phillips McLaughlin & Hall and Wiley Rein LLP.

The case is AMC Entertainment Holdings v. XL Specialty , Del. Super. Ct., No. N23C-05-045, 2/28/25 .

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DraftKings' \$10 Million NFT Settlement Gets Initial Approval

DraftKings Inc. and customers who purchased its non-fungible tokens got a federal court's preliminary approval Friday for a \$10 million class settlement of securities fraud claims.

Judge Denise J. Casper acted on the request for approval just two days after the NFT buyers submitted it to the US District Court for the District of Massachusetts.

- Lead plaintiff Justin Dufoe alleged that he and others expected to make a profit from the NFTs, but that he sold some at a loss and many that he still held were worthless
- Dufoe sufficiently pleaded that DraftKings' NFTs were investment contracts, and thus securities, Casper ruled in July 2024
- DraftKings shut down its NFT marketplace later that month

Kirby McInerney LLP represents the customers. Wilmer Cutler Pickering Hale & Dorr LLP represents DraftKings.

The case is Dufoe v. DraftKings Inc. , D. Mass., No. 1:23-cv-10524, 2/28/25 .

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Judge thins more claims in sprawling California lawsuit over social media addiction

 [courthousenews.com/judge-thins-more-claims-in-sprawling-california-lawsuit-over-social-media-addiction](https://www.courthousenews.com/judge-thins-more-claims-in-sprawling-california-lawsuit-over-social-media-addiction)

Matt Simons

(Image by Filmbetrachter from Pixabay via Courthouse News)

OAKLAND, Calif. (CN) — A federal judge on Friday issued a fifth and supposedly final ruling on a series of dismissal requests in a sprawling lawsuit against social media companies over the addictive nature of their apps when it comes to kids.

Overall, the 29-page decision by U.S. District Judge Yvonne Gonzales Rogers was a mixed bag for state plaintiffs and social-media company defendants alike. Although tech companies Meta and Snap Inc. succeeded in dismissing claims that they violated two criminal child sex abuse material laws, claims of wrongful death and general negligence persist against all defendant companies.

Some of the decisions to dismiss were relatively straightforward. The judge cited Section 230 of the Communications Decency Act of 1996 as the basis for dismissing claims that Meta and Snap failed to remove, report or take action against child sex abuse material on their platforms.

“Most courts have held Section 230 bars civil CSAM claims against social media platforms,” the Barack Obama appointee stated.

Other matters weren’t as clear. Concerning negligence claims, the court had to sort out whether there were plausible claims the social media companies created an unreasonable risk of harm by designing their platforms to foster addiction and compulsive use by young users.

Alternatively and failing that possibility, was it plausible the companies neglected to implement reasonable measures to reduce the risk of addiction?

The social media giants in the case moved to dismiss negligence claims while ignoring key features of their apps, the plaintiffs argue. But the companies say the negligence claims take a “shotgun” approach that does not adequately explain which features are problematic.

In the end, the judge sided with the state plaintiffs. Still, she said portions of the claims were restricted by Section 230.

Other parts of the decision were even piecemeal and complicated. Loss of consortium claims — that is, claims filed by loved ones of the injured for the loss or impairment of the intangible benefits of a relationship — were dismissed in 24 states, including California, as well as the

District of Columbia. However, the same claims were allowed to endure in all remaining states.

Dismissal of wrongful death and survival claims also varied from state to state.

Spokespersons for Meta, Google, Snap Inc. and ByteDance did not immediately respond to a request for comment.

The ruling is part of a multidistrict proceeding consolidating hundreds of personal injury lawsuits on behalf of children and adolescents by school districts, local governments and state attorneys general. These plaintiffs claim that Meta's Facebook and Instagram, Google's YouTube, ByteDance's TikTok and Snap's Snapchat are designed to foster compulsive use by minors.

In a joint lawsuit filed in late 2023, 33 states claimed that Meta built a business model that maximizes young users' time on its platforms and employs psychologically manipulative platform features. They accused the tech behemoth of publishing misleading reports on user harm and continuing to downplay the negative consequences of its products.

This case was filed in the Northern District of California.

Categories / Business, Consumers, Courts, Health, Technology

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Judicial Misconduct Complaint Accuses Depo-Provera Judge Of 'Explicit Preference for Females'

 [law.com/dailybusinessreview/2025/02/28/judicial-misconduct-complaint-accuses-depo-provera-judge-of-explicit-preference-for-females](https://www.law.com/dailybusinessreview/2025/02/28/judicial-misconduct-complaint-accuses-depo-provera-judge-of-explicit-preference-for-females)

Amanda Bronstad

What You Need to Know

- Rodgers, in the Northern District of Florida, was assigned earlier this month to oversee the multidistrict litigation alleging that Depo-Provera, an injectable birth control, was linked to brain tumors.
- In a Feb. 23 order outlining applications for leadership positions, she wrote that 'females should be adequately represented within leadership.'
- The complaint comes as more judges are encouraging diversity among the plaintiffs' leadership, particularly in multidistrict litigation.

A conservative judicial group called Article III Project filed a judicial misconduct complaint against U.S. District Judge M. Casey Rodgers after she issued an order emphasizing the need for women attorneys to lead more than 70 lawsuits over Depo-Provera.

Rodgers, in the Northern District of Florida, was assigned earlier this month to oversee the multidistrict litigation alleging that Depo-Provera, an injectable birth control, was linked to brain tumors. In a Feb. 23 order outlining applications for leadership positions, she wrote that "females should be adequately represented within leadership."

Those were "statements that improperly suggested that sex would be a relevant factor in selecting leadership counsel for the multidistrict litigation," according to Article III Project's complaint, which was submitted on Feb. 27 to the U.S. Court of Appeals for the Eleventh Circuit's judicial conduct and disability review board. "This remark reflects an explicit preference for females in the allocation of professional roles and responsibilities. By implying that sex – rather than qualifications, experience, or merit – should influence selection for MDL leadership, Judge Rodgers engaged in conduct that constitutes impermissible bias and judicial misconduct."

Such statements indicate "improper judicial favoritism and violates the principle of impartiality," the complaint says.

Article III Project did not respond to a request for comment. In its press release, the group says it "defends constitutionalist judges, punches back on radical assaults on judicial independence (like court-packing) and opposes judicial and other nominees who are outside

of the mainstream.”

A clerk in Rodgers’ chambers declined to comment.

The complaint comes as more judges are encouraging diversity among the plaintiffs’ leadership, particularly in multidistrict litigation. In her order, Rodgers encouraged “broad” participation.

“Importantly, the court prefers a balanced leadership team that reflects diversity of all types and, in particular, leadership should reflect the diversity of the individual plaintiffs that comprise the litigation,” she wrote. “This does not by any means suggest that every single position requires female counsel, but simply that females should be adequately represented within leadership.”

Two lawyers who advocated for sending the Depo-Provera cases to Rodgers spoke out in her support on Friday.

Chris Seeger, of Seeger Weiss in Ridgefield Park, New Jersey, who has filed Depo-Provera lawsuits, said, “These disgusting attacks on the courts need to stop. A more diverse bar and bench results in better representation of our respective clients, and Judge Rodgers along with the rest of the judiciary are more than capable of choosing qualified attorneys to lead major cases without baseless attacks from those in the cheap seats.”

Another lawyer, Bryan Aylstock, of Pensacola, Florida’s Aylstock, Witkin, Kreis, & Overholtz, noted the irony that the organization lacks Article III standing to bring its “baseless attacks” on Rodgers.

“She, as well as our entire federal judiciary, take seriously their obligations to ensure justice is made available for all,” he said of the judge. “And part of that is ensuring that counsel is best representing, and representative, of the people they serve. These groundless claims against the courts should be repudiated regardless of political ideology.”

US judge blocks Invisalign maker's price-fixing settlement

 [reuters.com/legal/litigation/us-judge-blocks-invisalign-makers-price-fixing-settlement-2025-02-28](https://www.reuters.com/legal/litigation/us-judge-blocks-invisalign-makers-price-fixing-settlement-2025-02-28)

Mike Scarcella

A gavel and a block is pictured on the judge's bench in this illustration picture taken in the Sussex County Court of Chancery in Georgetown, Delaware, U.S., June 9, 2021. REUTERS/Andrew Kelly/File Photo Purchase Licensing Rights , opens new tab

Feb 28 (Reuters) - A U.S. judge has declined to approve a \$27.5 million class action settlement in a consumer lawsuit accusing Align Technology, maker of Invisalign clear teeth aligners, of entering a conspiracy that drove up a rival's prices.

In a ruling , opens new tab on Thursday, U.S. District Judge Vince Chhabria in San Francisco said a provision of the settlement providing coupons for consumers to buy Invisalign products would only strengthen its position as an alleged monopolist.

"It's not clear that such a settlement would ever be appropriate in an antitrust class action against a monopolist," the judge wrote.

The consumer lawsuit alleged Align conspired with rival SmileDirectClub to not enter the direct-to-consumer market for teeth aligners, allowing SmileDirectClub to charge artificially higher prices.

Align and lawyers for the estimated 1.4 million class members — consumers who purchased aligners from SmileDirectClub — did not immediately respond to requests for comment. Align has denied any wrongdoing, and SmileDirectClub was not a defendant.

SmileDirectClub shut down in December 2023, after filing for U.S. bankruptcy protection.

Chhabria's ruling was the second time he has denied , opens new tab a proposed settlement in the lawsuit, filed in 2021. He said the two sides can try again to persuade him to approve an alternative settlement.

The judge said in Thursday's order that he was concerned about a component of the agreement that would give class members a \$300 coupon for Invisalign treatment and \$50 in coupons for one of the company's teeth retainers.

"The defendant in this antitrust case is a monopolist," Chhabria wrote. "The proposed settlement includes a coupon program that will direct still more customers to the monopolist."

Lawyers for the plaintiffs have defended the coupon provision. Align told the court this month that the coupons would "likely have a negligible impact" on the company's sales and will not harm competition in the aligner industry.

Chhabria set an April 18 hearing to discuss the status of the case.

The case is Snow v Align Technology Inc, U.S. District Court, Northern District of California, No. 3:21-cv-03269-VC.

For plaintiffs: Steve Berman and Rio Pierce of Hagens Berman Sobol Shapiro

For Align: Karma Giulianelli and Mark Levine of Bartlit Beck, and James Pearl and Thomas Counts of Paul Hastings

Read more:

Invisalign maker reaches \$27.5 million settlement of consumer antitrust lawsuit
Get a quick look at the days breaking legal news and analysis from The Afternoon Docket newsletter. Sign up here.

Reporting by Mike Scarcella

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Class Action

March 3, 2025, 10:30 AM PST

Apple Wins First Round in iCloud Monopoly Antitrust Litigation

By Katie Arcieri

- **Federal judge says plaintiffs fail to support tying claim**
- **Apple accused of tying iCloud to its mobile devices**

Apple Inc. notched a win for now against claims the tech giant illegally conditioned the sale of its mobile devices to purchases of its iCloud storage platform after a federal judge ruled the plaintiffs failed to plausibly allege an unlawful tying agreement.

Judge Eumi K. Lee of the US District Court for the Northern District of California in a Feb. 28 order partially granted Apple's motion to dismiss, saying no Apple device user is required to use or purchase iCloud or any other cloud storage service. She also said the plaintiffs failed to plausibly allege a claim under California's Unfair Competition Law.

"Because buyers can and do obtain the tying product (Apple mobile devices) without buying the tied product (iCloud), there is no positive tie," Lee said, giving the plaintiffs leave to amend their complaint.

Apple is battling antitrust claims on multiple fronts, including a case brought last year by the Justice Department alleging the company engages in illegal practices to maintain a smartphone monopoly.

Private plaintiffs have also sued Apple in multidistrict litigation claiming the device maker knowingly deters competition by designing iPhones to block cross-platform technologies involving Android smartphones.

Two iCloud subscribers sued Apple, seeking to represent a class of consumers who allegedly overpaid for iCloud due to Apple's file restrictions that prevent third-party cloud storage providers from accessing certain files on iPhones and iPads. Apple's conduct constitutes tying in violation of Section 1 of the Sherman Act, which prohibits agreements that restrain trade, the plaintiffs alleged.

Apple moved to dismiss, saying it doesn't unlawfully tie Apple devices to iCloud because device users aren't required to buy iCloud.

Apple also argued the plaintiffs' claims are time-barred because the company's file restriction policy was implemented more than a decade ago. But Lee denied Apple's motion to dismiss all claims on those grounds, saying the court can't conclude that plaintiffs' claims are time-barred.

"The timing of Apple's file restriction, and the details of how it is implemented, are not sufficiently clear from the face of the complaint," she said.

She gave the plaintiffs a chance to fix their tying claim under Section 1 of the Sherman Act "because this is the court's first ruling on the legal sufficiency of Plaintiffs' claims."

Lee said the plaintiffs may be able to plausibly allege monopoly power based on additional facts.

"What Plaintiffs are really challenging is Apple's product design decision to shield restricted files from third-party cloud storage providers," she said. "This type of unilateral anticompetitive conduct is properly challenged under Section 2 of the Sherman Act, not under Section 1."

Apple is represented by Latham and Watkins LLP. The plaintiffs are represented by Hagens Berman Sobol Shapiro LLP.

The case is *Gamboa v. Apple Inc.*, N.D. Cal., No. 5:24-cv-01270, 2/28/25 .

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Class Action

March 3, 2025, 6:39 AM PST

Sutter Health Settles Decade-Old Antitrust Case on Eve of Trial

By [Rob Tricchinelli](#)

Northern California health-care provider Sutter Health has settled a long-running lawsuit alleging it charged monopoly prices and forced “all or nothing” contracts to health insurers.

Trial was set to begin Monday, but a Sunday notice in the US District Court for the Northern District of California said the parties “have reached an agreement in principle to settle all individual and class claims.” The parties will file a motion for preliminary approval within 45 days of the notice.

Sutter’s initial trial victory was overturned in June 2024 by the US Court of Appeals for the Ninth Circuit, which also allowed older evidence into a retrial.

The plaintiffs had sought \$1.2 billion in damages in the first proceeding. The California attorney general’s office settled its case with similar claims against Sutter Health for \$575 million in 2021.

The plaintiffs are represented by Constantine Cannon LLP, Shinder Cantor Lerner LLP and Mehdi Firm. Sutter Health is represented by Jones Day.

The case is *Sidibe v. Sutter Health*, N.D. Cal., No. 3:12-cv-4854, notice of settlement 3/2/25 .

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Federal Judge Dismisses MDL Alleging COVID-19 Price-Fixing Conspiracy in US Tire Market

 [law.com/nationallawjournal/2025/02/28/federal-judge-dismisses-mdl-alleging-covid-19-price-fixing-conspiracy-in-us-tire-market](https://www.law.com/nationallawjournal/2025/02/28/federal-judge-dismisses-mdl-alleging-covid-19-price-fixing-conspiracy-in-us-tire-market)

Sulaiman Abdur-Rahman

An Ohio federal judge has dismissed consolidated antitrust class actions in multidistrict litigation accusing the largest tire manufacturers in the world of price-fixing during the COVID-19 pandemic in violation of the Sherman Act.

U.S. Chief District Judge Sara Lioi overseeing her first MDL in the Northern District of Ohio ruled the automobile dealership and other reseller plaintiffs “failed to adequately plead a conspiracy” and dismissed their consolidated complaints without prejudice Tuesday.

“Plaintiffs rely heavily on the oddity of a firm raising prices in the face of falling input costs as an indicator that a conspiracy was afoot,” Lioi wrote in her memorandum opinion. “But the reality—at least, according to the pleadings and their sources—is that defendants raised prices in the face of extreme volatility as to the cost for tires’ main ingredient (rubber). There is nothing odd or irrational about that.”

Big Law firms represented each of the defendants in the case, including Latham & Watkins and Thompson Hine for Michelin North America Inc., Weil, Gotshal & Manges for Bridgestone Corp., Wilson Sonsini Goodrich & Rosati and Vorys, Sater, Seymour and Pease for Continental AG, Alston & Bird for Nokian Tyres Inc., White & Case for Pirelli Tire LLC and Covington & Burling and Taft Stettinius & Hollister for the Goodyear Tire & Rubber Co.

Lead counsel for the plaintiffs included Cuneo, Gilbert & Laduca; Gustafson Gluek; Burns Charest; Steven Williams Law; and Zwerling, Schachter & Zwerling.

The consolidated lawsuits accused the defendants of raising new replacement tire prices by more than 20% from February 2020 through December 2022 under an unlawful agreement to “unreasonably restrain trade in violation of Section 1 of the Sherman Act.”

Counsel for the defendants filed a motion last September requesting permanent “dismissal of the complaints in their entirety with prejudice,” arguing the class actions “fail to plead an unlawful agreement.”

Lioi dismissed the consolidated complaints without prejudice and ruled the plaintiffs may seek leave to file amended consolidated complaints no later than March 25.

Counsel for the tire manufacturers “convincingly dispute the plausibility of the pretext allegations by pointing out several material inconsistencies within, and critical omissions from, the consolidated complaints,” Lioi wrote in her opinion filed Tuesday. “For reasons

explained below, the Court gives no weight to plaintiffs' unsupported conclusion that the price increases cannot be explained by the effects of the COVID-19 pandemic on the U.S. replacement tire market."

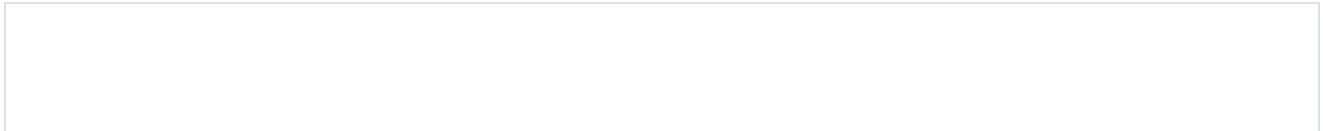
Lioi found the claims "deficient" and suggested no trial court in the United States would accept the allegations as plausible.

"Plaintiffs do not, however, cite any cases in which a court has accepted as true an unsupported legal conclusion simply because it was alleged to be the end-result of an undisclosed statistical analysis," Lioi wrote in her opinion. "This Court is not inclined to be the first."

Counsel for the plaintiffs did not respond to a request for comment on this article.

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Lab has 'whistleblower' settlement in place in Zantac case

 pennrecord.com/stories/670204987-lab-has-whistleblower-settlement-in-place-in-zantac-case

March 3, 2025

Light | <https://www.valisure.com/team/david-light>

PHILADELPHIA - The product-testing lab whose research has created tens of thousands of lawsuits still works to settle a case it brought itself and received no support from the federal government and more than two dozen states refusing to participate.

Valisure LLC has used testing methods criticized by the Food and Drug Administration to show chemicals in products like acne medicate and Zantac can turn into carcinogens. Plaintiff lawyers routinely cite its work when filing lawsuits, some of which are proposed class actions.

For five years, it was secretly the plaintiff in its own case against GlaxoSmithKline over Zantac. Its "whistleblower" lawsuit was filed in 2019 under seal under the False Claims Act, alleging programs like Medicare and Medicaid provided Zantac to patients while concealing the chance it could turn into NDMA.

In a March 3 filing about a year after the case was unsealed in Philadelphia federal court, the sides disclosed a settlement has been reached but not finished.

"The parties have been working diligently to finalize the settlement agreement, but they are still in the process of finalizing the settlement documents and obtaining necessary approvals from the Department of Justice and the representatives of the named plaintiff states," the document says.

Whistleblowers, or relators, win a percentage of whatever is successfully recovered. In addition to filing the case on behalf of the United States of America, Valisure also seeks to represent 27 states and the District of Columbia. Under the FCA, a whistleblower notifies these governments when filing, which allows them to decide whether to join the whistleblower's case.

All governments declined to intervene, according to a March 11, 2024, document, leaving Valisure and its lawyers, who include former U.S. Rep. Conor Lamb (now a lawyer at Kline & Specter) to pursue the case on their own. Maryland rules require dismissal of the state from the case because it didn't wish to join.

When the feds and states choose not to intervene, the whistleblower is entitled to a higher percentage of any recovery than if they received help from governments.

Valisure LLC created headlines and tens of thousands of lawsuits in 2019 when it claimed its testing showed the heartburn medicine contained an ingredient that changed to a known carcinogen called NDMA. Lawyers cited its study in ensuing litigation, calling Valisure an "independent" lab.

A federal judge and the Food and Drug Administration eventually found fault with Valisure's testing, which included heating an artificial stomach to a level about 70 degrees lower than the average temperature of the planet Mercury and introducing a lethal amount of salt.

Valisure brought its findings in a citizen petition to the FDA, which ordered a short-lived recall. The FDA said Valisure's methods were unreliable, saying the lab's "artificial stomach" was heated to 260 degrees and subjected to lethal levels of salt to create NDMA from Zantac.

Valisure detected no NDMA in the drug when testing it under normal human conditions, and a Florida federal judge in 2022 dismissed about 50,000 lawsuits after finding Valisure's methods didn't fit expert witness standards.

Delaware and California federal judges reached the opposite conclusions and allowed lawsuits there to proceed. None of this matters to its whistleblower case, Valisure says, as it is based on the actions of GSK.

GSK settled 80,000 cases for \$2.2 billion last year while denying all claims against it. Last month, plaintiff lawyers representing company investors sued the company over its Zantac disclosures, citing Valisure's study.

Another study by Valisure turned into dozens of lawsuits alleging acne medication turned into benzene. Facing similar claims over dry shampoo, Unilever recently decided to settle.

Valisure founder David Light ran afoul of the law more than 15 years ago for possessing a cache of illegal weapons while he was still an undergraduate at Yale.

Valisure announced a cooperative research agreement with the Defense Department in 2023, accompanied by praise from U.S. Representative Rosa DeLauro. The Pentagon has yet to provide *Legal Newsline* with any evidence such an agreement exists.

ORGANIZATIONS IN THIS STORY

U.S. District Court of Eastern District of Pennsylvania

From Meta to Airbnb, Companies Flag Risks Dealing With EU AI Act

- EU law establishes new AI legal framework based on risks
- Companies say compliance poses cost, complexity concerns

Meta Platforms Inc., Adobe Inc., and at least 70 other publicly-traded US companies are warning investors that the world's most far-reaching AI regulation poses risks to their businesses.

The European Union's Artificial Intelligence Act—which creates obligations for providers, distributors, and manufacturers of AI systems—may require hefty compliance costs and force companies to alter their product offerings across the Atlantic, businesses say. In many cases, this marks the first time companies have disclosed concerns with the first-of-its kind EU law in their annual reports' sections outlining potential risks to their operations and financial stability.

Airbnb Inc., Lyft Inc., and Mastercard Inc. are among those naming the EU AI Act as a risk in recent 10-K filings with the US Securities and Exchange Commission. Companies cited concerns they could face civil claims and steep fines against them if they're accused of or found to be breaching the law.

"It probably reflects the fact that there's going to be potentially aggressive enforcement of the EU AI Act," said Minesh Tanna, Simmons & Simmons LLP's global AI lead.

The "risk factors" section of 10-K filings is intended to insulate companies from claims of securities fraud by flagging possible areas of concern for potential investors. Typical risks range from litigation costs to political and economic troubles in the countries in which companies operate.

The EU AI Act, which entered into force in August, is an addition to an existing list of technology and data privacy-related laws that businesses have named in their reports. Its first provisions blocking overly risky uses of AI in the EU took effect in February.

Ambiguity over what the law will require adds to corporate angst.

"It's when you start looking at how the regulations are enforced that you get a real feel of how the adjudicators will decide on these issues," said Elisa Botero, a partner at Curtis, Mallet-Prevost, Colt & Mosle LLP.

Diverse Concerns

The law’s risk-based rules aim to ensure AI systems in the EU are safe and respect fundamental rights, weeding out practices like AI-based deception. The regulation also establishes a legal framework for providers of general-purpose AI systems, such as OpenAI Inc.’s GPT-3 large language model.

Abiding by the law “may impose significant costs on our business,” consulting firm Gartner Inc. said in its 10-K filing.

These compliance costs can result from companies hiring new personnel, paying external advisers, or other operational costs, according to Jenner & Block London LLP special counsel Ronan O’Reilly.

Airbnb told investors regulations including the EU AI Act “may impact our ability to use, procure and commercialize” AI and machine learning tools in the future.

“We’re seeing—and we’re going to see more of this—the risk of fragmentation with what products and services are offered in different markets,” said Joe Jones, the director of research and insights for the International Association of Privacy Professionals.

Annual Reports Describe Variety of Risks EU AI Act May Pose

Company	Potential risks
Roblox Corp.	Financial penalties
Gartner Inc.	Compliance costs
Adobe Inc.	Inconsistencies among AI regulations
Reddit Inc.	Increases in civil claims
Lyft Inc.	Adverse impact on business
Airbnb Inc.	Impact on AI commercialization

Source: Bloomberg Tax analysis of 10-K filings

Bloomberg Tax

The law could also require the use of AI to be altered or restricted in available products depending on the level of risk involved, the video game developer Roblox Corp. said in its report.

EU officials have assigned more compliance requirements to higher-risk uses of AI, such as types of biometric identification. These obligations can include detailed documentation, human oversight, and data governance measures.

There's ambiguity in the law's "high risk" category of AI systems' use, O'Reilly said.

Companies may have to look to a whole suite of separate EU legislation governing areas such as transportation to fully determine whether their AI systems fit into the "high risk" category, O'Reilly said. Those laws could have their own ambiguities, further complicating the picture.

The EU is working on supplemental guidelines to give companies a better sense of what their assessments should look like, said Gaia Morelli, counsel at Curtis.

For example, the European Commission published further guidelines on prohibited AI practices under the law in February.

Uncertain Fallout

Enforcement of the EU AI law is complicated because of the multiple players involved.

While the European AI Office within the European Commission has the sole competence to regulate general-purpose AI systems under the law, it will generally be up to the 27 member states' officials to enforce the rules regarding high-risk uses of AI, said Tanna, of Simmons & Simmons.

"You could be facing action in multiple member states in respect to the same alleged issue," Tanna said.

Breaching the act's requirements could result in fines of up to 35 million euros (about \$36 million) or 7% of annual global turnover for the previous year, whichever is higher, Roblox said in its report.

Meta, Adobe, Airbnb, Lyft, Mastercard, Gartner, and Roblox didn't return requests for additional comment on their 10-Ks.

Future Disclosure

AI risk-flagging is expected to create a domino effect as companies learn more about the EU law.

"Companies read one another's 10-Ks, so there's always a bit of hawkishness," said Jones, of the International Association of Privacy Professionals, adding organizations may find it important to get on the same page.

Businesses need strong risk management systems and employees who know the entire lifecycle of AI development, said Don Pagach, director of research for the Enterprise Risk Management Initiative at North Carolina State University.

This year's disclosures might prompt further concerns from the public about companies' AI governance, Jones said.

"It will drive investor questioning around, 'Well, what's your response to the AI Act? Who is accountable in the organization?'" he said.

Microsoft Corp. released information in January on how it plans to balance innovation with EU AI Act compliance that's of "paramount importance."

Ultimately, people should care about the EU law because of the bloc's market power, Botero said. The law applies not only to companies considering expanding their reach to the EU in the future, but also to those who already have EU clients, she said.

"If you're looking at companies that want to build AI systems, you can't ignore one of the largest markets in the world," she said.

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When Incorporating Your Business, Skip Delaware and Head to Ohio

- *Thompson Hine attorney assesses options to reincorporate*
- *Delaware Supreme Court paves way for move to other states*

Delaware's status as the preeminent jurisdiction for incorporation is in question as prominent companies openly consider moves out of the state, and a recent Delaware Supreme Court decision paved the way for boards to approve corporate relocations without exposing themselves to personal liability.

Nevada and Texas have received most of the attention from companies searching for a Delaware alternative, but they are by no means the only, or even the best, option. Ohio—already the state of incorporation for more than 15 Fortune 500 companies—offers its own attractive mix of pro-business policy preferences. Companies exploring a move—or simply reviewing their options—should consider the Buckeye State as they decide how to respond to this evolving corporate landscape.

For decades, Delaware has enjoyed a reputation as the jurisdiction of choice for the country's top companies. This reputation is well earned. Delaware has a developed body of law, skilled and experienced jurists, and a dedicated court system that acts with speed and efficiency. Many investors also value the significant protections afforded by Delaware law and may pay a premium to obtain them.

Yet a small but vocal minority of companies raised concerns that Delaware's judicially developed standards of review both overexpose directors and officers to personal liability and unduly constrain boards' ability to act in certain contexts. According to its critics, Delaware's heightened standards have emboldened stockholder-plaintiffs and invite litigation over a wide range of corporate actions—in particular, controlling stockholder or change-in-control transactions.

These concerns came to a head recently with the Court of Chancery's ruling voiding Elon Musk's historic pay package with Tesla, and Tesla's subsequent departure from Delaware. Several other companies, such as Meta, Dropbox, and Pershing Square, are reportedly considering following suit.

And just this month, the Delaware Supreme Court ruled that directors generally don't subject themselves to personal liability for approving a company's move out of Delaware—further paving the way for boards considering their options.

And if there was any doubt about whether Delaware is taking these concerns seriously, look no further than the Delaware legislature's recent proposed changes to its corporate statute, which, among other things, propose lowering the standard of review for some controlling stockholder transactions. It remains to be seen whether these proposals will be enough for companies searching for a different mix of policy choices than what Delaware has to offer.

So where to, for companies looking for a Delaware alternative? Nevada and Texas are the most oft-cited jurisdictions. The reasons are no mystery. Nevada offers a more predictable statutory regime that broadens the ability of companies to insulate directors from personal liability and eliminates heightened scrutiny over many controller and change-in-control transactions.

And while differences between the corporate law of Texas and Delaware are less clearly defined, Texas has successfully positioned itself as a pro-business jurisdiction and recently established a specialized business court dedicated to handling commercial disputes.

But Nevada and Texas are not the only (or even the best) options for companies looking beyond Delaware. Ohio offers an attractive blend of business-friendly policy choices that prioritize predictability and afford directors heightened protections and reduced risk of personal liability. These policy choices not only distinguish Ohio from Delaware, but—in several key respects—from Nevada and Texas as well.

Ohio's statute-based approach to corporate law. Ohio's version of the business judgment rule has been defined by statute since 1986. By contrast, the business judgment rule in jurisdictions such as Delaware and Texas have been developed primarily by courts through judicial decisions, which can be more difficult to predict than statute-based regimes. Unsurprisingly, Ohio courts often still look to Delaware case law to fill in gaps in the law. But even so, companies that prioritize predictability over an evolving body of law may find more of it in Ohio's statute-based regime.

Ohio permits broader exculpation. Delaware and Texas don't allow companies to exculpate directors for good-faith breaches of the duty of loyalty. Ohio does, so long as directors aren't intentionally harming the company or recklessly disregarding its interests. Ohio directors are also automatically exculpated from liability unless a company's governing documents say otherwise, while in Delaware companies are required to opt in to exculpation.

Ohio directors may consider constituencies beyond stockholders. In exercising their fiduciary duties, Delaware directors are required to focus solely on the interests of stockholders. By contrast, directors of Ohio companies have broader discretion (but not the obligation) to consider other constituencies beyond shareholders, such as employees or communities.

Ohio's clear and convincing standard for director liability. Stockholders bringing fiduciary duty claims against Ohio officers or directors generally must prove their claims by clear and convincing evidence. This heightened standard of proof—which also applies to exculpation and a director's obligation to repay an advancement of legal costs by the company—underscores Ohio's policy of ensuring directors are free to use their judgment in making business decisions without undue concern for personal liability. Delaware, Nevada, and Texas apply a less rigorous "preponderance of the evidence" standard.

No enhanced scrutiny of takeover defenses or change of control transactions. Ohio's legislature has also made clear that directors are held to the same standard of review, regardless of whether they are addressing ordinary course business decisions, responding to a takeover threat, or approving a change of control transaction.

This distinguishes Ohio from Delaware, where actions in the latter two contexts are generally subject to enhanced judicial scrutiny requiring directors to justify their actions. Ohio also has strong statutory takeover defenses, including its control share acquisition act and anti-greenmail statute, that further underscore Ohio's firmly entrenched policy of protecting its companies from hostile takeovers.

Limitation on squeeze-out remedies. Ohio also limits post-merger challenges by minority stockholders where the only issue is whether a fair price was paid to the remedy of appraisal—i.e., no fiduciary duty suit against individual directors—another policy choice intended to limit personal liability for individual directors in certain circumstances.

Other factors also make Ohio worth considering. Like Texas, Ohio's corporate hubs—e.g., Cincinnati, Columbus, Cleveland—all have separate commercial dockets that specialize in handling complex commercial disputes.

While not as experienced as Delaware's Court of Chancery, these specialized courts have been adjudicating business disputes for more than 15 years and offer corporate litigants greater expertise and expediency than they might receive on a general court docket.

Ohio likewise benefits from a robust and deep-rooted business community, numerous Fortune 500 companies that choose to be governed by Ohio law, a responsive corporate bar, and a state legislature that has demonstrated both an understanding of corporate concerns and a willingness to act quickly and proactively to address them.

Deciding where to incorporate is a significant decision that requires understanding a company's corporate objectives and weighing competing policy considerations.

No jurisdiction is perfect, and Delaware may well continue to be the right fit for many companies. But for those considering a new home, Ohio's predictable statutory framework and strong pro-business community offer an attractive alternative that boards and their advisors are wise to consider.

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

Five Things Senator Husted Did This Week

ohiodems.org/five-things-senator-husted-did-this-week

February 28, 2025



News

February 28, 2025

Columbus, Ohio- While Ohio's working families wonder how they will make ends meet as egg prices increase, their access to healthcare is threatened, and their energy bills are still high from a corruption scandal, their senator is nowhere to be found. That's why we're telling Ohioans about five things Senator Husted did this week that hurt Ohioans.

- 1) Had a "great visit" with Elon Musk in the same week that Musk laid off public servants in Ohio, cut services for our state's veterans, and more. While Ohio's working families suffer, Husted & Musk would rather pad the pockets of billionaires and special interests.
- 2) Refused to answer questions about if he would vote to defund or significantly change the PACT Act- which provides healthcare for veterans exposed to toxic substances while serving our country.
- 3) Advocated for Medicaid work requirements that could result in more than 61,000 Ohioans losing access to healthcare. As his new best friend Elon Musk continues to be a clear and present danger to all medicaid recipients, he's been silent.
- 4) Despite claiming otherwise, Husted continued to largely refuse to listen to or meet with constituents that weren't special interest groups. What is he hiding from?
- 5) Of course, this wasn't the week that Husted finally explained his role in the biggest corruption scandal in our state's history. Maybe next week will be the week when the "Golden Boy of FirstEnergy" answers for his role in the scandal that skyrocketed energy bills for Ohioans, but we're not holding our breath.

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<https://www.wsj.com/business/retail/kroger-ceo-rodney-mcmullen-resigns-after-investigation-of-personal-conduct-507398ad>

BUSINESS | RETAIL

Kroger CEO Rodney McMullen Resigns After Investigation Into Personal Conduct

Supermarket chain says the conduct was unrelated to its financial performance or operations but was inconsistent with its ethics policy

By *Denny Jacob* and *Patrick Thomas*

Updated March 3, 2025 9:47 am ET



Rodney McMullen served as CEO since 2014 and was named chairman in 2015. PHOTO: PATRICK T. FALLON/AGENCE FRANCE-PRESSE/GETTY IMAGES

[Kroger](#) KR -2.21% ▼ Chief Executive Rodney McMullen resigned from the company following a board investigation into his personal conduct, ending a more than four-decade career at the grocery chain.

Kroger, the biggest U.S. supermarket chain by sales, said Monday that while the conduct was unrelated to the company's business, it was inconsistent with its ethics policy. Lead director Ronald Sargent will serve as chairman and interim CEO while the company searches for a permanent replacement for McMullen.

“I plan to be a steady, but active hand in the execution of our strategy,” said Sargent, who has been on Kroger’s board since 2006 and lead director since 2017. He previously held corporate roles at Kroger and served as CEO of office-supplies retailer Staples.

McMullen’s ouster follows Kroger’s failed [\\$20 billion takeover](#) of smaller rival [Albertsons](#), which aimed to unite the two largest pure-play supermarket operators in the biggest grocery deal ever. [The deal was blocked](#) by a federal judge in Oregon in December.

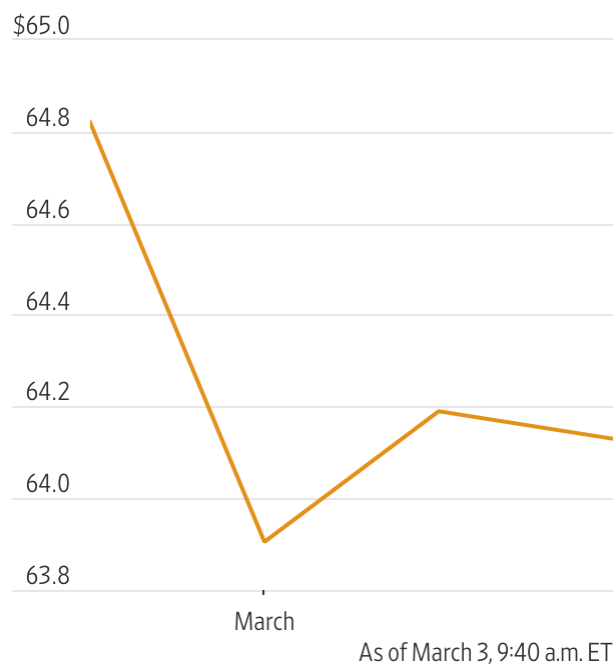
The Cincinnati-based company said Monday its board was made aware of certain personal conduct by McMullen, who also served as chairman, on Feb. 21 and immediately retained outside independent counsel to conduct an investigation, which was overseen by a special board committee.

McMullen’s conduct wasn’t related to Kroger’s financial performance, operations or reporting, and didn’t involve any Kroger associates, said the company. Efforts to reach McMullen weren’t immediately successful.

Kroger shares declined 1.3% in morning trading.

Share-price performance

Kroger



Source: FactSet

McMullen’s ouster comes days before Kroger is scheduled to announce its fourth-quarter results. The company said it expects two key measures—identical sales without fuel and adjusted per-share earnings—to be at the high end of its prior outlook.

McMullen grew up in Kroger’s backyard as a farm-raised Kentuckian who joined the company as a part-time stock clerk in 1978. He earned a master’s degree in accounting and [spent years climbing Kroger’s ranks](#). He had served as CEO since 2014 and was named chairman

in 2015.

McMullen carefully studied the grocery industry, and has been known to peruse the aisles of his stores and those of rivals as he expanded Kroger, seeking to build leverage with suppliers and cut costs.

Early in his tenure as Kroger's CEO, McMullen spent [about \\$200 million to acquire chains](#) such as Roundy's and Pick N' Save in Wisconsin and Mariano's in Chicago, expanding Kroger's Midwest footprint. He described [Amazon.com's](#) takeover of Whole Foods as a watershed moment for the industry and one that helped inspire Kroger's attempted takeover of Albertsons.

In 2022, he launched an effort to acquire Albertsons, a deal he said would secure the chains' future to better compete with retail giants including [Walmart](#) and Amazon. The Biden administration argued the deal would remove Kroger's largest competitor and lead to higher prices for grocery shoppers.

The Federal Trade Commission [sued to block the deal](#), taking the companies to trial and winning a ruling from an Oregon federal judge to halt the merger. The companies dropped the deal shortly after. [Albertsons has since sued Kroger](#), saying the grocer didn't do enough to win regulatory approval for their deal.

Kroger has said that it is focused on its future without Albertsons by keeping costs low as it works to gain market share. Analysts have said the supermarket chain could try to acquire smaller, more regional grocers over the next year.

The company's coming earnings results will be watched for any signs of slowing growth or changes in consumer-spending patterns amid higher prices for eggs and other groceries.

McMullen's resignation is the latest change to Kroger's C-suite in the past few months. The company in February hired veteran [PepsiCo](#) executive David Kennerley as its next chief financial officer. Stuart Aitken, Kroger's chief merchandising and marketing officer and one of its top executives, departed the company last November.

Write to Denny Jacob at denny.jacob@wsj.com and Patrick Thomas at patrick.thomas@wsj.com

Videos

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

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Kroger Co

Kroger says chief Rodney McMullen has quit over personal conduct

US supermarket chain appoints Ronald Sargent as chair and interim CEO



Kroger said a board investigation found Rodney McMullen's personal conduct was 'inconsistent' with its policy on business ethics © Bloomberg

Jonathan Wheatley in London and **Gregory Meyer** in New York

Published 7 HOURS AGO | Updated 06:54



US supermarket chain Kroger said that chief executive and chair Rodney McMullen had stepped down after a board investigation found his personal conduct was “inconsistent” with its policy on business ethics.

In a statement on Monday, the company said McMullen's conduct was not related to the chain's financial performance or operations, but did not give any details.

[Kroger](#) is the largest US supermarket chain, with \$150bn in revenue. But the Cincinnati-based company has in recent years confronted intensifying competition in food retail from big-box retailers such as [Walmart](#) and Costco as well as discount chains including Aldi. Last year Kroger captured 9.1 per cent of US grocery sales, compared with [20.9 per cent at Walmart](#), according to Numerator, a market research firm.

To survive competitive pressures, Kroger sought to merge with rival supermarket operator Albertsons. The [deal was blocked](#) on antitrust grounds last year.

Kroger said its board had been made aware on February 21 of “certain personal conduct” by McMullen and had “immediately retained outside independent counsel to conduct an investigation”.

It said the conduct was not related to Kroger’s “financial performance, operations or reporting, and it did not involve any Kroger associates”.

Ronald Sargent, Kroger’s lead independent director, will replace McMullen as chair and interim chief executive immediately, the company added. It said it had hired a headhunter to find a permanent replacement as chief executive.

Sargent said: “As interim CEO, I am committed to working alongside our proven and experienced management team and dedicated associates to ensure Kroger continues providing exceptional value for our customers.”

McMullen’s departure marks a significant shake-up this year for Kroger’s top leadership. The company last month announced that interim chief financial officer Todd Foley will step down in April, to be replaced by PepsiCo Europe CFO David Kennerley.

[Albertsons sued Kroger](#) in December after their proposed \$25bn merger was blocked by two separate US judges. The deal would have been the biggest supermarket merger in US history, creating a behemoth with 5,000 stores across 48 US states. Albertsons alleged that Kroger had not made enough effort to secure regulatory approval.

Kroger said on Monday that it expected full-year sales “at the high end of its guidance range” and that adjusted earnings per share would be slightly above guidance. It will report fourth-quarter and full-year results on March 6.

Shares of Kroger were down 1.4 per cent shortly after Wall Street's opening bell on Monday.

McMullen, 64, has served as Kroger's CEO since 2014 and added the chair title a year later. A 'lifer' of 47 years, he began working at the company as a shelf stacker while in college. Kroger paid him \$15.7mn in the company's 2023 fiscal year, according to Kroger's latest proxy statement.

Kroger said on Monday that McMullen would forfeit all unvested stock awards outstanding under a long-term incentive plan and will not be eligible for a bonus from the latest fiscal year.

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March 3, 2025, 10:31AM PST

Matt Levine's Money Stuff: Citi Keeps Hitting the Wrong Buttons

By Matt Levine

Opinion

Bank error in your favor

I think the best job in tech, or at least *my* dream job, is designing the user interface for the payments department of Citigroup Inc. As far as I can tell the job is just doing pranks, and the pranks are *very* funny:

Citigroup credited a client's account with \$81tn when it meant to send only \$280, an error that could hinder the bank's attempt to persuade regulators that it has fixed long-standing operational issues.

The erroneous internal transfer, which occurred last April and has not been previously reported, was missed by both a payments employee and a second official assigned to check the transaction before it was approved to be processed at the start of business the following day. ...

Citi's \$81tn near miss in April was due to an input error and a back-up system with a cumbersome user interface, according to people familiar with the incident. In mid-March, four transactions totalling \$280 destined for a customer's escrow account in Brazil had been blocked by a screen that catches payments that are potential sanction violations.

The payment was quickly cleared, but nonetheless remained stuck in the bank's system and unable to be completed normally.

Citi's technology team instructed the payments processing employee to manually input the transactions into a rarely used back-up screen. One quirk of the program was that the amount field came pre-populated with 15 zeros, which the person inputting a transaction needed to delete, something that did not happen.

One quirk? *Fifteen zeros*? The quirk in the software is that if you type "send \$1" it says "okay sending one quadrillion dollars" and you have to backspace over all the zeros? Incredible interface design. "What is the lowest amount of money someone might want to send," the interface designers asked themselves, and then answered "one quadrillion dollars" and fell out of their chairs laughing. "Fifteen zeros," they screamed through tears of laughter.

They had to work hard to top their previous comedic masterpiece. This is not the first time we have talked about Citi's payments interface design. In 2020, Citi accidentally wired out \$900 million to some angry hedge funds because its payments team checked the wrong boxes in the system. They did this because the boxes were inscrutably labeled. Citi was trying to *pretend* to send out a payment to a "wash" account, for reasons, and to send a payment to the wash account – instead of to actual recipients – "ALL of the below field[s] must be set to the wash account: FRONT[;] FUND[; and] PRINCIPAL." The payments person thought "okay I want to send the principal to a wash account" and so checked "PRINCIPAL" but not the other inscrutable ones, and the money actually went out. "A gothic horror story about software design," I called it.

But this is much better! I mean, worse! (But funnier.) Every day Citi sends out thousands of payments and, almost every time, people remember to delete the FIFTEEN EXTRANEIOUS ZEROS and send out a normal payment, and then, you know, at least once, they forget and an \$81 trillion payment goes out and Citi is like “whoops we didn’t delete the zeros.” *Why are the zeros there in the first place?* Just the finest sense of comedy of any department of any bank, incredible.

Amaranth guy

A point that I make frequently around here is that it is good, for your financial career, to lose a billion dollars. If you have a catastrophic blowup, potential future investors (1) will definitely have heard of you, (2) will be impressed that someone trusted you with a billion dollars, (3) will appreciate your willingness to take big swings and (4) will assume that you have learned some lessons from your prior mistakes. Here is a Wall Street Journal article about those themes:

In 2006, [Nicholas] Maounis was caught by surprise by an energy-trading catastrophe at Amaranth Advisors, which he ran at the time. The firm’s collapse cost investors over \$6 billion in a matter of days.

Today, Maounis is managing \$11.8 billion at Verition Fund Management. The fund, which has spent years overcoming investor concerns, has grown from just around \$1 billion in 2019. Maounis helps oversee Verition’s investments and risk management, much as he did at Amaranth.

Maounis’s comeback is a testament to an enduring phenomenon. Wall Street traders regularly get second or third chances, even after enormous and embarrassing losses. Those who blow up in spectacular fashion often attract the most cash for their next endeavors, a true head-scratcher.

Part of the explanation: Investors figure someone who has blown it once has likely learned important lessons. Some investors also feel that a manager who makes a huge mistake could just as easily hit it big next time.

“Every successful trader has a near-death experience,” says Peter Borish, a veteran hedge-fund investor who runs Computer Trading Corp., an investing and consulting firm. “Successful ones bounce back, enhance their risk management and potentially thrive.”

One theory of executive compensation is that executives are naturally too risk-averse. If you are a chief executive officer and you run your company into the ground, it’s not *that* bad for your shareholders – they’re probably all diversified index funds and can handle the loss – but it’s very bad for you, because you have undiversifiable career risk tied up in your company. The shareholders should want you to take big risks, but you might be too nervous. So, the theory goes, the shareholders should give you lots of stock options so you get asymmetric upside, overcome your natural worries about your career, and take the optimal amount of risk for the shareholders.

Hedge fund managers are arguably less naturally risk-averse than corporate executives, and also get paid for upside (in the form of performance fees), so you might think they probably take at least the optimal amount of risk for clients. Still it is perhaps a nice additional incentive that the career risk of blowing up isn't really that bad. You just start a new fund, and when you meet with potential investors you give them a sheepish grin and they make fun of you for a few minutes and then give you their money anyway.

Still, some risk aversion is good, particularly if you are running a multimanager fund:

Clients note that Verition has a different strategy compared with Amaranth. It also has close to three times the number of risk managers as Amaranth, and it imposes various limits on its portfolio managers, suggesting that Maounis has learned lessons from the Amaranth episode, they say.

Like Verition, Amaranth was also a multimanager fund, and it was blown up by one of its portfolio managers. It's possible that the best way to learn to keep a close eye on your portfolio managers is by having one blow up your previous fund.

Personal conduct

Here is an environmental, social and governance investing question: What is the future of stories like this ?

Kroger Co. replaced Chief Executive Officer Rodney McMullen following an investigation into his personal conduct, which the US supermarket chain said was unrelated to the company's financial performance and didn't involve Kroger employees.

That's pretty vague, though there are standard things that those words might mean. A crude story of recent corporate history might go like this:

1. Once upon a time, the only job of a CEO was to make money for shareholders, and the CEO's outside personal conduct was the CEO's business. A board of directors was not about to go around firing an effective CEO for personal misbehavior.

- 2. That changed in recent years. It changed in part because of the #MeToo movement, which made it harder for powerful men to get away with sexual misconduct just because they made money. It also changed in part because of investors' increasing interest in environmental, social and governance issues: Unchecked CEO personal misconduct seems like bad governance, and the typical (sexual) form of CEO personal misconduct is probably bad for the company's social impact.

- 3. There has now been a backlash to ESG, to diversity, equity and inclusion programs, to the idea of "wokeness." It is increasingly illegal, or at least frowned upon, for companies and boards and shareholders to consider social issues, or diversity, or even governance. Does that backlash mean that unchecked CEO personal misconduct is fine, that considerations like "this CEO's pattern of sexual harassment is a bad look even if the profits remain high" are now off limits to boards, and that powerful men now *can* get away with personal misconduct as long as they make money?

Will shareholders sue Kroger, arguing that firing a CEO for reasons “unrelated to the company’s financial performance” is a breach of fiduciary duty? Are you even allowed to say that anymore?

Crypto strategic reserve

What is the point of crypto? The point of *Bitcoin* is clear enough: It is widely used, these days, as a sort of “digital gold,” a store of value that might hedge against some sorts of risk. You buy Bitcoin not because you think it will do anything, but because you think it will retain its value. That story might annoy you, but I think it’s basically fine.

What is the point of Solana? I mean, when I go to solana.com, I read words like “Powerful for developers. Fast for everyone” and “Bring blockchain to the people” and “Solana supports experiences for power users, new consumers, and everyone in between” and “Designed for real world use” and “Hivemapper decentralizes mapping with better real-time data and community incentives.” Solana is a blockchain, a development platform, a set of tools and relationships that allow people to build new products for, you know, maps or whatever. And SOL, the native token of the Solana blockchain, is in part a way to do transactions on that platform and in part a way to bet on the platform’s success, a form of quasi-equity in Solana.

I think the latter description is true of a lot of other competing blockchains; it’s roughly how you might describe Ethereum or Cardano or maybe even Ripple. You could criticize this description. You could argue that it’s pretty aspirational, that most of the applications built on these blockchains are not all that revolutionary, that many of them are just ways to speculate on crypto. But I think, or at least I used to think, that if you ascribe tens of billions of dollars of value to those tokens, it’s because you think they are, or will be, *useful for doing things*. They are platforms that are intended to allow the development of useful products for real users, and if you think they will succeed in doing that, maybe you should buy their tokens.

There is obviously an alternative story of Solana, or whatever, that is like “all of the stuff about platforms is window dressing, none of this could ever be all that useful in the real world, the tokens are just a gambling game and the goal is to pump up the price of the tokens by saying stuff.”

How could you tell which story is right? Well, I think the main answer is: Wait a few years and see. If in, like, 2030, a large portion of the world’s economy runs on the Solana blockchain, if a lot of people use Solana apps in their daily lives, if Solana provides much of the infrastructure of finance, then it was useful. If not, not.

This experiment was complicated a bit by the attitude of the US Securities and Exchange Commission toward crypto over the last few years. Simplifying only slightly, the SEC thought that pretty much all non-Bitcoin crypto was illegal, and so it cracked down on developers trying to use crypto to raise money and build platforms, and on exchanges that traded crypto. So if you had a really good idea for building some new application that would move the world closer to running on the Solana blockchain, you might have hesitated to do it. “I’ll just go work in AI instead,” you might have thought; “crypto is too uncertain.”

And now that has changed, the US government is fully pro-crypto and the SEC has backed off all sorts of crypto enforcement. What does that mean for, like, the future of Solana as financial and technological infrastructure? I have argued that there are two possibilities:

1. All the stuff about platforms and real-world uses was real, it was frozen under the SEC's previous reign of terror, and now it will come roaring back and people will build all sorts of useful stuff on these blockchains.
- 2. All the stuff about platforms and real-world uses was fake and the newly permissive environment will lead to a wave of pump-and-dumps and nothing else.

And, again, we will find out. What does this mean ?

In a Truth Social post on Sunday, [President Donald] Trump said his January executive order on crypto "directed the Presidential Working Group to move forward on a Crypto Strategic Reserve that includes XRP, SOL, and ADA."

The inclusion of XRP and ADA tokens in Trump's plan were surprising, according to Andrew Tu, head of sales at crypto market maker Efficient Frontier. Both tokens had huge rallies on Sunday, leading gains across most digital assets. Trump also said Bitcoin and Ether would be included in the reserve, helping those coins recover some of last month's steep declines.

Why does the US government need a "strategic reserve" of Ripple (XRP), Solana (SOL) and Cardano (ADA) tokens? Bitcoin, fine, I guess: Bitcoin is a sort of digital gold, the US government has a stash of gold, it can have a stash of Bitcoin if it wants. But Solana is a kind of equity bet on a particular technological platform, one that is still at this point pretty speculative. Why is it a *strategic reserve* asset? Why not, like, SpaceX shares? "If the United States is willing to put these tokens on their balance sheet, we should also be willing to put stock from Amazon, Facebook, Tesla, Palantir, and Gamestop," writes crypto booster Anthony Pompliano.

Or my Bloomberg colleague Joe Weisenthal writes :

When Trump made his Truth Social post, a bunch of serious crypto people were irritated by the inclusion of XRP and Cardano. 'There's nothing real there! Hardly anyone is building on these chains! You can't find much stablecoin activity on them!' and so on.

But you know who gets the inclusion of XRP and ADA? Those guys soy facing on YouTube.

This is a point that the monetary blogger JP Koning has been making for a long time; that the real crypto industry is the guys on YouTube pumping altcoins and that all the people building out new networks for transmitting value and creating decentralized applications are the phonies. And even before Trump's announcement, the mere existence (and *persistence*) of these other coins in maintaining sizable value (as measured by market cap) speaks to this point.

It's hard to know how seriously to take the Trump strategic reserve stuff, but if you take it seriously it seems quite *bearish* for crypto as a technology for creating real-world value. If you work in crypto, there are two paths for you in this new pro-crypto environment:

1. Get to work building useful stuff.
- 2. Pump your bag and find suckers to buy it.

The second path seems really good and easy! If you are a politically connected crypto person, the ultimate sucker to buy your bag is the US government. If your focus is on lobbying the government to buy your bag, you're probably not doing anything all that useful.

State Street vs. BlackRock

Do you remember "Fearless Girl"? In 2017, State Street Global Advisors commissioned a bronze statue of a girl with her hands on her hips and put it, originally, facing the "Charging Bull" statue in lower Manhattan. The point of the girl staring down the bull was to advertise for State Street's push for more gender diversity at public companies:

SSGA offers guidelines to the companies in which it has a stake, encouraging them to improve gender diversity and address the gender bias in hiring and setting goals. If companies fail to live up to these standards, then SSGA stands ready to use its position as a large shareholder to push for policies that promote change.

This past Friday, State Street "shelved gender diversity targets for company boards amid mounting backlash against diversity, equity and inclusion across corporate America," ah well. But also, despite the statue, State Street never quite succeeded in branding itself as the giant global asset manager that stood for diversity and social change. That was BlackRock, oops:

State Street Corp. was chosen by Indiana's state pension plan to replace BlackRock Inc. as the manager of a roughly \$970 million bond portfolio, after the retirement fund voted to oust the world's largest money manager last year because of its environmental, social and governance efforts.

The Indiana Public Retirement System will transfer the portfolio's assets to State Street next month, according to an update from the pension's board released Friday. The plan's board voted in December to replace BlackRock as the manager of the global inflation-linked bond investments.

Before the vote, state Treasurer Daniel Elliott, a member of the fund's board, released a report that said BlackRock's "ESG commitments" made the money manager ineligible for contracts under the state's anti-ESG law.

I am not convinced that BlackRock's ESG work was substantively all *that* different from the other big asset managers, but it talked more about it, in a way that got it more attention at the time and that has now backfired. I like to imagine that the Indiana managers met with State Street and said "we need a fund manager that has no social or environmental commitments" and State Street was like "yep that's us" as they nervously nudged Fearless Girl behind a curtain.

ABS is back

The cartoony maximalist story would be something like:

1. All human economic activity will soon be replaced by artificial intelligence. (Or, you know, some large percentage.)
- 2. For this transition to happen, humanity will first need to build thousands of data centers filled with computer servers, to train and run all the AIs.
- 3. Therefore companies will need to spend trillions of dollars to build the data centers in the next few years.
- 4. Where will they get the money?
- 5. Well, this is not a long-shot speculative bet: If you build the data centers, you can pretty easily lease them to big tech companies that are working on AI, and those companies are good credits and will probably pay their rent. (And if they don't, the AI market is hot enough that you can quickly find new lessors.)
- 6. Therefore the natural sort of financing would be *debt*, and specifically *asset-backed debt*: You borrow money against some combination of (1) the data center, (2) the servers and chips inside it and (3) the steady cash flow from the leases.
- 7. The market for this debt is still in its infancy, but in five years it will be, like, the main financial asset in the world? Trillions of dollars of data-center financing will come into being in a short time, and you might as well get in on the ground floor.

And then I guess if it *doesn't* happen that way, a lot of empty data centers and defaulted loans. Anyway here's a Wall Street Journal story about how asset-backed securities have come back since the 2008 financial crisis:

Wall Street is once again creating and selling securities backed by everything—the more creative the better—including corporate loans and consumer credit-card debt, lease payments on cars, airplanes and golf carts, and payments to data centers. Once dominated by bonds backed by home mortgages, deals now reach into nearly every cranny of the economy.

"It's amazing to me," said Lesley Goldwasser, a managing partner with GreensLedge, a boutique investment bank that focuses on structured credit. "I have watched this with absolute wonder."

New U.S. issuance of some of the most popular flavors of publicly traded structured credit hit record levels in 2024 and are expected to surpass those tallies this year, according to S&P Global. New asset-backed securities totaled \$335 billion last year. Collateralized loan obligations, or baskets of corporate debt, rose to \$201 billion, also an all-time high.

Good good. "Creating and selling securities backed by everything" really is kind of the point of finance, the main move that financiers do to slice up the cash flows from an asset so that it can be financed more easily, a main way that finance adds value. It got a bad rap in 2008 because securitized slices of home mortgages blew up the global economy, but that doesn't mean that every securitized slicing of everything has the potential to blow up the global economy. Still people *are* strikingly jazzed for data-center-backed securities:

Jason Pan, an analyst at PGIM, the investment arm of Prudential Financial, came to the Aria to talk on a panel about data-center ABS. It was so popular people had to sit on the floor.

Data-center bonds are backed by lease payments from companies that rent out computing capacity. It will cost about \$3 trillion to build the centers needed in the next five years, according to BlackRock. That prospect had many at the conference giddy with excitement.

"The growth feels exponential right now," said Pan, a 34-year old former actuary and recreational rock climber.

Also here is a sociology of structured finance:

Investment banking attracts the whizzes with social skills. The fixed-income markets draw more STEM majors than stock investing. Structured finance is the even more-intense, proudly nerdy corner of that debt world. Earlier in his career, John Wright worked in a structured-credit group that colleagues nicknamed "Team Dungeons & Dragons." ...

Still, Vegas is Vegas. By late afternoons, impromptu happy hours cropped up everywhere, in the banks' and funds' private quarters and in the exhibit-hall booths. People spilled out of the Aria's row of bars and lounges. Cocktail hours were followed by dinners at Jean Georges Steakhouse and Carbone. The Aria casino was humming at midnight.

The pipeline of "Dungeons & Dragons to Carbone" is pretty standard by now but good for them.

Things happen

SEC Dangles \$50,000 Incentive for Employees to Resign or Retire. Meet the Best Friends Who Are Private Equity's Newest Young Stars. Private Credit Paychecks Jump as Asset-Based Lending Expands. General Catalyst is considering an IPO. Ackman's Buyout Offer Deemed 'Not Acceptable' by Howard Hughes. Hedge funds hit back against new leverage limits. Blackstone's Schwarzman Takes Home More Than \$1 Billion Again. Deutsche Bank clashed with ECB over bad loan losses. Europe's only sanctioned oil trader appeals decision citing 'disinformation.' Dalio Warns of US Debt Crisis 'Heart Attack' Within Three Years. Problems With New California Bar Exam Enrage Test Takers and Cloud Their Futures. Nvidia CEO Gives \$22.5 Million to Save Cash-Starved Arts College . Graduates From Top MBA Programs Are Struggling to Land Jobs. The Schools Reviving Shop Class Offer a Hedge Against the AI Future. From Death Star to Raccoon Feet: have quirky meeting room names gone too far?

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- 1. I mean, one quadrillion dollars is \$1,000,000,000,000,000. It's possible that some of the zeros come after a decimal point, like \$10,000,000,000,000.00, ten trillion dollars, which makes more sense with the numbers mentioned in the story.
- 2. And maybe Ethereum, though that's complicated.
- 3. Again Ethereum is an intermediate case, a blockchain intended to be useful for building things, but also an old and well-established cryptocurrency with a sort of monetary element to it.

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[Securities Law News](#)

Feb. 28, 2025, 2:15 PM PST; Updated: Feb. 28, 2025, 6:02 PM PST

CFPB Drops TransUnion Lawsuit, Continues MoneyLion Case (1)

- CFPB sued TransUnion, ex-exec for violating 2017 settlement
- Agency moved to dismiss several enforcement actions this month

The Consumer Financial Protection Bureau dropped its case against consumer credit reporting giant TransUnion and a former top executive over allegations they violated a 2017 settlement by using deceptive marketing practices to sell subscription-based credit monitoring services.

The CFPB, TransUnion, and former executive John Danaher filed a joint stipulation of voluntary dismissal of the case Friday in the US District Court for the Northern District of Illinois. The parties asked for the case to be dismissed with prejudice, meaning a future CFPB director can't revive it.

The CFPB didn't provide a reason for the dismissal in the filing.

Also Friday, the CFPB filed a joint stipulation of dismissal in the US District Court for the District of Connecticut with 1st Alliance LLC, an East Hartford, Conn.-based mortgage lender the agency sued in 2021 over alleged deceptive mortgage practices.

Digital finance platform MoneyLion Technologies Inc. wasn't as lucky.

Acting CFPB Director Russell Vought authorized the CFPB to continue pursuing its case against the company over its membership program and compliance with the Military Lending Act, which caps interest on loans issued to service members and their families at 36%.

The CFPB sued MoneyLion in the US District Court for the Southern District of New York in September 2022.

Counsel for MoneyLion declined to comment.

Dropped Cases

The CFPB this week alone moved to drop cases against Capital One Financial Corp., a unit of Rocket Cos., and a unit of Warren Buffett's Berkshire Hathaway Co., as well as suits against an installment lender and a student loan servicer.

Earlier this month, it filed a joint motion for dismissal with fintech lending platform SoLo Funds Inc.

Vought has ordered the agency to cancel its expert witness contracts, and agency enforcement attorneys have been barred from engaging in any investigative or litigation work as part of his broad stop-work order.

That has led to fears among consumer advocates the CFPB could move to drop most of its existing enforcement actions, said Eric Halperin, the CFPB enforcement director under former Director Rohit Chopra.

"This lack of enforcement will not only hurt consumers, but also law-abiding companies that are now competing against companies that break the law," he said on a Friday call with reporters.

Jonathan McKernan, President Donald Trump's nominee to serve as CFPB director, said at a Thursday confirmation hearing that enforcement would continue under his watch but that the CFPB would be more streamlined.

The CFPB could keep a few cases alive attempting prove that point, Halperin said.

"If they leave one or two cases pending, that's a fig leaf," he said.

'Dark Patterns'

The CFPB sued TransUnion in April 2022 alleging the company deployed "digital dark patterns" that resulted in consumers signing up for a credit monitoring service with monthly charges.

TransUnion agreed to return \$13.9 million to consumers and pay a \$3 million civil money penalty under a 2017 settlement of similar allegations, the CFPB said.

The CFPB defeated motions to dismiss filed by both TransUnion and Danaher over the course of the litigation.

"We are pleased with the dismissal of this case, which reflects our long-standing view of the facts and our ongoing work to support consumers," TransUnion said in a Friday statement.

Counsel for Danaher didn't immediately respond to requests for comment.

TransUnion is represented by Covington & Burling LLP and Jenner & Block LLP.

Danaher is represented by Simpson Thacher & Bartlett LLP and Riley Safer Holmes & Cancila LLP.

1st Alliance Lenders is represented by Weiner Brodsky Kider PC and The Garber Group LLC.

Troutman Pepper Locke LLP represents MoneyLion.

The cases are CFPB v. TransUnion , N.D. Ill., No. 1:22-cv-01880, Joint Stipulation of Voluntary Dismissal 2/28/25 , CFPB v. 1st Alliance Lending LLC , D. Conn., No. 3:21-cv-00055, Joint Stipulation of Voluntary Dismissal 2/28/25 , CFPB v. MoneyLion Technologies Inc. , S.D.N.Y., No. 1:22-cv-08308, Letter 2/28/25 .

(Updates with 1st Alliance and MoneyLion case developments in paragraphs four to eight.)

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Donald Trump supporters lose \$12,000,000,000 after his meme coin collapses

U [uniladtech.com/news/tech-news/donald-trump-supporters-lose-12-billion-after-meme-coin-collapse-393345-20250228](https://www.uniladtech.com/news/tech-news/donald-trump-supporters-lose-12-billion-after-meme-coin-collapse-393345-20250228)

Tom Chapman

Did the Haliey "Hawk Tuah Girl" Welch saga teach us nothing? Did Jimmy "MrBeast" Donaldson not tell us that meme coins are 'icky'? The idea of celebrating Donald Trump's return to the Oval Office with a meme coin might've sounded like a patriotic way to usher in this new era of cryptocurrency and artificial intelligence advancements, and with 500 people reportedly becoming millionaires overnight, it looked like some were destined to become pretty rich.

Not least of them was Trump himself, with the returning POTUS making billions off the back of the meme coin. As we've already warned, meme coins can be volatile and have been compared to 'gambling' by some, which was shown by the launch of Melania Trump's own \$MELANIA coin wiping a ton of value off her husband's.



Interest in \$TRUMP continues to slump (NurPhoto / Contributor / Getty)

The Commander in Chief and his wife have come under fire recently, with the current worth of Melania's coin being branded as 'disgusting' just over a month after it was first launched. To put it into context, those who invested \$10,000 in Melania's coin during its inauguration peak of \$13.73 find the total would now be worth just \$652.44.

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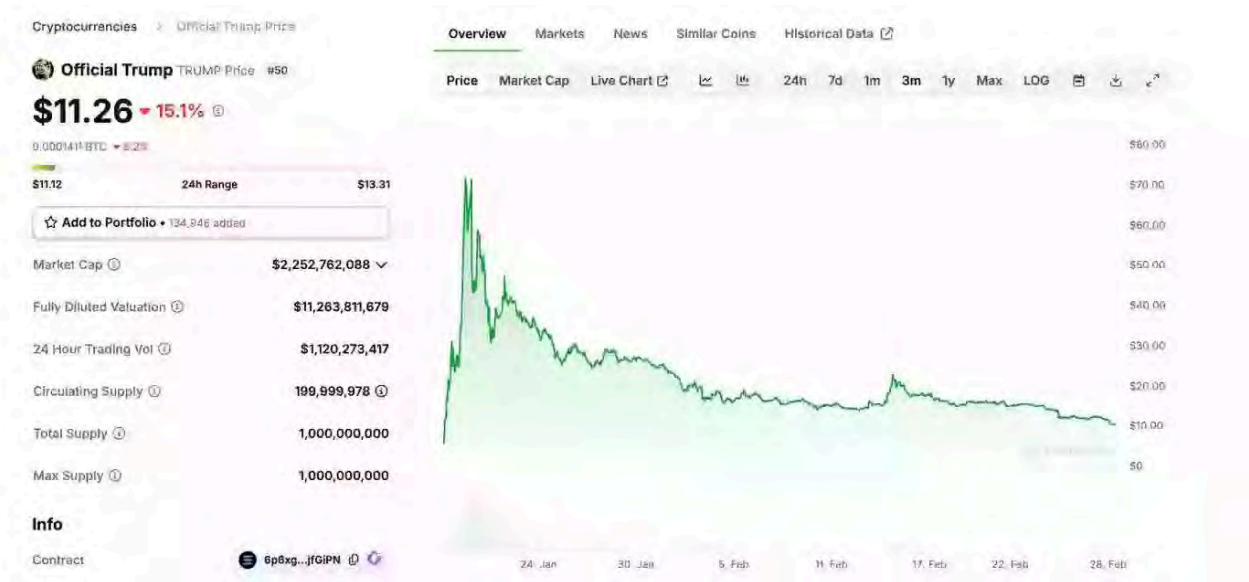
Things aren't looking much better for \$TRUMP, as it's managed to wipe 80% off its value since its January 17 launch. As reported by The Telegraph, \$TRUMP has spectacularly dropped from its January 19 peak of \$73.43.

Having plummeted from \$15 billion to \$2.7 billion on February 27, it currently sits at a measly \$11.27 at the time of writing and has lost over \$12 billion. The site also claims that the value of the coins owned by Trump himself has been slashed by a jaw-dropping \$50 billion.

It's bad news across the board for crypto, with the dramatic drop of interest in \$TRUMP and \$MELANIA being part of a wider fallout. After Bitcoin similarly hit an all-time high of \$108,786 on January 20's inauguration day, it's slumped down to *just* \$79,844. This goes against the projections of some, who predicted Bitcoin could soar past \$200,000 per coin in 2025.

Things aren't looking great for Trump vowing to be the world's first 'crypto president' or the appointment of venture capitalist David Sacks as the White House's very own 'Crypto Tsar'.





It's not looking good for the Trump family meme coins (CoinGecko)

These crypto concerns come as California freshman Democrat Rep. Sam Liccardo puts the President's meme coin monopoly in his crosshairs. Speaking to ABC News, Liccardo explained how he wants to enact legislation that would stop White House officials and their families from capitalizing on meme coins.

The Modern Emoluments and Malfeasance Enforcement (MEME) Act would prevent everyone from the President to members of Congress (as well as their families) from "sponsoring or endorsing a security, future, commodity or digital asset."

Liccardo added: "Let's make corruption criminal again. Our public offices belong to the public, not the officeholders, nor should they leverage their political authority for financial gain."

"The Trumps' issuance of meme coins financially exploits the public for personal gain, and raises the specter of insider trading and foreign influence over the Executive Branch."

If things continue the way they are, Liccardo might not have much to worry about, as the interest in the Trump dynasty meme coins looks like it's continuing to dwindle.

Featured Image Credit: NurPhoto / Contributor / Getty
Cryptocurrency

Donald Trump

Bitcoin

News from Bloomberg Terminal
March 3, 2025, 10:54 AM PST
Trump Crypto Rally Fizzles Amid Skepticism on His Reserve Plan

- Coins picked by Trump gave back some initial gains Monday
- Crypto experts are questioning the benefits of Trump stockpile

By Philip Lagerkranser

(Bloomberg) --

Donald Trump’s announcement that the US will include three lesser-known digital tokens in its strategic crypto reserve was greeted with skepticism in the industry, with investors questioning the project’s merits and the coins he selected giving up some of their initial gains from Sunday.

Trump said Sunday on Truth Social that the XRP, SOL and ADA tokens will be included in the reserve, along with Bitcoin and Ether. The news ignited an immediate crypto rally, offering relief to an asset class fresh off its worst month since 2022.

Yet the initial euphoria soon gave way to questions about everything from the feasibility of Trump’s plan to the motivations behind it. Crypto markets were mostly back in the red on Monday, with XRP, SOL and ADA each suffering intraday declines of more than 10% after soaring the day before. Bitcoin and Ether also slid.

Michael Bentley

@euler_mab · Follow

A strategic reserve that looks like a retail trader’s 2017 portfolio indicates that the US admin doesn’t really understand the value proposition of bitcoin or the rest of the rest of the crypto market.

Strong chance this is abandoned when it becomes apparent US tax payers are... [Show more](#)

11:52 PM · Mar 2, 2025

207

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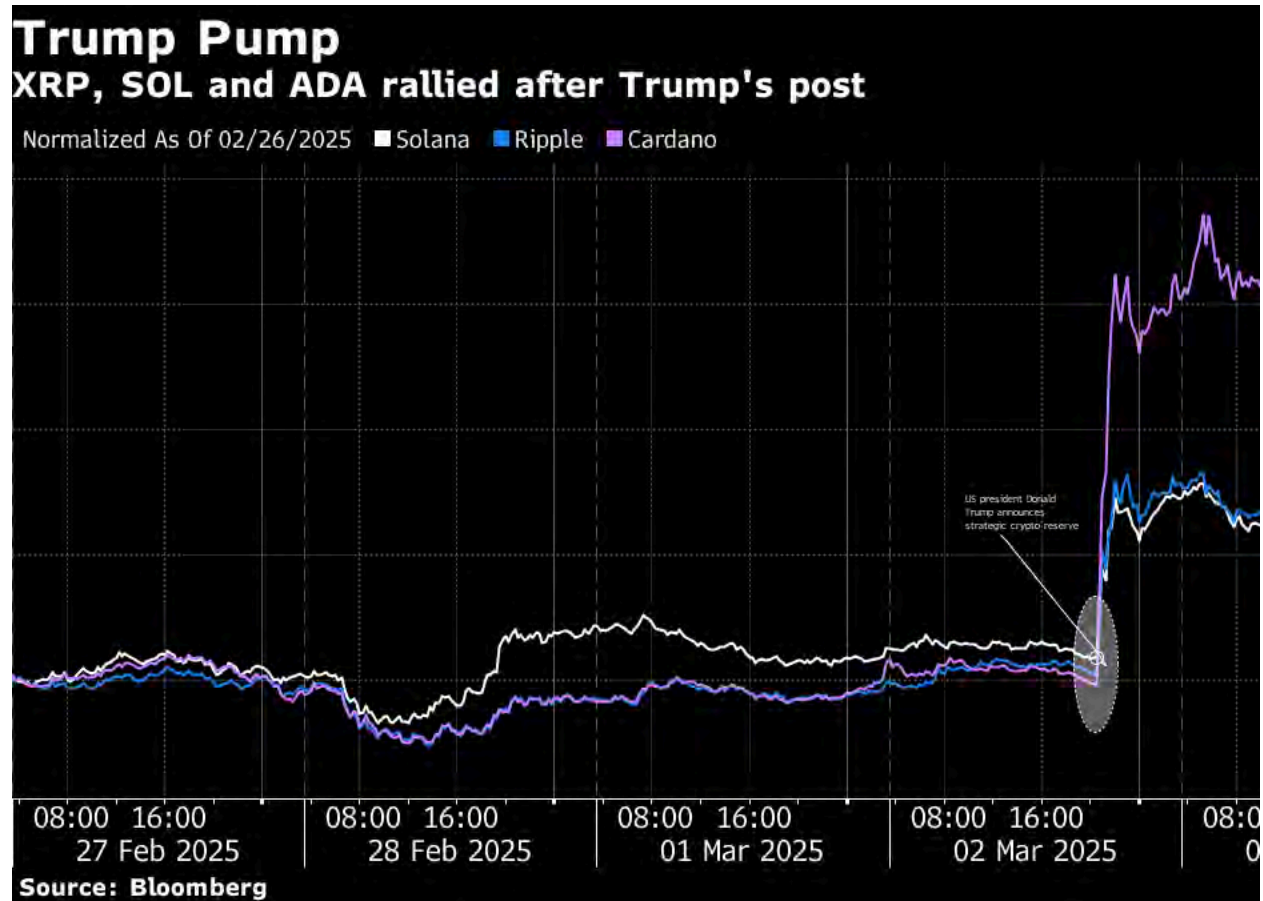
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The February crypto rout had put pressure on Trump, who returned to the White House after the industry showered him with campaign donations and praise. Even the Securities and Exchange Commission’s reversal of a years-long crackdown had failed to stem the selloff, which many attributed in part to nervousness about Trump’s trade tariffs and dramatic moves to gut government programs.

Read more: SEC ‘Demolition’ of Crypto Enforcement Gets Cheers, Jeers

“For a president who thrives on being the market’s hero, last week’s risk asset performance was anything but inspiring,” QCP Capital said in a note on Monday. “The political calculus was clear – Trump needed a win before his approval ratings start slipping, a metric he likely takes very personally.”

XRP was down 15% at 1:54 p.m. in New York after rallying 32% on Sunday, while SOL and ADA slipped about 15% each. Bitcoin was about 7% lower, trading near \$87,000, while Ether lost about 13%.

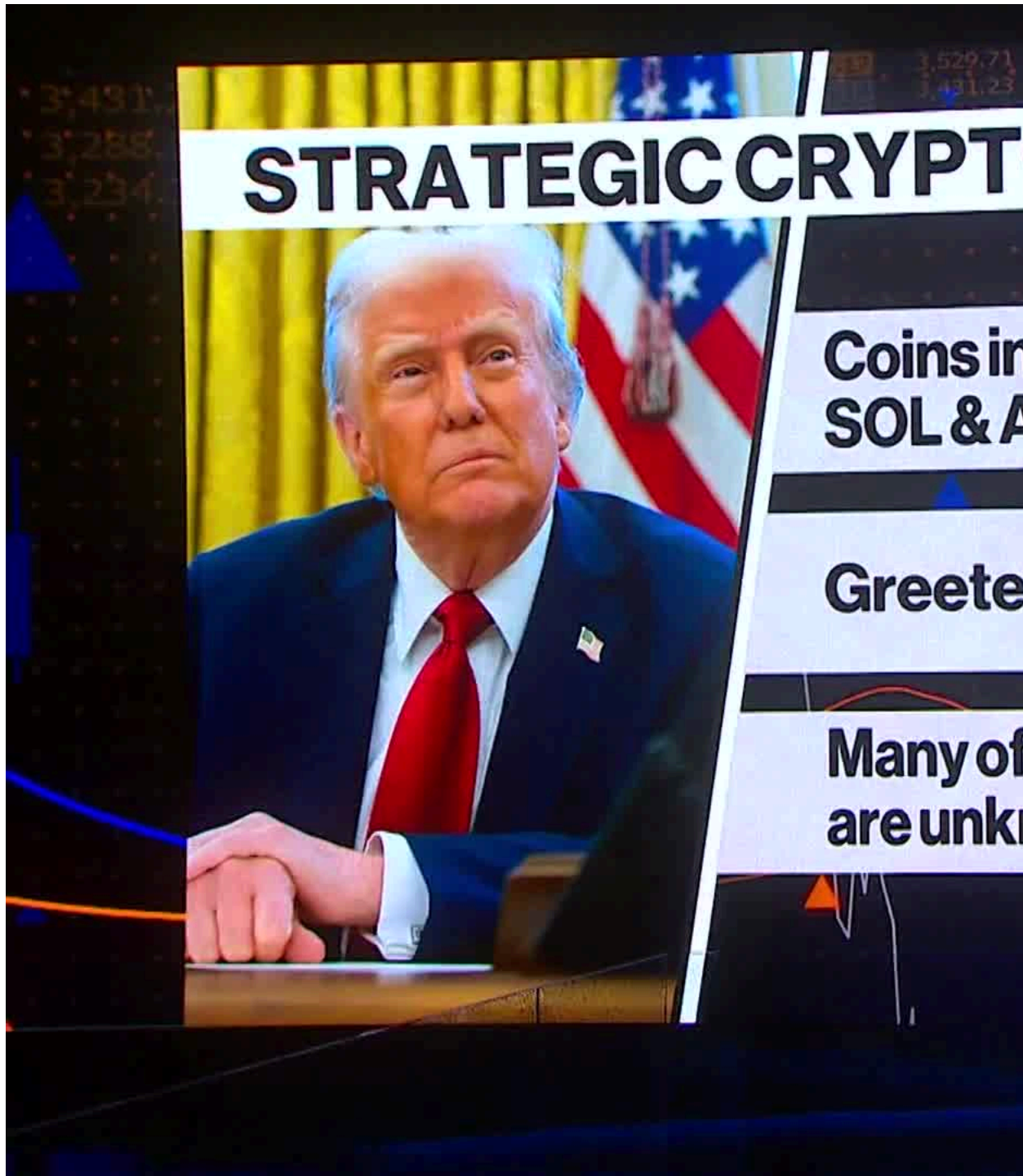


In its first statement about creating a crypto reserve in January, the White House said such a stockpile would be "potentially derived from cryptocurrencies lawfully seized by the Federal Government through its law enforcement efforts." Bitcoin tends to be the main crypto token seized by law enforcement agencies, including in the bust of the notorious Silk Road website.

The initial announcement contained little detail on how the reserve would be created, disappointing investors and helping set the stage for February's selloff.

Trump's Sunday posts came just as his crypto czar David Sacks prepares to host the White House's first industry summit. On Monday, Sacks took to the X platform to announce that he sold all his cryptocurrency holdings – including Bitcoin, Ether and SOL – before Trump's administration took over in January.

XRP is the cryptocurrency associated with Ripple Labs Inc., the company run by Brad Garlinghouse. SOL and ADA are the native tokens of the Solana and Cardano blockchains. Below is a summary of the tokens' history and the people they're linked to.



WATCH: Donald Trump's announcement that the US will include three lesser-known digital tokens in its strategic crypto reserve made some investors question the project's merits. Zeke Faux has more on the story.

Source: Bloomberg

XRP

Trump in February shared a CoinDesk story about Garlinghouse on Truth Social, drawing both cheers from fans of XRP – Ripple's native token – and grumbling among other crypto executives.

Garlinghouse had said in December that the company planned to donate \$5 million worth of XRP to Trump's inauguration festivities. He and Ripple's chief legal officer, Stu Alderoty, have been photographed dining with the President at Mar-a-Lago.

That level of political access represents a stark reversal of fortunes for the San Francisco-based company, which was sued in 2020 by the SEC and accused of offering unregistered securities. A US district court later found that XRP was a security when sold to institutional investors but not when sold to retail investors, which was seen as a win in the crypto industry. The SEC appealed that ruling. While the SEC has dropped many crypto enforcement actions, the Ripple appeal has not yet been abandoned.

<http://twitter.com/bgarlinghouse/statuses/1896252389919006989>

Brad Garlinghouse




@bgarlinghouse · Follow



I've said this before - the crypto industry will achieve our goals (and beyond), IF WE WORK TOGETHER. Appreciate the crypto President @realDonaldTrump's vision of a govt digital asset reserve representative of the industry.

Maximalism is the enemy of the industry's progress.... [Show more](#)

David Sacks




@davidsacks47

President Trump has announced a Crypto Strategic Reserve consisting of Bitcoin and other top cryptocurrencies. This is consistent with his week-one E.O. 14178. President Trump is keeping his promise to make the U.S. the "Crypto Capital of the World." More to come at the Summit.

9:32 AM · Mar 2, 2025





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Founded in 2012 and originally named Opencoin, Ripple was one of the earlier companies to begin developing distributed ledger technology for mainstream financial services. It created its own platform with the goal of speeding up and cutting the cost of settling international payments.

Like many other blockchain startups targeting traditional financial-services flows, it has had mixed results, with banks being slow to adopt the technology.

Solana

Solana is the blockchain of choice for issuers of so-called memecoins, digital assets with little intrinsic value that can nevertheless balloon in value if they're able to capture the attention of social media users – and which are liable to implode just as quickly.

Trump and his wife Melania launched memecoins on Solana in January. The president's token is down about 80% from its all-time high of about \$74, according to CoinGecko data. In February, Argentina's President Javier Milei became embroiled in a political scandal after directing his followers to a Solana-based memecoin named Libra in a post on X.

Read more: Milei's Memecoin Moment in Solana 'Hellscape:' Bloomberg Crypto

Launched in 2020, Solana was once closely associated with now-imprisoned entrepreneur Sam Bankman-Fried and his trading firm Alameda Research. The price of SOL, its token, fell sharply after the collapse of Bankman-Fried's crypto empire in November 2022.

It then rebounded in 2024 before hitting an all-time high of \$295 on Jan. 19 – the same weekend that Trump debuted his memecoin. The token has since retreated 45% to trade at about \$160.

Cardano

Cardano, which positions itself as a rival to Ethereum, launched in 2017 after raising over \$60 million through a sale of its tokens, according to CoinGecko records. Unlike Ethereum, which is considered the blockchain industry's main commercial highway, Cardano has struggled to claim much market share in decentralized finance markets, which rely on automated software rather than people to execute functions.

Charles Hoskinson, co-founder and CEO of the company behind the Cardano blockchain, said in a podcast posted on X shortly after Trump's win in November that he had been helping US lawmakers to shape crypto policy.

Watch: Charles Hoskinson of IOG Singapore Pte Ltd on Bloomberg US TV

The total value of assets locked on Cardano currently stands at \$607 million compared with about \$90 billion on Ethereum, according to DeFiLlama data.
(Updates prices in sixth paragraph.)

--With assistance from Sidhartha Shukla, Anna Irrera and Emily Nicolle.

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Ryan Weeks, Philip Lagerkranser

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Trump-Media ETF With Double Leverage Is Coming for Day Traders

- T-Rex 2X Long DJT Daily Target ETF may trade next week
- Risk elevated for leveraged ETFs, Strategas' Sohn says

An exchange-traded fund offering double the returns of the volatile Trump Media & Technology Group Corp. is set to start trading as early as next week, in the first such product riding the social-media company.

The T-Rex 2X Long DJT Daily Target ETF, which uses derivatives to deliver two times the daily performance of the stock, is slated for its Wall Street launch under the ticker DJTU, according to **Matt Tuttle**, who filed for the product. The ETF would carry a 1.05% expense ratio.

The loss-making firm, which trades under Trump's initials, has been on an unpredictable ride since its March debut through a blank-check merger. Its shares have slumped more than 40% from a January peak.

Wrapping the firm, which is majority-owned by Trump himself, into a double-leveraged ETF is the newest maneuver from upstart firms racing to print investment products connected to the US president, and can be seen as a bid to capture interest from self-directed investors. Leveraged ETFs have been very popular with retail traders who have flocked to meme stocks like Trump Media.

But just as some leveraged ETFs amplify returns on the way up, so, too, do they pile on losses on the way down when markets decline. Earlier this week, a number of them saw double-digit drops amid a wider market selloff, sparked in part by growth fears and elevated stock valuations.

Read more: Wall Street Gamblers Get Crushed as Leveraged ETF Losses Hit 40%

"They are great adrenaline products when the market is hot, as the past 15 months have been. But investors shouldn't forget volatility is a feature of markets," said **Todd Sohn**, senior ETF strategist at Strategas. "And when the tide turns — perhaps such as now — risk is still elevated for these products."

Earlier this month, Trump Media applied to trademark brands for six investment products focused on “Made in America,” energy independence and Bitcoin. In January, REX Financial and Osprey Funds filed with the US Securities and Exchange Commission for an ETF that would track a Trump memecoin, while Tuttle has an application for a leveraged version based on the token.

Meanwhile, ETF issuers are in an intense battle to launch the next hot thing amid a highly saturated \$11 trillion ETF universe in the US, flooded by some 4,000 funds. High-octane offerings have surged in popularity over the past few years, helped by a relentless bull market in stocks.

Of the active funds that launched in January, 61% use derivatives in some way or form, promising to protect against downside or hedging against currency fluctuations, data compiled by Bloomberg Intelligence show. The floodgates can be traced back to 2019 when US regulators eased constraints for launching new funds and the following when they no longer considered some leveraged ETFs to be “complex.”

Mohit Bajaj, director of ETFs at WallachBeth Capital, foresees demand for the product due to active traders interested in the underlying stock. He also acknowledges that risks persist with such funds, and urges investors to take precautions.

“These levered products have been pretty successful,” he said. “This could be another one as well,” he said of DJTU.

--With assistance from **Bailey Lipschultz**.

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SEC 'Demolition' of Crypto Enforcement Gets Cheers, Jeers (2)

- Agency has dismissed or paused at least eight cases recently
- Supporters of Trump have also seen their cases offloaded

The US Securities and Exchange Commission has kicked off the new year with a makeover, wiping clean its slate of crypto enforcement actions and turning what was once a hostile landscape for digital assets into a potential haven.

In the last month alone, the securities watchdog has dismissed or paused at least eight cases against crypto companies, including those that targeted some of the sector's most prominent faces. The running tally includes high-profile lawsuits against crypto exchanges Coinbase Global Inc and Binance Holdings Ltd. — who were sued within one day of each other in mid-2023 — as well as threats of legal action against Robinhood Markets Inc., Uniswap Labs and OpenSea.

"It's a multifaceted demolition of the most successful SEC enforcement program in history," said **John Reed Stark**, a former SEC enforcement attorney and now consultant. Following the election of President Donald Trump, Stark said the agency's message to the world has been: "We're going to grind to a screeching halt every single aspect of the SEC crypto enforcement program in a manner that's not just unprecedented and unusual, it's beyond imagination."

The watchdog's about-face came swiftly after the departure of former chair Gary Gensler, who stepped away in late January. He is expected to be replaced by former SEC commissioner Paul Atkins, with **Mark Uyeda** acting in the role while Atkins awaits confirmation. A SEC spokesperson declined to comment.

On the campaign trail, Trump pledged to fire Gensler on his first day in office due to his unpopularity in crypto circles — one of many promises made to the industry that bankrolled the Republican Party's return to majority power. His support buoyed Bitcoin, crypto's most valuable asset, to an all-time high on his inauguration day, though subsequent policy decisions on tariffs has sent it down 25% off the peak.

As the list of abandoned cases grows, executives, analysts and crypto-friendly regulators expect innovation to flourish.

"There are, we think, reasons to be long-term cheerful," **Alex Saunders**, research strategist at Citigroup, said in a note on Friday. "Clarity on regulation should deliver more opportunities to innovate, build trust, and improve the user experience in crypto."

American Appeal

Under the Biden administration, the US market was considered by crypto executives to be a wasted opportunity. Many spoke openly against Gensler and his approach to regulating the space, which the industry viewed as tyrannical in its enforcement of securities laws against the sector.

Read More: US Crypto Crackdown Boosts Appeal of Friendlier Overseas Hubs

Companies like Coinbase and Ripple rapidly increased hiring efforts overseas as a result, viewing other jurisdictions like Europe, the Middle East and Asia as much friendlier toward their business strategies. Now some of those decisions are being reversed, with Ripple advertising 75% of its open roles on US soil in January.

"It seemed like the SEC on a whim could wake up on the wrong side of the bed and decide to bring in enforcement action or to file a Wells notice, or subpoena for information. That fear seems to have gone away, especially in light of these dismissals," said Cathy Yoon, general counsel at Wormhole Foundation, an organization that supports blockchain development.

The SEC's Change of Course

Company	Date Lawsuit/Investigation Announced	Date Announced That Dropped/Paused
Binance	6/5/23	2/10/25
Coinbase	6/6/23	2/21/25
OpenSea	8/28/24	2/21/25
Robinhood	5/6/24	2/24/25
Uniswap	4/9/24	2/25/25
Gemini	Not known	2/26/25
Justin Sun	3/22/23	2/26/25
Consensys	7/2/2024	2/27/25

Source: Company announcements, court documents

Bloomberg

Since taking over the agency on Jan. 21, the changes under Uyeda have been immediate. In the space of a month, the SEC fully replaced its crypto division with a new Cyber and Emerging Technologies Unit, and launched a “crypto taskforce” dedicated to developing rules for the sector alongside industry advisers. The taskforce’s future conclusions are already proving integral to how the agency operates, being used as the basis for the SEC’s request to stay its case against Binance last month.

Meanwhile, the intensity of arguments over whether cryptoassets are a security or a commodity in the eyes of US law has reduced as the threat of enforcement faded. Exchanges like Robinhood, which had previously delisted tokens like Solana and Cardano in the wake of SEC lawsuits naming them as potential securities, quickly reactivated trading for US clients after Trump’s win. The agency has also been more open to applications for exchange-traded funds tied to such digital assets.

On Thursday, the SEC clarified that memecoins — tokens that personify an internet joke or viral moment with no promise of utility — are not considered securities in the eyes of its staff. Trump himself launched a memecoin in January, its circulating value spiking close to \$15 billion before crashing more than 80%. His family are also heavily tied to unlaunched crypto platform World Liberty Financial, which has sold over \$1 billion in tokens.

Read More: How Trump Came Around to Crypto — and What Crypto Wants in Return

Those who were major supporters of Trump and his businesses have also seen their cases offloaded by the SEC. Lawyers for the agency and Justin Sun, a crypto entrepreneur who invested \$75 million in World Liberty Financial, jointly sought a stay in the regulatory proceedings against him on Thursday. Crypto exchange Gemini Trust Co, whose billionaire owners attempted to donate \$1 million in Bitcoin to Trump's campaign last year, said a day earlier that the SEC had closed its case against the business with no action.

The SEC's new approach to crypto regulation doesn't mean it's a market free-for-all. The SEC's cyber and emerging technologies enforcement units includes making sure retail investors don't get ensnared in crypto scams, said **Joe Castelluccio**, partner at Mayer Brown.

"They're looking for the industry to return to a more traditional American ethos of the Internet, which is to build things and break things, and don't ask permission, ask forgiveness," said J. Christopher Giancarlo, a former chair of the Commodity Futures Trading Commission who now advises several crypto businesses. "There's one major caveat to that, and that is don't cheat people."

The CFTC — which has long been crypto's preferred regulator — may step up activity in this new environment, he added. "When it comes to fraud, manipulation and market misconduct, you'll continue to see a very strong enforcement activity," he said. "Perhaps even more strong because it'll be less distracted by going after firms for technical violations."

Trouble has continued to proliferate in crypto, most recently with the Feb. 21 theft of almost \$1.5 billion in digital assets from crypto exchange Bybit. Last month, Argentine President Javier Milei found himself at the center of a crypto scandal, after a memecoin he'd touted resulted in an estimated \$251 million in losses for investors.

Read More: Counterfeits and Cult Murder: A Memecoin Family's Checkered Past

"Say what you will about Gary — he may have stood in the way of progress, but he also stood in the way of crime season," said Dan Hughes, founder of blockchain Radix DLT Ltd. "Just be careful what you wish for, I suppose."

(Adds that SEC declined to comment in the fourth paragraph.)

--With assistance from **Nicola M White** and **Olga Kharif**.

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SEC Staff Agree 'in Principle' to Dismiss Lawsuit Against Kraken

 [law.com/nationallawjournal/2025/03/03/sec-staff-agree-in-principle-to-dismiss-lawsuit-against-kraken](https://www.law.com/nationallawjournal/2025/03/03/sec-staff-agree-in-principle-to-dismiss-lawsuit-against-kraken)

Michael A. Mora

Kraken announced Monday that the U.S. Securities and Exchange Commission has "agreed in principle" to drop its lawsuit against the cryptocurrency exchange.

"The SEC's decision to dismiss its lawsuit against us (and many others) is more than just a legal victory—it's a turning point for the future of crypto in the U.S.," Kraken said in a statement. "It ends a wasteful, politically motivated campaign, lifts uncertainty that stifled innovation and investment, and clears the path toward a stable, forward-thinking regulatory regime."

Mauro M. Wolfe, a partner at Duane Morris and leader of the Am Law 100 firm's digital assets group, said the decision is a signal to the market that the new regime is not going to be hostile to the crypto market and is working toward market clarity and clear rules to allow for innovation to flourish.

"This case is part of the 'crypto reset' theme," said Wolfe, who is not involved in the Kraken litigation. "The real question for the future is what will enforcement look like, and what will the tone be from the SEC after the 'reset' is complete."

The SEC did not immediately respond to a request for comment.

The case dates to November 2023, when the SEC sued Kraken over allegations that the cryptocurrency exchange acted simultaneously as a broker, dealer, exchange and clearing agency without registering with the regulatory agency. The SEC also claimed that Kraken commingled customers' crypto assets and fiat currencies with its own, which, according to the agency's independent auditor, created a "significant risk of loss" to the exchange's customers.

Under the Biden administration, then SEC Chair Gary Gensler issued Wells notices and sued a broad array of crypto companies. Those actions led to hundreds of millions of dollars in campaign donations from the industry ahead of the 2024 presidential and congressional elections.

Among the recipients was Donald Trump, whose presidential platform included promises to create a strategic digital asset reserve and to end the SEC's "war on crypto."

Since Trump's return to office, the SEC has created the Cyber and Emerging Technologies Unit to replace the Crypto Asset and Cyber Unit and ceased its enforcement actions against multiple players, including OpenSea, Robinhood's crypto division, Uniswap, Consensys and Coinbase. And on Sunday, Trump confirmed a "U.S. crypto reserve."

In the Monday blog post, Kraken claimed the SEC's lawsuit mischaracterized its business model and was without merit.

"This dismissal confirms what we've said all along: Regulatory actions must be based on facts, not political agendas," Kraken stated. "This case was never about protecting investors—it and other enforcement actions clouded instead of clarified. It undermined a nascent industry that repeatedly urged clear rules of the road."

Scott Armstrong, a principal at McGovern Weems in New York and a former federal prosecutor who served as senior counsel in cases involving crypto, stated in an email that with this dismissal and the many others in the previous weeks, the SEC is sending a clear message that its "registration only" cases are over.

"The SEC's case against Kraken, like those against other high-profile crypto exchanges, did not allege underlying fraud or market manipulation," Armstrong said. "By dismissing this action, the SEC is signaling to the industry that, one, it will not pursue these types of 'registration' cases going forward and, two, it will presumably focus its resources on fraud cases that harm consumers."

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Tesla sales down in France, Scandinavia as Musk faces test of brand

[reuters.com/business/autos-transportation/tesla-sales-decline-across-scandinavia-musk-faces-test-brand-2025-03-03](https://www.reuters.com/business/autos-transportation/tesla-sales-decline-across-scandinavia-musk-faces-test-brand-2025-03-03)

Terje Solsvik, Louise Rasmussen

Tesla electric vehicles are parked in a Tesla dealer in Paramus, New Jersey, U.S., July 23, 2024. REUTERS/Eduardo Munoz/File Photo Purchase Licensing Rights [↗](#), opens new tab

- Slowdown for Tesla in Norway, Sweden, Denmark, France
- February registrations down 42%-48% on year in growing market
- Pressure from European, Japanese rivals
- Tesla brand may suffer under CEO Elon Musk
- Revamped Model Y arriving in March

OSLO/COPENHAGEN, March 3 (Reuters) - Tesla (TSLA.O) [↗](#), opens new tab sales plunged in Scandinavia and France in February from a year ago, eroding its market share, as the electric vehicle maker faced a brand loyalty test amid CEO Elon Musk's role in U.S. President Donald Trump's administration.

Tesla, whose cars topped sales charts in Norway, Sweden and Denmark in 2023 and 2024, has slipped this year behind rivals with newer model lineups, such as Volkswagen (VOWG_p.DE) [↗](#), opens new tab and Toyota (7203.T) [↗](#), opens new tab, registration data showed on Monday.

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Tesla market share of new car registration



Note: 2025 figures are for January-February

Source: Mobility Denmark, Mobility Sweden, Norwegian Road Federation (OFV)

Tesla's market share in Norway, Sweden and Denmark has declined this year

A total of 613 new Teslas were registered in Sweden last month, down 42% year-on-year, while registrations in Norway and Denmark each fell by 48% to 917 and 509 cars respectively, despite rising overall auto demand in the three countries, including for EVs.

Tesla registrations in France also declined by 45% over the first two months of the year compared to the same period in 2024, data published on Saturday by French car body PFA showed, continuing this year's negative trend in Europe.

Last year, the company's Model Y was the most sold EV in France and the 10th most sold car, while this year, it's only 27th so far and outpaced by the electric Peugeot 208, Renault 5 and Citroen e-C3.

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Musk's entry into politics, his sweeping cuts to the U.S. federal workforce and endorsing of far-right political views in Europe has triggered "Tesla Takedown" demonstrations in the United States and calls for boycotts elsewhere.

The company did not immediately respond to a request for comment.

In Norway, where almost all new cars are fully electric, Tesla's share of overall car sales has slipped to 8.8% year-to-date from a market-leading 18.9% for the full-year 2024 and 20% in 2023.

LOYALTY TEST

Held back also by an ageing vehicle lineup, the company faces a test in the coming months as it prepares to introduce an upgraded version in Europe of its Model Y mid-size SUV, the Scandinavian region's best-selling car in the last two years.

But it was unclear if Tesla would recapture its former position as the people's car of choice, the Norwegian Road Federation (OFV), an industry group, said on Monday.

"The brand has had a unique market position in Norway for several years. Whether that will continue is uncertain, because there is a lot of unrest and noise around Tesla and Elon Musk," the OFV said in a statement.

In Denmark, a growing number of prospective buyers seeking advice from the Danish Federation of Motorists (FDM) said they were looking for alternatives to the Texas-based auto maker.

"A lot of people start by saying, 'I want to buy an electric car, but I don't want it to be a Tesla'... The political consumer has always been there, but it's more pronounced with Tesla now," FDM chief adviser Ilyas Dogru said.

Long-admired as a successful industrialist, Musk himself appeared to have become the car brand's biggest enemy, said Atle Falch Tuverud, editor-in-chief of Norwegian auto trade publication BilNytt.

"There is little doubt that Tesla has now lost some of its existing customers, and it is absolutely certain that they have lost some of their potential customers," Tuverud said, adding it could take several months to fully assess the impact on sales.

An initial answer may come in the months from March to June this year, when shipments begin of the redesigned Model Y, and the company could also opt to compete more aggressively on price, FDM's Dogru said.

Stay up to date with the latest news, trends and innovations that are driving the global automotive industry with the Reuters Auto File newsletter. [Sign up here](#).

Reporting by Terje Solsvik in Oslo and Louise Rasmussen in Copenhagen, additional reporting by Gilles Guillaume in Paris; Editing by Sharon Singleton and Bernadette Baum

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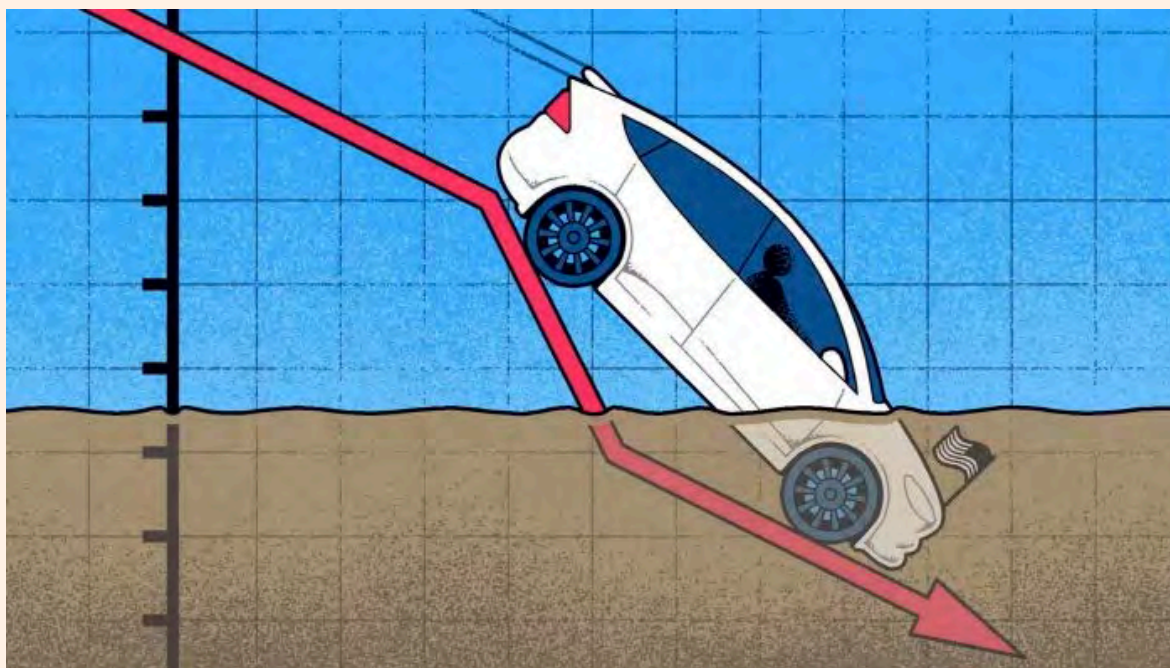
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Opinion **Tesla Inc**

What Tesla's tarnish tells us about America Inc

Elon Musk's company, like the US itself, seems like a sell

RANA FOROOHAR



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Rana Foroohar

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Of all the Trump trades to hit the skids, Tesla stands out. The share price of Elon Musk's electric vehicle company has plummeted from a post-election high of nearly \$480 to less than \$282 last week. The fall has been so precipitous that last Thursday, the American Federation of Teachers, a US union representing members with \$4tn in retirement investments, called on six large money managers — BlackRock, Vanguard, State Street, T Rowe Price, Fidelity and TIAA — to [reconsider their position](#) in the company.

As AFT president Randi Weingarten put it, Tesla stock has been sinking “faster than a Cybertruck in quicksand”, with European sales in particular falling off a cliff. The company's latest financial statements show a 23 per cent year on year decrease in operating income, with gross profit margins slipping 138 basis points in the fourth quarter.

Sales in California — a key market for electric vehicles — fell 8 per cent in the fourth quarter of 2024, according to vehicle registrations released by the California New Car Dealers Association. Of course, that's nothing compared with the near 60 per cent January year-on-year sales dip reported in Germany.

Some of the backlash is political. Gestures that look like Nazi salutes don't go down well with Europeans, nor do calls to dismantle the Department of Education resonate with teachers. But even if Musk himself were not so polarising, the company's share price has become “completely divorced from the fundamentals”, as a JPMorgan analysis put it barely a month ago. What's more, the reasons that Tesla's brand has become so tarnished overlap with the larger decline of [America Inc.](#)

Just as Trump overpromises and underdelivers (remember the line about prices falling his first month in office?) so has Musk. Start with the fact that Chinese electric vehicle maker BYD outperformed 2024 sales estimates by nearly 20 per cent, even as Tesla reported its first full year of [decline in vehicle deliveries](#) since 2011. This is the result of BYD dramatically lowering its costs compared with rivals by leveraging vertical integration, ownership of supply chains (BYD makes its own batteries) and [economies of scale](#).

That is the magic formula for Chinese industrial policy — constant iteration at scale keeps productivity up and costs down. State subsidies in areas such as electric vehicles support expansion. But post-Biden, the US has no industrial policy in clean technology. Trump is ending federal support to build charging stations, something that massively benefited Tesla, and will probably cut tax incentives for electric vehicles as well. Musk may be able to attend cabinet meetings, but at the end of the day, Big Oil [runs the Republican party](#) and Trump has no interest in supporting the clean energy transition. That doesn't bode well for an American company trying to outcompete a Chinese national champion.

Tesla has focused not on price, but on being a premium brand. That's the Apple strategy. But to charge a premium, you have to be seen as having a certain lustre and cachet in the marketplace. Musk's political antics have devalued his brand in many parts of the world. Sales in Europe crashed after he announced support for Germany's far-right AfD party.

A Dutch pension fund divested from Tesla in protest early in January. Tesla owners in France, Norway and the UK are snapping up bumper stickers that read: "I bought this before we knew Elon was crazy." In Germany, public protests at Tesla factories are commonplace (I recently received an invitation for one in Brooklyn too). All of this has eroded Tesla's pricing power and the value of its high tech, sustainable brand. According to Stifel analyst Stephen Gengaro, Tesla's net favourability rating, which measures consumer perception of a brand, is close to an all-time low.

Tesla's fall mirrors a larger sense that US equity exceptionalism, especially in technology, may be at an end. Some of this is down to stiffer competition from China (the DeepSeek surprise led to a sharp correction in US artificial intelligence stocks) and the reality that technology decoupling will inevitably shut US companies out of large markets. Tesla sales lag behind overall market growth in China, where regulators have been slow to approve Musk's self-driving software. Given the politics of the US-China relationship, it's hard to imagine that Tesla will be able to move ahead of competitors such as Waymo in areas like autonomous cars.

Meanwhile, competitors at home and abroad are coming together to threaten Tesla's leadership in EV infrastructure. Mercedes-Benz, BMW, GM, Stellantis, Honda, Hyundai, Kia and Toyota have launched Ionna, a rival charging station initiative in the US that plans to deploy 30,000 stations by 2030. That, says the AFT, "poses a direct challenge to Tesla's dominance".

Will money managers listen to union calls to review their position in Tesla? I hope so. Musk's frequent announcements about ambitious projects that will supposedly transform the company (I'm not betting on the success of humanoid robots outside Japan) have an air of recklessness. His contested pay package is both obscene and unwarranted. As AFT points out, one JPMorgan analyst has a \$135 target for Tesla. If the share price were to decline to this, the year-to-date price drop would reach 64 per cent.

That would be a serious hit for investors. I'd rank Tesla, like the US itself these days, as a sell.

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Musk and a Dead Horse: Two Cases Show Delaware Court's Range

Deep Dive

Brenton Marckese knows it was desperate, the way he tried to block trash trucks from entering a Delaware landfill that December morning. But somewhere inside were the remains of his beloved Clydesdale.

He had been riding the horse, named Michigan's Breeze, 36 hours earlier when both were struck in a hit-and-run on a rural road. Marckese was hospitalized; Breeze euthanized and dumped in the state-run landfill without his knowledge.

No one would've allowed human remains to be treated that way, he reasoned. His 9-year-old mare deserved the same respect. "In my eyes, she was murdered," he says.

Rebuffed at the landfill's entrance, days before Christmas, Marckese turned to his last hope, the Delaware Chancery Court.

All he wanted was his horse back. He didn't expect the case to grip Delaware's tight-knit corporate law community. But it did, largely because of the judge asked to resolve it: Chancellor Kathaleen St. Jude McCormick.

For nearly a year, McCormick and the Chancery Court had been besieged by criticism and online hostility after she scuttled Tesla Inc.'s attempt to reward CEO Elon Musk with a stock-based pay package worth at least \$56 billion. Musk pulled his companies out of Delaware, urging other Fortune 500 leaders to do the same.

Amid the attacks from the world's richest man, McCormick quietly turned her attention to the petition from Marckese, a 34-year-old construction worker from a small Delaware town. What happened next, observers say, highlights the Chancery Court's responsibility—sometimes overlooked—to deliver equity for all who seek it.

For lawyers like Richard Renck, a Duane Morris LLP partner in Wilmington, Marckese's case reinforces the notion the court serves "not just our corporate citizens, but our individual citizens that have beefs with their neighbors—or [who] need to find the remains of their horse."

'Extraordinary Power'

Every state operates civil courts to resolve local disputes, but Delaware splits civil litigation in two: one track for lawsuits seeking monetary damages, another for equity matters where money alone wouldn't resolve the issue. That second group goes to Chancery Court.

Its 230 years of case law, along with judges recognized as business law experts, help make Delaware an attractive corporate home. Over 2 million businesses, including nearly two-thirds of the Fortune 500, are incorporated in the state. To compete, states such as Nevada and Texas have established specialized business courts, along with statutes offering corporate leaders a bigger say in organizing their companies and more protection from investor lawsuits.

The billionaire litigants get all the attention, but the Chancery Court is also Delaware's venue for guardianships, estates and wills, easement disputes, and other property concerns.

Its non-corporate docket has grown alongside the ever-increasing number of corporate lawsuits—so much that its bench now includes five magistrates to help the seven main judges manage the caseload. The state judiciary wants legislators to add two more magistrates next year.

The traditional equity docket is an important training ground for corporate law.

"It's this extraordinary power that the Court of Chancery has—not to award damages, but to instruct people to do, or refrain from doing, something," said retired Vice Chancellor Sam Glasscock III, a onetime magistrate. "There has to be a balance, and that's the beauty of equity."

McCormick, 45, joined the bench in 2018, and became its first female chancellor, or chief judge, in 2021. Her resume includes degrees from Harvard and Notre Dame, but her roots are in Delaware.

She grew up roughly 10 miles from the spot where Breeze died, a rural area outside Dover where Amish horse-drawn buggies are a familiar sight.

"I had a horse briefly," McCormick told Marckese's attorney in one hearing, according to a transcript. "I understand how precious this animal was to him."

The Crash

Marckese had once worked transporting racehorses, and he owned a thoroughbred for a while. But he'd wanted a Clydesdale ever since seeing Budweiser's famous team when he was a boy. He leapt at the chance when a friend showed him a photo of a foal in 2015 and said Marckese could buy her for \$1,100. "Melted my heart," he says.

Michigan's Breeze was the name she came with, but Marckese called her Breeze. As she grew to 2,000 pounds, he lived paycheck to paycheck to keep her fed and healthy. She became a kind of emotional support animal for him and his friends, some of them military veterans, as they struggled with substance abuse, the deaths of loved ones, and tumultuous relationships.

"That horse has helped multiple friends of mine from committing suicide. That horse has kept multiple friends of mine from going back down trails of drugs," he says. "That horse has kept me from going out to the bars and drinking heavily, because that's what I used to do."



Marckese and Michigan's Breeze.
Photos courtesy of Brenton Marckese

Over time, they developed a routine: Every day after work, he saddled up Breeze to ride about 100 yards down the road, then back to the barn whose owner boarded her in exchange for Marckese's help clearing pastures and other work around the grounds.

They were almost home on Dec. 17 when Marckese heard a vehicle approaching fast behind him, according to the account he's since repeated in interviews and court testimony. Marckese guided Breeze to the road's edge, her front legs dipping into a ditch. As her hind legs followed off the blacktop, the vehicle struck them. All Marckese remembers are its bright, square headlights.

The driver briefly stopped, then drove off into the dusk. Marckese, his face numb and bleeding, tried to calm her as she convulsed on the ground, cradling the horse's head as he had when he bottle-fed her when she was just a few months old.

By this time, the barn's owner had arrived, paramedics had been called. A veterinarian and the farrier who cared for the horse's hooves were on the way.

Marckese reluctantly left in an ambulance. He didn't think he'd have to remind anyone how precious Breeze was to him.

He received painkillers at the hospital and lost track of his phone, and couldn't get a clear answer about what had happened to Breeze. Badly bruised but with no broken bones, he was discharged early the next morning. It was late afternoon before he retrieved his phone from his mother and saw the messages from the barn's owner.

She told him Breeze had been put down and gave him the number for the company that took her away. He eventually learned the horse had been taken to the Sandtown Landfill, about a dozen miles away, along the Maryland state line. Large animal carcasses weren't uncommon there—Breeze was one of four horses dumped that day, according to court records.

Marckese left home early the next morning to be at the landfill when it opened.

After his showdown failed, he pleaded on a local talk radio program for tips that might lead police to the hit-and-run driver. Delaware's equestrian community, meanwhile, spread his story on social media. There, it caught the attention of an attorney who happened to take riding lessons at the same barn.

Christmas Eve Hearing

Angelica Mamani had been drawn to the law in part by horses: Working at a ranch, developing a love for English riding, she noticed that the horses with the nicest saddles, bridles, and other gear all belonged to lawyers and judges.

A first-year attorney at Hudson Jones Jaywork & Fisher, she offered to help Marckese for free. She'd assisted on a few Chancery Court property disputes and contract breach claims, but nothing like this—seeking a court order to let Marckese retrieve his horse's remains.

Mamani quickly drafted and filed the petition, but assumed no one at the court would see it until after the holiday. Then her phone rang Christmas Eve afternoon.

As the chief judge, McCormick could choose which cases to hear. She also was the only judge with the authority to open the court during the holiday break.

She called for an emergency hearing over Zoom that night.

"I don't want to ruin everyone's Christmas, but I don't know what else to do, because it seems like this is kind of urgent," the judge said during the proceeding, according to a transcript.



The barn stall where Breeze was boarded.

Photographer: Jennifer Kay/Bloomberg Law

For a court that's drawn a national and often critical spotlight for its novel rulings curtailing corporate and shareholder power, these were uncharted waters: A dead horse in a landfill presented legal questions McCormick never had to consider.

"Hardship and the balancing of the equities is not necessarily what's front and center," the judge said in the Zoom call that night with Marckese, Mamani, and an attorney representing the state-run landfill, according to the transcript.

"What we need to know is the law on this area. Has this ever happened? Has a person's belongings ever been wrongly placed in a landfill? And if so, how do we balance public safety and the need to prevent the hazard that comes along with digging in a capped landfill with the rights of the person whose property has been taken?"

The lawyer for the Delaware Solid Waste Authority agreed in that Dec. 24 call that the landfill would stop adding dirt or debris to the acre-wide area where Breeze had been dumped until McCormick could consider additional arguments.

But the attorney, Michael Teichman of Parkowski, Guerke & Swayze, said the agency didn't want to set a precedent for others to dig into the state's landfills.

"A landfill isn't just a hole in the ground where you throw trash," he said. Disturbing its layers risked releasing toxic gases and damaging the infrastructure holding it together.

The only time anyone could remember such a search permitted in a state landfill was in 1996, when the FBI was searching for Anne Marie Fahey, a gubernatorial aide whose disappearance and murder by a prominent Wilmington lawyer ranks among the state's most notorious crimes.

In briefs and a second Zoom hearing, on Dec. 27, Mamani argued Marckese hadn't abandoned his horse when he was carted away in the ambulance. He hadn't consented to her removal to the landfill, either. The state had no lawful reason to withhold Breeze's remains from Marckese.

"There's no justification for it," Mamani argued.

For Marckese, the hearing was better than his past courtroom experiences. This judge spoke *with* him—not at him—and promised a ruling just after New Year's.

In the ensuing days, the barn's owner told him that a homeowner's doorbell camera near the crash site had captured the incident. The device picked up the noise of the crash, but no images. Marckese couldn't bring himself to listen to it.

He kept replaying that night in his head. He had told the barn's owner, in a conversation months earlier, he would never want Breeze's remains taken to a landfill. "I said straight to her: My animals get cremated. I don't care what it costs," he testified to the judge.

McCormick still had Tesla hanging over her as 2025 began. She had struck down Musk's pay for a second time at the beginning of December, but owed the company a decision about a proposed settlement with shareholders that called for Tesla's board, including Musk, to return stock and options worth up to \$735 million and forgo three years of pay allegedly worth \$184 million.

Before she finalized that decision, though, she turned to Marckese.

Her 15-page opinion, released Jan. 3, fit within her usual writing style: detailed reasoning sprinkled with relatable analogies rooted in real-world expressions. It described Marckese's lawsuit as "a tribute to the life" of his horse, and noted he "would dig up that entire acre himself, given access and a shovel."

But, she added, "landfills are delicate things."

McCormick explained the difficulty he had brought to her court.

"Balancing the equities requires a court to compare the relative importance of interests that defy conventional approaches to valuation," she wrote. "How does one compare the solace of knowing that the remains of one's beloved animal companion have been treated with dignity against the dangers of disturbing a meticulously engineered landfill? Forget comparing apples to oranges, it's more like comparing apples to differential calculus."

In the end, she denied his petition to open the landfill, though noting "his love for Breeze is undeniable, and his desire to treat her remains with respect is most praiseworthy."

Asked by Bloomberg Law for comment, McCormick replied in an email that she prefers to let her opinions speak for themselves, and she works to give each litigant her "full attention and make sure people feel heard."

"I also strongly believe that the traditional equitable matters are the soul of our court," she said.

Unique Ruling

Lawyers and lawmakers always keep a close eye on new Chancery Court rulings because so many of them, like those in the Musk case, have the potential to stir up Delaware's corporate interests. So they couldn't help but notice McCormick's ruling in Marckese's case.

Just her swift response to Marckese's petition showed the court is working as intended, state Sen. Dave Lawson (R) said Feb. 20 during a hearing considering the Delaware judiciary's budget requests.

"McCormick jumped on it," he said. Marckese didn't get the result he wanted, "but he got the court to act immediately, and I don't think any other state can brag on that turnaround."

Glasscock, McCormick's retired colleague, added the opinion to the reading list for the corporate law survey course he teaches at Georgetown, calling it "a tutorial on how equity should work."

Breeze's case "is a great example of a case that had to be tried quickly," he said. "It could not languish while some corporate matter was being heard."

It's also a decision unique to Delaware, said Widener University Delaware Law School Professor Geeta Tewari. None of the states attempting to compete with Delaware's corporate dominance appears to want to consider non-corporate matters alongside corporate litigation.

But if a business court doesn't hear local cases like the story of how Breeze ended up in a landfill, she asked, how mindful will it be when it has to evaluate executives failing to enact appropriate oversight to prevent, for example, sexual harassment of their employees?

"They would really struggle with rendering decisions that reflect the human aspect" of the corporate harms presented to them, Tewari said. That should matter to corporate leaders if they care about their workforce and their business reputation, she said.

Marckese and Mamani don't plan to appeal McCormick's ruling. He's also not planning to seek damages in another court. It was never about the money.



Weeks after the accident, Marckese returned to the barn.

Photographer: Jennifer Kay/Bloomberg Law

"The point was to get the horse out, but now it's 40 feet underground," he says.

He only met McCormick through hastily scheduled videoconferencing but was struck by the judge's handling of the case. "I still could feel compassion from her," he says.

For now, Marckese has to mourn the loss of Breeze and hope for another form of justice. There have been no arrests in the hit-and-run.

Delaware State Police say the investigation remains open.

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North Korea's \$1.5 Billion Heist Puts the Crypto World on Notice

Deep Dive

- Hackers drained Ether, other tokens from “cold” crypto wallet
- Exchanges must step up spending on security, experts say

As news started spreading about a massive hack on crypto exchange Bybit last Friday, cybersecurity researchers quickly concluded that the era of giant digital-asset heists had entered a new and potentially ruinous phase.

It wasn't just the size of the exploit, although at close to \$1.5 billion, it was the biggest ever by a wide margin. Within hours, it was clear that the attack — which the Federal Bureau of Investigation attributed to North Korea's Lazarus Group — was far more ambitious, and difficult to prevent, than any that preceded it.

Perhaps most disturbing was that the hackers managed to drain a so-called “cold” crypto storage wallet, a piece of hardware used to hold the private key needed to access funds. Such wallets are kept mostly isolated from online networks and so were considered to be almost impervious to attacks.

The impact on the industry and the nascent regulations governing it are far-reaching, according to interviews with more than a dozen executives and security experts. Staving off North Korean thefts will likely require much higher spending by crypto exchanges, more stringent regulations and increased coordination between governments, they said.

“This hack shatters the myth that cold wallets are impenetrable,” said Angela Ang, a senior executive at blockchain intelligence firm TRM Labs. “Exchanges must rethink security and harden their defenses.”

How North Korea Hackers Stole \$1.5 Billion From Bybit



Regular code



Malicious code

- 1 **Hacker infiltrates Safe employee computer** and gains access to key information needed to insert malicious code into Safe Wallet's software. Safe is a crypto wallet provider that Bybit uses to approve transactions.

The hacker targeted one of Bybit's Ether wallets and was waiting for it to perform a routine transaction that could be hijacked.



Cold wallet

Bybit cold wallet

The wallet targeted by hackers was a so-called cold wallet, which provides a more secure way to digitally store cryptocurrencies offline. Cold wallets store the "private key" used to access funds on a blockchain.

- 2 **Bybit starts routine transfer** of Ether from its cold wallet to a warm (online) wallet.

Bybit's cold wallet used a security feature called multisig, where multiple signatures from different people are required to approve transactions.

Three signers — including the CEO of Bybit — approved the routine transfer before the hacker's code kicked in. A fourth person was supposed to execute the transfer, but it was already too late.

Pending
Ethereum
transfer

Multisignature system



Signer 1



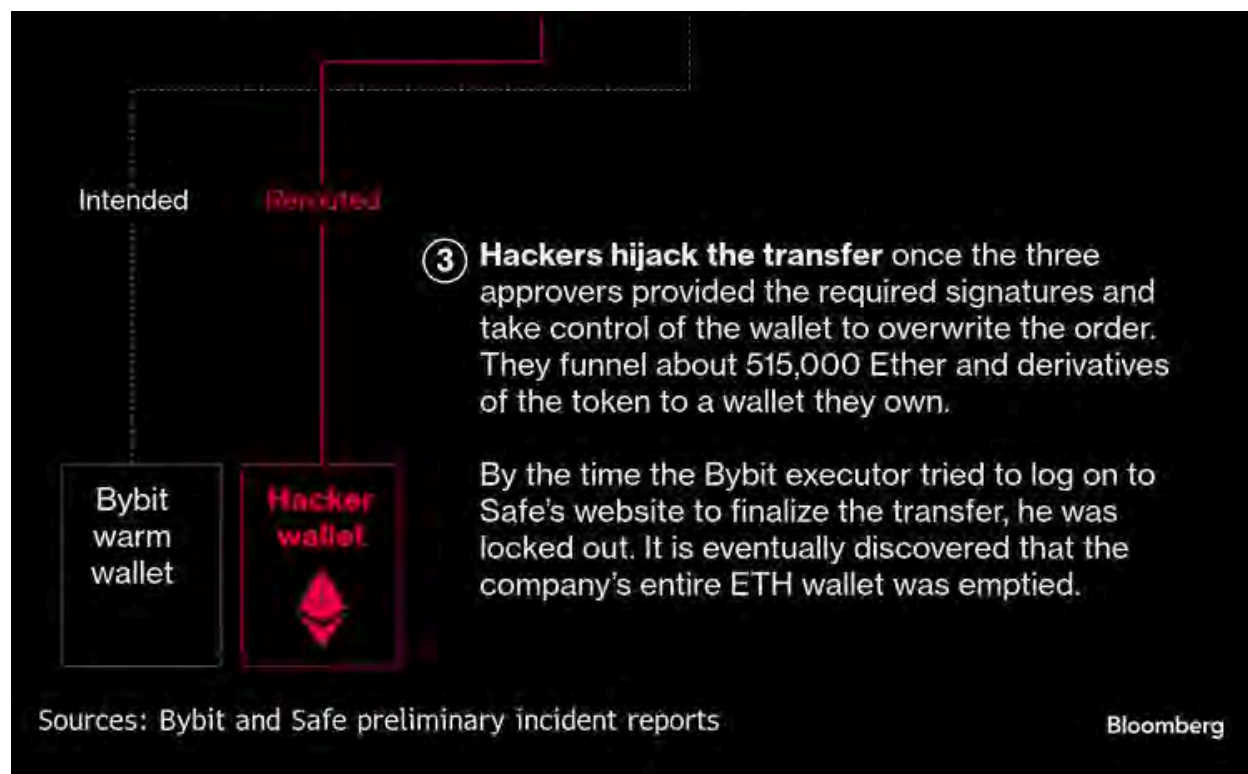
Signer 2



Signer 3



Executor



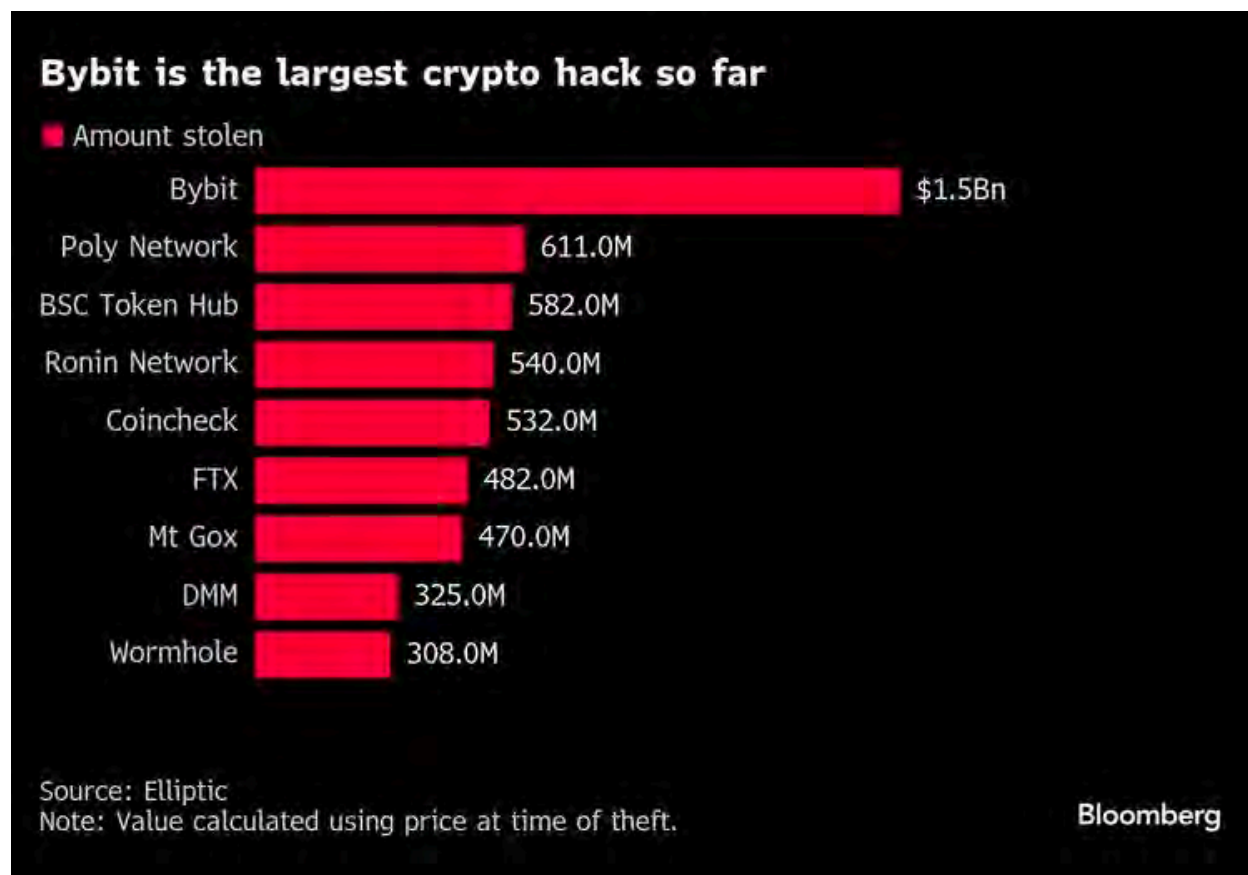
Bybit, one of the biggest crypto exchanges, was forced to borrow from other platforms and use its own treasury funds to replace the roughly 515,000 tokens, mostly Ether but also derivatives of the coin, that were stolen. Its efforts to restore calm didn't stop clients from withdrawing about \$4 billion from the platform within two days of the attack, according to DefiLlama.

"Bybit has successfully restored 77% of its Assets Under Management (AUM) to pre-incident levels," the company said Thursday.

Western governments have accused the North Korean state of fostering a number of hacking groups, with the economically isolated country allegedly having used cyber crime to bring in money to fund weapons programs. The hackers known as Lazarus Group, one of the most formidable groups, dates back as far as 2007 and is controlled by the cyber operations arm of one of the country's primary intelligence agencies, the Reconnaissance General Bureau, according to US officials.

Crypto thefts by North Korea-linked hackers more than doubled last year to \$1.34 billion, accounting for about 60% of the total, according to researcher Chainalysis. The Bybit hack means exploits attributed to the regime have already surpassed that amount in 2025.

"This attack shows that even serious and diligent teams — which Bybit surely is — face extremely demanding environments; the predators are literally, not figuratively, nation-state actors," Mitchell Amador, chief executive of crypto security firm Immunefi, said in an email. "They have infinite time, patience, and resources, and they only need to win once."



Bybit Chief Operating Officer Helen Liu had just sat down for dinner with her parents in Dubai, where the exchange is based, when CEO Ben Zhou called to tell her about the hack. She left for the office and worked through the night, at one point juggling three different calls at the same time.

"I slept a bit after coming back home," she said in an interview. "But our CEO, our wallet engineers, the team tracking the money, they didn't sleep for two or three days."

The tokens taken from Bybit were held in a multi-signature cold wallet, meaning three people with authorizations, including Zhou, were required to sign off on moving any funds. Multi-signature cold wallets have long been considered safe and are widely used among crypto exchanges, researchers said.

While accounts of precisely how the attack unfolded vary somewhat, the hackers appear to have begun by targeting the computer of an employee at Safe Wallet, Bybit's crypto wallet provider. The company didn't respond to requests for comment.

"What the hackers did was a form of ambush," said Shahar Madar, vice president of security and trust at custody solutions provider Fireblocks. "It was piggybacking on an existing flow."

Social Engineering Hacks

To some extent, the perceived safety of multi-signature wallets could have imbued the signers with a false sense of security, according to Dan Hughes, who founded the Radix blockchain.

The attack also underscored another uncomfortable truth: For all of crypto's claims of having created a transparent ecosystem where blockchains interact using automated software contracts, it still depends on human judgment at critical junctures. And humans can be duped.

North Korean hackers have gotten particularly adept at exploiting that vulnerability through so-called social engineering attacks on the sector, the FBI said in a September notice. In the Bybit heist, the signers were presented with false information the malicious code had inserted, making them believe they were approving a legitimate transaction.

"I'm really coming up blank on how exchanges are going to properly be able to defend against this and make sure that the tool chains that are used and the people who are on the multi-sigs aren't compromised socially or physically," Hughes said.

The hack puts the spotlight on a potentially existential issue for an industry that scored a huge win when Donald Trump returned to the White House in January and put crypto advocates in key positions. The Securities and Exchange Commission, which embarked on a years-long crackdown under former Chair Gary Gensler, has closed down investigations into several crypto outfits in past weeks.

Targeting Crypto's Core

After years of going after mostly decentralized crypto projects with lower security barriers, North Korean hackers have begun stepping up attacks on centralized exchanges, striking Japan's DMM Bitcoin and India's WazirX in 2024. WazirX, at one point India's biggest crypto exchange, filed for restructuring after the hack.

Centralized exchanges sit at the heart of the crypto ecosystem and often handle hundreds of billions of dollars of trading volume a day in total. The impact of a major hack like the one on Bybit can reverberate far beyond just the exchange and its customers. Ether, Bitcoin and other cryptocurrencies slumped on news of the hack, as did shares of Coinbase Inc., the biggest listed exchange.

Faced with increasingly sophisticated nation-state hackers, crypto exchanges must ramp up security spending and also work more closely with governments to track and recover funds before criminals move them out of reach, said Ang of TRM Labs. Regulators are likely to rethink their rules for how exchanges handle customer assets, she said.

The speed and skill with which the hackers moved once they were inside added to the unease. The assets were siphoned off the Bybit wallet within seconds of the transaction being approved, and then laundered by using decentralized exchanges and so-called cross-chain bridges to convert them into other cryptocurrencies.

How Hackers Move Stolen Funds to Hide Tracks

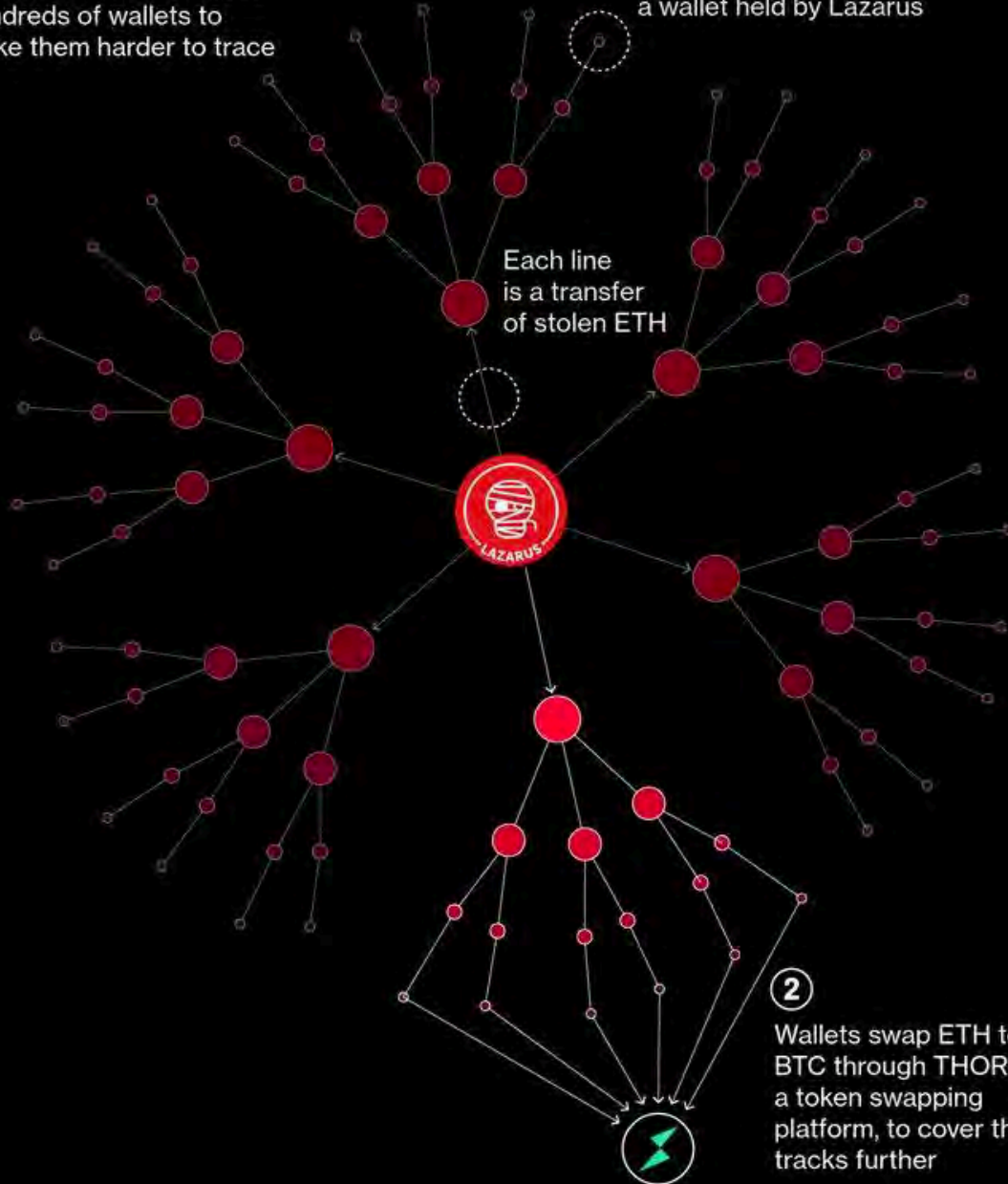
After stealing \$1.5 billion in Ethereum tokens, Lazarus distributed the funds across hundreds of wallets

①

Tokens are diluted across hundreds of wallets to make them harder to trace

Every circle represents a wallet held by Lazarus

Each line is a transfer of stolen ETH



②

Wallets swap ETH to BTC through THORchain, a token swapping platform, to cover their tracks further

Source: Arkham Intelligence

Bloomberg

Bybit says about \$43 million of the stolen crypto has been recovered, or 3% of the total. It has launched a bounty-hunter website, offering rewards for those who manage to trace and freeze stolen tokens. In a statement on Wednesday, the FBI circulated a list of blockchain addresses linked to the hackers and encouraged entities throughout the cryptosphere to block transactions related to them.

"The sheer scale and speed of this laundering operation show that crypto security is not keeping pace with attackers," Ang said. "This attack was a stress test for the industry, and it barely passed."

--With assistance from **Sidhartha Shukla**.

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Beyond Meat Fries Investors' Fast-Food Production Woes Suit

By **Lauren Berg**

Law360 (February 28, 2025, 6:30 PM EST) -- A Los Angeles federal judge has tossed, for good, a reworked investor class action accusing Beyond Meat of concealing major problems with its efforts to scale production on plant-based meat substitutes for fast-food chains like McDonald's, KFC and Pizza Hut.

U.S. District Judge Michael W. Fitzgerald, in a Wednesday **order** from his chambers, dismissed an amended investor complaint alleging **stock prices dropped 92%** amid production issues with a nationwide rollout of Beyond Meat's vegan protein products in 2022, saying the shareholders still haven't sufficiently alleged a material misrepresentation by the company or its CEO Ethan Brown.

The shareholders — led by Saskatchewan Healthcare Employees' Pension Plan — argue that the defendants' public statements about the company's investments "misleadingly reassured" them that these investments were lowering production costs and improving manufacturing, when in actuality there were hidden production issues having a negative impact on sales and margins, the order states.

"But the evidence of 'undisclosed production inefficiencies' cited by plaintiffs are generalized statements about production problems and critiques of Brown's management style that are vaguely and loosely tied to the content of the challenged statements," Judge Fitzgerald said.

Judge Fitzgerald in August **threw out** the investors' original complaint for failure to allege a material misrepresentation by Beyond Meat or Brown, criticizing the pension plan's "shotgun approach" to the litigation.

The judge found that many of the alleged misstatements were nonactionable as puffery, opinions or optimistic forward-looking statements that do not amount to securities fraud.

But he did say that some of the alleged misstatements might be actionable and gave the suing shareholders a chance to rewrite the complaint with more detail about what the company and Brown knew when publicly discussing its partnership with fast-food chains.

The investors filed their amended complaint in September and Beyond Meat quickly filed the instant motion to dismiss, according to court records.

During **oral argument** in November, Judge Fitzgerald commented that while the facts in the rejiggered complaint make "perfect sense," he still didn't think it met the pleading standard under the Private Securities Litigation Reform Act.

In his order Wednesday, Judge Fitzgerald did not deviate from his thoughts at the hearing, finding that the investors' reworked complaint doesn't do enough to show that the challenged statements were false or misleading.

And because they haven't alleged a material misrepresentation or omission, they aren't able to allege that Beyond Meat or Brown "had knowledge of falsity or acted with deliberate recklessness as to any of the challenged statements," according to the order.

Judge Fitzgerald dismissed the case and did not give the investors another chance to rework their

suit, finding that "granting leave to amend would be futile," the order states.

"Plaintiffs' [first amended complaint] did not cure the deficiencies; plaintiffs did not offer any amendments; and this court does not perceive what amendments would be possible," Judge Fitzgerald said.

Michele Johnson of Latham & Watkins LLP, who represents the defendants, applauded the order, telling Law360 on Friday that "Beyond Meat is glad to put this matter behind them and looks forward to continuing to innovate in the exciting plant-based food industry."

Counsel for the investors did not immediately respond to a request for comment.

The investors are represented by Spencer A. Burkholz, Laurie L. Largent, Matthew I. Alpert and Joseph J. Tull of Robbins Geller Rudman & Dowd LLP.

Beyond Meat and Brown are represented by Michele D. Johnson, Ryan Walsh, Heather Waller, Allie O'Hara, Brittany Record, Mindy Vo and Renatta Gorski of Latham & Watkins LLP.

The suit is Saskatchewan Healthcare Employees' Pension Plan v. Beyond Meat Inc. et al., case number 2:23-cv-03602, in the U.S. District Court for the Central District of California.

--Additional reporting by Katryna Perera, Jessica Corso and Rachel Scharf. Editing by Jay Jackson Jr.

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Space Co. Lied About Rocket Launch Timeline, Investors Say

By **Sydney Price**

Law360 (February 28, 2025, 7:32 PM EST) -- Aerospace company Rocket Lab USA Inc. has been hit with a proposed shareholder class action in California federal court alleging it intentionally concealed issues that would delay the test and commercial launches of a vehicle it developed.

According to a **complaint** filed by shareholder Douglas Bray on Thursday, Rocket Lab's stock price plunged 10% on Feb. 25 after a short seller's report alleged that the company misled investors and would not meet its plans to test-launch its Neutron Launch Vehicle in mid-2025 due to equipment issues.

In addition to Rocket Lab, its CEO Peter Beck and Chief Financial Officer Adam Spice are defendants in the suit.

The proposed class period begins Nov. 12, 2024, the day Rocket Lab issued its third-quarter 2024 earnings results. Rocket Lab told investors that day it was still planning a mid-2025 launch of its Neutron vehicle, according to the suit.

A few months later, on Feb. 25, Bleecker Street Research published a report stating Rocket Lab had a potable water problem that was not scheduled to be fixed until January 2026, which delayed preparation of the launch pad, creating a "significant risk" that the Neutron rocket would not launch in mid-2025.

Bleecker Street said in the report that rocket experts, who included industry experts and former Rocket Lab engineers and executives, predicted a one- or two-year launch delay, according to the complaint.

The report also claimed Rocket Lab had a singular contract with "unreliable startup" E-Space, which is described as a "risk item," the suit states.

On this news, Rocket Lab's stock price fell \$2.21, or about 10%, to close at \$20.28 per share on Feb. 25, according to the suit.

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

Counsel for Bray and a representative of Rocket Lab did not immediately respond to requests for comment on Friday.

Bray is represented by Robert V. Prongay, Charles H. Linehan and Pavithra Rajesh of Glancy Prongay & Murray LLP.

Counsel information for Rocket Lab and the individual defendants was not immediately available on Friday.

The case is Bray v. Rocket Lab USA Inc. et al., case number 2:25-cv-01733, in the U.S. District Court for the Central District of California.

--Editing by Linda Voorhis.



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Aimmune Shareholders' \$27.5M Deal Over Sale To Nestle OK'd

By **Bonnie Eslinger**

Law360 (February 28, 2025, 5:45 PM EST) -- Aimmune Therapeutics Inc. stockholders won preliminary approval in California federal court on Friday for a \$27.5 million settlement of their securities fraud class action alleging that Aimmune was falsely undervalued before its merger with Nestlé Health Science SA.

At a hearing in San Francisco, U.S. District Judge Maxine M. Chesney gave her initial approval to the settlement investors inked with Aimmune, a biopharmaceutical company developing food allergy treatments when it was acquired by Nestle in 2020. She also set a final approval hearing for the deal on July 18.

Under the proposed agreement, class counsel said it plans to seek about one-third of the settlement — \$9.1 million — for fees, as well as costs and expenses related to the litigation and administration of the settlement.

During Friday's hearing, Judge Chesney said in light of the "hurdles and defenses the defendant was prepared to raise" as the case headed to trial, the "sum of money being offered appears to be fair."

The parties reached the settlement in November, weeks before the case was set to go to trial.

"It's not an insignificant sum of money," Judge Chesney said. "Also, if this case were to continue litigating, it could have gone on for a long time. It already went on for a long time."

There also did not appear to be collusion between the two sides, the judge said.

"Even though the fees that are being asked for are more than the benchmark, benchmarks have a tendency to shift," the judge said. "But more than that it's not totally out of line, so there's nothing here to suggest collusion."

That said, the judge told class counsel to be prepared to argue for their 30% fee request when it came time for the court to sign off on that with final approval for the deal.

"You will need to support that," the judge said, adding that 25% is the standard.

Counsel for the class, Juan Monteverde of Monteverde & Associates, told the judge that the plaintiffs will provide additional information to the court backing its fee request when it moves for final approval but maintained that the 30% ask is "standard for these kinds of cases."

The complaint, filed in September 2020 after **the merger was announced**, alleged that the consideration offered to shareholders was inadequate and that the statement of recommendation from Aimmune to shareholders included "materially incomplete and misleading information," in violation of the federal Securities and Exchange Act. The statement offered spurious financial projections for Aimmune, questionable valuation analyses and misleading background information on the offer, the shareholders claimed. In addition to Aimmune, the suit from plaintiff Steven Germano and other investors named the company's former chief executive officer, Jayson D.A. Dallas, as a defendant.

The sale of Aimmune to Nestlé, the company's largest shareholder, was at a price far below its fair

value, the shareholders claimed.

The \$27 million deal comes after "four years of hard-fought litigation," the plaintiffs said in their motion for preliminary approval, and represents "an excellent recovery for the class in light of the significant risks associated with continuing to litigate this case."

The suit survived three motions to dismiss and was certified as a class action in May 2024, according to the motion. The court approved a class of Aimmune Therapeutics common-stock holders, who held that stock from Sept. 14, 2020, through October 9, 2020, and had their shares exchanged for \$34.50 per share in connection with the closing of the merger in October 2020. There are approximately 2,100 potential class members, according to the preliminary approval motion.

Aimmune could have appealed that class certification order — or if plaintiffs prevailed at trial, filed an appeal, "a process that would further extend the litigation for years and risk reversal of any verdict," the investors underscore in their motion for preliminary approval. In addition, at the time the settlement was reached, Aimmune had a pending motion for summary judgment that sought dismissal of all claims.

The settlement "confers a substantial and immediate benefit and avoids the risks associated with obtaining a wholly speculative (though potentially larger) sum in the future," the investors told the court. "In sum, class counsel believes the settlement balances the risks, costs, and delay inherent in complex cases, is a meaningful recovery, and thus merits preliminary approval."

The defendants continue to deny the suit's allegations, the investors note.

Mediation in the litigation began in September 2024 with the deal struck on November 7. That same day, the parties filed a notice of settlement with the court, which vacated the scheduled dates for the suit's trial, set to start on Jan. 13, according to the preliminary approval motion.

The plaintiffs are represented by Juan E. Monteverde, Miles D. Schreiner, Jonathan T. Lerner and David E. Bower of Monteverde & Associates and Michael Palestina, Brian Mears and Gina Palermo of Kahn Swick & Foti LLC.

Aimmune Therapeutics is represented by Michele D. Johnson, Daniel Robert Gherardi, Gregory Garre, Kristin Nicole Murphy and Morgan Edwin Whitworth of Latham & Watkins LLP.

The case is In Re: Aimmune Therapeutics Inc. Securities Litigation, case number 3:20-cv-06733, in the U.S. District Court for the Northern District of California.

--Editing by Rich Mills.



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Bioventus Hit With Del. Derivative Suit After NC Class Deal

By **Jeff Montgomery**

Law360 (February 28, 2025, 5:29 PM EST) -- A Bioventus Inc. stockholder sued 15 current and former directors and officers of the medical device venture in Delaware's Court of Chancery to recover for the company tens of millions in losses tied to alleged mismanagement and corporate duty failures over a two year period.

The suit by stockholder James Bouchereau, made public Thursday, followed a \$15.25 million settlement of Exchange Act class claims against the business in the U.S. District Court for the Middle District of North Carolina, approved on Dec. 18, 2024. That suit alleged financial reporting failures and improper accounting that materially inflated the company's financial statements after Medicare pricing changes for key products.

In approving the settlement in the North Carolina case, U.S. District Judge Catherine C. Eagles concluded that the deal would pay 10.8% of the more than \$140 million maximum value of the claims, and 27% of the likely \$112 million value, according to a final memorandum opinion and order.

The Delaware derivative complaint said that, among other problems, Bioventus "failed to establish or implement any formal procedure for tracking rebates and verifying rebate claims" that reduced final revenues for its products, led by an injectable treatment for osteoarthritis related knee pain.

Sought in the Delaware case are damages on behalf of the company for unjust enrichment, breaches of fiduciary duty and waste of corporate assets by those named.

The issues began to surface in the summer of 2021, when an internal audit prompted by a multimillion-dollar customer rebate claim led to what were described in the audit as "disastrous" company financial results. A "Red Report" notifying the board of ineffective internal controls followed. Company officials, however, allegedly failed to address the problems.

"Due to the company's high debt position, the individual defendants were incentivized to misleadingly assure the investing public that Bioventus would be able to cover its obligations for past and future acquisitions" of other assets and businesses with the revenue from its knee injectables, the complaint said.

On April 4, 2023, Bioventus CEO Kenneth Reali resigned as a director and officer of the company, one day after its board determined that he would "transition" out of the roles.

The amended complaint in the North Carolina case, filed the same year, asserted that as a result of material misstatements by the company and its principals, "Bioventus' stock price declined catastrophically from \$13.00 in its February 2021 IPO to just \$1.07 on March 31, 2023, leaving investors with enormous losses."

In November 2022, prior to most public revelations, Bioventus filed a notice that it would be unable to submit its required report for the third quarter of that year, and announced that it faced an impairment charge of \$185 million to \$205 million.

The complaint in Delaware said those named "failed to implement any procedures at all to monitor revenue or rebate claims from the insurance companies with which Bioventus conducted business."

Company revenues were stagnating, in part, the complaint said, as a result of newly enacted Medicare drug pricing rules, which cut payments for Bioventus' two main injectable products.

A Bioventus payments specialist who testified in the securities action recalled the company "blindly" paying rebate claims received from insurance companies "without having any means of independently confirming the amount owed," according to the complaint.

Adding to the company's revenue troubles after its initial go-public stock offering in early 2021, the Delaware complaint said, was its entry into "three massive and imprudent acquisitions," putting Bioventus more than \$360 million in debt.

"Despite knowledge of the Red Report and its findings, the individual defendants did nothing to address the company's deficient internal controls," the Delaware complaint said. It noted that the North Carolina complaint had quoted a senior manager for internal audits and Sarbanes-Oxley Act compliance as prioritizing acquisitions of other companies over compliance needs.

Bioventus and counsel for James Bouchereau did not immediately respond to a request for comment.

Stockholder James Bouchereau is represented by Christopher P. Quinn of Kahn Swick & Foti LLC and Phillip Kim and Erica L. Stone of the Rosen Law Firm.

Counsel for Bioventus in the Delaware suit was not immediately available.

The case is James Bouchereau, derivatively, v. Kenneth M. Reali, et al, case number 2025-0214, in the Court of Chancery of the State of Delaware.

In the U.S. District Court for the Middle District of North Carolina case:

Wayne County Employees Retirement System is represented by Joseph A. Fonti of Bleichmar Font & Auld LLP and Gagan Gupta of Tin Fulton Walker & Owen PLLC.

Bioventus Inc., Kenneth M. Reali, Mark L. Singleton, Gregory O. Anglum and Susan M. Stalnecker are represented by Colleen C. Smith, Michele D. Johnson and Kristin N. Murphy of Latham & Watkins LLP.

The North Carolina case is Robert Ciarciello, et al, v. Bioventus Inc., et al, case number 1:23-cv-00032, in the United States District Court for the Middle District of California.

--Editing by Alex Hubbard.



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Del. Judge Orders Trial On AMC Stock Swap Coverage Fight

By **Jeff Montgomery**

Law360 (February 28, 2025, 9:00 PM EST) -- A Delaware Superior Court judge ordered a jury trial Friday on an AMC Entertainment Holdings Inc. insurer's claim that it never consented to cover part of a \$99.3 million settlement with theater chain stockholders who challenged a preferred share conversion and reverse stock split.

Judge Meghan A. Adams' decision set the stage for arguments before jurors over Midvale Indemnity Co. claims that AMC "began and completed" settlement negotiations with insurer consent.

Triggering the dispute was an AMC effort to tap insurance that would cover a settlement payment to common stockholders who alleged they faced dilution of their shares by the conversion of AMC preferred equity shares into regular stock. The entertainment company issued the APE shares as a fundraising workaround in part during the COVID-19 turndown in theatergoing after running out of authorized common shares to sell.

Vice Chancellor Morgan T. Zurn presided over months of battling over the APE shares, in litigation that began in 2023. The final agreement called for awarding common stockholders one extra share for every 7.5 shares held, with the insurer claims now before the court eventually valued at \$99.3 million by AMC.

"Midvale contends that, because shares of stock are not money which can be 'paid,' the policies do not cover the settlement, which provides that AMC will issue stock to the underlying plaintiffs rather than pay in cash," Judge Adams wrote Friday. "Midvale argues AMC issued stock but did not pay any amount which reaches the excess policies."

Only Midvale remains among 17 insurers that were sued by AMC in 2023 after disputing the cost of AMC's settlement. Midvale's policy triggers at \$30 million and covers a third of payouts until AMC incurs \$45 million in covered losses.

The ruling Friday rejected Midvale's arguments that only insurer payouts in legal tender can count as a loss, and found that AMC suffered coverable economic harm

"Insurance policies should be interpreted to favor broad coverage," Judge Adams wrote. "The court will not insert a restricting clause into the policy, which provides that only cash settlements are covered loss."

But the judge found that disputed issues of fact are involved in whether "AMC needed to seek consent to settle the underlying action, whether AMC sought this consent and whether AMC began and completed settlement negotiations without the insurers' consent."

Midvale argued that insurers never sought a required consent for the deal, with a March 29, 2023, conference call being one of the points about which there is disagreement on the facts.

"AMC asks the court to rely on notes taken by the call's participants, and to interpret what occurred based on these notes, but the court declines to do so. This issue shall be resolved by a jury," the judge wrote.

Judge Adams said AMC contended that the insurers never intended to cover the settlement, waiving

the consent-to-settle right.

"In order to accept this premise, the court would once again need to look into the mind of the insurers based on notes and deposition transcripts," Judge Adams wrote. "The court declines this invitation and will leave this issue for the jury."

During the Court of Chancery litigation, AMC CEO Adam Aron and the company's directors were accused of ginning up a preferred share issue, conversion and reverse stock split plan as part of an extended, multistep, cash-raising scheme that "weaponized" the company's ability to issue, without a vote, remaining authorized stock.

Class attorneys argued that the process bypassed dilution-wary common stockholders who twice rejected an increase in the number of authorized shares of AMC, and who invested in AMC at a time when theatergoing had put ticket sales, company revenues and share prices in a nosedive.

According to Midvale, AMC did not tell the insurers how they could participate in the settlement negotiations until months after the deal was finished, and sought payment directly to AMC based on expenses recorded on its income statement. Those terms were not included in the settlement, the complaint said.

AMC is represented by David J. Baldwin of Berger McDermott LLP, and Adam S. Ziffer and Michelle R. Migdon of Cohen Ziffer Frenchman & McKenna LLP.

Midvale is represented by David A. Bilson of Phillips McLaughlin & Hall, and Matthew W. Beato, Joseph W. Gross and Andrea V. Martinez of Wiley Rein LLP.

The case is AMC Entertainment Holdings v. XL Specialty Insurance Company et al., case number N23C-05-045, in the Superior Court of the State of Delaware.

--Editing by Melissa Treolo.

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Chancery Ruling Holds Authorized Share Takeaways For Cos.

By **Robin Wechkin** (February 28, 2025, 1:30 PM EST)

Recent legislation in Delaware has eased the path of boards of directors who want to increase the number of a corporation's authorized shares. In *Salama v. Simon*, the Delaware Chancery Court on Nov. 27 concluded that the General Assembly's most recent effort in this area, made in 2023, has yielded an ambiguous statute.^[1]

The court then resolved that ambiguity in favor of boards and against stockholders opposing share increases. The decision has important implications both for corporate practitioners working with companies to increase authorized shares, and for litigators presenting extrinsic evidence in support of contract or statutory interpretation arguments, including evidence of market practice.



Robin Wechkin

Legislative and Case Background

At issue in the *Salama* case were recent amendments to Section 242 of the Delaware General Corporation Law. Section 242 governs charter amendments generally. The 2023 legislation addresses amendments to increase or decrease the number of a corporation's authorized shares in particular.

The court in the *Salama* case addressed two issues related to share increase proposals: (1) whether stockholders are entitled to a class vote, as opposed to all classes of stock voting together, and (2) whether the voting standard is a majority of voting power or a majority of votes cast.

Before the 2023 amendment, class voting was required, but corporations could opt out of that requirement by amending their charters to eliminate class voting, under specified procedures. The mechanism for opting out was, and continues to be, set forth in the final provision of Section 242(b). Many corporations have taken advantage of that opt-out provision. Tilray Brands Inc., the corporation in the *Salama* case, did so in 2018.

The 2023 amendment addressed both class voting and the voting standard. Under Subsection (d) of the amended statute: class voting is no longer required in many circumstances, and the more lenient majority-of-the-votes-cast formulation applies to all votes.

The 2023 amendment also contains what are effectively two carveouts from these pro-corporate provisions.

First, class voting is still required for any corporation that has not taken advantage of the preamendment opportunity — set forth in Section 242(b) — to opt out of class voting by means of a charter amendment. Corporations that have not done so are still required to use class voting for share increases — although the standard used in class voting is now the majority-of-the-votes-cast. Second, and more sweepingly, corporations are not subject to any of the changes effected in Subsection (d) if their charters expressly require otherwise.

The second provision was at issue in the *Salama* case. Tilray, as noted, had in 2018 adopted a charter amendment opting out of class voting under the pre-2023 statutory scheme. Somewhat ironically, the plaintiff, Nabil Salama, argued that Tilray's 2018 charter amendment — which was intended to ease share increases by eliminating class voting requirements — blocked application of

the 2023 statutory amendment, which was intended to ease share increases by lowering the voting standard.

Salama argued that Tilray's 2018 charter amendment was the kind of express requirement that takes a company out of the more lenient procedures the Legislature embraced through Subsection (d) in 2023. Irony aside, however, Salama's argument had solid support in the text of Tilray's 2018 charter amendment. The charter amendment referred to the more demanding voting standard — the affirmative vote of the holders of a majority of the voting power — as opposed to the more lenient majority-of-the-votes-cast standard the Legislature adopted in 2023.

The Salama Decision: Textual and Extrinsic Evidence

The court thus had to decide whether Tilray's 2018 charter amendment constituted an "express requirement" barring application of the more lenient provisions of the 2023 legislation. On this issue, the court determined that the statute was ambiguous.

Both parties had presented reasonable interpretations. Tilray reasonably interpreted the statutory term "expressly required" to mean something more than simply a reference to a different voting standard. Salama reasonably interpreted "expressly required" as being satisfied by any affirmative reference to a different voting standard. Under the Salama's interpretation, "express" simply means not implied.

Although the court held that both interpretations were reasonable, it did not suggest that the two were of equal merit. The court's analysis suggests that Salama's interpretation was the better one. The court rejected Tilray's attack on Salama's interpretation, holding that it was not persuasive and explaining at length why this was so. By contrast, the court repeatedly characterized Salama's attack on the company's interpretation as "strong."

The relative strength of the two arguments, however, did not decide the issue. Because both interpretations were reasonable, the court concluded that the statute was ambiguous, and moved to examination of extrinsic evidence. In doing so, the court appeared to start with a clean slate. In weighing the extrinsic evidence, that is, the court appeared to leave behind the relative merits of the competing textual interpretations.

The extrinsic evidence weighed in the company's favor. Timing was an important factor. The court read Tilray's charter provision, adopted in 2018, as an effort to opt out of class voting, not to enshrine the more demanding majority-of-the-voting-power voting standard.

The language of the company's 2018 charter amendment underscored the timing point. It tracked the opt-out provision of preamendment Subsection 242(b). The court noted that different timing could have led to a different result. A post-2023 charter amendment that referred to the more demanding voting standard would much more likely be read as a deliberate attempt to avoid the looser voting standard embraced by the 2023 legislation, and set forth in Subsection 242(d)).

Legislative history also favored the company's interpretation. The 2023 amendment was proposed by the Council of the Corporation Law Section of the Delaware State Bar Association, which provided a synopsis of the legislation. Under Delaware law, such synopses are appropriate indicia of legislative intent.

In the synopsis, the council stated that a "general recitation in the certificate of incorporation of the vote generally required under subsection (b) without a specific reference to the amendments specified in subsection (d) is not sufficient." The court initially reasoned that this language was "not directly on point."

Notably, the court had earlier rejected a similar argument by the company — that the term "expressly required" contemplates a specific textual reference in the charter to subsection (d). Nevertheless, the court ultimately concluded that the "concept" embedded in the synopsis supported the interpretation that the "expressly required" standard is not satisfied by a charter amendment that appears designed to track the pre-2023 class vote opt-out provision of Subsection 242(b).

The Salama Case and Policies Applicable to Share Increase Amendments

The court finally considered statutory policy, as evidenced by "practitioner memoranda describing the 2023 Amendments." These memoranda made clear that the council's objective was to make it easier for corporations to increase the number of authorized shares, and that the previously applicable majority-of-the-voting-power standard interfered with this:

The memoranda discuss how public corporations with large numbers of retail investors had encountered difficulties securing approval for increases under the Majority-of-the-Outstanding Standard. The memoranda explained that due to rational apathy, retail investors are less likely to return proxy cards and vote. ... The memoranda regard facilitating a corporation's ability to increase its authorized shares as a public policy goal because of the many possible uses of the additional shares.

The court noted that a different public policy might at first appear to cut in Salama's favor — namely, the pro-stockholder franchise policy, which is embodied in "the interpretive canon that a court should interpret an ambiguous provision in favor of voting rights." But the court observed "a problem with applying that canon here."

Two groups of stockholders had voting rights at stake — those who wanted to increase the number of authorized shares and those who did not want to, or simply did not vote. On the record before the court, no basis appeared for "choosing between two sets of stockholders." The pro-franchise policy was therefore a wash.

Because the other extrinsic factors weighed in favor of Tilray's interpretation, the court granted summary judgment to the company. In the procedural posture in which the case had arisen, that meant that Tilray was free to proceed with its vote and was not required to correct proxy materials that described the voting standard as majority-of-the-votes-cast.

Corporation and Litigation Takeaways

The primary takeaways for corporate practitioners are the following — all assuming that a corporation wants to make a charter amendment increasing the number of authorized shares as easy to pass as the law allows.

First, a company that has not already adopted a charter amendment eliminating class voting for share increases pursuant to the requirements of Subsection 242(b) — the pre-2023 subsection — should do so as soon as it can.

Second, a company that has already adopted a charter amendment opting out of class voting for share increases will continue to enjoy the benefit of that amendment under the 2023 legislation. This is the case even if the charter amendment refers to a majority-of-the-outstanding-shares voting standard, so long as the amendment tracks the language of the opt-out provision of pre-2023 Subsection 242(b). Nevertheless, eliminating from a charter amendment any reference to the higher, majority-of-the-outstanding-shares voting standard is probably well worth the effort.

And third, going forward, a company drafting or amending a charter provision governing an increase in the number of authorized shares should include a provision opting out of class voting, and avoid any reference to voting standards.

The decision also has some intriguing nuggets for litigators.

Binary Analysis

The binary nature of the court's analysis is striking. As noted, the court analyzed textual and extrinsic evidence in two very distinct steps, and the relative merits of the parties' competing textual interpretations appeared to drop away once the court reached the extrinsic evidence. That may have implications for briefing and evidentiary presentations in cases involving either contract interpretation or statutory interpretation.

Market Practice

The court considered as extrinsic evidence both (1) law firm publications, and (2) public-company U.S. Securities and Exchange Commission filings describing voting standards applicable to charter amendments to increase shares. But at the same time, the court expressed skepticism about the litigants' reliance on those materials. The court referred in belittling terms to market practice evidence as "something all the rage of late," and to "the current insistence in some quarters on the primacy of market practice." The court then cited its own pronouncement in a blockbuster decision from earlier in 2024 that "market practice is not law."^[2]

The court went on to contrast situations in which market practice is "both well-established and clear" from those in which it "falls short of that standard," and in which "the noise drowns out any signal." The court's comments do not appear to be intended to discourage litigants from using market practice evidence altogether, but they do suggest that some care is needed, and that market practice that is less than uniform may not show much more than ambiguity.

Robin E. Wechkin is counsel at Sidley Austin LLP.

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[1] **Salama v. Simon** , No. 2024-1124-JTL, 2024 WL 4906737 (Del. Ch. Nov. 27, 2024). <https://courts.delaware.gov/Opinions/Download.aspx?id=372340>.

[2] **W. Palm Beach Firefighters' Pension Fund v. Moelis & Co.** , 311 A.3d 809, 878 (Del. Ch. 2024).

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Time To Abolish IPO 'Bureaucracy,' Law Professor Says

By **Tom Zanki**

Law360 (February 28, 2025, 2:07 PM EST) -- The U.S. Securities and Exchange Commission's long-established practice of vetting initial public offering filings through back-and-forth comment letters with companies — essentially a screening process intended to rectify faulty disclosures before public dissemination — is a bureaucratic relic that should be done away with, a law professor argues.

Alex Platt, a University of Kansas law professor who specializes in securities regulation, argued in a recent study titled "Rethinking The IPO Bureaucracy" that the SEC's comment-letter process doesn't elicit valuable information, raises costs, and delays or deters IPOs altogether without protecting investors. He contends the IPO market would function better minus this review, which was developed in the early days of publicly traded stocks for reasons that no longer apply.



Alex Platt

"Based on this analysis, I propose abolishing the IPO bureaucracy," Platt concluded in his 53-page **report**.

Platt's study also comes as the Trump administration is seeking to cut costs and **curb regulatory power**, following recommendations from the Department of Government Efficiency, a non-cabinet agency led by billionaire entrepreneur Elon Musk that is reportedly setting sights on the SEC. Separately, Acting SEC Chair Mark Uyeda last Monday endorsed **making IPO processes more efficient** in an effort to spur more public listings.

Platt said he hasn't heard feedback from administration officials or regulators regarding his study, which was published in December on the Social Science Research Network and is set to be published by the Berkeley Business Law Journal later this year in connection with a symposium organized by the Institute for Law and Economic Policy.

The SEC declined to comment. The agency's website said it selectively issues comment letters in order "to monitor and enhance compliance with the applicable disclosure and accounting requirements."

Recounting the history, Platt notes the Securities Act of 1933 does not mention comment letters. The Securities Act, which governs the sale of new stocks or bonds, intended that IPO registration statements would automatically take effect 20 days after being filed unless the SEC found reasons to block such filings because of material misstatements or omissions, he said.

As the process began, SEC official Baldwin Bane's staff found that all registration statements contained material deficiencies. Rather than issue a complete stop of IPOs — which Platt said would be "politically disastrous" — Bane instructed the small SEC staff at the time to invite companies to fix faulty disclosures through amendments or face formal action if they declined.

And so the comment-letter process was born. While Bane's solution may have eased headaches at the time, Platt argues the procedure is antiquated given modern realities.

Platt recently discussed his findings with Law360. This interview has been edited for length and clarity.

Your paper argues the SEC's comment letter process no longer serves a critical function in today's market. What's changed?

So many things have changed. In the earliest years, a [company doing an IPO] had no way of knowing what was required. There was no expertise. There were no resources. There was no guidance about how to comply, so talking directly with agency staff was the only and best way to figure out what actually had to be disclosed. Today, that's not true. There are mountains of guidance, mountains of expertise at the click of a button for firms to learn what they need to do to comply.

And who were the IPO investors in the early years? They were human beings. Real people who often lack the sophistication or resources to evaluate these disclosures themselves. So it made a lot of sense for SEC staff to intermediately stand between these vulnerable investors and the companies who are trying to sell them stock. Today, that's not true. IPO investors are sophisticated institutions who are very capable of fending for themselves.

And in the early years, what would happen if a firm committed fraud in an IPO disclosure? The statute says there's a cause of action for material misrepresentation. But in practice, that never happened, and that's because of what changed over the 20th century. What we have today, which didn't exist then, is something called a class action and an institutionalized securities' plaintiffs bar. There's a real deterrent threat. Firms know if there is fraud, they will be sued.

Investor advocates could argue that having SEC staff vet disclosures before a company launches a public securities offering provides a key layer of protection. Isn't that a valid concern?

Even if you take the SEC staff out of the equation, people need to understand that the IPO disclosures are already being scrutinized from an extremely broad array of sophisticated, well-resourced and well-incentivized actors. Think about — not just the experts inside the company, such as the CFO or others who have done the public company stuff before — but also outside advisers, the elite investment banks, audit firms and law firms.

And on the other side of the transaction, before the IPO happens, who's looking at it? These big institutional investors are scrutinizing those documents, asking questions, demanding more information. There are market analysts who are looking at this stuff and going to make recommendations too. There are financial journalists, in many cases, who are digging into these filings.

And then there are plaintiffs' lawyers who are lurking, so that before anything gets out there, the firm knows those plaintiff lawyers are going to be sniffing around if the stock drops. They will be looking at the document too, so it's reasonable to wonder what the government staffers are really capable of adding to this process. Are they really eliciting material information that isn't being elicited by these other actors?

How does the comment process potentially deter companies from completing IPOs?

The average SEC review process takes four to five months. That is an eternity in the IPO world, where there are waves of intense activity and then long periods of quiet, which is what we're in now. If you are a firm thinking about whether to do an IPO or some other transaction, such as a private placement or M&A, not only are you going to have to spend two months writing this disclosure, you're going to have to wait an average of five months, possibly eight months. That's a big deterrent. It's certainly a cost and risk that has to be factored into that decision.

And there's new evidence I have about the rate at which firms who start the IPO process, and make that initial filing, fail to complete the process. There's attrition at higher levels than has been recognized. This has been harder to study since 2012 because Congress in the Jobs Act said you can

file confidentially and withdraw confidentially and never tell anybody.

Since 2012, researchers and market people have not really known how many of those firms are starting and failing to finish. I was able to get, for the first time through the Freedom of Information Act, some data from the agency on what's going on. My calculations are it's about two out of five filers fail to actually complete the IPO transaction. So for every five firms that file a registration statement, only three actually make it to the finish line. There's a lot of attrition along the way.

What's going on there? I think the comment letter process is pushing firms to do other kinds of transactions, M&A, private placements, SPACs, in part because of the delay and in part because of the demands that are made by the agency on the firms during that process. Every week that goes by, maybe somebody approaches the firm and says, 'We've got a better offer for you. We can do an M&A transaction that will save you the hassle of dealing with this public market stuff.' And so the IPO process has basically become an auction block for firms instead of an escalator to the public markets.

What would an IPO filing process look like without SEC comment letters?

It would look like what the drafters of the 1933 Act thought it would look like, which is the SEC makes disclosure rules and brings enforcement actions when they're violated. The job of evaluating individual disclosures is left to the private market, left to investors, left to investment banks and others in that IPO private process.

Everything else stays exactly the same. This is not as radical a proposal as some other things that are being floated. We're not getting rid of mandatory disclosure. We're also not getting rid of the SEC's ability to make rules or issue guidance about what companies should do. It's just that they're making those rules prospectively, rather than in this five-month long correspondence. And you'd still, of course, have liability for fraud.

--Editing by Philip Shea.

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Align Tech Deal Directs Buyers To A Monopolist, Judge Says

By **Hailey Konnath**

Law360 (February 28, 2025, 11:12 PM EST) -- A California federal judge has soundly rejected Align Technologies Inc.'s proposed \$27.5 million antitrust settlement with teeth-aligner buyers, slamming Align as a monopolist and saying that the deal "will direct still more customers to the monopolist."

In a two-paragraph order, U.S. District Judge Vince Chhabria denied consumers' renewed motion for preliminary approval of the deal, which would've resolved allegations Align colluded with now-bankrupt SmileDirectClub LLC to illegally restrict competition.

"The defendant in this antitrust case is a monopolist," Judge Chhabria said. And the proposed settlement calls for a coupon program "that will direct still more customers to the monopolist," he said.

"It's not clear that such a settlement would ever be appropriate in an antitrust class action against a monopolist," the judge said. "But regardless, the parties have not convinced the court that it would be fair, reasonable and adequate on these facts."

The proposed deal called for \$27.5 million for a proposed class of nearly 1.45 million SmileDirectClub teeth-aligner buyers, plus the option for class members to receive a \$300 coupon for Invisalign treatment and a \$50 coupon for an Align retainer.

Judge Chhabria had said he was "struggling" with the idea of the settlement at **a hearing in December**.

"I think there's an argument that that is just inherently improper," he said at the time.

In Thursday's order, Judge Chhabria noted that the parties have said they'll work on an alternate structure for the settlement if their proposal is rejected. Thus, he said he would give the parties time to hammer that out. The judge scheduled a case management conference for April 18.

If no alternative settlement structure is offered, "the court will issue a more detailed ruling explaining the denial of this motion, and a new litigation schedule will be set at the case management conference," he said.

Counsel for the parties didn't immediately respond to requests for comment late Friday.

The consumers first filed suit **in 2021**, claiming that Align and SmileDirectClub schemed to restrict the direct-to-consumer clear aligner market, which Snow said allowed the companies to overcharge customers for the aligners, a plastic form of dental braces, in violation of Section 1 of the Sherman Act.

The customers alleged that a patent dispute with SmileDirectClub led to a series of 2016 deals through which Align bought a stake in SmileDirectClub and under which the two companies agreed to divvy up the market.

SmileDirectClub isn't listed as a defendant in the California litigation.

At the hearing in December, Judge Chhabria suggested class members receive a neutral coupon for

Invisalign or an alignment treatment offered by another provider. The settlement administrator would reimburse class members who choose a different brand for the \$300.

"Why shouldn't they be able to use the coupon for a different brand if they want?" the judge said at the time.

A lawyer for the customers agreed that it would be more in the interest of the class to provide for a choice, but said the current settlement terms were the best they could do. Meanwhile, a lawyer for Align noted that the court's proposal would require additional money "that could be used to help out competitors."

"You're providing something of value to class members," the judge responded. "For them to decide how to use them, as opposed to steering them in the direction of your own company."

The plaintiffs are represented by Steve W. Berman, Theodore Wojcik and Rio S. Pierce of Hagens Berman Sobol Shapiro LLP.

Align is represented by James M. Pearl, Emma Farrow, Thomas A. Counts, Michael F. Murray and Adam M. Reich of Paul Hastings LLP.

The case is Misty Snow v. Align Technology Inc., case number 3:21-cv-03269, in the U.S. District Court for the Northern District of California.

--Additional reporting by Bonnie Eslinger, Dorothy Atkins and Nadia Dreid. Editing by Jay Jackson Jr.

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Ford Insists Recalls Thwart Engine Fire Defect Class Action

By **Linda Chiem**

Law360 (February 28, 2025, 8:37 PM EST) -- Ford Motor Co. asked a Michigan federal judge on Friday to snuff an amended proposed class action alleging it sold hybrid electric vehicles with defective engines that could spontaneously stall and catch fire, reiterating that two voluntary recalls of affected vehicles voids the drivers' claims.

The automaker said in a **motion to dismiss** that a July 2022 voluntary recall and a second, expanded May 2023 recall provided multiple remedies for the alleged fire risks in model year 2020-2023 Ford Hybrid Escapes, 2022-2023 Ford Hybrid Mavericks, and 2021-2023 Lincoln Hybrid Corsairs.

The drivers alleged in their Jan. 17 second amended complaint that the vehicles could suffer a "block breach," akin to an engine blowout, that then expel flammable fluid and vapors, eventually leading to an under-the-hood fire

"[The second recall] demonstrates the recall system working as designed and forecloses any argument that plaintiffs have been harmed," Ford said in its dismissal bid. "Specifically, Ford has provided new technology to detect developing failures before they cause an engine issue at all — much less a risk of fire — and has promised to replace owners' engine long blocks in the event of such developing failure, not just in the present but also in the future for up to 10 years or 100,000 miles."

That means this case presents no redressable injury on any theory, Ford argued, and the plaintiffs' "cookie-cutter" and mostly hypothetical claims fall apart.

"While the remedy took two different forms within the recall population (given differences in vehicles and engines), everyone potentially affected by this 1% risk of occurrence has been fully protected, either by detection and free engine replacement if needed far past the standard warranty period or else by a one-time prophylactic replacement," it maintained.

Ford further said the 16 named plaintiffs from 11 states don't have standing to bring their claims. Most didn't even allege they experienced "actual block breaches, failed connecting-rod bearings, or even a single stall, much less the 'explosions' or fires that sensationalize the [second amended complaint]," it said. None of them had a fire, and only two said they experienced a mechanical event like the car being in limp mode or stalling, it said.

Ford contends that the named plaintiffs, led by California resident Anthony Pacheco, rushed to sue after the initial 2022 recall, and their case was dismissed in 2023 for being **"prudentially moot."** They **appealed** to the Sixth Circuit and got a limited remand, and a Michigan federal court reopened the case in November.

The suit also includes certain claims from another group of drivers led by named plaintiff Todd Nishon, who had filed a separate but similar **proposed class action**.

The drivers' second amended complaint blasts Ford's so-called "fix," saying the recalls were ineffective and didn't address the root cause of the engine defect.

"A vehicle that has a risk of spontaneously stalling and catching on fire while in operation is not fit for

its ordinary purpose. And a 'fix' that does nothing to inspect for and repair an underlying issue, and in fact creates additional problems, is not a fix at all," the drivers alleged. "Ford is placing an unfair burden on class members whose vehicles are still powered by engines that may literally explode and eject flammable fluids and vapors."

The drivers maintain that had they known of the spontaneous stall and fire risk, they either wouldn't have purchased or leased those vehicles. or they would've paid less for them, according to the second amended complaint.

Counsel for the plaintiffs and representatives for Ford were not immediately available for comment Friday.

The proposed class is represented by Steve W. Berman and Abigail D. Pershing of Hagens Berman Sobol Shapiro LLP, and E. Powell Miller and Dennis A. Lienhardt of The Miller Law Firm PC.

Ford is represented by Stephanie A. Douglas, Roger P. Meyers, Susan A. McKeever, A. Lane Morrison and Zakary A. Drabczyk of Bush Seyferth PLLC.

The case is Pacheco et al. v. Ford Motor Co., case number 2:22-cv-11927, in the U.S. District Court for the Eastern District of Michigan.

--Additional reporting by Danielle Ferguson and Ryan Harroff. Editing by Adam LoBelia.

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Group Blasts Judge's Call For Women In Contraception MDL

By **Carolina Bolado**

Law360 (February 28, 2025, 8:41 PM EST) -- A judicial organization dedicated to fighting "leftist lawfare" filed a complaint Thursday against the Florida federal judge overseeing multidistrict litigation over the hormonal contraceptive drug Depo-Provera, claiming that her comments about women needing to be represented in the MDL leadership show an impermissible bias.

In a **letter** sent to Chief U.S. Circuit Judge William Pryor of the Eleventh Circuit, Mike Davis of Article III Project said U.S. District Judge M. Casey Rodgers, of the Northern District of Florida, made statements during the first case management conference of the MDL that improperly suggested sex would be a relevant factor in selecting leadership counsel for the case.

Article III describes itself on its website as an organization that "brings brass knuckles to fight leftist lawfare."

Davis said Judge Rodgers referred to the fact that the case centers on a birth control product to emphasize the need for adequate representation of women in leadership roles. He added that she also made a "more general and troubling statement about 'diversity.'"

"This remark reflects an explicit preference for females in the allocation of professional roles and responsibilities," Davis said. "By implying that sex — rather than qualifications, experience or merit — should influence selection for MDL leadership, Judge Rodgers engaged in conduct that constitutes impermissible bias and judicial misconduct."

Davis, who previously served as chief counsel for judicial nominations for Sen. Chuck Grassley, R-Iowa, called this "cognizable misconduct" and said it violates not just the Rules for Judicial Conduct but also the equal protection guarantee of the Fifth Amendment's due process clause.

Bryan Aylstock of Aylstock Witkin Kreis & Overholtz PLLC, who represents plaintiffs in the MDL, called the attacks by the Article III Project "baseless."

"[Judge Rodgers], as well as our entire federal judiciary, take seriously their obligations to ensure justice is made available for all," Aylstock said. "And part of that is ensuring that counsel is best representing, and representative, of the people they serve. These groundless claims against the courts should be repudiated regardless of political ideology."

Christopher Seeger of Seeger Weiss LLP, who also represents plaintiffs in the MDL, called it a "disgusting attack" and said a "more diverse bar and bench results in better representation of our respective clients."

"Judge Rodgers along with the rest of the judiciary are more than capable of choosing qualified attorneys to lead major cases without baseless attacks from those in the cheap seats," Seeger said.

A representative for the Northern District of Florida declined to comment.

Earlier this month, the U.S. Judicial Panel on Multidistrict Litigation **consolidated** more than 70 consumer lawsuits claiming that Pfizer Inc. failed to adequately warn patients and doctors about the risk of brain tumors associated with Depo-Provera before Judge Rodgers.

Judge Rodgers most recently presided over the **nation's largest MDL**, involving more than 200,000 service members accusing 3M Co. of making faulty earplugs.

Depo-Provera is a prescription drug used for birth control and endometriosis and is administered via an injection into the muscle on the upper arm or buttocks every three months.

The suits allege that for the last several years, medical and scientific studies have indicated that progesterone, its synthetic progestin analogues and Depo-Provera in particular could significantly contribute to the development of meningioma, or brain tumors. Despite this, Pfizer failed to warn patients about the risks, according to the plaintiffs.

Lead counsel for the plaintiffs have not yet been selected in the MDL. The next case management conference is set for March 10.

Pfizer is represented by Joseph G. Petrosinelli of Williams & Connolly LLP.

The case is In re: Depo-Provera (Depot Medroxyprogesterone Acetate) Products Liability Litigation, case number 3:25-md-03140, in the U.S. District Court for the Northern District of Florida.

--Editing by Amy French.

Update: This story has been updated to add further information on Judge Rodgers.

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Litigant Funding Co. Has No Claim To NFL Concussion Deal

By **P.J. D'Annunzio**

Law360 (February 28, 2025, 6:17 PM EST) -- A special master overseeing the NFL's concussion settlement fund told a Pennsylvania federal court in a filing made public Friday that a company that funds litigants' healthcare expenses was correctly denied money from the fund because the rights assigned to it by former players' doctors counted as "prohibited assignments," not the liens the company claimed they were.

The **filing** from special master David A. Hoffman came in response to GreenLink Solutions LLC's claims it was entitled to liens tapping into the **litigation settlement** since the NFL players who were originally entitled to the money had agreed to have their medical exam expenses deducted from the settlement proceeds by their medical providers, who in turn sold those agreements to GreenLink.

GreenLink's request was previously rejected by the claims administrator, who determined that the asserted debts were prohibited under the settlement agreement. Hoffman agreed, saying the agreements were not liens.

"In short, these 'assignment of proceeds' agreements artificially inflated the cost of players' medical appointments to net the medical practices and GreenLink a significant profit. The supporting invoices for a single claimant's 'costs' included doctor bills of \$22,400, \$7,000, and \$8,571, whereas a typical diagnostic appointment in the program runs between \$1,000 and \$5,000," Hoffman said.

"These prices allowed the doctors to pocket thousands of dollars per claimant — including for supposed medical treatment performed after qualifying diagnoses were rendered," the special master continued.

The agreements signed by the players state their medical providers can sell to Green Link the right to collect from the personal injury settlement, allowing the company to assume the role of the player.

Players are free to enter into cash advance agreements with third parties under the settlement's terms, Hoffman said, but in this case, nothing was advanced.

"Rather, GreenLink bought the right to claim settlement funds from medical providers, which, in turn, bought that right from class members in exchange for medical care for which class members' attorneys ordinarily advance costs. GreenLink now seeks to have that money paid from the monetary award fund directly," Hoffman said.

He added that simply calling the assignment a lien does not make it one.

"In short, there appears to be no limit to what GreenLink, 'the provider's assignee,' thinks it can now collect for charges that cognitively impaired claimants had no ability to observe or object to. Again, it is not for me to say if the resulting debts are unconscionable or otherwise illegal," Hoffman said. "All that I can conclude is that the right that GreenLink wishes to assert against the monetary award fund is a true assignment. As such, it is void under the settlement agreement."

The NFL concussion settlement was reached in 2015 between the league and players who claimed they developed chronic traumatic encephalopathy, or CTE.

As of November, the settlement fund has **paid out \$1.3 billion** to former players.

GreenLink did not immediately respond to a request for comment Friday.

Counsel information for GreenLink was not available Friday.

The case is In re: National Football League Players' Concussion Injury Litigation, case number 2:12-md-02323, in the U.S. District Court for the Eastern District of Pennsylvania.

--Editing by Lakshna Mehta.

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