

News from Bloomberg Terminal

March 4, 2025, 10:03 AM PST

Federal Judge Rejects Abstention Plea in Health Data Breach MDL

- Factors 'modestly' favoring abstention not enough, judge says
- Motions to dismiss from health providers, vendor pending

By Cassandre Coyer

(Bloomberg Law) --

A federal judge declined to give up jurisdiction in a multi-district litigation accusing health entities and a third-party medical vendor of failing to protect patient information ahead of a 2023 data breach.

Plaintiffs across the country filed putative class actions against medical transcription service provider Perry Johnson & Associates Inc. and its health-care clients after a 2023 breach to the vendor's networks exposed swaths of patient data, according to an order filed Monday in the US District Court for the Eastern District of New York.

The suits named both the third-party vendor and the health-care organizations that shared patient data with it as defendants, including Cook County Health & Hospitals and Cook County Health (CCH). More than 50 cases were transferred to a federal multi-district litigation in New York, while other proceedings are ongoing in Illinois state court.

In November 2024, CCH asked the court to stay one of the member cases in federal court in which it was named as a defendant, invoking the abstention doctrine rooted in *Colorado River Water Conservation District v. United States*. The 1976 Supreme Court ruling expanded the doctrine of abstention, recognizing that there are circumstances when a federal court may abstain from exercising jurisdiction "due to the presence of a concurrent state proceeding," according to the filing.

But US District Judge Rachel P. Kovner refused to give up her jurisdiction.

"Defendants' showing that some factors modestly favor abstention does not justify declining to exercise jurisdiction here," Kovner said. The circumstances favoring abstention are "strictly limited," she added.

While the state and federal proceedings meet the "parallel" requirement—meaning the suits have similar plaintiffs, parties, and allegations—the balancing of factors ultimately "favors exercising jurisdiction," Kovner said.

The federal judge performed a six-step balancing test laid out by the high court, analyzing factors such as whether a specific forum is more convenient for the parties or whether staying an action would avoid piecemeal litigation.

Three of the *Colorado River* factors are neutral and therefore favor retaining the case, she said, while the three remaining factors only “slightly” favor abstention.

CCH and other defendants in the MDL have moved to dismiss the consolidated complaint in federal court, with no rulings on the motions yet.

Cook County Health representatives didn’t immediately respond to a request for comment.

Gordon Rees Scully Mansukhani LLP represents CCH. Leeds Brown Law PC, Robbins Geller Rudman & Dowd LLP and Israel David LLC represent the plaintiffs and proposed class.

The case is *In Re: Perry Johnson & Associates Medical Transcription Data Security Breach Litigation*, E.D.N.Y., No. 1:24-md-03096, order filed 3/3/25.

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

To contact the editor responsible for this story: James Arkin at jarkin@bloombergindustry.com

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Robbins Geller Rudman & Dowd

 benchmarklitigation.com/Firm/Robbins-Geller-Rudman-Dowd-California/FirmLawyersWithFilter/109243



Darryl Alvarado

United States (National), California

Future Star

Randall Baron

United States (National), California

Securities

Litigation Star

National Practice Area Star

California - Litigation Star

Luke Brooks

United States (National), California

Securities

Litigation Star

California - Litigation Star

Spencer Burkholz

United States (National), California, Top 20 California Trial Lawyer

Securities

Litigation Star

National Practice Area Star

Top 20 Trial Lawyers in California

Brian Cochran

40 & Under List - West

Securities

40 & Under List

Daniel Drosman

United States (National), California

Securities, Plaintiff Class Action

Litigation Star

Jason Forge

California

Securities

Litigation Star

Tor Gronborg

United States (National), California

Securities, Plaintiff Class Action

Litigation Star

National Practice Area Star

J. Marco Janoski Gray

California, 40 & Under List - West

Securities

40 & Under List

David Knotts

United States (National), California, 40 & Under List - West

Securities

Litigation Star

40 & Under List

Ting Liu

California, 40 & Under List - West

Dispute resolution

40 & Under List

Danielle Myers

United States (National), California

Future Star

Erika Oliver

California, 40 & Under List - West

Securities

40 & Under List

Lucas Olts

United States (National), California

Future Star

Daniel Pfefferbaum

United States (National), California

Securities

Future Star

Ashley Price

40 & Under List - West

Securities

40 & Under List

Darren Robbins

United States (National), California

Insurance, Securities, Product liability and recall, Energy, Foreign Corrupt Practice Act (FCPA)

Litigation Star

California - Litigation Star

Jessica Shinnfield

California

Future Star

Hillary Stakem

40 & Under List - West

Securities

40 & Under List

Shawn Williams

California

Securities

Litigation Star

Debra Wyman

United States (National), California, Top 250 Women - West

Securities

Litigation Star

National Practice Area Star

California - Litigation Star

Top 250 Women in Litigation

In Ohio, another attempt to repeal HB 6 coal subsidies

 1.next.westlaw.com/Document/lb6833e10f8dd11ef88babdac21463bb2/View/FullText.html

NewsRoom

3/4/25 Ohio Cap. J. (No Page)

2025 WLNR 5211340

Ohio Capital Journal

Copyright (c) 2025 Ohio Capital Journal

March 4, 2025

Kathiann M. Kowalski, Canary Media

Mar 04, 2025

Utility corruption graphic generated by Open AI's Dall E, Feb. 26, 2024.

This monthly newsletter round-up was originally published by Canary Media.

Welcome to Ohio Utility Watch, a monthly newsletter tracking developments in Ohio's ongoing public-corruption saga, often referred to as the House Bill 6 or HB 6 scandal. I'm Kathiann Kowalski, a contributing reporter for Canary Media based in Ohio, and I've been following utility efforts to secure bailouts for over a dozen years.

If you're new to the subject, here is an overview I wrote last summer on the fifth anniversary of the legislation. Common Cause Ohio also has a helpful timeline.

In brief: HB 6 is at the heart of the largest public-corruption scandal in Ohio history and among the largest utility scandals in U.S. history. Utility companies used dark money groups to route roughly \$60 million in bribes to pass and protect legislation mandating more than \$1.5 billion in ratepayer subsidies to aging, uneconomical coal and nuclear power plants.

To sign up for this newsletter, please email krawczyk@canarymedia.com.

What are we following?

Major questions about accountability and transparency remain unresolved as courts, politicians, regulators, ratepayers, and advocates grapple with Ohio's ongoing House Bill 6 saga. Here's a list of some of the people and cases we've been tracking with this newsletter:

Criminal cases

In July 2020, a federal grand jury indicted former Ohio House Speaker Larry Householder, former Ohio Republican Party chair Matt Borges, veteran political strategist Jeff Longstreth, and lobbyists Juan Cespedes and Neil Clark on racketeering charges related to HB 6.

Longstreth and Cespedes pleaded guilty in October 2020. Clark was found dead in March 2021. Householder and Borges were convicted in March 2023 and have both filed appeals.

In February 2024, a state grand jury indicted former Public Utilities Commission of Ohio chairman Sam Randazzo and former FirstEnergy executives Chuck Jones and Michael Dowling on bribery, money laundering, and other charges related to HB 6 fraud. Randazzo died by suicide in April 2024. Jones and Dowling's cases remain in pre-trial.

In January 2025, a federal grand jury indicted Jones and Dowling on additional racketeering charges, alleging they participated in bribery, money laundering and obstruction to increase the company's stock and enrich themselves.*FirstEnergy Corp. also faced federal wire fraud charges but in July 2021 agreed to cooperate with prosecutors and pay a \$230 million penalty in exchange for deferred prosecution.

Civil cases

Starting in September 2020, law firms announced class-action lawsuits against FirstEnergy and American Electric Power alleging securities fraud and seeking damages for investors. Claims against AEP were settled in July 2024. Litigation against FirstEnergy is ongoing. Another set of lawsuits, known as shareholder derivative cases, accused FirstEnergy and American Electric Power management of breaching fiduciary duties to the companies. Both have settled those cases. FirstEnergy and Energy Harbor, its former generation subsidiary, also faced a class-action lawsuit seeking damages for ratepayers. That case was settled in July 2023 when the companies agreed to reimburse customers a combined \$49 million. FirstEnergy, Householder, Jones, and others also face state civil claims, which are on indefinite hold until the criminal cases are resolved.

Regulatory

Jones still faces a civil lawsuit from federal financial regulators alleging he committed fraud against the company's shareholders.

First Energy and AEP have each settled claims with the U.S. Securities and Exchange Commission related to communications with investors.*PUCO has several active dockets related to FirstEnergy and HB 6:

– A “corporate separation” audit to determine if FirstEnergy's distribution and generation companies acted independently. Evidentiary hearing set for May 13.*

- Customer rider audits to assess whether money was improperly collected or spent. One rider has already been found unlawful but not refundable. Evidentiary hearing set for May 13.*
- A review of political and charitable spending to ensure HB 6 activity wasn't funded with customer money.
- The PUCO also audits spending under the HB 6 coal plant subsidies, including challenges to those charges. One case is on appeal to the Ohio Supreme Court.

Legislation

House Bill 15 and Senate Bill 2: Bills would repeal HB 6 coal subsidies and eliminate “electric security plans,” among other things. Both bills are currently in committee.*

* Updates in this month's newsletter

Bills would end coal subsidies and rider plans

House Bill 6 mandated ratepayer subsidies of roughly \$1 billion for two former FirstEnergy nuclear plants over the course of six years and more than half a billion dollars for two 1950s-era coal plants. Other provisions let utilities “recession-proof” their income by guaranteeing revenue even if electricity sales declined. The 2019 law also gutted Ohio's standards for energy efficiency and renewable energy, which is still the case today.

Lawmakers repealed the nuclear subsidies and revenue guarantees in 2021, but the coal subsidies remain on the books. Utility customers have already paid more than \$400 million for the subsidies, according to the Office of the Ohio Consumers' Counsel. And ratepayers are on track to pay roughly \$80 million more for just the first half of 2025, says a December 2024 analysis from the consulting firm RunnerStone. The total could top \$1 billion by 2030, the analysis adds.

Multiple companies and groups testified before the Ohio House and Senate Energy committees this month in support of ending those subsidies. Unlike earlier attempts, House Bill 15 reportedly has the approval of Ohio House Speaker Matt Huffman. Senate Bill 2 is HB 15's companion bill, although there are some differences. Gov. Mike DeWine has also said he hopes to end the coal subsidies.

Current versions of the bills would let utilities keep charging for the coal plants until their current rider plans expire. That could range from 2026 to 2028, so thousands of consumers might get only a year or two of relief before the coal subsidies otherwise end in 2030.

HB 15 and SB 2 would also end so-called electric security plans, a regulatory construct that has allowed utilities to impose various riders without the benefit of a full ratemaking case.

SUBSCRIBESUPPORT

Read more:

Ohio senators hear from supporters of energy overhaul (Ohio Capital Journal)Ohio Senate Unveils Energy Legislation: Key Differences Between S.B. 2 and H.B. 15 (Bricker Graydon)GOP proposal would end coal bailout and limit the 'riders' on your electric bill (Cleveland.com)Coal plant charges, solar subsidies would end under energy bill (Toledo Blade)

Regulatory case update

The Public Utilities Commission of Ohio will hold a hearing on March 13 on Fifth Amendment claims by several witnesses who previously refused to answer questions under oath.

Regulatory staff says the witnesses might now agree to answer if ordered by the PUCO. An outstanding question has been whether an Ohio law granting immunity would cover potential federal charges.

Consumer advocates, business groups and others have been pushing for more than four years for rate adjustments, penalties, or other relief in four regulatory cases related to the HB 6 scandal. FirstEnergy's objections to turning over massive amounts of documents led to delays, and then the cases were stalled for a year and a half after a request by the Department of Justice. Part of one corporate separate case had an evidentiary hearing in the fall, but the rest of the cases remain unresolved.

Collectively, the cases question the legitimacy of hundreds of thousands of dollars in ratepayer charges. FirstEnergy also could face more than \$1 billion in civil penalties.

Although document production has continued, stakeholders are still waiting for FirstEnergy to turn over an internal investigation. The PUCO so far has not required it in the regulatory cases, but a federal judge ruled it should be produced in shareholder litigation. FirstEnergy's challenge to that order is pending in federal court.

For now, the PUCO plans to start an evidentiary hearing for three of the regulatory cases on May 13. One case deals with HB 6–related questions in a corporate separation case, including an alleged side deal between FirstEnergy and Randazzo back in 2015 that is also relevant to a rider in another case.

Audits in that other case found FirstEnergy failed to properly track spending for one of the charges. Customers paid roughly \$450,000 before that charge was ultimately held unlawful. Although the court refused to allow a refund, parties in the rider case have asked for FirstEnergy to be charged more than \$1 billion in civil penalties.

A third regulatory case deals with improper spending under another rider, which was supposed to be for capital costs. The fourth case deals more generally with whether FirstEnergy unlawfully used ratepayer money for political or charitable purposes. An

evidentiary hearing date has not yet been set there.

Read more:

U.S. Attorney can unstick efforts to expose HB 6 damage by offering immunity to balking witnesses: editorial (Cleveland.com)

New charges against FirstEnergy execs

The U.S. Attorney for the Southern District of Ohio filed charges against former FirstEnergy executives Chuck Jones and Michael Dowling in January. The Jan. 15 indictment marks the first federal criminal charges against individuals who allegedly paid bribes to others in the HB 6 scandal. FirstEnergy, as a company, already paid a \$230 million penalty under a deferred prosecution agreement in 2021.

The same day the federal indictment against Jones and Dowling became public, Gov. DeWine announced the appointment of former Lt. Gov. Jon Husted to serve Vice President JD Vance's unexpired term in the U.S. Senate. The executives dined with DeWine and Husted roughly seven years earlier, on Dec. 18, 2018. Earlier that day, Jones and Dowling met with Randazzo. And later that night, FirstEnergy finalized its plan to pay \$4.3 million to a company controlled by Randazzo. Six weeks later DeWine picked Randazzo to chair the Public Utilities Commission of Ohio. FirstEnergy later admitted it paid the money with the expectation that Randazzo would help it on HB 6 and other matters. Randazzo also faced criminal charges in federal and state court when he died of an apparent suicide last spring.

Read more:

Two former FirstEnergy execs indicted on federal racketeering charges (News 5 Cleveland)Former energy executives face federal charges in massive Ohio bribery scheme (USA Today)

AEP settles securities charges

On Jan. 17, American Electric Power announced it had agreed to a \$19 million civil penalty to resolve allegations by the Securities and Exchange Commission that it made material misstatements of fact about HB 6–related payments, omitted important information from securities filings, and otherwise failed to maintain proper records on the payments.

To date, no criminal charges have been brought against the company or its executives.

According to the SEC's cease-and-desist order, the company contributed funds to a nonprofit organization it controlled, which in turn gave approximately \$1 million to dark money groups designated by Householder to help pass and protect HB 6 and then to help him stay in office

beyond Ohio's term limits. Among Ohio utilities, AEP owns the largest share of the Ohio Valley Electric Corp., which runs the two HB 6-subsidized coal plants. One is in Ohio, and the other is in Indiana.

Read more:

American Electric Power pays \$19M to settle with SEC over its HB6 entanglement (Cleveland.com)

GET THE MORNING HEADLINES.

YOU MAKE OUR WORK POSSIBLE.

The views expressed in any and all content distributed by Newstex and its re-distributors (collectively, the "Newstex Authoritative Content") are solely those of the respective author(s) and not necessarily the views of Newstex or its re-distributors. Stories from such authors are provided "AS IS," with no warranties, and confer no rights. The material and information provided in Newstex Authoritative Content are for general information only and should not, in any respect, be relied on as professional advice. Newstex Authoritative Content is not "read and approved" before it is posted. Accordingly, neither Newstex nor its re-distributors make any claims, promises or guarantees about the accuracy, completeness, or adequacy of the information contained therein or linked to from such content, nor do they take responsibility for any aspect of such content. The Newstex Authoritative Content shall be construed as author-based content and commentary. Accordingly, no warranties or other guarantees are offered as to the quality of the opinions, commentary or anything else appearing in such Newstex Authoritative Content. Newstex and its re-distributors expressly reserve the right to delete stories at its and their sole discretion.

---- Index References ----

Company: U.S. SECURITIES AND EXCHANGE COMMISSION; FIRSTENERGY CORP.; OHIO VALLEY ELECTRIC CORPORATION; LINEAR MINERALS CORP.; AMERICAN ELECTRIC POWER COMPANY, INC.; CANARY MEDIA LIMITED; ENERGY HARBOR HOLDINGS LLC; UNITED STATES SENATE

News Subject: (Crime (1CR87); Criminal Law (1CR79); Financial Fraud (1FI18); Fraud (1FR30); Government Litigation (1GO18); Legal (1LE33); Social Issues (1SO05))

Industry: (Coal (1CO39); Electric Utilities (1EL82); Energy & Fuel (1EN13); Metals & Mining (1ME07); Mining (1MI65); Natural Resources (1NA60); Utilities (1UT12))

Region: (Americas (1AM92); North America (1NO39); Ohio (1OH35); U.S. Midwest Region (1MI19); USA (1US73))

Language: EN

Other Indexing: (Ohio Republican Party; the Ohio Supreme; two former FirstEnergy; the Office of the Ohio Consumers' Counsel; firm RunnerStone; Ohio Senate; found FirstEnergy; whether FirstEnergy; against FirstEnergy; U.S. Securities and Exchange Commission; FirstEnergy Corp.; Ohio Valley Electric Corp.; First Energy; American Electric Power; Canary Media; Energy Harbor; U.S. Senate)

Keywords: (Biz & Labor); (Economy); (Energy & Environment); (Fracking); (Politics & Gov); (The Courts)

Word Count: 1859

End of
Document

© 2025 Thomson Reuters. No claim to original U.S. Government Works.

NewsRoom

[Securities Law](#)

March 4, 2025, 8:19 AM PST

Caribou Biosciences Leaders Overhyped Cancer Therapy, Suit SaysBy [Gillian R. Brassil](#)

-
- **COURT:** N.D. Cal.
 - **TRACK DOCKET:** No. [4:25-cv-02199](#) (Bloomberg Law subscription)

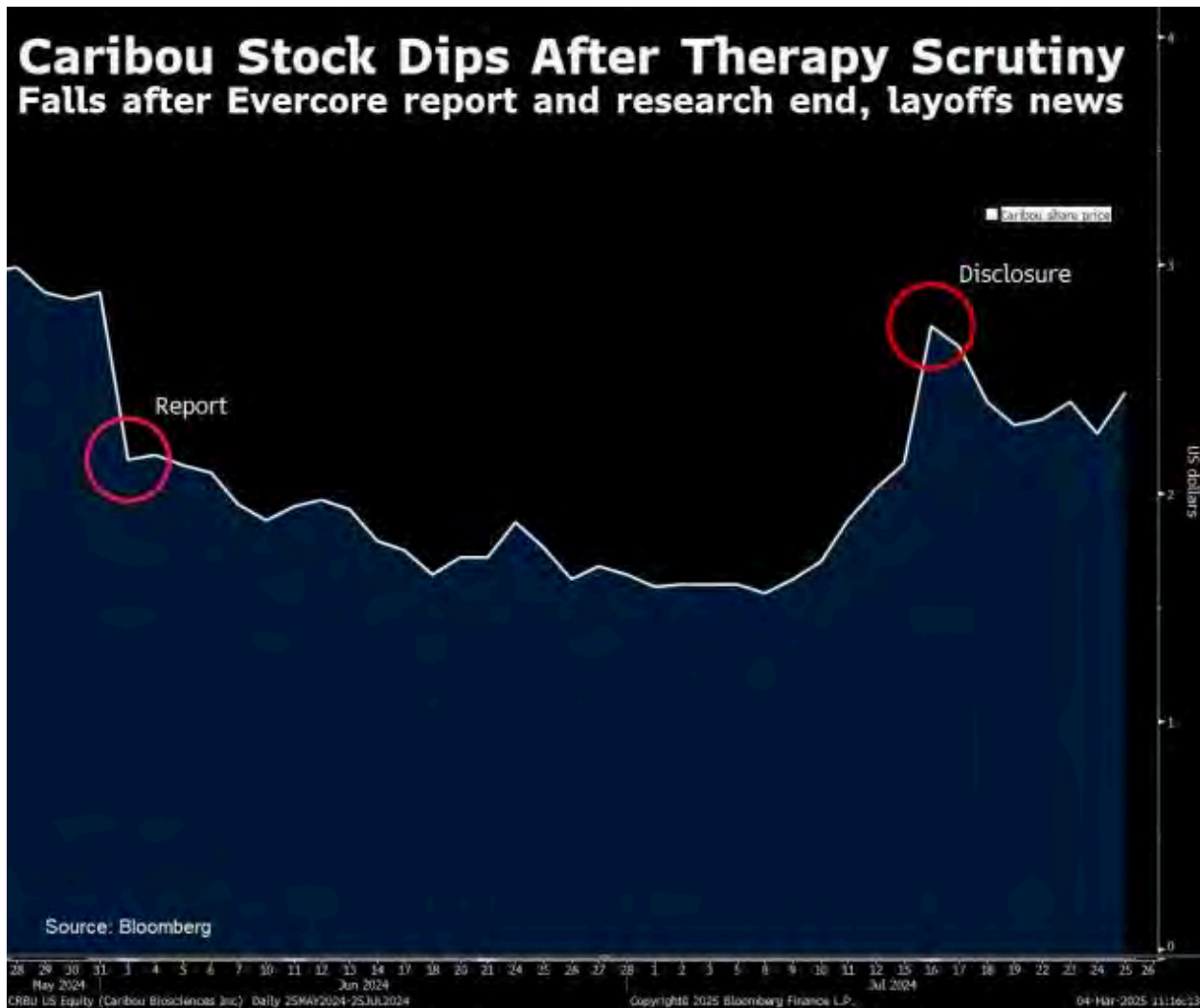
Caribou Biosciences Inc. management misled investors about its financial stability and lead cell therapy product's outlook, hurting the company and driving down its stock when it announced it had ended certain research and would cut jobs, a shareholder derivative lawsuit said.

Top brass caused Caribou to overhype its CB-010 cell therapy, which is being tested to target a stubborn form of blood cancer, while concealing the company was running out of money to operate, said Alan Moisio's complaint filed in the US District Court for the Northern District of California.

In June 2024, Caribou said it had presented data from its phase 1 trial that suggested one dose of CB-010 had "the potential to rival the safety, efficacy, and durability" of related approved therapies, Moisio's Monday complaint said.

But the next morning, June 3, Evercore ISI analysts downgraded the company's stock and dropped its price target from \$13 to \$3, saying they weren't yet convinced the therapy would be competitive amid a crowded field and safety concerns, the complaint said. Share prices tumbled almost 26% to close at \$2.15 that day, the complaint said—the stock's most significant single-day fall in almost three months, according to data compiled by Bloomberg.

Then share prices fell another 3%, or 9 cents, the day after the company revealed in a Securities and Exchange Commission July 16 filing it had stopped preclinical research on a different therapy platform aimed at solid tumors and was laying off about 12% of its workforce to keep financially afloat, per the complaint.



A proposed class action filed in December alleging similar issues is ongoing in the same court.

Caribou agreed to pay \$3.9 million to end a different investor lawsuit concerning statements surrounding its 2021 initial public offering. A judge granted final approval of the class action settlement last month.

The Brown Law Firm PC represents Moisio, who alleged wrongdoing by a current and a former executive and board members from July 14, 2023—when Caribou said it intended to use forthcoming proceeds of a public offering to fund preclinical development of its tumor-targeting CB-020 product—through July 16, 2024. He seeks damages awarded to Caribou plus corporate reform, among other relief, for claims of securities law violations, breach of fiduciary duties, unjust enrichment, and more.

Neither Caribou nor its counsel in the pending proposed class action, Gibson Dunn & Crutcher LLP, immediately responded to emails seeking comment.

The case is *Moisio v. Haurwitz*, N.D. Cal., No. 4:25-cv-02199, complaint filed 3/3/25.

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

Lucid Leaders Sued Over Electric Vehicle Production Shortcomings

- **COURT:** D. Del.
- **TRACK DOCKET:** No. [1:25-cv-00237](#) (Bloomberg Law subscription)

Lucid Group Inc. executives overhyped the luxury electric car maker's production capacity surrounding its 2021 SPAC merger to the company and investors' detriment, a shareholder derivative action said.

Former CEO Peter Rawlinson and others hid the impact of internal logistics problems on production, at first blaming projected shortcomings in 2022 on industry-wide supply chain challenges, stockholder Kathleen McKenny told the US District Court for the District of Delaware. Investors learned about the significance of internal issues in August 2022, and the stock price plummeted after both target slashes, her Feb. 28 complaint said.

While the stock was propped up on lofty production goals, the company raised over \$2 billion in a convertible note offering and Rawlinson got an executive compensation package with a \$2 million bonus and \$556 million in potential stock options, McKenny said. "By January 25, 2022, Rawlinson had maintained Lucid's high market capitalization long enough to trigger four out of five tranches of his performance-based stock options, receiving nearly 14 million options valued at approximately \$263 million," she said.

Lucid's predecessor planned to merge with a special purpose acquisition company in 2021 to receive a much-needed cash infusion, McKenny said. To generate interest in the merger, Lucid and Rawlinson assured investors that it would ramp up 2022 production of its key vehicle, McKenny said. The merger closed in July 2021, she said.

Executives at first displayed confidence in their 20,000-vehicle production target, the complaint said.

Share prices tumbled more than 13% in February 2022 after Lucid slashed that target, blaming supply chain problems, McKenny said. Then in August, executives said Lucid would only make 6,000 to 7,000 vehicles in 2022 primarily due to logistical issues, she said. The stock price subsequently fell almost 10%, she said.

Lucid's reputation and financials were hurt by the stock dives and ongoing litigation as a result of current and former board members and executives' actions, McKenny said.

Rawlinson stepped aside as CEO last week.

This is the third shareholder derivative action filed against Lucid leadership in 2025, according to Bloomberg Law docket data. The consolidated proposed class action, first filed in 2022, alleging similar issues and referenced by McKenny is ongoing in the Northern District of California. And a lawsuit brought by SPAC investors lacked standing to sue Lucid's predecessor, given they didn't own that stock, the Ninth Circuit affirmed last year.

Long Law LLC, Griffin Humphries LLC, and Bragar Egel & Squire PC represent McKenny, who seeks damages and prejudgment interest awarded to Lucid among other asks. She alleged securities law violations, breach of fiduciary duties, unjust enrichment, waste of corporate assets, and aiding and abetting.

Neither Lucid nor its counsel in the proposed class action, Sidley Austin LLP, immediately responded to emails seeking comment.

The case is McKenny v. Alnowaiser, D. Del., No. 1:25-cv-00237, complaint filed 2/28/25.

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

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

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Class Action

March 4, 2025, 9:08 AM PST

Tricida CEO to Pay \$14 Million in Class Suit Over Drug Progress

By [Martina Barash](#)

Tricida Inc.'s CEO has reached an agreement with investors to pay about \$14 million to settle allegations that he misled investors about a kidney disease treatment's progress toward FDA approval, a federal court filing said.

The deal with the bankrupt drug developer's founder, CEO, and president Gerrit Klaerner warrants preliminary approval, lead plaintiff Jeffrey Fiore told the US District Court for the Northern District of California on Monday. Tricida was dismissed from the class action following its 2023 bankruptcy.

- Fiore alleged Klaerner misrepresented the Food and Drug Administration's reasons for canceling a 2020 advisory committee meeting related to Tricida's new drug application for veverimer, which was developed to slow the progression of chronic kidney disease, and mischaracterized outstanding review issues with the agency
- Judge Haywood S. Gilliam Jr. allowed claims to proceed in March 2024 and certified a class of investors in September
- Klaerner's directors and officers insurance "was the most readily available source of a recovery," and the settlement amount represents between about 7% and 32% of estimated damages, Fiore said

Block & Leviton LLP is class counsel. Sidley Austin LLP represents Klaerner.

The case is Pardi v. Tricida, Inc., N.D. Cal., No. 4:21-cv-00076, motion 3/3/25 .

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

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

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

PPL Agrees to \$8.2 Million Settlement Over Retirement Plan Funds

- Northern Trust Focus Funds have driven multiple lawsuits
- Class action was scheduled to go to trial in January

PPL Corp. signed an \$8.2 million class settlement with workers challenging the Northern Trust target date funds in the publicly traded utility company's retirement plans.

The proposed deal would cover all participants in four PPL retirement plans between 2016 and 2020 who invested in a Northern Trust Focus Fund, along with their beneficiaries. The parties came to an agreement one week before the case was scheduled to go to trial in January, according to a motion for preliminary settlement approval filed Feb. 28 in the US District Court for the Eastern District of Pennsylvania.

The lawsuit centers on a suite of collective investment trust target date funds from Northern Trust, which isn't named as a defendant. The Northern Trust Focus Funds "suffered from significant and ongoing quantitative deficiencies and managerial turnover," leading to "massive underperformance" and millions of dollars of losses to the plans, according to the complaint.

Judge Mia R. Perez ruled last year that the case was viable because the workers presented "substantial circumstantial evidence" of the company's alleged missteps. She later greenlighted the dispute for trial, saying the case involved factual disputes over the defendants' processes for monitoring investments and choosing fund share classes.

Northern Trust's Focus Funds have driven several recent Employee Retirement Income Security Act lawsuits by 401(k) plan investors, with mixed results in court. Walgreen Co., Takeda Pharmaceuticals USA Inc. and Northern Trust itself each signed multi-million dollar settlements in lawsuits challenging the funds.

PPL is represented by O'Melveny & Myers LLP and LeVan Law LLC. The workers are represented by Schlichter Bogard LLC and Promisloff Law PC, which are authorized under the agreement to seek up to one-third of the settlement value as attorneys' fees.

The case is *Binder v. PPL Corp.*, E.D. Pa., No. 5:22-cv-00133, settlement motion 2/28/25 .

Class Action

March 4, 2025, 9:10 AM PST

Tesla's Reincorporation to Texas Was Legal, Delaware Judge RulesBy [Mike Leonard](#)

Tesla Inc.'s move to Texas—executed after a Delaware judge struck down Elon Musk's \$56 billion pay package—complied with the company's charter and corporate law, the same judge said in a ruling made public Tuesday.

Chancellor Kathaleen St. Jude McCormick declined to invalidate the reincorporation, saying the case involved the same issues resolved last year in a separate lawsuit that sought to block Trade Desk Inc.'s move to Nevada.

- Both shareholder suits said the companies violated charter provisions requiring a two-thirds investor vote—Tesla's shift to Texas got only 63% approval—for certain types of governance changes
- McCormick rejected that argument for the same reasons cited by a different judge in the Trade Desk case last November: A reincorporation isn't a charter amendment, even when it has the same practical effect
- The chief judge of Delaware's Chancery Court has fielded more than a year of online attacks from Musk and his devoted social media followers

The shareholder plaintiff is represented by McCollom D'Emilio Smith Uebler LLC. DLA Piper represents Tesla.

The case is Ball v. Tesla Inc. , Del. Ch., No. 2024-0622, 3/3/25 .

To contact the reporter on this story: Mike Leonard in Washington at mleonard@bloomberglaw.com

To contact the editor responsible for this story: Alex Clearfield at aclearfield@bloombergindustry.com

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Musk Appeasement Gambles Delaware's Corporate Golden Goose

Deep Dive

- Major statutory changes seek to head off corporate exodus
- 'Overkill' could backfire, undermine state's 'secret sauce'

A proposed shift in legal power from smaller investors toward moguls like Elon Musk is dividing Delaware's business community over the state's future as America's corporate capital.

State Senate Bill 21, unveiled in February, would limit judges' discretion to scrutinize insider deals, shrink the category of documents available to shareholders, and make it harder to prove boards are beholden to a dominant force like Musk. The proposal follows Musk's year-long crusade against the court system that cost him \$56 billion.

A split has emerged over whether those measures would save or kill Delaware's golden goose—corporate franchise taxes generate about 25% of the state budget—after news of departure plans by Meta Platforms Inc. and Dropbox Inc. Backers including Gov. Matt Meyer (D) say the bill will slow the "DExit" momentum, but opponents describe it as a coup by powerful controlling stockholders against the elite Delaware Chancery Court.

The statute "will blow up everything that makes Delaware special," Tulane University law professor Ann Lipton said. "Corporate managers are essentially declaring, 'No gods, no masters.' It reflects an attitude that laws simply cannot contain the people at the top of the corporate hierarchy, so it's useless to try."

Bernstein Litowitz Berger & Grossmann LLP partner Jeroen van Kwawegen, who helped overturn Musk's compensation, referred to SB21 as a "major rewrite of corporate law designed to transfer value from public shareholders to corporate insiders."

"I've called it a license to steal," he said. "That's exactly what it is."

Controlling Stockholders

Widener University law professor Lawrence Hamermesh, a drafter of the legislation, said it will restore the balance between dealmaker flexibility and fairness for investors, leaving corporate law “where it was 10 years ago.”

SB21 targets the swing toward shareholders, particularly the Musk decision—saying his influence over Tesla Inc. made him its controlling stockholder with only a 22% stake—and a ruling involving Match Group Inc. that upheld heightened scrutiny of even routine transactions involving controllers.

Delaware’s defense bar reacted to the decisions with alarm, saying they made insider deals onerous while leaving no way to predict who’s an insider. The bill shields most transactions—excluding go-privates—from review if they get board or shareholder approval at virtually any time, rather than requiring deals to be conditioned on both in advance.

It also restricts when a minority stockholder can be considered a controller—requiring either a one-third stake or a board majority—and strengthens the presumption of director independence. At the same time, the law could handcuff shareholders by significantly raising the bar for accessing emails and texts they need to overcome that presumption.

There were ways to reverse *Match* with less collateral damage, said Columbia University law professor Dorothy Lund. “I think *Match* was wrong,” she said. “I would’ve decided the Musk case differently. But this is overkill.”

DExit

The repudiation of landmark precedents targeted by Musk’s anti-judge campaign is contributing to an atmosphere of recrimination. SB21’s rollout bypassed the usual vetting process by the influential Corporation Law Council.

The fast track is about DExit, said Hamermesh, who downplayed data suggesting the trend is overstated. He cited “the sheer extent of discontent in boardrooms,” saying the upcoming proxy season will start revealing the iceberg.

“People in Delaware don’t want to wait until we’re past the tipping point,” Hamermesh said.

But lawyers for billionaires are drumming up false urgency through “a whisper campaign” that defies reality, said Labaton Keller Sucharow LLP partner Mark Richardson.

Van Kwawegen called the process an ambush by “sore losers.” The mass exodus narrative is “fake news,” he said.

The council, which ultimately got the chance to fine-tune the bill, delivered tweaks Monday. But the initial end run squandered an opportunity to get broader buy-in, Lund said.

'Extraordinary Rebuke'

Even more striking than the pivot toward insiders would be Delaware's overnight turn toward inflexible statutes, away from "textured and interesting and responsive" reasoning by a specialized judiciary, Lipton said.

"It's an extraordinary rebuke to the judges," she said. "They're gutting the common law method of corporate governance in favor of an off-the-rack approach. You can argue about whether that's good or bad, but one thing it's not is Delaware."

Lawmakers seem to be saying, "We can't trust our judges, so we need bright-line rules," said Lund. That would undermine Delaware's "secret sauce"—its bench—making it easier for states like Nevada and Texas to compete, she said.

Hamermesh acknowledged the downsides of "greater prescriptiveness," though he said the courts will still play a major role.

"Legislation is inherently sloppy," he said. "But the basic substance is sound."

Legislative Battle

The proposal is expected to sail through the state Senate, which reconvenes March 11. A rapidly mobilizing opposition makes its chances less certain in the General Assembly.

In the meantime, the bill's opponents are highlighting its ties to Richards, Layton & Finger PA, a firm handling Tesla's compensation appeal.

"A couple of people sit in a room, they have RLF write the law they like, and they push it through," van Kwawegen said.

Hamermesh said the "scrivener," RLF partner John Mark Zeberkiewicz, is a skilled drafter not involved in the compensation case. The firm stressed in a statement that it represents Tesla, not Musk, and emphasized its "responsibility to provide our deep institutional knowledge" to ensure "Delaware remains the preeminent jurisdiction for incorporation."

"Our assistance was not on behalf of or influenced by any client," the statement said.

The potential authorization of post-deal shareholder "ratification" has amplified suspicions it's about Musk, who tried to revive his pay on those grounds. But applying the law to Musk retroactively would happen "over my dead body," Hamermesh said.

Monday's version of the bill specifies that the amendments won't automatically cover ongoing cases, but it explicitly gives judges permission "to reach an outcome consistent with one that would be dictated by this act."

"To suggest this isn't related to Elon Musk is just gaslighting," Richardson said. "The governor said so himself."

To contact the reporter on this story: Mike Leonard in Washington at mleonard@bloomberglaw.com

To contact the editors responsible for this story: Andrew Harris at aharris@bloomberglaw.com; Drew Singer at dsinger@bloombergindustry.com

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

New AI feature coming soon

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

[Visit admin hub](#)

Opinion **Business Insight**

Delaware braced for change after attacks from Elon Musk and others

Insiders worry about the diminution of state's unique jurisprudence after move to limit shareholder lawsuits

SUJEET INDAP



Delaware is quickly seeking to enact sweeping changes to the law to make traditional shareholder litigation more difficult to bring © Andrew Kelly/Reuters

Sujeet Indap

Published YESTERDAY



Get ahead with daily markets updates. **Join the FT's WhatsApp channel**



Professor Eric Talley may soon have a surprise summer project: a major rewrite of his long-running syllabus for his core class on corporate law at Columbia Law School.

The standards for US mergers and acquisitions and corporate governance jurisprudence have been set for decades in the state court of [Delaware](#), the tiny mid-Atlantic state where most US public companies remain incorporated.

It is partially a historical accident but also through conscious public policy decisions that an otherwise unremarkable jurisdiction has essentially developed a monopoly on setting case law on the relationship between American corporate managers and shareholders.

But the likes of Elon Musk and other entrepreneurs — who have lost big cases or faced intrusive lawsuits — have increasingly complained that these standards are now excessively punitive for their kinds of companies. Tesla and other Musk businesses as well as a handful of other prominent companies such as Dropbox have reincorporated in [Texas or Nevada](#), states that themselves are actively marketing their pro-billionaire bona fides.

The worry for Delaware, where incorporation fees generate billions in revenue, is that several others were similarly lining up a “D-exit”. In response, the new Delaware governor and legislative allies are now quickly seeking to enact [sweeping changes](#) to the law this spring to make traditional shareholder litigation much more difficult to bring.

More broadly, Delaware’s hallmark had been to let its technocratic judges apply their discretion in cases so standards were flexible and dependent on the particular facts. The new [law](#) would be much more prescriptive in defining conflicts of interest and how much scrutiny directors and officers could face on their decision-making.

Talley estimates that dozens of previously binding Delaware judicial precedents are about to be made obsolete by the potential law. “These changes to my own pedagogy will be costly to me, no doubt,” he said.

It may, however, prove enough to avoid the “D-exit” of a large number of companies and help the state retain the associated fees. But on the flip side, the policing and deterrent mechanism of shareholder lawsuits may fall away. And an almost certain consequence of that is the diminution of a system that grappled constantly with the consequential and intellectually interesting questions at the intersection of corporate law and corporate finance. Such issues will simply not be as richly litigated or studied any more.

“We have this wonderful ecosystem, where we are litigating high-stakes cases in front of a highly sophisticated and demanding court. Every time we are matched up against the very best and brightest. It is cool,” said Ned Weinberger, a well-known Delaware shareholder attorney.

“Chancery litigation is one of the key economic engines in Wilmington. Big lawsuits create big demand. This bill, if it passes, is going to be devastating to the city and the state and hurt a lot of people across many industries.”

A 2019 economic impact report from the University of Delaware said that Wilmington, despite having fewer than 75,000 residents, had a branch office for 19 of the 100 largest US law firms. At the same time, there are multiple locally based firms also filled with top law school graduates who could otherwise work in any other major market. The spillover effects include allowing the Delaware federal and bankruptcy courts to punch above their weight.

Joel Friedlander, another top shareholder lawyer who has won large recoveries from Fortune 500 companies and investment banks, reminisced about being told as a law student, following the late 1980s hostile takeover wave largely contested in Delaware courts, that he should become a litigator in the state rather than a New York deals lawyer.

Over his 30-year career, Friedlander said big companies were impressed enough with the Delaware Court of Chancery to insist that various types of other governance and transactional disputes also be decided by Delaware judges. However, he said he would no longer recommend that law students come to Wilmington if this legislation is enacted.

“Some people in Delaware want to wreck what is special about Delaware, which is its case law and its judiciary — that cannot be replicated.”

sujeet.indap@ft.com

With Final Dismissal Order, Social Media Addiction Claims Head Toward Trial



law.com/therecorder/2025/03/04/with-final-dismissal-order-social-media-addiction-claims-head-toward-trial

Amanda Bronstad

What You Need to Know

- Friday's order focused on what the judge called 'non-priority' claims of general negligence, wrongful death, survival and loss of consortium.
- The final dismissal order sets the stage for a potential bellwether trial next year.
- The judge previously allowed claims to go forward by school districts and state AGs.

A federal judge refused to dismiss the final remaining claims in lawsuits alleging social media sites like Instagram and YouTube addicted adolescent users, causing their mental health problems.

The Feb. 28 ruling by U.S. District Judge Yvonne Gonzalez Rogers, who is overseeing the multidistrict litigation in the Northern District of California, sets the stage for a potential bellwether trial next year.

"As the court previously described, plaintiffs allege that defendants try to cultivate children as users and have deliberately designed their social media platforms to foster compulsive and addictive use, aware of young users' susceptibility to addictive components of their platforms and the negative health consequences that result," the judge wrote in her order, the fifth to address motions to dismiss the claims brought by the four defendants: Meta Platforms Inc., which owns Facebook and Instagram; YouTube, part of Google; ByteDance, which owns TikTok; and Snap Inc., parent of Snapchat.

Representatives of Meta and Google, owned by Alphabet Inc., declined to comment.

Lead plaintiffs' counsel Lexi Hazam, of San Francisco's Lieff Cabraser Heimann & Bernstein, and Motley Rice's Previn Warren in Washington D.C., said in a statement that the order "reaffirms the legitimacy of our claims against Meta, TikTok, Snapchat, and Google for the harm their platforms have inflicted on young users and their families. The court has upheld critical legal arguments in our case, including negligence and failure to warn claims that expose how these companies designed addictive and harmful platforms targeting adolescents."

School Districts, States, Previously Allowed to Sue

Gonzalez Rogers has allowed most of the addiction claims to go forward but has tossed some of them.

In her first order, in 2023, the judge found that Section 230 of the Communications Decency Act, which grants immunity to tech companies from the actions of third parties, did not protect social media companies from certain elements including poor parental controls and age verification. She also found the First Amendment did not protect social media companies. In that order, Gonzalez Rogers focused on five “priority claims,” four of which were based on product liability laws.

Last year, Gonzalez Rogers refused to dismiss claims of misrepresentations made by the social media companies to consumers, as alleged in a bipartisan complaint brought by attorneys general in 33 states, led by California, and a separate case brought by Florida. She also allowed school districts to sue social media sites for expenses they incurred dealing with students addicted to their platforms. Then, days later, Gonzalez Rogers allowed public nuisance claims brought by school districts in 15 states to move forward, including California, Florida, Georgia and Pennsylvania.

Friday’s order focused on what the judge called “non-priority” claims by individuals with personal injuries: general negligence, wrongful death, survival and loss of consortium.

Additionally, she granted dismissal of consortium claims in 25 states, as well as separate allegations brought against Meta and Snap under statutes pertaining to child sex abuse material, referred to as CSAM, which the judge found fell under the protections of Section 230 immunity.

“Here, plaintiffs do not argue that they allege Meta and Snap enhanced the development or distribution of third-party CSAM, but rather that the platforms had actual or constructive knowledge of instances of CSAM on the platforms and failed to properly report that CSAM,” she wrote. “The difference is material under Section 230.”

NOT FOR REPRINT

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

In Mass Torts, Should MDL Versus Bankruptcy Be an Either/Or Question?

 [law.com/litigationdaily/2025/03/04/in-mass-torts-should-mdl-versus-bankruptcy-be-an-eitheror-question](https://www.law.com/litigationdaily/2025/03/04/in-mass-torts-should-mdl-versus-bankruptcy-be-an-eitheror-question)

Ross Todd

Clockwise from top left is U.S Bankruptcy Judge William Lafferty III of the Northern District of California, Leslie Brueckner of Singleton Schreiber, Anne Bloom, the executive director of the Civil Justice Research Initiative at Berkeley Law and Professor Andrew Bradt of Berkeley Law discussing in a webinar on mass tort bankruptcies hosted by CJRI. Courtesy image

Analysis

"There's lots of ways you can imagine these systems could really work in better harmony than we've seen so far," said Leslie Brueckner of Singleton Schreiber.

March 04, 2025 at 07:30 AM

Litigation

By Ross Todd

Editor/columnist



Perhaps the debate over whether multidistrict litigation or bankruptcy is a better vehicle to resolve mass torts need not be binary.

U.S. Bankruptcy **Judge William Lafferty III** of the Northern District of California, **Leslie Brueckner** of **Singleton Schreiber** and Professor **Andrew Bradt** of UC Berkeley School of Law discussed the increasingly busy intersection of mass torts and bankruptcy last week as part of a discussion sponsored by the school's Civil Justice Research Initiative and moderated by **Anne Bloom**, the initiative's executive director.

Much of the recent conversation has centered on the "Texas Two-Step," a maneuver used by companies, including 3M and Johnson & Johnson, in attempts to create corporate entities that assume mass tort liabilities that are separate from their operating companies. But Bradt said there's a sense that companies using the bankruptcy mechanism to resolve mass tort liability is somehow a new thing. "It's, of course, not," he said, alluding to decades' worth of bankruptcy proceedings involving asbestos.

"The system of bankruptcy procedure is very well designed to achieve closure. That's really the point of bankruptcy," Bradt said. "It's a way for a debtor to go into bankruptcy, resolve their liabilities and then come out the other side with a fresh start." What's new in bankruptcy, he said, is that companies that otherwise don't seem to be distressed are tapping it to deal with mass tort liabilities.

By comparison, Bradt said the strengths of multidistrict litigation lie in fact-finding—using trials and motion practice to accurately evaluate the plaintiffs' injuries. The MDL process, he said, gives plaintiffs the opportunity to decide for themselves whether they want to opt in to any settlement or not. Where the bankruptcy process can force dissenters into a settlement, the MDL process cannot. "So to some degree, this bankruptcy versus MDL problem is boiling down to who's better off?"

Brueckner of Singleton Schreiber, who represents plaintiffs primarily in appellate proceedings, noted that there are sharp divisions in the bar and the legal academy about who ends up better off in either system. "Some people believe that tort victims actually do better in the bankruptcy system, because it means that everybody—all creditors—get a seat at the table, and everybody gets a piece of the pie," she said. However, she noted that the bankruptcy system lacks the sort of discovery that can help air corporate misconduct and allow injured plaintiffs to tell their story. "The focus is on accountability, not equitable distribution," said Brueckner of the civil justice system available to plaintiffs in MDLs.

Judge Lafferty pointed out that in dealing with the question of whether a debtor has filed for bankruptcy in "good faith," his colleagues on bankruptcy courts across the country are dealing with something that's been developed in the case law. "There is nothing in the code that says how you define that. There's no requirement in the bankruptcy code that you be insolvent to file a bankruptcy case," Lafferty said.

The judge pointed out that Chief Bankruptcy Judge Michael Kaplan in New Jersey offered up a "full-throated" defense of the bankruptcy system's ability to deal with mass torts in his first decision denying a motion to dismiss in the talc-related bankruptcy case of Johnson & Johnson affiliate LTL Management LLC. Lafferty pointed out that the subsequent Third Circuit decision reversing Kaplan's ruling was written by Third Circuit Judge Thomas Ambro, whom Lafferty called "a brilliant bankruptcy lawyer before he was on the Third Circuit."

Although Ambro's decision didn't directly say an operating company should be forced to file for bankruptcy itself, Lafferty said many people are reading the decision to say perhaps the price of admission for bankruptcy—where parties' rights are so fundamentally affected—should include facing all the inconveniences that come with it. "Essentially, there's an urgency to get things done," said Lafferty of the prospect of having an operating company in bankruptcy. "When you have another entity who goes in, you sort of disconnect the inconveniences of bankruptcy from all the benefits."

Bradt agreed. "If you are a debtor in bankruptcy, you are getting a lot of things that you're not going to get just as a regular defendant," he said. The debtor, he noted, gets an automatic stay of all litigation and the ability to pass a restructuring plan—essentially a settlement—based on either a super majority or three-quarters majority vote of the creditors, with the dissenters bound to the plan. "It's crammed down, whereas in multidistrict litigation, you don't

get any of those benefits,” he said. “I think that what Judge Ambro is saying, in part, is that we're not going to let you get all of the benefits that we would normally give to a truly distressed debtor over the litigation system, unless you are entitled to them. And the fear is that, well, if you manufacture them artificially, then you're going to get these debtor-based benefits of the bankruptcy system without being the sort of party that ought to be entitled to them.”

Lafferty also pointed out that he and his colleagues on the bankruptcy bench lack the power to try personal injury claims. “What I can do is set up the structure to allow people to see if they're willing to get into a discussion about how this will be resolved,” he said. “It turns into a very extensive and very complex mediation, which either results in a deal or it doesn't.”

Lafferty pointed to bankruptcy cases involving Catholic dioceses, where he and other bankruptcy judges across the country have allowed those bringing abuse claims against the church to tell their stories as part of the process at the suggestion of creditors' committees. “This is meaningful to these people, and this is at least a tiny piece of that agency that they lost when they weren't able to go to a jury,” he said.

Bradt, for his part, suggested that the Judicial Panel on Multidistrict Litigation might want to consider transferring MDLs to the place where a bankruptcy is seated in instances where the company facing mass tort claims ends up in bankruptcy. That would, he said, allow the bankruptcy court and the MDL judge to perhaps leverage both systems' “comparative advantages.”

“In a world where there's uncertainty about how this pans out, the panel could decide to try to experiment along those lines, and I'd be surprised if we couldn't find some synergies.”

Brueckner agreed that there's more potential for the MDL system and bankruptcy courts to work together than what has played out so far, especially since bankruptcy courts don't try the merits of the underlying claims. “There's lots of ways you can imagine these systems could really work in better harmony than we've seen so far,” she said.

NOT FOR REPRINT

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

Latest

ITG owes Reynolds American \$251.5 million for Florida tobacco settlement, judge rules

 [reuters.com/legal/itg-owes-reynolds-american-2515-million-florida-tobacco-settlement-judge-rules-2025-03-03](https://www.reuters.com/legal/itg-owes-reynolds-american-2515-million-florida-tobacco-settlement-judge-rules-2025-03-03)

Jonathan Stempel

Cigarettes are stacked on a shelf inside a tobacco store in New York July 11, 2014.

REUTERS/Lucas Jackson/File Photo Purchase Licensing Rights , opens new tab

March 3 (Reuters) - A Delaware judge on Monday ordered ITG Brands to pay rival cigarette maker Reynolds American \$251.5 million in connection with a Florida tobacco settlement, following ITG's purchase of four cigarette brands from Reynolds a decade ago.

Vice Chancellor Lori Will of the Delaware Chancery Court rejected ITG's argument that the \$251.5 million, the full amount Reynolds sought, be reduced by money Reynolds saved because ITG did not join the Florida settlement.

Reynolds is a unit of British American Tobacco (BATS.L) , opens new tab, while ITG is a unit of Britain's Imperial Brands (IMB.L) , opens new tab. ITG said it plans to appeal. The case arose from Reynolds' June 2015 sale of the Kool, Maverick, Salem and Winston brands to ITG, so Reynolds could win regulatory approval for its \$25.8 billion purchase of smaller rival Lorillard.

Before the sale, Reynolds had for many years made annual payments to Florida under a settlement to recoup tobacco-related healthcare costs, after the state accused cigarette makers of misrepresenting the addictiveness and health risks of smoking.

But after the sale closed, Reynolds stopped making payments that had been based on sales of the four brands it no longer owned.

Florida then sued Reynolds and ITG, and obtained a judgment requiring Reynolds to make payments unless and until ITG joined the settlement.

Reynolds paid Florida \$251.5 million attributable to the four brands for 2015 to 2023.

Will in October 2022 found ITG liable to reimburse Reynolds, leaving the question of how much to pay.

In Monday's decision, Will said it would be "perverse" to reduce ITG's liability by the estimated \$112.8 million of "profit adjustment" payments that Reynolds saved because ITG did not join the Florida settlement.

"To reduce Reynolds' damages as though ITG joined the Florida settlement agreement would disincentive ITG from ever doing so," Will wrote.

ITG is based in Greensboro, North Carolina, and Reynolds is based in Winston-Salem, North Carolina.

In a statement, ITG said it disagreed with Will's liability and damages findings, and remained confident in its arguments "as we seek a reversal."

Reynolds and its lawyers did not immediately respond to requests for comment. The company's brands include Camel, Newport and Pall Mall.

Reporting by Jonathan Stempel in New York; Editing by Richard Chang

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

Class Action

March 4, 2025, 9:27 AM PST

CapCut Users Advance Lawsuit Over ByteDance Data Collection

By Christopher Brown

- **Users say app copied all videos on devices, not just uploads**
- **They claimed privacy expectation in location, biometric info**

Beijing-based ByteDance Inc. must face several claims of a proposed class action alleging it collected the personal data of users of its CapCut video-editing app in violation of federal and state privacy laws.

The plaintiffs adequately stated claims of invasion of privacy under the California Constitution, intrusion upon seclusion, larceny, conversion, and violations of the Illinois Biometric Information Privacy Act, Judge Georgia N. Alexakis of the US District Court for the Northern District of Illinois said Monday.

Alexakis dismissed their claims of unjust enrichment and violations of the Consumer Fraud and Abuse Act, the Computer Data Access and Fraud Act, the Video Privacy Protection Act, the Electronic Communications Privacy Act, the California Invasion of Privacy Act, the Stored Communications Act, the California Unfair Competition Law, and the California False Advertising Law.

The plaintiffs alleged that ByteDance used the CapCut app to secretly collect a wide range of users' personal information, including biometric data, images, video and audio recordings, clipboard data, geolocations, email addresses, passcodes, telephone numbers, and other identifying information.

The company profited from the information by targeting users with advertising and using it to improve its products and services, according to the complaint. ByteDance also disclosed user data to the Chinese government, it said.

The company argued in a motion to dismiss that several of the plaintiffs' claims failed because they consented to the collection of their data when they agreed to the company's privacy policy, but Alexakis rejected that argument at this stage of the case.

Whether the plaintiffs waived their right to bring suit based on their alleged consent to the company's privacy policy was an affirmative defense that couldn't be resolved on a motion to dismiss, she said.

ByteDance's challenge to the plaintiffs' invasion-of-privacy claims fared no better.

They alleged the CapCut accessed and collected all the videos and photos stored on their devices, not just those they uploaded to the app to create content, the judge said. A reasonable CapCut user would not expect this, she said.

The plaintiffs also adequately alleged a reasonable expectation of privacy in their location and biometric data, but not their device identifiers, registration information, and sign-up information, she said.

ByteDance's argument that it couldn't have stolen or converted videos willingly uploaded by the plaintiffs to the app failed because they alleged the collection of videos not willingly provided to the app, as well as the collection of their personal and private data, she said.

The plaintiffs' claims under BIPA's written-consent provision survived the motion because they adequately pleaded that ByteDance collected their biometric identifiers as defined in the statute, and that the company was capable of using the data to identify them.

She dismissed their claims under BIPA provisions related to improper use, improper disclosure, and inadequate protection of biometric data.

Hagens Berman Sobol Shapiro LLP and Alpheus LLC represents the plaintiffs and the proposed class. Mayer Brown LLP represents ByteDance.

The case is Rodriguez v. Bytedance Inc. , N.D. Ill., No. 1:23-cv-04953, 3/3/25 .

To contact the reporter on this story: Christopher Brown in St. Louis at ChrisBrown@bloombergindustry.com

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

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Google seeks to dismiss privacy class action over voice recordings

DJ [dailyjournal.com/articles/383975-google-seeks-to-dismiss-privacy-class-action-over-voice-recordings](https://www.dailyjournal.com/articles/383975-google-seeks-to-dismiss-privacy-class-action-over-voice-recordings)

Shutterstock

Google LLC argued that it did not "explicitly promise" its voice-enabled Google Assistant devices would only record conversations when prompted and asked a San Jose federal judge to grant summary judgment in a consolidated, certified privacy class action that has been pending for six years.

The dispute stems from a pair of lawsuits accusing the tech giant of violating its own terms of service and California's Unfair Competition Law by recording conversations by Google Home device buyers even when they didn't use a "hot word" to trigger the Google Assistant technology to activate.

According to Google's website, the audio feature can only be enabled when a user utters a "hot word" that triggers the device such as "Hey Google." The plaintiffs claim that they were victims of a "false accept," alleging their devices began recording their conversations without a prompt and shared that information with third parties that work to improve the voice command software.

U.S. District Judge Beth Labson Freeman certified the class in December 2022 but only for the group of plaintiffs seeking relief for breach of contract and unfair business practices, known as the "purchaser class."

Freeman declined to certify the plaintiffs claiming the company violated state and federal wiretapping and privacy laws by recording and storing their conversations absent a voice command. *In re: Google Assistant Privacy Litigation*, 5:19-cv-04286 (N.D.Cal. filed July 25, 2019).

Google's defense team from Perkins Coie LLP --- Bobbie J. Wilson, Sunita Bali, and Erin K. Earl --- argued in the Feb. 28 motion for summary judgment that the plaintiffs' entire case rests on a "promise" in Google's terms of service and privacy policy that did not exist and said that these "false accepts" occur infrequently.

"There is no evidence that Google promised in its privacy policy not to record or share audio data resulting from false accepts, Google breached any such purported promise, or the Purchaser Class overpaid for Google-Made Devices as a result of any such breach," the defense team wrote.

The plaintiffs' legal team from Lexington Law Group, Scott+Scott Attorneys at Law LLP, Lowey Dannenberg P.C., and Gutride Safier LLP could not be reached for comment on Monday.

In a 2021 past opposition brief against one of Google's motions to dismiss, the plaintiffs' counsel addressed the argument that Google's terms of service do not create a legally binding promise by claiming that the company states its devices only record when a person is using the audio features.

The attorneys added, "It is also worth noting that to the extent there are any inconsistencies or ambiguities in the contract, these must be interpreted against Google, the drafter of its adhesive, one-sided contract, and in a manner that is consistent with the reasonable expectations of the user."

Some of the world's largest tech companies have faced similar litigation in California courts over their voice command products in recent years.

Apple Inc. agreed to a \$95 million settlement of a putative class action with an estimated "tens of millions" of customers who accused the company of using devices equipped with Siri, Apple's voice controlled virtual assistant, to record, store, and distribute their confidential communications to third parties without their knowledge or consent. *Lopez et al v. Apple Inc.*, 4:19-cv-04577 (N.D. Cal. filed Aug. 7, 2019).

The following attorneys represent the plaintiffs: Mark N. Todzo and Eric S. Somers of Lexington Law Group in San Francisco; and Hayley Reynolds, Seth A. Safier of Gutride Safier LLP in San Francisco; Vincent Briganti, Christian Levis, Andrea Farah of Lowey Dannenberg P.C. in White Plains, New York; Joseph P. Guglielmo, Erin Green Comite, John T. Jasnoch, Stephanie A. Hackett, and Hal C. Cunningham of Scott+Scott Attorneys at Law.

#383975

Wisdom Howell

Daily Journal Staff Writer
wisdom_howell@dailyjournal.com

Supreme Court grants certiorari on important class certification standards

DJ [dailyjournal.com/articles/383965-supreme-court-grants-certiorari-on-important-class-certification-standards](https://www.dailyjournal.com/articles/383965-supreme-court-grants-certiorari-on-important-class-certification-standards)

U.S. Supreme Court

Mar. 4, 2025

The Supreme Court will decide if a federal court can certify a Rule 23(b)(3) damages class when some members lack Article III standing, addressing a key issue in class certification and potential business liability.



Amit Rana

Partner and Co-chair, Venable LLP

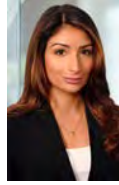
Class Action Defense Practice

Phone: (415) 653-3747

Email: arana@venable.com

UC Davis SOL King Hall; Davis CA

See more...



Antonia I. Stabile

Associate, Venable LLP

Phone: 415-653-3734

Email: aistabile@venable.com

Antonia focuses on complex commercial disputes and class action defense.

See more...



Shutterstock

The United States Supreme Court has granted certiorari in *Laboratory Corporation of America Holdings v. Davis*. The case raises a pivotal question impacting class certification standards: Can a federal court certify a Rule 23(b)(3) damages class when some proposed class members lack Article III standing?

I. The background: A brewing circuit split

In 2021, the Supreme Court confirmed that "Article III does not give federal courts the power to order relief to any uninjured plaintiff, class action or not." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021). The *TransUnion* court was clear that in the class action context, "every class member must have Article III standing in order to recover individual

damages." *Id.* But *TransUnion* was decided following a final judgment long after the certification stage. Accordingly, courts have grappled with how its holding might influence the predominance inquiry at class certification, creating fertile ground for conflicting rulings.

Defendants have long argued (correctly, in our view) that, since uninjured class members cannot recover in a class action, it is necessary to separate those class members who have a concrete injury from those who do not. As LabCorp argued, such an inquiry into Article III standing is quintessentially individual because it turns on a person's individual experience and intent. Those individualized inquiries therefore overwhelm common questions and preclude a finding of predominance at the certification stage.

Not all district and appellate courts have agreed, however. LabCorp argued in its cert petition that a three-way split on this issue has emerged. The Ninth Circuit has adopted the most permissive standard, allowing certification even when more than a *de minimis* number of class members lack standing. In our view, such a lenient standard runs afoul of the purpose of the predominance inquiry in the first instance--that if liability is to be determined collectively, the class must be sufficiently cohesive.

Other circuits, such as the Second and Eighth, have taken a stricter approach, barring certification outright if any class member lacks Article III standing. Meanwhile, the D.C. and First Circuits adopt a middle-ground approach, allowing certification if the number of uninjured members is "*de minimis*."

Highlighting the extant and growing circuit split, one day before the Supreme Court granted certiorari in *LabCorp*, the Fourth Circuit embraced the strictest standard, holding that at the certification stage there must be an *evidentiary basis* to establish injury for all class members. See *Alig v. Rocket Mortgage, LLC*, 126 F.4th 965, 975 (4th Cir. Jan. 23, 2025).

II. How the inclusion of uninjured class members at certification impacts businesses

For defendants, the inclusion of uninjured members in certified classes can dramatically inflate exposure, particularly in statutory damages cases like *LabCorp*. That case stems from a class action lawsuit filed by two legally blind plaintiffs, alleging that LabCorp's self-service kiosks violated the Americans with Disabilities Act (ADA) and California's Unruh Act, which provides for statutory damages of \$4,000 per violation. But a substantial portion of the class never used, wanted to use, or intended to use the kiosks, rendering them uninjured (and therefore without Article III standing). LabCorp argued that certifying a class with uninjured class members could expose the company to nearly half a billion dollars a year in damages. As LabCorp argued in its cert petition, a certification order on such claims is often "the ball game" because plaintiffs can easily inflate the size of a class with uninjured persons and drive-up potential liability.

That concern is not limited to statutory damages claims. As businesses know, the proliferation of false advertising class actions continues unabated, particularly in district courts within the Ninth Circuit. The most common theory of injury in such cases is that plaintiffs and the putative class would not have made their purchases, or would have paid less for them, had they been aware that the challenged representations were false or misleading. Accordingly, defendants have rightly argued that individualized inquiries over which class members actually suffered concrete harm overwhelm common ones and preclude certification. Like statutory damages claims, these false advertising class actions pose a risk of artificially inflating exposure by including uninjured class members. And some states' false advertising statutes, like New York's General Business Law, potentially carry statutory damages. But here too courts have grappled with the level of evidentiary support plaintiffs must make available at the certification stage. The Ninth Circuit's standard would dispense with that factual inquiry at the certification stage (an evidentiary motion, after all) and lump together injured and uninjured class members into one class that is, by its very nature, not cohesive enough to allow for collective liability determinations. Clarity from the Supreme Court on plaintiffs' evidentiary burden for standing at the certification stage could therefore also allow defendants to reframe questions that go to the elements of the claims as questions of injury and standing and demand a heightened factual basis for each class member at the certification stage.

III. A clearer standard on the horizon?

While the Supreme Court's decision in *LabCorp* is likely to resolve the circuit split, the outcome is far from certain. A ruling that applies the strictest interpretation of *TransUnion* could spell the end of certification for any class that includes uninjured members, creating substantial hurdles for plaintiffs. On the other hand, an endorsement of the Ninth Circuit's more lenient approach could provide tailwinds for plaintiffs' counsel bringing class actions with dubious injury allegations.

Additionally, the Court's ruling will have implications for how parties approach evidentiary burdens at certification. If the Court tightens standing requirements, plaintiffs' counsel may need to invest heavily in individualized evidentiary standing analyses before reaching the certification stage - a costly and potentially prohibitive endeavor.

IV. What's next?

Merits briefing in *LabCorp* is set to conclude in April 2025, with a decision possible by the end of the Court's term in June. While the ruling should resolve the circuit split, it also has the potential to introduce new questions and challenges for lower courts to navigate. For now, the case serves as a reminder of the Supreme Court's increasing interest in procedural questions that have outsized effects on class actions.

We'll be monitoring, so stay tuned!

#383965

Submit your own column for publication to Diana Bosetti

Fire and Rain: How Litigators Fit Into Disaster Response

 [law.com/litigationdaily/2025/03/03/fire-and-rain-how-litigators-fit-into-disaster-response](https://www.law.com/litigationdaily/2025/03/03/fire-and-rain-how-litigators-fit-into-disaster-response)

Ross Todd

What role does litigation play in the wake of disasters—either natural or manmade?

Gerald Singleton, the managing partner of **Singleton Schreiber**, whose firm has handled wildfire litigation in California, New Mexico, Oregon, Washington, Hawaii, Colorado, Mississippi and Utah, and **Michal Meiler**, a partner at **Ver Ploeg & Marino** in Miami who has litigated insurance coverage issues for policyholders affected by hurricanes, addressed that question recently in [a conversation](#) sponsored by The Civil Justice Research Initiative at UC Berkeley School of Law.

Singleton, who is based in San Diego, said his firm focuses on “unnatural” disasters, representing individuals against companies accused of starting wildfires. He said his firm tries to help bridge the difference between their clients’ losses covered by insurance and those that are not. “As anyone knows who handles cases in this area, insurance doesn’t fully cover you for your losses,” Singleton said. “So even people that have insurance are going to have a significant gap between what their covered losses are and what they receive from their insurance company.”

Singleton said that the firm hires “cause and origin” investigators—often retired law enforcement officers and arson investigators—when they see an event that bears the hallmarks of a fire potentially sparked by a utility company’s equipment. The key indicators include things such as a point of origin near a power line or evidence of a spark. He said the investigators go out to see if they can rule out any potential causes, such as lightning, fireworks or campfires. He said in the case of the recent Eaton fire in Los Angeles County, there’s video online of “arcing” from a power line—“essentially a wall of fire coming down from the actual line to the ground.”

Investigators were sent out to inspect the tower in question to look for specific markings consistent with an arcing event. Singleton said that his team won’t be able to get a definitive look at the evidence until there’s discovery in litigation, but that his team’s initial review leads them to believe the utility is at fault.

While Singleton said lightning is “by far” the most common cause of wildfires, he added that investor-owned utilities have an inherent tension between spending on safety and the need to make a return for shareholders. He said that tension leads to practices like drive-by inspections of vital equipment. “They’ll literally claim that they did an inspection when they had somebody drive by and look with binoculars from a half mile away,” Singleton said.

“Have you inspected it? Well, you've seen it. But you certainly aren't going to see any of the hallmarks that you're looking for to indicate that there's a problem with those lines, or with the tree that could fall into the lines.”

Meiler said with hurricanes, by contrast, you're always dealing with “an act of God.” She said the disputes that she tends to handle start with insurance companies that try to say the damage at issue falls within an exclusion to the policy in question. She gave the example of a homeowner making a claim following a storm where their roof was compromised. There, she said, an adjuster might find the roof was in disrepair and the claim falls within a “wear and tear” exclusion in the policy. She said that part of her role as an advocate for policy holders is not only to look at how to prove the scope of any damage and show that it was due to a hurricane, but also to look at how the insurance company handled the claim.

“Is the insurance company fairly handling this claim? Are they doing so promptly? Are they moving in a manner that is in the best interest of the insured, or the opposite?” Meiler said. She pointed out that insurance contracts aren't “ordinary” contracts. “There's an actual good faith duty that the insurance companies owe to their policy holders to act fairly and honestly and in their best interest,” she said. “So my job is not only to pursue the claim, but to also make sure that the claim is being handled in good faith.”

Singleton said that he and his colleagues on wildfire cases interact with insurance companies in a couple of ways. Like Meiler, he said he advocates for clients on coverage issues, especially in instances where insurers are seeking to minimize payments for things such as smoke and soot damage—coverage questions that may be less cut-and-dry than those about damage from fire itself. But he said that his firm often helps insurers with subrogation claims where the insurance company essentially steps into the shoes of the policyholder to sue for recovery against those that contributed to the cause of the fire. “It's very interesting because we have this, on the one hand, sort of adverse relationship,” he said. “But on the other, we know the attorneys, because there's five or six firms that represent all the majors.”

NOT FOR REPRINT

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

Private security firm that helped carry out Trump's child separation policy can't dodge suit, judge rules

 [courthousenews.com/private-security-firm-that-helped-carry-out-trumps-child-separation-policy-cant-dodge-suit-judge-rules](https://www.courthousenews.com/private-security-firm-that-helped-carry-out-trumps-child-separation-policy-cant-dodge-suit-judge-rules)

Hillel Aron

A protester holds a sign outside a closed gate at the Port of Entry facility, Thursday, June 21, 2018, in Fabens, Texas, where tent shelters are being used to house separated family members. (AP Photo/Matt York)

(CN) — A federal class action against the private security firm MVM, the sole contractor in charge of transporting minors in accordance with the first Trump administration's "family separation policy," cleared its first legal hurdle on Monday.

U.S. District Judge Dana Sabraw declined to dismiss most of a father and son's class action claiming the firm was contracted by the government to transport children detained by Immigration and Customs Enforcement at the U.S.-Mexico border during President Donald Trump's first term. The plaintiffs included claims of child abduction, torture and cruel, inhuman, or degrading treatment in their suit filed in July 2024.

"This is a huge victory," said attorney Mary Van Houten Harper, a partner at Hausfeld representing the named plaintiffs in the case going by the aliases "Padre" and "Junior." "The vast majority of our claims are moving forward, including the child abduction claim."

As to the claims of child abduction and torture, Sabraw, a George W. Bush appointee, found that under California law, the statute of limitations window began not when Padre and Junior, then 16-years-old, were separated in 2017, but when they were reunited on July 20, 2023, making them timely.

Sabraw also allowed a charge of enforced disappearance — stemming from the plaintiffs' claim that Junior and other separated children were taken to shelters, some across the country from their parents, and both sides were denied information about where the other was — finding that MVW's actions fit the International Convention for the Protection of All Persons' definition of arrest, detention, abduction and concealment.

But Sabraw agreed in his 21-page ruling to dismiss claims of civil rights conspiracy and some state law claims, because, he found, they fell outside the statute of limitations — though he will allow the plaintiffs to refile an amended version of their complaint.

The judge said the plaintiffs "fail to address the federal cases finding the accrual date for these kinds of constitutional claims is the date of separation, not the date of reunification."

The judge also declined to hand MVM immunity — which it said it should have because of its government ties — because the company hadn't filed a copy of the contract it signed with the federal government.

"This alleged contract is referenced throughout the complaint, but defendant did not submit a copy of the contract with its motion," Sabraw wrote. "In the absence of that evidence ... it is ... impossible for the court to determine if defendant had discretion in carrying out its contractual obligations, which would also defeat defendant's claim of derivative sovereign immunity.

He also said this contract would not shield the company from the plaintiffs' torture claims.

"Defendant fails to cite any authority to support its argument that conduct performed pursuant to a government contract renders that conduct exempt from claims of torture," Sabraw wrote.

"MVM was the sole government contractor for ICE, responsible for transporting children, physically, away from parents, often thousands of miles across the country," Harper, the plaintiff's attorney, said. "This was an unlawful scheme to separate children without due process."

Attorneys for MVM did not return emails requesting a comment on the ruling.

Around 5,000 children, including some infants, were separated from their parents between the summer of 2017 and the end of 2019, part of a "zero tolerance policy" aimed at deterring illegal border crossings.

In most cases, the adults found crossing the border were held in jail or deported, while the children were placed under the supervision of the Department of Health and Human Services — though not before some of the kids were forced to wait for weeks in overcrowded detention centers.

In the face of widespread outrage, the Trump administration backed down and discontinued the policy in 2018. Later, Sabraw — who also oversaw a lawsuit against the federal government for the policy — issued an injunction against the president reimplementing the policy, and ordered the government to reunite all of the separated children.

In 2023, the Biden administration agreed to settle the lawsuit, which funded efforts to reunite the families and offered a path to asylum for many of them.

MVM is described by the plaintiffs in their suit as a private security firm founded by three former secret service agents that "previously provided armed guards for security agencies, such as the CIA in Iraq."

They say that since at least as far back as 2014, MVM has been contracted by the federal government to escort and transport unaccompanied minors detained by ICE.

Follow @hillelaron

Categories / Civil Rights, Courts, Government

Subscribe to Closing Arguments

Sign up for new weekly newsletter Closing Arguments to get the latest about ongoing trials, major litigation and hot cases and rulings in courthouses around the U.S. and the world.

Mondelez Misleads With 'Climate Neutral' Clif Bar, Buyer Says

- **COURT:** N.D. Ill.
- **TRACKING DOCKET:** [1:25-cv-02139](#) (Bloomberg Law subscription)

Mondelez deceived Clif Bar buyers who paid more for climate-friendly snacks that failed to help the environment, a customer said in a prospective class action.

Clif Kid Zbars from Mondelez International Inc. used misleading packaging that describes the snack bar as "climate neutral" when it's not, according to a proposed class action complaint buyer Cynthia Salguero filed Friday in the US District Court for the Northern District of Illinois.

Zbar's production, marketing, and transportation fuel climate change and thwart any possible benefit to the environment, Salguero said. Salguero said she and other consumers wouldn't have purchased Zbars, would have paid less for the snacks, or bought the food under different terms, if they'd known the product's advertising was deceptive.

The Federal Trade Commission has warned companies against misleading environmental marketing, also known as greenwashing, according to Salguero, who cited the agency's Green Guides. The FTC's 2012 nonbinding guidance remains in effect under President Donald Trump, after a Biden-era effort to update it stalled.

Salguero's complaint included images of two Zbar labels that say the snack bars are "climate neutral certified." Mondelez measures greenhouse gas emissions, sets pollution reduction targets, and contributes to projects fighting climate change to receive the certification, according to a Zbar website.

"The exact scenario anticipated in the Green Guides has played out here," Salguero said in the complaint. "'Climate neutral' is an unqualified, general environmental claim for which Defendant cannot substantiate all reasonable interpretations."

Salguero asked the court to certify class status to Zbar buyers and sought monetary relief.

A Mondelez spokesperson declined to comment.

Zimmerman Reed LLP represents Salguero.

The case is Salguero v. Mondelez International, Inc. , N.D. Ill., No. 1:25-cv-02139, complaint filed 2/28/25 .

To contact the reporter on this story: Andrew Ramonas in Washington at aramonas@bloomberglaw.com

To contact the editors responsible for this story: Jeff Harrington at jharrington@bloombergindustry.com;
Martha Mueller Neff at mmuellerneff@bloomberglaw.com

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Lawsuits claim browser extensions divert content creator earnings

DJ [dailyjournal.com/articles/383976](https://www.dailyjournal.com/articles/383976)

Data Privacy,

Contracts

Mar. 4, 2025

A wave of lawsuits against Rakuten Inc. alleges that the company's browser extension is diverting affiliate commissions away from social media content creators. Plaintiffs' attorneys argue the cases highlight an industry-wide issue that could reshape the affiliate marketing landscape.



Plaintiffs' attorneys said Monday that a recent wave of putative class actions against Rakuten Inc. by social media content creators over allegedly stolen commissions is a symptom of an "industry wide problem" and that the lawsuits will "change the affiliate marketing marketplace."

Since Feb. 13, four separate complaints have been filed against Rakuten in the Northern District of California, all by social media content creators claiming the company's coupon hunting software redirected a portion of the profits from product purchases their followers made from devices that had the Rakuten browser extension installed.

Carol Lee, senior director of corporate communications for Rakuten International, declined to comment on pending litigation in an email Monday but wrote, "Rakuten continues to adhere to industry standards and network policies, including stand down best practices."

Scrutiny of companies' shopping browser extensions has been heightened following a Dec. 21 viral video from investigative YouTuber MegaLag that revealed a similar alleged scheme operated by PayPal Inc. through its subsidiary Honey. A number of lawsuits have subsequently been filed against PayPal that closely mirror the allegations against Rakuten, including one filed in January by YouTuber Devin James Stone of Eagle Team LLP, otherwise known as Legal Eagle.

Thomas E. Loeser, co-managing partner of the Seattle office of Cotchett Pitre and McCarthy LLP, referenced the video and described the potential impact of the lawsuits on the field of content creation in a phone interview Monday.

Loeser's firm filed two of the four lawsuits against Rakuten last month. *Just Josh, Inc. V. Rakuten USA Inc et al*, 3:25-cv-02038 (N.D.Cal. filed Feb. 27, 2025); *Rhodes v. Rakuten USA, Inc. et al.*, 3:25-cv-02005 (N.D. Cal. filed Feb. 25, 2025).

"These cases are going to change the affiliate marketing marketplace back to what it was before these companies started interjecting themselves in and stealing the referral commissions," Loeser said. "It's really astonishing. Our client and other people we talked to couldn't figure out why over the last four years, despite growing their market share and followers, they were getting less and less commission payments. . . Once we found out what PayPal's browser extension was doing, we ran tests on other shopping extensions and discovered that they were doing the same thing."

The latest complaint, filed on Feb. 28 by John R. Parker of Almeida Law Group LLC in Sacramento, also referenced the video from MegaLag and PayPal's actions. In an email Monday, Parker said that Rakuten's alleged practices were a "straightforward case of theft"

"It is a straightforward case of theft and an industry-wide problem, unfortunately," Parker wrote. "We are glad the problem is now getting some public disclosure and look forward to holding Rakuten and other companies that are stealing affiliate commissions accountable." *Davis v. Rakuten USA, Inc.*, 4:25-cv-02113 (N.D. Cal. filed Feb. 28, 2025).

The initial lawsuit against Rakuten was filed on Feb. 13 by the following attorneys: William Jahveri-Weeks, Sarah Abraham and Ally N. Girouard of The Jhaveri-Weeks Firm PC in San Francisco and Julian Hammond, Polina Brandler and Ari Cherniak of HammondLaw PC in Seattle. *Oganesyan v. Rakuten USA, Inc.*, 4:25-cv-01534 (N.D. Cal. filed Feb. 13, 2025).

Joseph W. Cotchett, founding partner for Cotchett Pitre and McCarthy and two of Loeser's colleagues from Seattle, Karin B. Swope, and Jacob M. Alhadeff, serve as co-counsel. Christopher L. Lebsock of Hausfeld LLP in San Francisco serves as co-counsel in one of the cases.

#383976

Orthofix Fired Execs for Private Texts. They're Fighting Back With a Vengeance

 [law.com/therecorder/2025/03/03/orthofix-fired-execs-for-private-texts-theyre-fighting-back-with-a-vengeance](https://www.law.com/therecorder/2025/03/03/orthofix-fired-execs-for-private-texts-theyre-fighting-back-with-a-vengeance)

Chris O'Malley

Orthofix makes orthopedic medical devices and is headquartered in Lewisville, Texas. Credit: sackKOP/Adobe Stock

News

The company's former CLO, CEO and CFO have filed a defamation lawsuit seeking at least \$137 million.

March 03, 2025 at 04:47 PM

General Counsel and In House Counsel

By Chris O'Malley



The original version of this story was published on Corporate Counsel

Orthofix's simultaneous sacking of its chief legal officer, chief financial officer and CEO 18 months ago for what the maker of orthopedic medical devices described at the time only as "offensive conduct" was as mysterious as it was extraordinary for a publicly traded company.

But now Orthofix's former board chair, Catherine Burzik, has filed court papers that seek to publicly justify why the trio got the ax—dozens of "graphically inappropriate" text messages the executives sent to one another that she says were so abhorrent that the Lewisville, Texas-based company "had no choice but to remove the three."

In late February, she and Wayne Burris—an Orthofix director who led the internal investigation that spurred the firing of CLO Patrick Keran, CEO Keith Valentine and CFO John Bostjancic—turned over to a San Diego court 73 pages of text messages exchanged among the three in the 12 months before the board unanimously voted to to dismiss them in September 2023.

"Orthofix fired the former executives only after it uncovered proof that each repeatedly made gross and improper sexist, homophobic, racist, and other vulgar and demeaning comments about co-workers and third-parties in the workplace," states the filing from Melissa Bailey, a Quinn Emanuel Urquhart & Sullivan partner representing Burzik and Burris.

Bailey submitted the messages in an effort to beat back a defamation lawsuit the former executives filed last September against Burzik and Burris. The suit alleges that when Orthofix publicly disclosed the firings, it "sensationalized" and "aggrandized" the executives' conduct to "justify its unwarranted, unsupportable, and severe actions."

The suit seeks at least \$137 million in compensatory damages. The proceeding is separate from the executives' efforts through arbitration to collect at least \$18 million they say the company denied them by wrongly deeming their firings "for cause." The damages the executives are seeking represent a combination of forfeited equity grants and severance payments they were denied.

The cornerstone of the executives' defense is that the texts at issue were exchanged only among themselves, making their purported misconduct a crime without a victim.

"The company now tries to falsely frame plaintiffs' private sense of humor as somehow nefarious, but there is zero conduct involving any third party. There are no material acts of moral turpitude involved that justify a 'for cause' termination, and the company's public statements were defamatory and calculated to inflict maximum damage on our clients' successful careers," Kyle Bisceglie, a partner at Olshan Frome Wolosky and co-counsel for the Orthofix executives, told Law.com.

The defamation complaint adds: "The recipients were not offended and nobody objected to the texts."

The executives say the company wrongly implied otherwise, noting that in the press release announcing the dismissals Burzik is quoted as saying, "We do not condone harassing or inappropriate conduct."

Further, the company could have been specific in the release and securities filings by stating the matter involved "offensive communications" but instead sought to "publicly bloody" the executives by opting instead for the broader-sounding "offensive conduct," the executives say in a filing. For the same reason, they object to a line from the press release stating that the executives' behavior "violated multiple code of conduct requirements and was inconsistent with the company's values and culture."

The defamation complaint notes that their ouster was lucrative for Burzik, who stepped in as interim CEO, a role she remained in until January 2024, when the company hired LimaCorporate CEO Massimo Calafiore as permanent CEO. Under Burzik's employment agreement, her annual salary was \$825,000, and her target annual bonus was 110% of her salary. In addition, she received a \$100,000 bonus upon taking the role and a month later received stock awards totaling \$1.5 million.

Burzic, who left the board in June 2024, earlier in her career held senior executive posts at Eastman Kodak and Johnson & Johnson. Burris, who remains on the board, retired in 2019 as chief financial officer of Roche Diagnostics Corp.

In a filing, Burzic and Burris ask the court to strike defamation claims under California's anti-SLAPP statute, which allows plaintiffs to quickly dispense of meritless lawsuits and leaves plaintiffs on the hook for defendants' legal fees.

"The plaintiffs have not and cannot establish a probability that they will prevail," the filings says, adding, "Orthofix's statements were true, so they cannot form the basis for any cause of action under California defamation law, which only requires an allegedly defamatory statement to be substantially true for the claim to fail. Moreover, Orthofix's statements predominately amount to statements of its own opinion, which cannot be actionable as a matter of longstanding First Amendment law."

In the filing, Burzic and Burris also asserted that the executives' troublesome behavior extended beyond the text messages they shared among themselves.

"If that were not sufficient cause for their terminations (and it is), Orthofix also discovered evidence that the former executives engaged in significant and repeated bullying and other mistreatment of Orthofix's employees, that the culture the three managed demeaned and devalued the contributions of female employees, and that the three executives acted frequently with aggression, and accepted and promoted vulgarity and personal attacks," the filing said. "None of this is permissible in the workplace."

Texting During Meetings

The texts disclosed ranged from ordinary business discussion to sophomoric humor to guttural banter about sex acts.

Often, the text exchanges occurred during Orthofix meetings or calls "while the very individuals that the former executives demeaned were speaking," according to Burzic and Burris' filing.

As an example, during an Orthofix investor presentation, CEO Valentine texted Keran and Bostjancic that he "is always so patient and happy to answer any and all questions in these investor meetings with cute chicks!"

CLO Keran replied, "I would like to get more involved in IR activities!" Bostjancic texted that one of the women "may not be of the drinking age yet! And seems fanatically over-interested in Orthobiologics."

Valentine quipped, "She likes a good bone!"

Some of the texts Orthofix flagged as inappropriate play off racial or ethnic stereotypes. For instance, in one Valentine refers to a Black man he is observing as a rapper, and in another Bostjancic surmises that his lunch or dinner meeting will be at a sushi restaurant because it's with an Asian doctor.

In a court filing, the executives chalked up their banter to the fact they "had worked together closely since 2015, were friends, lived close to each other, frequently interacted outside of work, were familiar with intimate details of one another's personal and private lives, and had a shared sense of humor."

The three had worked alongside one another for years in the same roles for years at SeaSpine, a rival medical device firm. When the two companies in mid-October 2022 agreed to a merger of equals, the board opted to take the Orthofix name but install SeaSpine senior executives to run it.

Some of the text exchanges occurred before the parties had reached a deal. In one, Keran complained that an Orthofix director was bogging down due diligence. He said the director needed "to get off her ass" and should expect to work 24/7 until closing "with my fist up her ass." Bostjancic chimed in that his "fist will be right next to" Keran's.

The executives "regularly engaged in discussions of graphic and violent sexual acts on directors, employees, investors, and others," Baily wrote.

The executives countered that messages Orthofix objected to represented a tiny fraction of the thousands of messages they had sent in the past year.

Execs Blindsided

The defamation suit says the executives turned over their phones to assist with what the company told them was an investigation into Orthofix's legacy sales and marketing practices. DLA Piper launched the inquiry before transitioning it to Latham & Watkins.

Valentine initially refused the company's requests to turn over his phone but relented after being assured that the company was not interested in private texts or other personal content, according to the complaint.

Keran also expressed reservations but was reassured when Terra Reynolds, global vice chair of Latham's health group group as well as global vice chair of its white-collar defense and investigations practice, "assured Keran that she has 'seen it all' and that personal and/or private content, including private texts would not be reviewed and were not relevant to the internal investigation," the defamation suit alleges.

Reynolds did not respond to Law.com's request for comment on Keran's characterization of their discussion.

The defamation suit says, "At no time were the plaintiffs ever advised they were the subject of the internal investigation or any investigation. They cooperated fully in the internal investigation entirely without the representation of counsel until nearly the day before they were fired."

Fallout from Firings

According to the defamation suit, had the executives not been fired, Valentine would have earned roughly \$7.7 million in 2023, while Bostjancic would have earned \$2.4 million and Kernan \$2.3 million.

The suit says the executives tried to sway the board not to abruptly fire them, saying doing so would cause the stock to tank, a prediction that proved right. On the day of the announcement, Orthofix shares cratered 30.2%, the biggest one-day percentage drop in the company's stock in nearly 30 years.

Investors may have been rattled in part due to the company's fixation on "unnecessarily and irreparably tarnishing" the executives, according to their defamation suit.

For example, the executives say the company misled the investment community when it said it fired the executives following an internal investigation costing \$3.4 million. That "conveys that the board conducted an investigation centered on plaintiffs' conduct. In fact, the private texts were unrelated to the stated purpose or scope of the internal investigation."

Lawyers for the fired executives said the company has been unable to identify any precedent that private texts "between longtime colleagues and friends constituted material acts of tergitude," one of the grounds Orthofix cited for the dismissals.

"These executives worked hard to drive execution and deliver value for company shareholders. The evidence will show they were fired for sending private text messages that offended the defendants' sensibilities, and the company shareholders paid the price as a direct result," Bisceglie told Law.com.

The company is facing a thicket of litigation stemming from the firings. For example, shareholders have filed at least four lawsuits alleging the company made false or misleading statements in the months before the stock plunged. For example, a derivative complaint accuses Orthofix of falsely assuring shareholders that the new management team was committed to conducting business in accordance with ethical and legal standards.

All three executives had signed a dispute-resolution agreement requiring that rifts over employment be resolved through binding arbitration. That process has moved slowly, however.

The executives brought their arbitration claims in December 2023. But four months later, they asked a San Diego court to intercede, saying the parties were at an impasse over whom to select as arbitrator.

In a securities filing last year, the company said it "disagrees with many of the assertions made in the arbitration claims and intends to vigorously defend the asserted claims." It also has denied allegations in the securities suits.

NOT FOR REPRINT

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

[Latest](#)

Trending

Corporate Deal

DoubleVerify, a software platform for digital media measurement, data and analytics, announced that it has entered into an agreement to acquire Rockerbox, a marketing attribution company, for \$85 million. The transaction, announced Feb. 26, is expected to close in the second quarter of 2025. New York-based DoubleVerify was advised by a Debevoise & Plimpton team led by partner Aly Love. Counsel information for New York-based Rockerbox was not immediately available.

[Read More](#)

Corporate Deal

SolarWinds, a provider of observability and IT management software, announced that it has signed an agreement to acquire Squadcast, an incident response solution company. Financial terms were not disclosed. Austin, Texas-based SolarWinds was

Citi Copy-Paste Error Almost Sent \$6 Billion to Wealth Account

Citigroup Inc. almost shifted about \$6 billion to a customer's account by accident after a staffer handling the transfer copied and pasted the account number into a field for the dollar figure.

The near-miss in Citigroup's wealth-management business magnified the intended amount by more than a thousand times and was detected on the next business day, according to people familiar with the matter. It happened in April, the same month that another part of the bank accidentally credited \$81 trillion to a different client.

The wealth division's error was reported to regulators and, within Citigroup's offices, provoked audible frustration from **Andy Sieg**, who had arrived just months earlier to run the unit, according to the people, who asked not to be named discussing private information.

Executives were in the midst of discussions with higher-ups and regulators over how to address what happened when word of the much larger mistake reached them, offering some of the managers a measure of bittersweet relief.

The firm has since set up a companywide tool to help vet large, anomalous payments and transfers, some of the people said.

In a statement, Citigroup said it "promptly identified and corrected this inputting error, which had no impact to the bank or our client. In addition, we have implemented enhanced preventative measures which are consistent with Citi's continuing efforts to eliminate manual processes and automate controls."

The incidents highlight Citigroup's ongoing struggle to improve risk and controls after it was slapped with regulatory penalties and restrictions because of its poor systems. In January, Chief Executive Officer **Jane Fraser** lowered a key profitability target, in part because the bank needed to spend more money on its "transformation," a plan that aims to overhaul operations and assuage watchdogs' concerns.

For panicked wealth executives, the error invoked memories of Citigroup's notorious Revlon Inc. incident in 2020, when the bank accidentally transferred more than \$900 million to creditors of the cosmetics company, some of the people said. The firm recouped the money more than two years later through a lengthy legal battle.

Still, in this case — as with the \$81 trillion credit that was first reported by the Financial Times last week — the error was related to an attempted transfer of funds between internal accounts, reducing the risk to the bank.

In the larger case, the mistake was caught about 90 minutes later, according to the FT, and was so big — dwarfing the firm's total assets — that the funds couldn't have left. The process at the center of that incident has since been fully automated, according to another person with knowledge of the situation.

Read More: Jane Fraser Stares Down Skeptics Ahead of Citi's Critical Year

To contact the reporter on this story:

Todd Gillespie in New York at tgillespie30@bloomberg.net

To contact the editors responsible for this story:

Sally Bakewell at sbakewell1@bloomberg.net

David Scheer, Steve Dickson

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

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Securities Law

March 4, 2025, 10:25 AM PST

Matt Levine's Money Stuff: Citi Hit Another Wrong Button

By Matt Levine

Opinion

Citi!

Generally companies like to deal with all their problems at once. Investors tend to care more about recurring earnings than one-time events, so if you have made some mistakes, you want to pick one quarter and say “okay we’re taking all of our losses for all of our previous mistakes this quarter, but after this everything is fine.” Every *other* quarter looks good, with normal healthy growing earnings, and that *one* quarter is terrible but investors are willing to look past it. If you have to take one big write-down this quarter, you might as well hunt around for every other possible write-down, because if you take them all this quarter they sort of don’t count, whereas if you wait until next quarter they’ll hurt.

This applies more broadly. I don’t exactly think Citigroup Inc. was *intentionally* fat-fingering all of its payments last April, but [this is funny](#) :

Citigroup Inc. almost shifted about \$6 billion to a customer’s account by accident after a staffer handling the transfer copied and pasted the account number into a field for the dollar figure.

The near-miss in Citigroup’s wealth-management business magnified the intended amount by more than a thousand times and was detected on the next business day, according to people familiar with the matter. It happened in April, the same month that another part of the bank accidentally credited \$81 trillion to a different client.

The wealth division’s error was reported to regulators and, within Citigroup’s offices, provoked audible frustration from Andy Sieg, who had arrived just months earlier to run the unit, according to the people, who asked not to be named discussing private information.

Executives were in the midst of discussions with higher-ups and regulators over how to address what happened when word of the much larger mistake reached them, offering some of the managers a measure of bittersweet relief.

We [talked yesterday](#) about the bigger error, in which Citi accidentally almost sent a client \$81 trillion instead of \$280 because one of its payments systems automatically populated the “amount” field with FIFTEEN ZEROS, incredible. If you accidentally sent a client \$6 billion when you meant to send them \$3 million, it *would* be “a measure of bittersweet relief” to learn that a colleague sent a client \$81 trillion meaning to send them \$280. Being off by three orders of magnitude is, let’s be clear, embarrassing, but it’s a lot better than 11 orders of magnitude. It’s, uh, one hundred million times better? So, better.

I made fun of Citi's payments interface design yesterday, because the 15 zeros are very funny, but this one – pasting the account number in the amount field – has more of a could-happen-to-anyone flavor. (The 15 zeros could kind of only happen to Citi.) Still, you might want a little bit more in the way of checks? Not just as a matter of what the screen looks like, but as a matter of what it lets employees do. Presumably if you run a bank payments system you will want to prevent anyone from making an \$81 trillion payment in any circumstances, because \$81 trillion is an order of magnitude bigger than Citi's entire balance sheet, so if you send out an \$81 trillion payment it will definitely bounce. "Don't pay more money than we have" is not *quite* a binding rule for a bank – banks create money! – but it's still a good rough guideline.

Even \$6 billion ... I mean banks send \$6 billion payments, but not *constantly*. (Transfers in the US Fedwire system average about \$5.4 million, and there are about 836,000 of them per day; presumably the billion-dollar-plus transfers are rarer.) Maybe every time someone tries to send more than \$1 billion (less?) to a *wealth management* client, Andy Sieg's phone could beep? Just one last check? It would not be *that* many beeps, and \$1 billion is a lot of money even for a big bank. "The firm has since set up a companywide tool to help vet large, anomalous payments and transfers, some of the people said," and, yes, vetting large anomalous payments does seem like an important function of a bank.

Anyway if you work at Citi and you accidentally sent a client \$100 million, now is the time to come clean about it; people will barely even notice at this point. (Not legal or career advice.) If you work at Citi and you want to send *me* \$100 million, uh, what a great way to be featured in Money Stuff! It's probably fine!

Incidentally, a couple of readers emailed me yesterday to say things to the effect of "this is why I bank with Citi" or "I am going to open an account with Citi." Other banks almost certainly won't give you \$6 billion for no reason, but there's a tiny chance that Citi might, and that's a positive expected value trade for you. Your checking account comes with a hilarious lottery ticket attached to it. It's a good marketing campaign.

Big Four

Last month, I [compared the big multimanager multistrategy hedge funds](#) to investment banks. The argument I made is that the big multistrategy funds are not exactly "hedge funds" in the traditional sense – that is, investment vehicles that raise money from limited partners, make investments, and give the limited partners the performance of the investments minus fees. Instead, they are more like investment banks: They raise money from the LPs, use the money to do trades, and use the profits from those trades to *pay their employees*, giving what is left over to the LPs. You can tell because traditionally hedge funds charged fees like "2% of assets and 20% of returns," while the big multistrategy funds – often called "platforms" or "pod shops" – charge fees like "we will deduct whatever it costs us to run our fund, mostly employee pay, from what we give you." These are called "pass-through fees."

I got some objections to this comparison. One objection is: If you invest in the stock of an investment bank, you are making a bet on the bank's franchise value. If the bank has a good track record of making money for shareholders, the stock goes up. At a multistrategy hedge fund, the limited partners don't get that. If the fund has a great track record of making money for LPs, it's not like the LPs can sell their stakes in the fund at a premium. It's more likely that they'll get cashed out at par, as the fund returns capital and moves toward the great ideal of [becoming a family office](#).

That's a little odd, no? There *is* a lot of demand for those LP stakes; they kind of *ought* to trade at a premium. Here's a fun Business Insider story about the growing dominance of the "big four" multistrategy funds – Millennium, Citadel, Point72, and Balyasny – that features this statistic:

Point72 and Citadel have returned capital to investors, and Millennium can command a five-year lockup period for new money, a term length previously unheard of in the hedge fund world. One allocator told BI that Point72, the \$39 billion firm run by the billionaire New York Mets owner Steve Cohen, had a \$9 billion waitlist – which is more capital than firms like Eisler and Walleye manage.

The demand to invest with Point72 – to give Point72 your money and take back whatever Point72 wants to give you, net of whatever fees it wants to charge – is greater than the supply; surely some aspiring investors would pay 110 cents on the dollar (to existing investors) to get off the waitlist, if only they were allowed to.

Anyway the whole article is interesting, and fits with the thesis that the multistrategy platforms are institutional successors to investment banks:

Goldman Sachs' prime brokerage desk, using regulatory filings, estimated in July that 53 multistrategy firms employed a total of 18,600 people. More than 71% of them worked for one of the big four, leaving the 49 other funds with a combined head count smaller than Millennium's. ...

"They're becoming more and more like investment banks to an extent," said one platform founder with less than \$10 billion in total assets. Others in the industry likened Citadel in particular to pre-IPO Goldman Sachs – a comparison Ken Griffin would most likely welcome, given his laudatory comments about the firm.

There is also a suggestion that the big platforms are qualitatively different from other hedge funds, that they are offering a different product entirely, and that if you can't get into their funds you will choose, not some other hedge fund, but a different asset class:

A different allocator compared the concentration of capital in the four largest firms to passive investing, in which all the assets flow to Vanguard, BlackRock, or State Street.

"For people who can't get into the top guys, they're saying they'll just invest in some other structure or asset class instead," this person said, pointing to private credit as a landing spot for some of this capital.

And:

A February report from JPMorgan's capital advisory team said hedge funds with assets between \$500 million and \$5 billion had net outflows of \$21.5 billion in the past two years, while firms with assets greater than \$5 billion hauled in \$12.2 billion in net new money. ...

"If you're going to compete with Citadel and Millennium in their own backyard, you're already dead," one person who's building out their multistrategy offering told BI.

They added, "Do you have a right to exist – or are you on borrowed time because you raised money when all multistrats could raise money?"

I [sometimes argue](#) that the essential thing that gives a hedge fund the right to exist *is* that it raises money when the raising is good, not that it makes good trades, but I appreciate the self-reflection here.

Memecoins are not securities

Last month, [we talked about](#) alleged manipulation of memecoins, and I wrote that, whatever else it is, it's not securities fraud:

Memecoins are *obviously* not securities, they are *obviously* not "an investment of money in a common enterprise with profits to come solely from the efforts of others," because there are no enterprise, no profits and no efforts.

I got some [pushback](#) on this – like, the Hawk Tuah Girl got sued for securities fraud over her memecoin? – but last week the US Securities and Exchange Commission officially agreed:

The offer and sale of meme coins does not involve an investment in an enterprise nor is it undertaken with a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others. First, meme coin purchasers are not making an investment in an enterprise. That is, their funds are not pooled together to be deployed by promoters or other third parties for developing the coin or a related enterprise. Second, any expectation of profits that meme coin purchasers have is not derived from the efforts of others. That is, the value of meme coins is derived from speculative trading and the collective sentiment of the market, like a collectible. Moreover, the promoters of meme coins are not undertaking (or indicating an intention to undertake) managerial and entrepreneurial efforts from which purchasers could reasonably expect profit.

A footnote adds:

For example, if the promoters' efforts are limited primarily to hyping the meme coin on social media and online forums and getting the coin listed on crypto trading platforms, then there are not likely to be sufficient indicia to establish that purchasers had a reasonable expectation of profits based on the efforts of the promoters.

This strikes me as correct, though a little depressing. I will say, though, that we [talked last week](#) about an effort to use a memecoin as a financing tool for an attempt to purchase Infowars, an actual media business. You can try a basic process like:

1. Launch a consumer-focused, online, meme-y business idea;
- 2. Sell memecoins vaguely associated with your business – they don't promise any *cash flows*, but they have the same *name* as your business, and maybe carry some rights to vote on how you run the business;
- 3. Use the money from selling the memecoins to try to build the business;
- 4. When the business does well, the memecoin goes up.

Is that a securities offering? I think the answer is “obviously yes,” but who can say now really. In the memecoin announcement, the SEC says that it “will evaluate the economic realities of the particular transaction,” and that “products that are labeled ‘meme coins’ in an effort to evade the application of the federal securities laws by disguising a product that otherwise would constitute a security” can still be securities.

Elsewhere in memecoins, here is a profile of Hayden Davis, the guy who did Libra, “a meme coin that was intended to help fund the development of the Argentine economy,” sure it was:

In later interviews, Hayden defended the practice of using insider knowledge to make money from tokens such as \$MELANIA and \$LIBRA.

“It is an insider’s game,” he said in the interview with [YouTuber Stephen] Findeisen. “This is an unregulated casino.”

[Argentine President Javier] Milei, too, compared the crypto market to gambling in an interview with Argentine media outlet Todo Noticias, adding that people who lost money on \$LIBRA had no right to complain.

“It’s like someone who goes and plays Russian roulette and the bullet hits him,” Milei said.

Yeah I mean he said that *after* Libra tanked. It would be funny if he had *advertised* Libra, at launch, as “come play Russian roulette!” Who am I kidding, though, people still would have bought it. They’re not *wrong* that it’s an unregulated casino and everyone knows that.

Elsewhere in crypto enforcement, last week the SEC also dropped its case against Coinbase Inc. You could approximate the theory here as “the old SEC [sued Coinbase](#) for illegally trading tokens that were securities, but the new SEC has decided those tokens are not securities so it dropped the case.” That is probably roughly true, but it is not the SEC’s official reason:

The Commission’s decision to exercise its discretion and dismiss this pending enforcement action rests on its judgment that the dismissal will facilitate the Commission’s ongoing efforts to reform and renew its regulatory approach to the crypto industry, not on any assessment of the merits of the claims alleged in the action. Furthermore, as stated in the joint stipulation, “the Commission’s decision to seek dismissal of this litigation does not reflect the Commission’s position on any other case.”

The legal status of crypto is still kind of uncertain, but the *enforcement* status is “go ahead, do whatever.”

Capital One

Elsewhere in Trump administration regulators dropping Biden-era enforcement actions, last week the US Consumer Financial Protection Bureau [dropped its case](#) against Capital One Financial Corp. for not paying enough interest on one of its high-yield savings accounts. We [talked about this case in January](#). I was kind of sympathetic to Capital One, which to my mind was doing standard banking stuff, but I also wrote that “this is why the CFPB exists”: Bank regulators like it when banks minimize the interest they pay depositors (good for stability!), but consumer protection regulators do not (bad for consumers!). There is arguably a productive tension there. Of course now the CFPB essentially *doesn’t* exist, so never mind.

New asset class

One claim about crypto is that it is a new form of money, or a new way to send money. A broader claim about crypto is that it is a new form of *identity*, or a new way to organize identity online. A maximal claim about crypto is that it is a new sort of *soul*, or a new way of understanding the concept of ensoulment. There’s a 2022 paper by Puja Ohlhaber, E. Glen Weyl and Vitalik Buterin (yes, that Vitalik) proposing “non-transferable ‘soulbound’ tokens (SBTs) representing the commitments, credentials, and affiliations of ‘Souls’” that would “encode the trust networks of the real economy to establish provenance and reputation.” The idea might be that the ineffable factors that make us who we are – our relationships and character and memories and personality – were once vaguely and approximately captured in the concept of a “soul,” but can now be precisely and immutably captured in some set of digital tokens. And then you can, I don’t know, borrow with your soul as collateral.

Anyway now you can use crypto to [bet on the pope’s death](#) :

“Did you know that – thanks to the power of blockchain – you can not only jeopardize your money, but also your soul with a simple Metamask signature?” Polymarket wrote in its newsletter on Feb. 24. “Gambling on the papal selection process was once punishable by excommunication (getting kicked out of the Catholic church). However this policy was either repealed or is now rarely enforced.”

“Not spiritual advice,” the newsletter concluded. “Consult your priest.”

Polymarket is a crypto prediction market where you can bet on whether there will be a new pope:

In the bet’s comments section, users sparred over the morality of their speculation. “Betting on the pope’s health sends you directly to Hell,” one Polymarket user wrote on Tuesday. “Benefiting and hoping for someone’s death seems too immoral for me to bet on this market,” mused another. Commenters shared links to the latest updates on Francis’s health, and drifted into conjecture about a possible papal resignation and the existence of God.

I am not a religious person, but it does feel like betting on the death of the pope is the sort of thing that could get you smitten by lightning, or at least get your crypto wallet hacked. Your tokens might be burned for all eternity.

Things happen

Circle vs. Tether. BlackRock Buys Hutchison's [Panama Ports](#) in Victory for Trump. US Gives [Chevron](#) One Month to End Operations in Venezuela. Hong Kong targets creation of rival to Euroclear. Walgreens Nears Roughly \$10 Billion Deal to Go Private. [FDIC](#) Rescinds Plans on Brokered Deposits, Bank Board Governance. Hudson River Trading has quietly built an \$8 billion global powerhouse. Banks Loan \$2 Billion to Build a 100-Acre AI Data Center in Utah. Billionaire Salinas Says Elektra [Delisting Will Set Him Free](#) . How Federal Workers Are Dealing With the \$1 Limit on Their Corporate Cards. Rothschild hires ex-Moelis banker recorded in viral punching incident. Cali sober. Woolly mice. How a Stuffed Animal Named Billy Possum Tried – and Failed – to Replace the Teddy Bear as America's National Toy.

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

To contact the author of this story:

Matt Levine at mlevine51@bloomberg.net

To contact the editor responsible for this story:

Michael Newman at mnewman43@bloomberg.net

- 1. "Provoked audible frustration" is such a great phrase. I too am sometimes provoked to audible frustration, and I know exactly what that sounds like.
- 2. No it isn't! Come on. First of all, they'd take it back, and you'd have costs in time and stress and lawyers during that process. Second, the chances of them accidentally paying \$6 billion to *you* are much lower than the chances of them accidentally paying \$6 billion to *someone else*, which is probably has negative expected value for you as a creditor of the bank.
- 3. In my comparison, I noted that the banks target some return on equity, essentially an income-statement measure. Shareholders profit from this return on equity in the loose sense that the profits of the bank accrue to the shareholders – much as the net profits of the hedge fund accrue to the LPs. But if the bank's stock price goes up by more than the book return on equity, that suggests an accretion of franchise value that also accrues to the shareholders. There is not really an equivalent process for hedge fund LPs: The fund targets a return on equity, it credits its actual return on equity to the LPs' accounts, and an LP's account is worth its book value.

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

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

**Bloomberg
Law**

Request a Demo

Login

[Securities Law News](#)

March 4, 2025, 5:24 AM PST

Bored Ape Creator Yuga Labs Says SEC Drops Probe Into Firm (1)

Nonfungible token creator Yuga Labs says the US Securities and Exchange Commission had ended a years-long investigation into the company.

- “After 3+ years, the SEC has officially closed its investigation into Yuga Labs,” the company said in a statement posted on X late Monday
- The SEC opened an investigation into Yuga Labs in 2022, Bloomberg News reported then, probing whether sales of its digital assets violate federal law
- Yuga Labs is the creator of the popular Bored Ape Yacht Club collection. It also operates the CryptoPunks franchise
- The SEC declined to comment. A spokesperson for Yuga Labs didn’t respond to request for comment outside of regular business hours
- NOTE: SEC ‘Demolition’ of Crypto Enforcement Gets Cheers, Jeers (2)

(Updates to say SEC declines to comment.)

To contact the reporter on this story:

Emily Nicolle in London at enicolle@bloomberg.net

To contact the editors responsible for this story:

stacy-marie ishmael at sishmael@bloomberg.net

Philip Lagerkranser

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

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Kraken Is Latest Crypto Firm to Say SEC Agrees to Drop Lawsuit

Kraken said the US Securities and Exchange Commission has agreed in principle to drop its lawsuit against the cryptocurrency exchange, the latest in a series of dismissals of legal actions against crypto companies by the market regulator.

There will be no admission of wrongdoing, no penalties paid and no changes to the business, Kraken said in a blog post Monday. A spokesperson for the SEC declined to comment.

In the last month alone, the securities watchdog has dismissed or paused at least nine 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.

Read more: SEC 'Demolition' of Crypto Enforcement Gets Cheers and Jeers

In November 2023, the agency sued San Francisco-based Kraken for operating as an unregistered securities exchange, broker, dealer and clearing agency. Earlier that year, Kraken reached a settlement after the agency alleged that the firm's cryptoasset staking service was an illegal sale of securities. Kraken agreed then to immediately cease offering staking services in the US and to pay \$30 million in penalties. The company has since restarted the US staking business.

A slew of enforcement actions were taken during the Biden administration after the collapse of the crypto exchange FTX in 2022.

The SEC'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.

On the campaign trail, President Donald 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 sent it down as much as 28% off the peak.

Kraken co-founder Jesse Powell was a large contributor to Trump's campaign.

--With assistance from **Emily Nicolle** and **Nicola M White**.

To contact the reporter on this story:

Olga Kharif in Portland at okharif@bloomberg.net

To contact the editors responsible for this story:

stacy-marie ishmael at sishmael@bloomberg.net

Michael P. Regan, Dave Liedtka

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

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

"Hearing from judicial branch employees who work in courtrooms where all the General Services Administration workers have been fired as part of Elon Musk's mandatory RIFs. There is no one left to fix burnt-out lightbulbs or respond to any other facilities requests." — Bluesky

 bsky.app/profile/jaywillis.net/post/3ljkxzsbyjk2r

Jay Willis

@jaywillis.net

Hearing from judicial branch employees who work in courtrooms where all the General Services Administration workers have been fired as part of Elon Musk's mandatory RIFs. There is no one left to fix burnt-out lightbulbs or respond to any other facilities requests.

March 4, 2025 at 9:21 AM

866 likes

1h

Yep. As a retired GSA employee. I can tell you it won't take long for the judge's to go ape shit. By the way, so everyone understands, the courthouse belongs to GSA not the courts. They are tenants.

1h

Give toilet plungers to the judges. Perhaps that will motivate them on some of the slow-moving cases to stop Musk and Trump

1h

Roberts in particular should take the lead.

1h

That motherfucker needs to go in the bowl head first.

1h

So we're finally going to get an answer to the question of how many United States District Judges it takes to screw in a lightbulb

1h

none. you need a CIRCUIT judge for that.

SEC Dangles \$50,000 Incentive for Employees to Resign or Retire

The US Securities and Exchange Commission is offering eligible employees a \$50,000 incentive to resign or retire by April 4, according to an email reviewed by Bloomberg.

The message, sent Friday by SEC Chief Operating Officer **Ken Johnson** to all staff, comes as the Trump administration seeks to slash the size of the federal government and fire thousands of workers.

The offer is a voluntary separation incentive or voluntary early retirement program, according to the email. The deadline to apply is March 21.

Eligible employees must have been on the agency's payroll before Jan. 24. They must voluntarily leave through resignation, transfer to another agency or immediate retirement. If they accept a voluntary separation agreement and return to the SEC within five years, they must pay back the incentive in full, the guidance states.

An SEC spokesperson declined to comment.

The agency last week instructed all staff, including the unionized workforce, to return to the office starting April 14.

To contact the reporters on this story:

Nicola M White in Washington at nicwhite@bloomberg.net;

Lydia Beyoud in Washington at lbeyoud2@bloomberg.net

To contact the editors responsible for this story:

Megan Howard at mhoward70@bloomberg.net

Stephanie Stoughton

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

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

**Bloomberg
Law**[Request a Demo](#)[Login](#)[Securities Law News](#)

March 3, 2025, 3:28 PM PST

GSA to Nix SEC's LA, Philadelphia Leases With Telework Possible

The Securities and Exchange Commission's Los Angeles and Philadelphia regional offices could close in coming months as part of an effort by the General Services Administration to reduce federal government office space and related costs.

The GSA plans to terminate those two leases, the SEC's Chief Operating Officer Ken Johnson told staff in an email Monday that was reviewed by Bloomberg.



The seal of the US Securities and Exchange Commission (SEC) on the agency's headquarters in Washington, DC

Photographer: Daniel Heuer/Bloomberg

Reuters reported on the plans earlier.

The GSA is also looking to terminate the lease of the Chicago regional office, though the regulator said it had informed the GSA that terminating the lease could result in significant financial penalties, the email said.

The GSA plans to empty the Chicago and Philadelphia offices by August and the Los Angeles one by September, according to Johnson's email. If new office space isn't obtained by then, staff will move to full-time telework.

Agency spokespeople declined to comment.

The agency paid more than \$30 million during fiscal 2024 for GSA-owned rental space, according to a report. The SEC has worked closely with the GSA to manage the cost of its facilities through "rightsizing" of office space when leases expire, the agency said in its fiscal 2025 congressional budget request. That effort has resulted in about \$8.5 million in annual rent savings since 2011, according to the budget request.

Such a move would be at odds with the Trump administration's requirement for federal workers to return to the office. SEC employees are being required to return to their offices by April 14, Bloomberg previously reported.

The lease terminations aren't related to staff reorganization or reductions in force, Johnson said in the email. The SEC is nevertheless undertaking efforts to reduce its headcount. It recently informed the heads of each of its 10 regional offices that their positions would be eliminated, according to a person familiar with the matter.

It is also offering staff a \$50,000 incentive payment if eligible employees opt to resign from their positions. The deadline to apply is March 21.

Read more: SEC Dangles \$50,000 Incentive for Employees to Resign or Retire

The GSA, which oversees the leasing and management of government buildings across the country, is undertaking a sweeping effort to dramatically reduce the square footage it leases for its workforce.

It pays about \$5 billion annually to rent 144 million square feet of office space, according to GSA data. The Department of Government Efficiency, spearheaded by billionaire and President Trump confidante Elon Musk, has been working with the agency to cancel the leases for many of those properties.

Read more: DOGE Risks a New \$5 Billion Headache for Struggling US Landlords

--With assistance from **Nicola M White**.

To contact the reporter on this story:

Lydia Beyoud in Washington at lbeyoud2@bloomberg.net

Musk Repeats Claim That the Fed Is 'Absurdly Overstaffed' (1)

- Federal Reserve Act insulates Fed on staffing, budget
- Central bank's balance sheet deficit could attract scrutiny

Elon Musk took aim at the Federal Reserve in a post on X Sunday, calling the US central bank "absurdly overstuffed."

It marks the second time that Musk, who has headed up efforts under President Donald Trump to slash federal government spending, has targeted the central bank with the same charge. He posted a similar accusation in December.

Musk's Department of Government Efficiency, or DOGE, has been instrumental in cutting government staff and demanding employees at many agencies submit emails accounting for their recent work.

Fed Chair Jerome Powell last month rebutted the idea that the central bank has an excess of employees.

"Overworked maybe, not overstuffed," Powell replied in response to a question from Democratic Senator Andy Kim of New Jersey at a congressional hearing. "Everybody at the Fed works really hard. It's a place where people work very hard."

Legal Protection

The Federal Reserve Board in Washington and its 12 regional reserve banks across the US employed roughly 24,000 people in 2023.

The law that established the central bank and governs its operations stipulates the Fed's Board of Governors "shall determine and prescribe the manner in which its obligations shall be incurred."

"The Federal Reserve Act specifically gives the Fed authority to hire and fire its employees, and they're not part of the civil-service system," said Scott Alvarez, a former general counsel at the Fed. "So as a legal matter, the Fed could say, 'We have the sole authority to do hiring and firing.'"

Unlike many parts of the federal government, the US central bank doesn't receive funding through the congressional budgetary process. Its income derives from its own operations — primarily from the interest on government securities that it has acquired through open market operations.

Nonetheless, the Fed could be vulnerable at the moment to extra scrutiny over its finances.

For many years, income from the Fed's balance sheet was more than enough to cover operational expenses and resulted in a surplus that was turned over to the Treasury each year. Remittances to the Treasury peaked at \$117 billion in 2015.

But interest expenses on bank reserves have ballooned in recent years as the Fed raised interest rates to combat inflation, resulting in a deficit of \$116 billion in 2023. The figure, however, represents a paper loss and has no direct impact on federal deficits or debt.

The Fed budgeted \$7.1 billion to cover operating expenses in 2024, 10% higher than its actual expenses in 2023, according to its 2023 annual report.

(Updates with additional comments and context, from fifth paragraph.)

To contact the reporter on this story:

Amara Omeokwe in Washington at aomeokwe@bloomberg.net

To contact the editors responsible for this story:

Cécile Daurat at cdaurat@bloomberg.net

Christopher Condon, Christopher Anstey

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

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

News from Bloomberg Terminal

March 4, 2025, 10:24 AM PST

Tesla Offers Buyer Perks to Drum Up Interest With Sales Slumping

- EV company pushes free supercharging, low-cost financing
- Demand has softened amid Musk backlash, aging vehicle lineup

By Kara Carlson

(Bloomberg) --

Tesla Inc. is tempting customers with charging perks and cheap financing to help revitalize sales amid a slow start to the year for the electric-vehicle maker.

The company is offering free lifetime supercharging on Foundation Series Cybertrucks purchased after Feb. 28. It's also advertising 0% APR or zero due at signing for Model 3s and discounts on older Model Y units as it ramps up production of a refreshed version. The more expensive Model X and Model S also come with lifetime supercharging.

Tesla's first quarter is traditionally slow, but this year's slump is significant. Vehicle sales and shipments have dropped year-over-year in key markets, with China – its biggest market – reporting a 49% drop in Tesla shipments last month, according to preliminary data from China's Passenger Car Association. In France, registrations fell 26% in February after a slow January, while overall European sales declined 45% year-over-year in January. And in California, Tesla's largest US market, Model 3 registrations dropped 36% in 2024.

Tesla's shares fell 4.7% at 1:20 p.m. in New York on Tuesday amid broad market declines over concerns about a global trade war. The EV maker's stock tumbled 30% this year through Monday's close.

Tesla's Chief Executive Officer Elon Musk's polarizing political moves in the US and Europe this year have fueled consumer backlash, with showrooms and supercharger locations experiencing protests and vandalism. Some Tesla owners have even added anti-Musk stickers to their vehicles, while others are trading in their Teslas or opting for other EV models.

The company's executives have said Tesla will return to growth this year despite the first annual sales decline in more than a decade in 2024. Last year the company pushed a number of end-of-year deals in an attempt to boost its 2024 numbers. Tesla's 2025 outlook didn't include specific figures, nor did it repeat a prediction Musk had given in October for a potential 20% to 30% growth in sales.

Tesla is also contending with an increasingly older EV lineup as it works toward an expected start of production of more affordable models in the first half of this year, however details on the upcoming vehicles are limited. The EV maker is expected to lose several weeks of output this quarter as it upgrades its factories to produce the redesigned Model Y, its most popular vehicle.

In addition to the supercharging and financing perks, Tesla is also advertising the federal EV tax credit, an incentive the Trump Administration has threatened, on a number of its vehicles including non-Foundation Series Cybertruck models. In June, Tesla had said it plans to stop selling its Foundation Series of the Cybertruck, which started deliveries in late 2023, "pretty soon."

To contact the reporter on this story:

Kara Carlson in Austin at kcarlson72@bloomberg.net

To contact the editors responsible for this story:

Brandon Harden at bharden9@bloomberg.net

Lindsay Blakely

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Gilead Sciences sets aside \$200 million to resolve HIV drug probe

 [reuters.com/business/healthcare-pharmaceuticals/gilead-sciences-sets-aside-200-million-resolve-hiv-drug-probe-2025-03-03](https://www.reuters.com/business/healthcare-pharmaceuticals/gilead-sciences-sets-aside-200-million-resolve-hiv-drug-probe-2025-03-03)

Luc Cohen

Gilead Sciences is seen in Oceanside, California, U.S., April 29, 2020. Purchase Licensing Rights [↗](#), opens new tab

NEW YORK, March 3 (Reuters) - Gilead Sciences (GILD.O) [↗](#), opens new tab set aside \$200 million for a potential settlement with federal prosecutors to resolve an investigation into the drugmaker's promotional speakers program for HIV drugs.

The Foster City, California-based company disclosed the potential resolution with the Manhattan U.S. Attorney's office in a Friday afternoon securities filing.

Gilead said it had received a subpoena in 2017, but did not provide additional details about the probe in its filing.

The company, which first disclosed the probe in 2018, said in a statement on Monday: "We have taken a litigation accrual for a potential settlement."

A spokesman for the Manhattan U.S. Attorney's office declined to comment.

Promotional speaker programs in which doctors are paid by drugmakers to deliver lectures about their products have drawn past Justice Department scrutiny.

In 2020, Swiss drugmaker Novartis (NOVN.S) [↗](#), opens new tab paid more than \$600 million to settle with the Manhattan U.S. Attorney over claims its speaker program was a cover for paying bribes to doctors to prescribe its medication.

Novartis at the time said it was "committed to doing what is right" and had established an enhanced compliance framework.

Gilead's HIV drug sales rose 16% to \$5.45 billion in the fourth quarter of 2024, contributing to a surge in its share price.

The company expects to launch a new drug, lenacapavir, for protecting against HIV infection later this year.

Keep up with the latest medical breakthroughs and healthcare trends with the Reuters Health Rounds newsletter. Sign up [here](#).

Reporting by Luc Cohen in New York; Editing by Bill Berkrot

FTX CEO Who Led 'Model' Bankruptcy Is Up for \$41 Million Bonus

- John Ray helmed 'sinking ship,' lead turnaround, FTX said
- Bonuses would push cost of FTX bankruptcy near \$1 billion

John J. Ray III, who led FTX's restructuring and efforts to return billions of dollars to customers after it imploded in 2022, stands to collect bonuses totaling \$41 million.

Ray — who also oversaw the liquidation of Enron Corp. — and his consulting firm, Owl Hill Advisory LLC, are in-line to receive a \$3 million completion fee and \$38 million incentive fee under his court-approved compensation package, according to court papers filed by FTX on Sunday. The size of the awards could be challenged by creditors or the US Justice Department's bankruptcy unit and must be approved by a judge.

The size of the bonus is a reflection of Ray's work achieving "a hugely successful and, in many ways, unprecedented" resolution of the massive and complex crypto bankruptcy, FTX said in court papers. If approved, Ray's bonuses would push the total cost of FTX's bankruptcy to just shy of \$1 billion.



John Ray

Photographer: Al Drago/Bloomberg

FTX said the proposed payment was justified, noting higher than anticipated customer payments while comparing the award to executive pay at other large companies. In similar bankruptcy cases, the firm said, the top restructuring executives got an average pay of nearly half of a percentage point of what creditors recovered. In this case, Ray is getting less than one-third of 1% of recoveries, by their calculations. Chief executives, running comparably-sized public companies received average pay of \$16.7 million, FTX said.

"Mr. Ray took command of a sinking ship and immediately became an indispensable asset for all of the Debtors' advisory teams (including the prudent hires that he made)," FTX said. "He utilized his prior experience to not only prevent complete disaster but produce an overwhelmingly positive outcome for all stakeholders involved."

In October, Judge John Dorsey called the proceedings "a model case" for dealing with a very complex Chapter 11 bankruptcy.

An FTX spokeswoman declined to comment.

Customer claims traded between 10 cents and 14 cents on the dollar after the exchange collapsed in November 2022, indicating the market expected only about \$1 billion would be returned to customers, FTX said. But distributions to FTX customers are now expected to exceed \$12.5 billion under a plan that pays customers between 119% to 143% on their claims which are valued at the time the company filed Chapter 11, the company said.

Law firms and other advisers who tracked down billions of dollars in digital assets and cash scattered across a byzantine network of accounts and legal entities operating under the FTX umbrella have been paid \$948 million and \$952 million in fees have already been approved by the court, Bloomberg New reported last week. Ray's consulting firm has already been paid more than \$8 million, according to court records.

FTX on Sunday attributed the turnaround to Ray and his unique experience as president and chairman of Enron during its bankruptcy. Ray worked nearly 6,000 hours on the FTX bankruptcy over the past two years and risked his reputation when he took-over the business from Sam Bankman-Fried, the company said.

If the bankruptcy went awry, Ray also faced the prospect of costly litigation, FTX said. Ray assumed the chief executive role despite knowing there was limited insurance for FTX directors and officers, the company added. The incentive award, devised by independent board members at the start of the bankruptcy, was intended "to account for the inherent risks and responsibilities of his role," according to FTX.

FTX's independent board members reviewed financial and legal analysis from law firm White & Case LLP and financial adviser Alvarez & Marsal to determine the appropriate amount of the incentive fee, according to court documents. The award was unanimously approved by the independent board following a December meeting and reviewed again by advisers liquidating FTX, Sunday's filing said.

The case is FTX Trading Ltd., 22-11068, US Bankruptcy Court for the District of Delaware.

To contact the reporters on this story:

Jonathan Randles in New York at jrandles5@bloomberg.net;

Steven Church in Wilmington, Delaware at schurch3@bloomberg.net

To contact the editors responsible for this story:

Irene García Pérez at igarciaperez@bloomberg.net

Cristin Flanagan

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

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

GWG Trustee Accuses Holland & Knight Partner of Aiding Fraud

- GWG liquidating trustee seeks at least \$148 million in damages
- Suit is among several brought by trustee seeking clawbacks

A Holland & Knight LLP partner helped the former leader of GWG Holdings Inc. in a scheme to “loot” the bond seller, a litigation trustee for the bankrupt company’s creditors alleged.

Holland & Knight litigation partner William “Bill” Banowsky knowingly participated in a fraudulent plan orchestrated by Bradley K. Heppner, a former GWG board director and chair, the litigation trustee said in a complaint filed Friday in the US Bankruptcy Court for the Southern District of Texas.

The trustee is seeking at least \$148.4 million in damages, plus other costs.

The suit accuses Banowsky of helping Heppner use a series of complex transactions and “sham loans” between related entities to move money and extract funds from GWG into companies that benefited Heppner’s businesses and trusts.

GWG, a seller of secondary life insurance bonds, filed for Chapter 11 in 2022 amid a probe by the US Securities and Exchange Commission into the company’s bond sales and accounting. The bankruptcy court approved GWG’s plan to wind down its estate in June 2023, including the approval of a trust to pursue claims on behalf of GWG’s estate.

The new suit is among several broadsides by GWG’s litigation trustee. In September, the trustee sued Foley & Lardner LLP, arguing that it committed malpractice when it helped with loan and equity purchases that were unfair to GWG. The trustee has also sued Heppner, who has said the case lacks support and should be dismissed.

The trustee’s claims in the new suit include aiding and abetting a breach of fiduciary duty, civil RICO violations, conspiracy, and fraud. The trustee said Holland & Knight is vicariously liable for Banowsky’s actions.

Heppner used GWG's ability to raise money to direct funds into Beneficient Co. Group LP, of which Heppner is the CEO, according to the complaint. The funds would then flow through Highland Capital Lending Partners—purportedly Beneficient's senior lender—which ultimately benefited trusts and companies associated with Heppner, the trustee said. Beneficient provides liquidity to alternative assets holders.

Beneficient declined to comment on behalf of itself and Heppner. Bonowsky and Holland & Knight didn't immediately respond to requests for comment Monday.

Banowsky and Holland & Knight are accused by the trustee of misrepresenting Heffner's control over Highland Capital.

Heffner needed to depict Highland as independent and willing to collect loans from Beneficient, as well as have Highland "make threats and demands for payment" from Beneficient on debts it was purportedly owed, the trustee said.

Banowsky helped disguise Heppner's relationship with Highland when GWG handed over \$128 million to pay down Beneficient's purported debt to Highland, the trustee said. Banowsky in February 2019 also worked with Heppner and his friend, Keith Martens, to change documents to make it seem like Martens controlled Highland, the trustee said.

Banowsky worked with Heppner to backdate organization documents related to Highland's control structure and helped conceal Heppner's relationship with Highland by issuing opinion letters with misstatements to GWG's special committee counsel in 2019, the trustee said.

Money from GWG that went to Beneficient and Highland was used for the benefit of Heppner and his family, including a family trust which helped paid for his children's private school, the trustee said.

The litigation trustee is represented by Reid Collins & Tsai LLP. Beneficient and Heppner are represented by Quinn Emanuel Urquhart & Sullivan LLP. Holland & Knight is represented by Rusty Hardin & Associates LLP.

The case is GWG Holdings, Inc. and GWG DLP Funding Holdings VI, LLC , Bankr. S.D. Tex., No. 22-90032, complaint 2/28/25 .

To contact the reporter on this story: James Nani in New York at jnani@bloombergindustry.com

To contact the editor responsible for this story: Maria Chutchian at mchutchian@bloombergindustry.com

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Semler Scientific Cites Crypto Accounting Rules as Risk Factor

- Health-care tech company has called Bitcoin “digital gold”
- Rules may adversely affect stock’s market price, it said

Health-care technology company Semler Scientific Inc. warned investors that the first US crypto accounting rules pose an escalated risk of financial unpredictability and could impact its stock price.

The Financial Accounting Standards Board’s landmark rules direct businesses to capture the highs and lows of their cryptocurrency holdings. Semler Scientific, through its 10-K annual report filed late Friday, joins software maker MicroStrategy Inc. and several others in citing the accounting change as a risk to business operations.

The health-care tech company adopted Bitcoin as its primary treasury reserve asset last May. It said as of last month it had acquired more than 3,000 bitcoins, valued then at approximately \$300 million.

The accounting rules, published in December 2023, require businesses that hold Bitcoin or Ethereum to record their coins at fair value, a measurement technique that aims to capture current market value of currency as opposed to historical cost or other valuation.

Semler Scientific’s disclosure is new in its annual report this year. The crypto accounting requirements take effect for both public and private companies with fiscal years that begin after Dec. 15, 2024, which means this year for calendar year-end companies. Semler Scientific said it chose to adopt the rules early, starting Jan. 1, 2024.

FASB’s rules were a long time coming for the crypto industry, which had asked the US standard-setter to write requirements three times since 2017. Historically, in the absence of guidelines, businesses that didn’t qualify as investment companies had defaulted to an American Institute of Certified Public Accountants practice guide, recording coins at the price they paid and marking them down permanently if their value decreased.

Semler Scientific, which develops products related to the treatment and detection of chronic diseases, told investors in its annual report the rules require it to provide certain interim and annual disclosures related to its Bitcoin holdings.

Due to the “volatility in the price of bitcoin,” Semler Scientific said in its annual report it expects adopting the rules may affect the carrying value of its Bitcoin on its balance sheet. The disclosure was part of the company’s broader section outlining possible threats related to Bitcoin, such as decreased investor confidence in the digital asset.

Semler Scientific chairman Eric Semler said in February the company has “unwavering confidence” in Bitcoin’s long-term potential, calling the asset “digital gold.”

The company declined to comment further on the information it provided in its 10-K.

To contact the reporter on this story: Jorja Siemons in Washington at jsiemons@bloombergindustry.com

To contact the editors responsible for this story: Jeff Harrington at jharrington@bloombergindustry.com; Amelia Gruber Cohn at agrubercohn@bloombergindustry.com

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

This copy is for your personal, non-commercial use only. Distribution and use of this material are governed by our Subscriber Agreement and by copyright law. For non-personal use or to order multiple copies, please contact Dow Jones Reprints at 1-800-843-0008 or visit www.djreprints.com.

<https://www.wsj.com/finance/currencies/who-is-giancarlo-devasini-tether-jeremy-allaire-circle-90a408b9>

The Titans Battling for Control of the Crypto Future

Trump's call to bring crypto into the mainstream has raised the stakes in a kill-or-be-killed battle between an iconoclastic Italian billionaire and his almost perfect American foil

By [Angus Berwick](#) [Follow](#)

March 3, 2025 9:00 pm ET

LUGANO, Switzerland—Giancarlo Devasini, one of the world's newest billionaires, leads a reclusive life in this Alpine town. He stays in a modest apartment by the lake, strolls the cobbled streets with a black hoodie pulled over his head—and rages about the American rival he believes is trying to kill his business.

Devasini is the main owner of Tether, whose eponymous digital dollar is an indispensable part of the cryptocurrency industry. Tether's centrality has earned Devasini tremendous wealth and vast influence over the sector, and the support of [a top ally of President Trump](#).

Critics say Tether has become the [tool of choice](#) for criminal groups to spirit money around the globe.

Out to disrupt his business empire is Devasini's almost perfect foil, Jeremy Allaire, founder of Tether's archrival, Circle, which issues its own so-called stablecoin, called USD Coin, or USDC. Allaire, a suit-wearing executive as comfortable in Davos as he is on Wall Street or the halls of Congress, is running a campaign to regulate Tether out of existence.

Devasini has told business associates that Circle is bad-mouthing Tether to politicians and whipping up enforcement actions against his company. They said that in his view, Circle wants to turn the industry into just another regulated corner of finance, while Devasini wants crypto to stay true to its swashbuckling, antiestablishment roots.



Tether chief Giancarlo Devasini in Milan in 2014. PHOTO: ALBERTO GIULIANI

“Circle will not win if Tether is alive,” Devasini told an associate several months ago.

The fight is over the future of the \$3 trillion crypto industry. The pro-crypto Trump administration is meant to usher in a golden age for the sector, and on Sunday, Trump announced the [formation of a crypto strategic reserve](#). But in reality, the call to bring crypto into the mainstream through government regulation has opened up a kill-or-be-killed battle among crypto players. Laws, while expected to be broadly friendly to the industry, could be devastating for individual players such as Tether if they are on the wrong side of new rules.

Allaire has encouraged the U.S. and other governments to pass laws that ban the use of Tether’s tokens, which are issued offshore. One such law fully took effect in the European Union in December, and similar bills have been introduced in the U.S.

Tether is the clear industry leader—its stablecoin is used in four out of five cryptocurrency transactions. Tether’s holding company, of which Devasini owns half, said it earned \$13 billion in profit last year, double that of [BlackRock](#) and mostly generated from the pile of supersafe Treasury bills that Tether owns to back its currency 1-to-1 with the dollar.

Allaire has regularly testified in Congress to call for greater regulation that would benefit Circle at Tether's expense. A top deputy pressed lawmakers last year to target Tether, [citing its tokens' use in terrorist financing](#). The [Wall Street Journal reported](#) in October that the Justice and Treasury Departments were investigating Tether for possibly violating financial crime laws.

"We want to make sure that USDC is the preferred digital dollar," Allaire said in an interview.

Jeremy Allaire, founder of Circle, a rival cryptocurrency company. PHOTO: TIMOTHY MULCARE FOR WSJ

Devasini, in contrast, eschews the spotlight and almost never speaks publicly. On paper, the 60-year-old has been Tether's chief financial officer, and on Monday the company said he would transition to become chairman. In reality, he has always run the operation—even though he passes out business cards that say "No title, No job, Nothing." Behind the scenes, he is counting on allies such as Commerce Secretary Howard Lutnick, whose firm Cantor Fitzgerald holds much of Tether's reserves, to snuff out hostile legislation backed by Circle, associates said. Lutnick stepped down from Cantor [after his confirmation to the cabinet in February](#).

Both companies declined to comment on the other directly. Circle isn't focused on the "unregulated money world," Allaire said, but rather the entire \$100 trillion market for legal

electronic money. When the host of a crypto YouTube show asked Devasini's top deputy Paolo Ardoino in February about Circle, he responded with a grin: "You named the name, I didn't name the name."

Tether has repeatedly denied aiding criminal actors and has said it cooperates with law-enforcement agencies.

Make the dollar scream

Devasini, an Italian, charted [a peripatetic career](#), first as a plastic surgeon in Milan, then as an electronics importer in Hong Kong. In 1995, Italian prosecutors charged him with fraud for helping run a software piracy gang. Devasini struck a plea bargain with authorities and paid a settlement to [Microsoft](#).

He later discovered the nascent crypto industry, and around a decade ago spotted an opportunity. Crypto companies couldn't connect their digital currencies with the real-world banking system.

Paolo Ardoino, one of Devasini's top deputies, often takes the public role for Tether. PHOTO: CAMILO FREEDMAN/BLOOMBERG NEWS

Launched in 2014 and registered in the British Virgin Islands, Tether aimed to fix this problem. Traders could exchange their real-world currencies for tether at a value pegged to the dollar, and exchange the stablecoin for other tokens near instantaneously via digital blockchains.

In Devasini's eyes, tether was meant to subvert traditional finance. His wife, an artist, exhibited paintings of dollar bills with the image of George Washington screaming because, she said, they had "no more value."

Allaire's mission was different. The American, now 53, was an established Silicon Valley entrepreneur who had served as chief technology officer at software firm Macromedia, which pioneered Flash animation. With Circle, which he set up in Boston the year before Tether's debut, Allaire wanted to create a new financial system for the internet age that would update an inefficient patchwork of banking networks that often snarled international payments.

While most of the crypto community relished the unregulated marketplace, Allaire's strategy to grow Circle by working with regulators was ironically "the contrarian bet," said Hemant Taneja, CEO of venture-capital firm General Catalyst, where Allaire had also worked.

Taneja and other big-name U.S. investors, including fellow venture capitalist Jim Breyer, known for his early stake in [Facebook](#), lined up to fund Allaire's vision. [Goldman Sachs](#), asset-managers BlackRock and Fidelity, as well as crypto exchange [Coinbase](#), all later invested, too. Allaire remains Circle's largest individual shareholder.

Regulators were skeptical when Allaire knocked on their doors and sought money-transmitter licenses. He quickly gained a reputation as the adult in the room amid a young, untested industry, full of mavericks and grifters. Allaire first testified before Congress in late 2013 and called for the U.S. to take the lead in putting guardrails on crypto to avoid allowing criminals to seize the advantage.

"He is as good as anyone I know at sitting down with very senior Washington politicians," Breyer said.

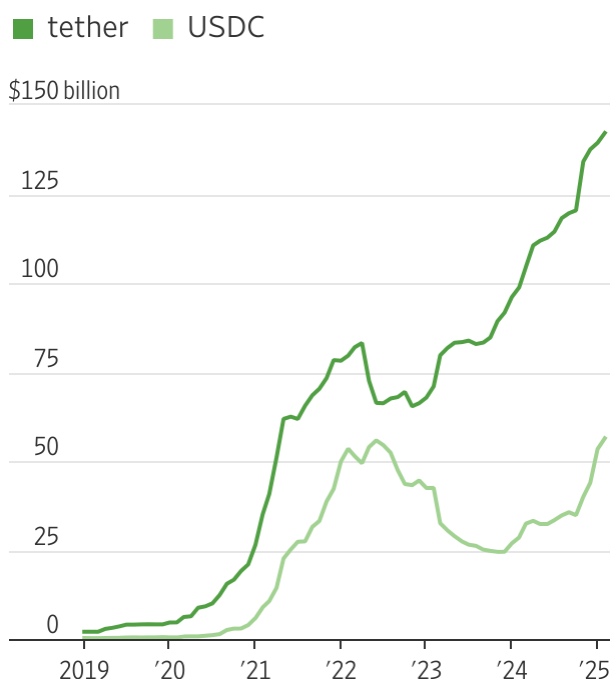
The mudslinging between Circle and Tether started when crypto trading hit the mainstream in 2020.

Tether's "greatest feature is its non-compliance and opacity," Allaire tweeted in January that year, noting it had become a solution for those wanting to bypass the financial system.

In letters to authorities in the U.S. and elsewhere, Circle raised the alarm about how unregulated stablecoins could harm consumers. Circle that July flagged to the Financial

Stability Board, an international body that monitors global finance, an incident that happened two years earlier in which tether temporarily lost its dollar peg because authorities seized a chunk of its reserves as part of a money-laundering investigation. Circle said this showed [how such stablecoins could potentially fail](#), wiping out consumers' crypto holdings.

Total value of tether and USDC markets



Source: CoinMarketCap

Circle promoted its transparency and released audited financials in 2021. It later hired accounting firm Deloitte to sign off on comprehensive monthly statements covering USDC's reserves, which consist mostly of Treasuries, plus some short-term Treasury loans and cash.

Tether, in contrast, releases financial statements that are far lighter in detail, and did so only after it was [forced to by New York state regulators](#). Tether also supplements its Treasuries with bitcoin, commercial loans, gold and unspecified other investments.

Devasini griped to associates in messages reviewed by the Journal about unfair comparisons with Circle.

He branded USDC a "shitcoin" and said auditors wouldn't work with Tether due to its reputation, claiming others were spreading lies about his company online.

'Flight to quality'

After years of mediocre returns, Tether and Circle stumbled into a gusher of money in 2022. When the Federal Reserve raised interest rates, Tether's Treasury holdings went from earning tens of millions of dollars a year to hundreds of millions a quarter.

A monitor shows values for a variety of cryptocurrencies in Hong Kong, including tether and USDC.

PHOTO: JEROME FAVRE/EPA/SHUTTERSTOCK

Devasini spent little of the windfall on himself. He often turned up to meetings in a worn tracksuit with a cap emblazoned with the word “FOOL” and a tangle of keys and memory drives clipped to a sling over his shoulder. Nonetheless, he liked to brag to associates about how much Tether was raking in each day.

He also felt his new riches painted a target on his back. At a meeting in the Bahamas that December, Devasini told a business partner he believed Tether posed such a threat to the U.S.-dominated international banking order that the White House could seek to shut down Tether at any moment.

Allaire, meanwhile, was deepening his ties to the traditional financial world. By the end of 2022, Circle kept most of its reserves at [Bank of New York Mellon](#), the world’s largest custody bank, as well as some cash at other regulated financial institutions. BlackRock managed its Treasury portfolio.

Tether was largely run by Devasini and a small band of fellow outsiders, including Ardoino, a pugnacious Italian computer programmer, according to people familiar with the company. Circle had hundreds of staff, along with a board of directors stacked with former corporate executives.

Allaire tweeted “Flight to quality” about traders ditching tether for USDC as his stablecoin gained ground on its rival.

But Circle stumbled when Silicon Valley Bank collapsed in March 2023, trapping over \$3 billion of Circle's cash reserves. Spooked traders [rushed to sell USDC](#), knocking its price down to 87 cents. Like a money-market fund, Circle's price isn't meant to fluctuate from \$1.

Tether rubbed salt in Circle's wounds by touting that it had no exposure to SVB. "Flight to safety," retorted Ardoino on Twitter as traders flooded back to tether.

USDC recovered its peg after regulators rescued SVB, which included many depositors who held cash far above the federal insurance level. Some \$20 billion drained out of USDC over the rest of the year.

Ardoino warned that people should "truly beware" of a stablecoin company like Circle for keeping reserves in uninsured cash deposits, which he said made USDC vulnerable to a bank failure, despite Tether's own money-seizure incident a few years earlier. Allaire said Circle needed to keep a small portion of its cash reserves outside BNY Mellon and other major global banks to facilitate customer redemptions.

That June, Allaire petitioned Congress for a stablecoin bill that would mandate strict reserve requirements and allow issuers to hold cash at the Federal Reserve. In a broadside against Tether, he called for measures to bar the circulation of digital dollars issued offshore that "do not play by U.S. rules." He said, "At worst, they are actively undermining U.S. national interests and security."

He and his deputies fanned out around the globe—Japan, Singapore, the EU, Brazil—to advise other governments to impose stablecoin laws, and sign up foreign banking partners that would allow local Circle customers to deal directly with a regulated institution.

Circle gains ground

At home in Lugano last year, Devasini was unnerved by tightening legal strictures—caused both by growing regulations and allegations of criminal use of tether.

The small Swiss city was his "refuge" from the outside world, according to Lugano's mayor, Michele Foletti. Devasini often worked out of a bland office above a sports bar, and dined with Foletti at a restaurant that served bitcoin-themed panettone. Devasini's wife unveiled a sculpture of Satoshi Nakamoto, the pseudonymous creator of bitcoin, in a lakeside park.

Lugano, where Giancarlo Devasini lives. An office where he worked, and a restaurant where he dined with the mayor. Devasini's wife, an artist, made a sculpture of Satoshi Nakamoto, the pseudonymous creator of bitcoin, in a lakeside park.

ANGUS BERWICK/WSJ

Devasini told associates he wouldn't travel to the U.S. In a chat group, he asked for information about the fate of Kim Dotcom, founder of the defunct Megaupload website, whom the Justice Department was seeking to extradite on piracy charges.

In April 2024, Treasury singled out tether for being used to help [fund Russia's war machine](#). In June, the slogan "Tethered to Corruption" appeared on billboards in Washington, D.C., and New York's Times Square. It was part of an advocacy group's campaign to bring attention to tether's use by terrorists and drug cartels. It called the company "the next FTX," after jailed Sam Bankman-Fried's bankrupt exchange.

Devasini saw Circle's hand in the negative attention. "They are behind every single attempt to bad-mouth Tether," Devasini told a business partner.

Ardoio later publicly accused Tether's competitors of funding the advocacy group's campaign. The group, Consumers' Research, which in the past has led [campaigns against environmental, social and corporate-governance investing](#), said it never discloses donors' identities.

Circle declined to comment on it.

Circle executives, however, regularly met with high-ranking Treasury officials and other authorities throughout 2024 to flag tether's national security risks, according to people familiar with the discussions. Asked about tether at a congressional hearing that February, Circle's senior policy director said she hoped U.S. authorities were studying how its rival was enabling "malign activities."

Treasury was so concerned by tether's proliferation among America's enemies that it considered whether to impose sanctions on Tether itself, the people said. This would lock Tether out of the U.S. banking system, likely dooming its business. The department also requested new powers from Congress to target offshore dollar-backed stablecoins, aiming to rein in Tether, though the powers weren't approved.

Sens. Kirsten Gillibrand (D., N.Y.) and Cynthia Lummis (R., Wyo.) introduced a bill in April that would ban unregulated stablecoins. "I would choose Circle over Tether," Lummis said at the time.

Sen. Cynthia Lummis has introduced bills to regulate cryptocurrencies. PHOTO: MARCO BELLO/REUTERS

Circle also obtained a license to operate across the EU under new regulations that required stablecoin issuers to hold at least 30% of their reserves in cash in local banks. Tether opposed the condition as creating more risk, citing SVB's collapse. Coinbase and other exchanges delisted tether tokens for their EU clients in response.

Another win for Circle came in December when Binance, the world's largest crypto trading platform, partnered with it to grow USDC's adoption. The once freewheeling exchange had been the center of the tether trade for years. But after pleading guilty to violating U.S. financial-crime laws in late 2023, even Binance was siding with Allaire.

New administration

Devasini had one ace up his sleeve: Commerce Secretary Lutnick, whose firm Cantor Fitzgerald held Tether's Treasurys.

Lutnick had personally negotiated a deal for Cantor to invest in Tether's holding company [via a convertible bond](#) in April 2024. Following a meeting with Lutnick in Lugano the following month, Devasini told associates the Trump ally would seek to kill any bills that could harm Tether. Lutnick shared his dislike of Circle, Devasini added.

The Commerce Department didn't respond to requests for comment. A Cantor spokeswoman declined to comment.

Lutnick helped Devasini cultivate ties to the Trump camp, the associates said. A month after Trump's election win, Tether paid \$775 million for a stake in the conservative streaming platform Rumble. Cantor managed the deal. Rumble Chief Executive Chris Pavlovski, a close friend of [Donald Trump Jr.](#), tweeted that Tether was spreading "American freedom."

President Trump in the Oval Office with Howard Lutnick in February, a few days before he was confirmed as Commerce Secretary. PHOTO: ANDREW CABALLERO-REYNOLDS/AFP/GETTY IMAGES

Senators pressed Lutnick about his potential conflict of interest over Tether during his confirmation hearings. He claimed criminals only used tether more than USDC because it had a larger market. “It’s like blaming [Apple](#) because criminals use Apple phones,” he said.

When Sen. Maria Cantwell (D., Wash.), asked Lutnick in written follow-up questions whether he would ever undermine any bills to regulate Tether, he responded that he had repeatedly conveyed his belief that Congress should take care not to undermine “dollar hegemony on blockchain,” indicating Congress shouldn’t make legislation so onerous for companies like Tether that they lose market share.

He didn’t commit to not interfere in any federal investigations into Tether, writing he would fulfill his duties in line with government ethics laws. Regarding his earlier discussions with Devasini, Lutnick wrote, “I have never suggested to anyone that I would do anything improper with respect to Tether.”

Trump [issued an executive order](#) to promote “lawful and legitimate dollar-backed stablecoins worldwide.” The order established a presidential crypto working group, which would include Lutnick, to review the regulations that should be scrapped or altered.

After Lutnick stepped down from Cantor, his son, Brandon Lutnick, who once interned with Tether in Lugano, was named the firm’s chairman.

Circle, meanwhile, contributed \$1 million to a super PAC that backed pro-crypto candidates, and it gave another \$1 million to Trump’s inaugural committee.

Sen. Kirsten Gillibrand helped introduce a bill she said would allow serious crypto companies to compete in a fair marketplace. PHOTO: MICHAEL NAGLE/BLOOMBERG NEWS

Lummis and Gillibrand joined two Republican Senators to debut a new stablecoin bill in February, which Allaire publicly cheered, and the House introduced a similar proposal. Gillibrand said in an interview the legislation would allow serious crypto companies to compete in a fair marketplace, “and not be disadvantaged or undermined by charlatans or purveyors that have no safety standards and have no transparency.”

“I don’t think Tether today would qualify for the requirements,” she said.

Tether’s growth has slowed since mid-December after its token’s removal from some exchanges.

Circle has been rocketing, with the total value of USDC finally eclipsing the pre-SVB level in early February. The company is soon moving into new headquarters in New York’s World Trade Center.

Write to Angus Berwick at angus.berwick@wsj.com



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

Wrongful Death Claims Go Ahead In Social Media MDL

By **Emily Field**

Law360 (March 3, 2025, 9:39 PM EST) -- A California federal judge overseeing the multidistrict litigation over claims Facebook and other social media companies purposefully addict minors to their platforms has allowed certain allegations, including negligence and wrongful death claims, to go forward in a final ruling.

U.S. District Court Judge Yvonne Gonzalez Rogers' Friday order said that wrongful death claims brought under Indiana, Florida, Virginia and Wyoming laws could proceed, since they could be better addressed in the MDL regarding particular plaintiffs. The judge also rejected the social media companies' arguments that the families' and school districts' negligence claims, such as that the companies failed to enact effective age checks, were barred by the First Amendment and Section 230 of the Communications Decency Act, which immunizes tech platforms from harm caused by third-party content posted on their sites.

The judge sided with the families' argument that there are known mental and physical health problems in minors who compulsively use social media.

"Plaintiffs argue that public policy supports finding a duty of care for social media companies to avoid taking steps to foster compulsive use and addiction in its young users, given the known corollary mental and physical health consequences of youth addiction to social media platforms," the judge said. "Public policy supports safeguarding child welfare, and courts have found intentional conduct interfering with the health of children plausibly breaches the duty of reasonable care."

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

The judge did dismiss allegations that the platforms were used to disseminate child sexual assault material and were used by abusers to contact victims, finding that those claims were barred by Section 230, saying that the claims are an "unworkable end-run" around the law.

"The only way for defendants to have avoided 'possession' of the CSAM material in the first place is to pre-screen content loaded onto its platforms by third parties, which is a traditional publishing activity," the judge said. "In other words, 'possession' and failure to pre-screen or remove are two sides of the same coin for an internet-content provider."

Judge Gonzalez also dismissed claims for loss of filial consortium under the laws of 24 states and the District of Columbia, as the plaintiffs agreed that those states don't recognize claims for parents' loss of consortium.

In February, the judge signaled that she would not let Google and Snap file interlocutory, saying the appeals requests make "no sense," and she slammed Meta insurers' unnecessary motion to expedite its coverage dispute with Meta as "unprofessional."

Her comments came during an hourslong hearing in Oakland, California, on multiple motions pending in consolidated personal injury litigation launched in 2022 against social media tech giants.

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

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

Lexi Hazam of Lieff Cabraser Heimann & Bernstein LLP and Previn Warren of Motley Rice LLC, the lead plaintiffs' counsel, said in an emailed statement to Law360 that "This order reaffirms the legitimacy of our claims against Meta, TikTok, Snapchat, and Google for the harm their platforms have inflicted on young users and their families. The court has upheld critical legal arguments in our case, including negligence and failure to warn claims that expose how these companies designed addictive and harmful platforms targeting adolescents."

"Social media giants have long known the risks their platforms pose to young people but have chosen profits over safety," they said, adding that they "remain committed to moving forward in discovery and bringing to light the truth about these platforms' role in the youth mental health crisis."

Representatives for the Meta entities did not immediately respond to requests for comment on Monday.

The Meta entities are represented by Antonio Perez-Marques, James Rouhandeh, Caroline Stern and Corey M. Meyer of Davis Polk & Wardwell LLP and Nathan Evans Shafroth, Phyllis Alene Jones and Timothy Channing Hester of Covington & Burling LLP.

The plaintiffs are represented by Lexi J. Hazam of Lieff Cabraser Heimann & Bernstein LLP and Previn Warren of Motley Rice LLC.

The MDL case is In re: Social Media Adolescent Addiction/Personal Injury Products Liability Litigation, case number 4:22-md-03047, in the U.S. District Court for the Northern District of California.

--Additional reporting by Dorothy Atkins. Editing by Vaqas Asghar.

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



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

Chancery OKs Amended Suit In \$8B Paramount Sale Fight

By **Jeff Montgomery**

Law360 (March 3, 2025, 4:37 PM EST) -- Delaware's chancellor agreed Monday to the filing of an amended stockholder challenge to Paramount Global's \$8.2 billion merger with Skydance Media and ordered responses by Tuesday from parties affected by a stockholder call for a fast-tracked probe of Paramount's response to an alternative, \$13.5 billion offer.

Chancellor Kathaleen St. J. McCormick imposed the short-fuse schedule in part after Paramount purportedly accelerated its merger timetable by securing U.S. Securities and Exchange Commission approval of a formal information statement regarding the merger.

The SEC disclosure filing potentially cleared the way for closing on the Skydance deal as early as March 18, months sooner than originally anticipated, Michael Barry of Grant & Eisenhofer PA, counsel to five New York pension funds that challenged the deal, told the chancellor.

"That changes everything, we realize that," Barry said, describing an earlier motion to expedite discovery in the case as largely irrelevant once Paramount filed its Form S-4 and deal prospectus on February 13. The filing permits closing as early as March 20, subject to Federal Communications Commission approval.

Five New York employee public pension funds sued on Feb. 10 arguing that a Paramount special committee breached its fiduciary duties by neglecting to consider a \$13.5 billion offer to buy Paramount and called for a Court of Chancery order compelling evaluation of the deal.

Skydance, the suit said, offered hundreds of millions of dollars in unfair and "egregious" benefits to Shari Redstone, who controls Paramount through her control of National Amusements Inc., which holds 77% of Paramount's voting Class A stock and 5% of its non-voting "B" shares.

Terms of the Skydance deal include a "no shop" provision barring Paramount from considering other buyer offers. Redstone-controlled NAI would get an allegedly inflated \$2.4 billion in a first step of the merger, as well as a buyout of Redstone's Central Park apartment and payment for the lease on her private jet, along with a \$200 million indemnification agreement covering any breach of fiduciary duty claim targeting the deal.

The pension funds recently sought approval to add both Skydance and Paramount to the complaint, which now names only Paramount directors who are part of a special deal committee, in addition to fast-tracked discovery.

On Monday, Blake Rohrbacher of Richards Layton & Finger PA, counsel to the Paramount special committee currently facing the suit, branded as "astounding and misleading" stockholder objections that Rohrbacher's clients failed to seek approval for filing an answering brief.

"They are trying to win their TRO by ambush," Rohrbacher said during an argument focused on what he said was an assortment of violations of court rules governing submissions, briefs and motions.

Gary A. Bornstein of Cravath Swain & Moore LLP, counsel to the special committee, said the company's marketing included a six-month sales process and tentative deal with Skydance that led to another "go shop" entertainment of alternatives, followed by a "no shop" agreement covering Skydance's offer.

Only now, Bornstein said, have the New York funds sought "a court-expedited transaction enjoining the transaction and risking losing the deal." The latest injunction and discovery efforts, Bornstein said, are "all for the purpose of forcing the committee to explore what can only be characterized as a bizarre offer from a mysterious entity that chose not to submit a written offer during the go-shop period."

Attorneys for the pension funds "refuse to provide any information about the financing sources, other than submissions that are, I would say charitably, barely worth the paper on which they are written."

Barry said earlier filings and the injunction bid had been developed based on at least a six-month closing window, drastically reduced by filing of the information statement.

"We're not here on an injunction. We're here on a motion for expedited discovery. It may be, after such discovery the evidence doesn't support the entry of an injunction and no motion will be filed," Barry said.

Separately, Barry argued, "It's reasonably conceivable that Skydance aided and abetted" breaches of special committee duties. "Not only did they agree to pay non-ratable benefits to Redstone, they agreed to indemnify up to \$200 million for any breach of fiduciary duty in connection with the Skydance merger."

Chancellor McCormick said she believed the amendment was possible "as a matter of right," but balked when Barry said it could be filed by Wednesday.

"That's not soon enough," the chancellor said, with Barry agreeing to an amended filing "by today."

During the hearing, Barry also referred to potential major changes in Delaware law regarding stockholder class litigation that could affect the case, namely Senate Bill 21, a measure up for legislative committee review on March 12 that would lower major hurdles businesses have to clear for deals involving controlling stockholders, giving greater deference to business judgment and less restrictive standards for approvals by board special committees.

Regarding relative harm considerations, Barry told the chancellor, "I don't know what happens with SB 21. It could have a significant impact here, and this might be a last opportunity for the court to look at conflicted transactions."

The chancellor ordered the amended complaint to be filed on Monday, with a deadline of the end of Tuesday for submissions from affected parties.

The New York City Employees' Retirement System, The New York City Fire Department Pension Fund, The New York City Police Pension Fund, The New York City Board of Education Retirement System, and The Teachers' Retirement System of the City of New York are represented by Michael J. Barry, Christine M. Mackintosh, Vivek Upadhy and William G. Passannante II of Grant & Eisenhofer PA.

The Paramount special committee is represented by Blake Rohrbacher, Daniel E. Kaprow, Elizabeth J. Freud and Benjamin O. Allen of Richards Layton & Finger PA and Daniel Slifkin, Gary A. Bornstein and Helam Gebremariam of Cravath Swaine & Moore LLP.

The case is The New York City Employees' Retirement System et al. v. Barbara M. Byrne et al., case number 2025-0126, in the Court of Chancery of the State of Delaware.

--Editing by Dave Trumbore.



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

Eckert Seamans Will Pay \$38M To Par Funding Investors

By **Ryan Harroff**

Law360 (March 3, 2025, 4:52 PM EST) -- A Florida federal judge has signed off on a \$38 million deal resolving legal malpractice claims against Eckert Seamans Cherin & Mellott LLC by investors who fell victim to a Ponzi scheme carried out by Par Funding, which enlisted the firm to help create the business model the lender ultimately used in the scheme.

U.S. District Judge Rodolfo A. Ruiz II approved the deal Friday, with \$31.75 million of that fund to be split between three proposed investor classes and multiple receivership entities involved in the litigation. The remaining \$6.25 million is set aside for attorney fees.

Judge Ruiz also noted that Eckert Seamans denies any wrongdoing and agreed to the deal on the condition it also bars potential future claims from members of the proposed class or the receivership entities. The order states that the deal was uncontested.

"The court finds that the allocations and consideration for the affected parties among the putative class plaintiffs and the receivership entities delineated in the settlement agreement are fair and reasonable, both individually and as a whole," the order states.

The order is just one of **multiple recent payout orders** filed in the sprawling litigation over the alleged Ponzi scheme. The SEC's case targets the companies behind the purported scheme. Eckert Seamans was alleged to have helped Par Funding create the agent-fund model that was used to collect investor funds for the scheme.

The receiver is represented by Timothy A. Kolaya of Stumphauzer Kolaya Nadler & Sloman PLLC and Gaetan J. Alfano and Douglas K. Rosenblum of Pietragallo Gordon Alfano Bosick & Raspanti LLP.

The SEC is represented in-house by Alise M. Johnson, Linda Salup-Schmidt, Martin F. Healey, Michael J. Roessner, Robert Kent Levenson and Amie Riggle Berlin.

The investors are represented by counsel from Chemicles Schwartz Kriner & Donaldson-Smith LLP, Edelson Lechtzin LLP, Levine Kellogg Lehman Schneider + Grossman LLP, Jeffrey C. Schneider PA and Silver Law Group.

Counsel information for Eckert Seamans was not immediately available.

The case is U.S. Securities and Exchange Commission v. Complete Business Solutions Group Inc. d/b/a Par Funding et al., case number 9:20-cv-81205, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by Carolina Bolado. Editing by Emily Kokoll.

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



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

3rd Circ. Preview: Litigation Funder, J&J Seek Relief In March

By **P.J. D'Annunzio**

Law360 (March 3, 2025, 1:21 PM EST) -- The Third Circuit's case lineup this month will task panels with determining if an American litigation funder can keep its dispute with a German law firm in federal court, and whether Johnson & Johnson can decertify class claims accusing the company of artificially inflating its stock price by failing to disclose the alleged cancer risks of its talc products.

Here are the highlights of the court's March calendar.

Litigation Funder Wants German Dispute in Federal Court

A Delaware-based litigation funder has asked the Third Circuit to undo a ruling blocking arbitration in its discovery dispute with Financialright Claims GmbH, stemming from litigation over contingency fees, arguing that the lower court's ruling that it lacked jurisdiction to decide the matter was wrong.

In its appellate brief, Burford German Funding LLC said the U.S. District Court for the District of Delaware was the **proper venue** for the case and that the judge could decide the matter because of questions presented under Title 28, Section 1782 of the U.S. Code, which governs assistance to parties in foreign litigation.

"The district court first erred by suggesting that a district court has 'authority' — but not 'jurisdiction' — over 1782 applications. There is no basis for that distinction. This court has repeatedly held that district courts have federal-question jurisdiction" over Section 1782 applications, Burford's brief said.

Financialright Claims GmbH, the defendant, argued that the court lacked jurisdiction to hear the matter under the Federal Arbitration Act.

"A district court can only compel arbitration under that provision if there is a 'civil action' or a 'suit' arising out of a controversy between the parties, and a Section 1782 proceeding is not a civil action or a suit," FRC's brief said.

Argument is scheduled for March 4.

The case is In Re Application of Financialright Claims GmbH, case number 24-3171.

J&J Wants Investor Class Certification Revoked

Johnson & Johnson is seeking de-certification of a class of investors who **claimed** the company artificially inflated its stock price by not disclosing the alleged cancer risks associated with its talc products.

The company said in its brief to the Third Circuit that the litigation was spurred by "lottery ticket"-size verdicts that spurred litigation across the country over talc, in turn encouraging securities plaintiffs lawyers to take advantage of the effect it had on J&J's stock price.

"In recent years some claims have succeeded and produced blockbuster awards, and tens of thousands of product liability cases have been filed as a result of intensive lawyer advertising based on those lottery-ticket verdicts," J&J said in its brief. "Seizing on stock price reactions to J&J's litigation risk, and the publicity that product liability lawyers generated to put settlement pressure on

J&J, securities fraud plaintiffs' lawyers succeeded in persuading the district court to certify a class."

The plaintiffs argued in their brief that J&J's assertions that its talc products were safe is false and that the alleged false statements affected the stock price. They said that J&J had the burden of disproving price impact.

"Based upon precedent, a fulsome record, and thousands of pages of briefing and exhibits — including dueling expert opinions — the court concluded that defendants did not satisfy that burden and so certified the class," the plaintiffs said.

Argument is scheduled for March 11.

The case is San Diego County Employees Retirement Association et al. v. Johnson & Johnson et al., case number 24-1409.

--Editing by Robert Rudinger.

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



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

Apple Gets iCloud Monopoly Suit Tossed For Now

By **Nadia Dreid**

Law360 (March 3, 2025, 9:45 PM EST) -- Apple has convinced a California federal judge to toss a proposed class action accusing it of flouting federal antitrust laws by blocking third-party cloud storage services from accessing and storing certain files on its smartphones, at least temporarily.

U.S. District Judge Eumi K. Lee handed down the **order** granting the motion to dismiss without prejudice Friday, saying the iPhone users behind the lawsuit hadn't provided enough evidence of the monopoly power they claimed Apple was exerting.

"Monopoly power may be demonstrated through direct or indirect evidence," Judge Lee said. "Plaintiffs' allegations are insufficient under either approach."

The iPhone and iPad users manage to allege that Apple was charging supracompetitive prices, which is the "first requirement for direct evidence of monopoly power," the judge said. But they stop short of alleging the "other requirement for direct evidence of monopoly power — that Apple has restricted output of cloud storage for Apple mobile devices."

What they do instead is allege that the tech titan "restricts the output of other cloud storage providers by preventing them from storing restricted files," an allegation that Judge Lee found "circular and conclusory."

The court also found problems with the Apple users' tying claim, which it said "fails at the outset because plaintiffs do not allege concerted conduct, which is a requirement for a Section 1 claim."

Apple doesn't require consumers to buy its iCloud storage in order to purchase an iPhone or iPad, which would be a positive tie, or ask them to agree not to purchase cloud storage from another company as a condition of buying an Apple product, a negative tie, the court said.

Judge Lee stopped short of declaring the claims time-barred though, as Apple had hoped she might. Apple has argued the Sherman Act tying claims and California law claims should have been brought back in 2011, when it implemented the design decision that the suit is challenging.

"At this early stage, the court cannot conclude that plaintiffs' claims are time-barred," the court said. "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."

Julianna Felix Gamboa filed her lawsuit earlier this year, seeking to represent iPhone and iPad buyers across the nation who have bought iCloud storage since 2020. This would encompass "tens of millions" of consumers, the suit predicted.

Apple makes around \$16 billion per year off of its cloud services, the suit said.

Users have limited options for transferring over their phone data because Apple keeps certain files "sequestered" away from other cloud services, the suit said, which means iPhone and iPad users ultimately opt to use the Apple service to avoid having to do things the hard way.

Felix Gamboa is represented by Ben M. Harrington, Benjamin J. Siegel, Gayne A. Kalustian-Carrier, Steve W. Berman, Robert F. Lopez and Catherine Y.N. Gannon of Hagens Berman Sobol Shapiro LLP.

Apple is represented by Belinda S. Lee, Sarah M. Ray, Alicia R. Jovais and Aaron T. Chiu of Latham &

Watkins LLP.

The case is Felix Gamboa v. Apple Inc., case number 5:24-cv-01270, in the U.S. District Court for the Northern District of California.

--Editing by Rich Mills.

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

BlackRock Suit Highlights Antitrust Risks Of ESG

By **Dylan Carson, David Smith and Katherine Herman** (March 3, 2025, 4:47 PM EST)

The new presidential administration may dramatically change a great deal of American public policy, but by all accounts, antitrust policy is not one of them. Aggressive antitrust enforcement by both federal and state antitrust enforcers over the past four years appears here to stay.

As a result, some companies may want to alter their approach to developing and implementing policies related to environmental, social, and governance, or ESG, goals because they will likely be a continued target of antitrust enforcement, especially if coordination with competitors is involved.

Even if intended for the betterment of society and the sustainability of life on the planet, companies continuing to execute on ESG goals should remain mindful of the antitrust risk inherent in collective activity.

This risk is **highlighted** by Texas v. BlackRock Inc., an antitrust lawsuit involving large institutional investors in coal companies. The suit, filed in the U.S. District Court for the Eastern District of Texas in November by 11 Republican state attorneys general, was joined by two more states in January.

Green Shoots

ESG investing is guided by environmental, e.g., a company's impact on the environment; social, e.g., a firm's treatment of employees, consumers, suppliers and communities; and governance, e.g., a company's integrity and compliance with anti-corruption laws, factors.[1]

ESG goals for investing aimed at sustainability became popular after the United Nations launched the Principles for Responsible Investment at the New York Stock Exchange in 2006, with numerous investment companies agreeing to consider ESG goals in making investment decisions.[2]

Groups like Climate Action 100+ began as "an investor-led initiative to ensure the world's largest corporate greenhouse gas emitters take appropriate action on climate change in order to mitigate financial risk and to maximize the long-term value of assets," according to the group's website.[3]

This effort led members of Congress to investigate sustainability-focused investment and claim to uncover a "climate cartel" of environmental activists and major financial institutions "to impose radical [ESG] goals upon the American people," according to the June 11 Interim Staff Report of the U.S. House of Representatives Committee on the Judiciary.[4]

Continuing the political fight, in December 2024, the U.S. House of Representatives Judiciary Committee sent letters to over 60 asset managers regarding their involvement in "a woke ESG cartel," the Net Zero Asset Managers, or NZAM, initiative.[5]

According to the NZAM initiative, it is

an international group of asset managers committed, consistent with their fiduciary duty to their clients and beneficiaries, to supporting the goal of net zero greenhouse gas emissions by 2050 or sooner, in line with global efforts to limit warming to 1.5 degrees Celsius; and to supporting investing aligned with net zero emissions by 2050 or sooner.[6]

Preview of Antitrust Litigation to Come

In late November 2024, 11 Republican state attorneys general, led by Texas, filed a federal antitrust lawsuit against three of the biggest institutional investors in the world — BlackRock, State Street Corp. and Vanguard Group — claiming that the asset managers engaged in a scheme to pressure coal companies to reduce their output and increase the prices of coal, with the goal of reducing greenhouse gas emissions.[7]

According to the complaint, the investors unlawfully conspired to suppress coal production when the firms committed to the investor-led ESG initiatives through Climate Action 100+ to limit CO2 emissions.

The plaintiffs allege that the defendants suppressed output through (1) horizontal acquisitions throughout the publicly held coal sector, which allowed the defendants to yield immense influence and lessen competition in the market, and (2) exertion of pressure to reduce production via proxy voting, meetings and other engagement.

In addition, the investors allegedly shared competitively sensitive information and strategies on how to pressure coal companies through their holdings to reduce carbon emissions and which coal companies had agreed to or were currently being pressured to comply.

Through this output-reduction scheme, the state attorneys general allege that the investment firms "artificially constrained the supply of coal, significantly diminished competition in the market for coal, increased energy prices for American consumers, and produced cartel-level profits for the defendants." [8]

The states contend that the firms' collusion and deceptive trade practices to achieve ESG commitments violated Section 1 of the Sherman Act, Section 7 of the Clayton Act and several state antitrust and consumer protection laws. The states seek injunctive relief, civil fines and penalties and even divestiture to restrain defendants from engaging in further practices

In January, two more states led by Republican attorneys general joined the Texas antitrust case.[9]

ESG Under Attack In Other Fora

Conflict over investment ideologies is not new. Some traditional investment schools of thought believe the sole fiduciary obligation of corporate officers, directors and investment managers is to maximize profits. Meanwhile, defenders argue ESG is an appropriate consideration of long-term risk and thus squarely within fiduciary obligations.[10]

In a non-antitrust context, pursuing ESG goals led to a successful Employee Retirement Income Security Act challenge in Spence v. American Airlines by a future pensioner against the airline asserting that company shareholder and pension fund investment manager BlackRock breached its fiduciary duty to more than 100,000 beneficiaries by investing "their employees' retirement assets towards [ESG] objectives." [11]



Dylan Carson



David Smith



Katherine Herman

The ERISA violation came when BlackRock, as American Airlines' investment manager, improperly considered ESG goals in investments without proper disclosure. On Jan. 10, the U.S. District Court for the Northern District of Texas found that American Airlines and its benefits committee had improperly allowed "BlackRock to engage in ESG-oriented proxy voting and investment strategies using Plan assets." [12]

Pro- and anti-ESG forces have drawn significant battle lines, while investors continue to seek ESG-related information from companies every time a major climate-related event has a material effect on businesses — e.g., hurricanes in Florida or wildfires in California affecting insurance markets. [13]

The U.S. Securities and Exchange Commission announced it will **halt and reconsider** its defense of a recently adopted climate disclosure rule, which mandates that all publicly traded companies both disclose specified categories of their greenhouse gas emissions and identify climate-related risks that materially affect financial investment decisions. [14]

With a nominee to run the SEC, Paul Atkins, who has, according to a 2016 article in Politico, criticized companies who "cave" to social activists as "weenies," and who has "railed against labor unions, environmentalists and gay rights groups for challenging public companies through shareholder activism," rumors of the demise of the SEC climate rule are not greatly exaggerated. [15]

Key Takeaways on the Interplay of Antitrust and ESG

It is important for companies involved in pursuing ESG goals through investing to be mindful of the effect that federal antitrust law may have on their ability to pursue sustainability objectives that involve collaboration with competing investment companies or adoption of investment principles that are not voluntary or discretionary.

It has long been established that so-called social justifications are not a defense to anticompetitive restraints that violate the antitrust laws. [16] Agreements or information-sharing among competitors may affect prices or output and risk running afoul of competition law, regardless of the social utility of any shared goals motivating the collaboration. [17]

Given that there is no carveout from federal and state antitrust law for group efforts to combat climate change (by, for example, lowering output of greenhouse gas emissions) or fight child labor in supply chains (by, for example, boycotting suppliers suspected of ignoring labor laws), firms should note the Texas v. BlackRock case as a reminder that:

- Companies should assess the antitrust risks of any effort to achieve ESG goals.
- ESG is, and will continue to be, under scrutiny in today's emboldened federal and state antitrust enforcement environment, with ESG-related investigations and litigation likely to continue in the next four years.
- ESG audits of company policies should include antitrust considerations, including whether any actions undertaken to further ESG goals are voluntary and do not involve the sharing of competitively sensitive information.
- At a high level, efforts to pursue ESG goals without running afoul of the antitrust laws are best achieved through unilateral action and through collective petitioning of policymakers, given the U.S. Supreme Court's shielding of lobbying from antitrust scrutiny by the Noerr-Pennington doctrine.
- Collective petitioning should occur in states like California and New York, which will continue to enact and enforce ESG laws and regulations, perhaps in coalition with other jurisdictions, to fill the coming void at the federal level for reporting about the investing risks of climate change.

Dylan Carson is a partner at Manatt Phelps & Phillips LLP. He previously served as a trial attorney at the U.S. Department of Justice's Antitrust Division.

David C. Smith is a partner at Manatt.

Katherine Herman is an associate at the firm.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] See Congressional Research Service, Introduction to Financial Services: Environmental, Social, and Governance (ESG) Issues (Jan. 5, 2023), <https://crsreports.congress.gov/product/pdf/IF/IF11716>.

[2] PRI, What are the Principles for Responsible Investment?, <https://www.unpri.org/about-us/what-are-the-principles-for-responsible-investment>; PRI, Principles for Responsible Investment, <https://portal.ct.gov/-/media/OTT/PDFs/PRI.pdf>.

[3] Climate Action 100+, Global Investors Driving Business Transition, <https://www.climateaction100.org/>.

[4] Interim Staff Report, H.R. Comm. on the Judiciary, Climate Control: Exposing the Decarbonization Collusion in Environmental, Social, and Governance (ESG) Investing (June 11, 2024), [https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2024-06-11%20Climate%20Control%20-%20Exposing%20the%20Decarbonization%20Collusion%20in%20Environmental%2C%20Social%2C%20and%20Governance%20\(ESG\)%20Investing.pdf](https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2024-06-11%20Climate%20Control%20-%20Exposing%20the%20Decarbonization%20Collusion%20in%20Environmental%2C%20Social%2C%20and%20Governance%20(ESG)%20Investing.pdf).

[5] Press Release, H.R. Comm. on the Judiciary, Judiciary Committee Probes 60+ Companies over ESG Ties (Dec. 20, 2024), <https://judiciary.house.gov/media/press-releases/judiciary-committee-probes-60-companies-over-esg-ties>.

[6] Net Zero Asset Managers Initiative, <https://www.netzeroassetmanagers.org/>.

[7] Compl., Texas v. BlackRock Inc., No. 6:24-cv-00437 (E.D. Tex. Nov. 27, 2024) ECF No. 1, <https://texasattorneygeneral.gov/sites/default/files/images/press/States%20v%20BlackRock%20Complaint%20Filed.pdf>.

[8] Id. at ¶ 6.

[9] Am. Compl., Texas v. BlackRock Inc., No. 6:24-cv-00437 (E.D. Tex. Jan. 16, 2025) ECF No. 50.

[10] Max M. Schanzenbach & Robert H. Sitkoff, Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of Esg Investing by A Trustee, 72 Stan. L. Rev. 381, 401 (2020).

[11] Findings of Fact and Conclusions of Law, *Spence v. American Airlines Inc.*, No. 4:23-cv-00552-O, at 1 (N.D. Tex. Jan. 10, 2025) ECF No. 157, <https://www.law360.com/articles/2282580/attachments/0>.

[12] Id. at 55.

[13] See Podcast, S&P Global, Listen: What the LA wildfires show about climate change and the future of insurance (Feb. 7, 2025) ("Insurance is the

climate crisis canary in the coal mine, and the canary is starting to expire."), <https://www.spglobal.com/esg/podcasts/what-the-la-wildfires-show-about-climate-change-and-the-future-of-insurance>.

[14] The Enhancement and Standardization of Climate-Related Disclosures for Investors, 89 Fed Reg. 21,668 (Apr. 4, 2024), <https://www.federalregister.gov/documents/2024/03/28/2024-05137/the-enhancement-and-standardization-of-climate-related-disclosures-for-investors>.

[15] Patrick Temple-West, Trump team member slams unions, activists in favor of businesses, Politico (Nov. 28, 2016), <https://www.politico.com/story/2016/11/trump-team-unions-activists-231875>.

[16] *FTC v. Superior Court Trial Lawyers Ass'n*, 493 U.S. 411, 424 (1990). See also Paul Balmer, Colluding to Save The World, How Antitrust Laws Discourage Corporations from Taking Action on Climate Change, 47 Ecology L. Currents 219 (2020).

[17] See *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150, 218 (1940) ("no showing of so-called competitive abuses or evils which those agreements were designed to eliminate or alleviate may be interposed as a defense.").

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



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

Defendant Admits To 'Shell Factory' Pump-And-Dump Scheme

By **Carolina Bolado**

Law360, Miami (March 3, 2025, 4:10 PM EST) -- The final defendant rounded up in the "Shell Factory Fraud" prosecution of a group that created fake shell companies as part of a pump-and-dump scheme pled guilty Monday in Miami to one count of securities fraud.

In a hearing before U.S. Magistrate Judge Lisette M. Reid, Myron Gushlak, 54, admitted to registering a shell company called Entertainment Art Inc., issuing secretly controlled shares of the company, and selling them to criminal actors.

He admitted to recruiting people to serve as straw CEOs of the company and making false statements in documents filed with the U.S. Securities and Exchange Commission that concealed his control over the company.

He faces up to 25 years in prison on the securities fraud count and a fine of up to \$250,000.

Gushlak, who is a Canadian citizen, was charged in October 2017 on various securities fraud and money laundering accounts along with Yelena Furman, who pled guilty in 2018 to helping Gushlak fraudulently sell Entertainment Art shares to the investing public. Gushlak was listed as a fugitive until late last year.

He is one of 12 defendants charged in the so-called "shell factory" scheme, some of which took place while Gushlak was serving a six-year prison sentence in a securities fraud case in New York relating to his paying unlawful commissions to brokerage firms and manipulating and selling \$6 million in GlobalNet Inc. stock in the months before the stock tanked.

Prosecutors say Gushlak worked from prison with his co-conspirators to operate the shell factory scheme, which involved recruiting investors to serve as straw CEOs for shell companies in exchange for a set payment and fraudulent corporate documents to register securities offerings with the SEC.

They then recruited nominee shareholders to create a class of unrestricted shares they could publicly trade, allowing the conspirators to sell off or transfer their shares without running into insider-trading roadblocks while promising the shell company shareholders a fixed return, according to the charging documents.

After that, prosecutors say the conspirators sought buyers to take control of the shell companies and the secretly controlled, unrestricted shares in a reverse merger, according to court records. Prosecutors said the shares would then be transferred to a third party without being disclosed to the SEC or the public.

Using fraudulent paperwork, the shares would then be deposited into broker accounts in the names of the people behind the scheme, according to prosecutors.

All 12 defendants in the shell factory scheme have been convicted.

An attorney for Gushlak declined to comment. A representative for the U.S. attorney's office did not respond to a request for comment.

The government is represented by Manolo Reboso of the U.S. Attorney's Office for the Southern

District of Florida.

Gushlak is represented by Francis D. Murry and Michael B. Nadler of Stumphauzer Kolaya Nadler & Sloman PLLC.

The case is U.S. v. Gushlak et al., case number 1:17-cr-20713, in the U.S. District Court for the Southern District of Florida.

--Editing by Vaqas Asghar.

Update: This article has been updated to include responses from the parties.

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



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

Fiji Beats Ill. Microplastics Suit Over Lack Of Testing

By **Lauraann Wood**

Law360 (March 3, 2025, 9:24 PM EST) -- An Illinois federal judge has tossed out proposed class claims that the company behind Fiji Water illegally labels the product as "natural" artesian water knowing it contains microplastics, saying Monday the consumers haven't pointed to scientific evidence directly tying the product to their claims.

Without such evidence, the plaintiffs' claims against The Wonderful Co. LLC are too bare and conclusory to consider them anything beyond conceivable, U.S. District Judge Matthew Kennelly said in his written order. He said he will enter judgment against the plaintiffs if they don't propose a second amended complaint with at least one viable claim that can proceed in federal court by March 18.

Expecting the consumers to have tested their own water for microplastics might be unreasonable since the product has likely been consumed, but the suit's claims could perhaps have been sufficient if they pointed to "relatively contemporaneous" testing of other Fiji Water, Judge Kennelly said. Instead, the suit references testing of different bottled water brands and points to a "less than definitive" study that also does not include Fiji Water in proposing a mechanism by which microplastics enter the product, he said.

"Allowing a suit of this type to proceed on this basis would basically open the door to enabling any purchaser of any consumable product to file a lawsuit simply saying, 'I bought product X, and it contains microplastics' (or 'forever' chemicals, or heavy metals, or whatever) and thereby get past a motion to dismiss and into discovery and class certification proceedings," Judge Kennelly said. "Given the context ... plausibility requires more."

The lawsuit, initially filed last year **in state court**, claimed that Wonderful had violated several state consumer protection laws by intentionally labeling its Fiji Water as "natural artisan water" even though it knows the product contains harmful microplastics.

While the U.S. Food and Drug Association has not officially defined the word "natural," the agency has considered it to mean that nothing artificial or synthetic is included or has been added to a product that isn't normally expected, the complaint said.

The plaintiffs alleged that they and other reasonable consumers do not expect microplastics to be in "natural" water products and that by mislabeling the Fiji Water bottles, Wonderful impaired the plaintiffs' ability to choose the type and quality of products they consume. They also paid a premium price for a nonpremium product, according to the suit.

Wonderful had argued that the Federal Food, Drug and Cosmetic Act — which gives the FDA the authority to regulate the distribution and sale of food and beverages, among other products — preempted the consumers' claims, but Judge Kennelly rejected that assertion.

"The lawsuit concerns the use of the term 'natural' on the label, not the contents of the bottles as such," the judge said.

Nothing in the FDA's standards for identifying artesian water identifies that a label must include the term "natural," Judge Kennelly said, noting that Seventh Circuit precedent indicates that challenging Wonderful's addition of the word on its labeling is fair game.

Representatives for the parties didn't immediately respond Monday to a request for comment.

The plaintiffs are represented by David Levin, Steven Perry and Todd Friedman of the Law Offices of Todd M. Friedman.

Wonderful is represented by Johnny Traboulsi and Reid Davis of Roll Law Group PC, and Daniel Spira of Sidley Austin LLP.

The case is Daly et al. v. The Wonderful Company LLC, case number 1:24-cv-01267, in the U.S. District Court for the Northern District of Illinois.

--Editing by Melissa Treolo.

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



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

ICE Contractor Loses Immunity Bid In Family Separation Suit

By Tom Lotshaw

Law360 (March 3, 2025, 9:19 PM EST) -- A California federal judge Monday largely denied a U.S. Immigration and Customs Enforcement contractor's attempt to escape litigation that a father and son brought against the transportation company for its role in a policy that separated them and thousands of other immigrant families during the first Trump administration.

While agreeing to trim some of the proposed class action's claims as time-barred, U.S. District Judge Dana M. Sabraw rejected MVM Inc.'s arguments that the entire suit must be dismissed because the federal government was not a party or because it was **entitled to derivative sovereign immunity** as a result of its contract with ICE.

The judge pointed out that the federal government has not taken any steps to join the litigation, despite being made aware of it, and that MVM did not provide the court with the contract in question.

"Indeed, without the contract it is difficult, if not impossible, for this court to determine whether the federal government 'authorized and directed' defendant's conduct at issue in this case," Judge Sabraw said in a decision issued on Monday.

"It is likewise impossible for the court to determine if defendant had discretion in carrying out its contractual obligations, which would also defeat defendant's claim of derivative sovereign immunity," the judge added.

In the litigation, the father and son, identified as "Padre" and "Junior," argue they were asylum seekers who were **cruelly and unlawfully separated** as a result of the family separation policy, and not reunited for nearly six years.

The policy was declared unconstitutional and blocked as a result of **separate litigation** brought against the federal government.

Judge Sabraw held that MVM must face claims including torture and enforced disappearance under the federal Alien Tort Statute, as well as a child abduction claim under California state law.

The judge granted MVM's motion to dismiss federal law claims of civil rights conspiracy and failure to prevent civil rights conspiracy as time-barred. But he also granted the father and son's request for the ability to file an amended complaint to try to fix deficiencies in their argument that the statute of limitations should be extended beyond the two years after their November 2017 separation, ruling they had otherwise put forward sufficient facts for their claims to survive MVM's motion to dismiss.

Representatives for MVM did not immediately respond to a request for comment on Monday.

Scott A. Gilmore, a Hausfeld LLP attorney helping to represent Padre and Junior, called the ruling an important day in a long effort to seek justice for children and families affected by the family separation policy.

"This is about holding the contractor accountable for its role in this policy," Gilmore told Law360 on Monday. "Plaintiffs claim this was torture and enforced disappearance, and those claims are moving forward. We'll be proceeding to discovery on the issue of whether this was an intentional human rights law violation."

The family is represented by Scott A. Gilmore, Amanda Lee-DasGupta, Mary S. Van Houten Harper, Amanda V. Boltax, Katie R. Beran, James Gotz, Ashley Crooks and Erika A. Inwald of Hausfeld LLP, Paul L. Hoffman and John C. Washington of Schonbrun Seplow Harris Hoffman & Zeldes LLP, and Andrew Fels of Al Otro Lado.

MVM is represented by Paul J. Fraidenburgh, Michelle A. Herrera, Thomas C. Hill, J. Ryan Stasell and Alexander P. Carroll of Pillsbury Winthrop Shaw Pittman LLP.

The case is Padre et al. v. MVM Inc., case number 3:24-cv-01265, in the U.S. District Court for the Southern District of California.

--Additional reporting by Gina Kim and Rae Ann Varona. Editing by Emily Kokoll.

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



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

Jaguar Can't Shirk Warranty Claims In EV Battery Fire Suit

By **Jonathan Capriel**

Law360 (March 3, 2025, 7:49 PM EST) -- Jaguar can't evade claims it sold thousands of electric vehicles with batteries prone to catching fire, a New Jersey federal judge ruled Monday, saying the argument that buyers expect and even price in these kinds of issues at the time of purchase "defies everyday experience."

U.S. District Judge Michael E. Farbiarz appears to have not thought highly of some of Jaguar Land Rover North America LLC's arguments for why the proposed class of EV drivers had failed to plead economic harm. Specifically, it appeared the automaker was insisting that there was actually no real gap between what the drivers paid for and what they actually received because consumers know what to expect when they get a new vehicle, "a possibly defective car" or "a possibly dishonored warranty," the judge said.

"This argument, if it is indeed being made, runs aground on common sense," Judge Farbiarz said.

"It defies everyday experience to think that car customers would shrug at serious alleged defects or dishonored warranties because they expected them in some way all along, and paid a lower price accordingly," he added.

The order largely denied Jaguar's motion seeking to dismiss the case, finding that the drivers had adequately alleged standing, injury-in-fact and breaches of warranty under both state and federal law. The court also rejected the preemption argument, holding that the Safety Act does not preempt state-law warranty claims.

In a suit launched in August 2023, the Jaguar drivers accused the car company of having sold thousands of defective Jaguar I-Pace cars between 2019 and 2023, even though it knew of battery fires involving the EV model since at least 2019. Despite this knowledge, the car manufacturer didn't issue a safety recall until Aug. 3, 2023, according to the drivers' complaint.

Jaguar moved to dismiss the case in February 2024, arguing the car owners do not have standing as they didn't actually suffer any out-of-pocket costs because the automaker offered to fix the issue for free through a recall. While an amended complaint alleged the recall didn't actually resolve the problem, Jaguar contended in a motion to dismiss that this is a "conclusory allegation" that the drivers have never supported through evidence.

The drivers claim that they never received the "benefit-of-the bargain" in their purchase, partly because the vehicles have suffered diminished resale value.

In November, Judge Farbiarz instructed Jaguar and the proposed class of EV owners to file briefs explaining what impact a then-newly issued Third Circuit's ruling — [Huertas et al. v. Bayer US LLC](#) — would have the present product liability litigation against the automaker.

The Judge Farbiarz request was clearly tied to how the appeals court ruled on economic injury claims. Specifically, the panel in [Huertas](#) overturned a New Jersey federal judge's order dismissing antifungal spray litigation brought against pharmaceutical company Bayer.

When siding with the plaintiffs, the three-judge appellate panel noted that the consumers relied on the "benefit-of-the-bargain theory to establish injury-in-fact, arguing that they paid full purchase

price for products 'free of contaminants and dangerous substances,' but received products that were defectively manufactured."

When responding to Judge Farbiarz's request, Jaguar explained that the antifungal spray at issue was unlike its vehicles because its EVs didn't suffer from a defect so severe that they couldn't be used. Additionally, the automaker said that "vehicle purchasers reasonably expect" recalls because they are issued so regularly in the United States, according to a letter it sent to the judge in November.

But Judge Farbiarz rejected this, saying that consumers do price in wear and tear, but there is no reason to believe they would price in such large alleged defects.

"And even if customers do discount what they are willing to pay for a car based on their estimate as to the odds that the car will later turn out to be defective — why does it make sense to think that customers discount cars precisely the right amount upfront, so that when things later go awry everything ends up just-so, and it turns out, looking back, that the customers did not actually overpay?" the judge asked.

The drivers are represented by Robert A. Magnanini of Stone & Magnanini LLP.

Jaguar is represented by Michael L. Kidney of Hogan Lovells US LLP.

The case is Joyce et al. v. Jaguar Land Rover North America LLC et al., case number 2:23-cv-04281, in the U.S. District Court for the District of New Jersey.

--Additional reporting by Henrik Nilsson, Matthew Santoni and Lauren Berg. Editing by Andrew Cohen.



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

ParkMobile Offers \$9M, App Credits To End Data Breach Suit

By **Chart Riggall**

Law360 (March 3, 2025, 7:06 PM EST) -- ParkMobile customers who alleged their personal information was compromised in a 2021 data breach have asked a Georgia federal judge to give final approval to a settlement that would set aside a \$9 million cash fund and up to \$21 million in parking credits to end their class action.

In a court filing seeking a sign-off on the deal between the parking app and its users, the Atlanta-based company has also agreed to spend \$2.5 million overhauling its security protocols to resolve claims that ParkMobile LLC's lax protections led to the data of more than 20 million customers being stolen, and would pay out over \$7 million to the plaintiffs' lawyers.

Calling the proposal "the result of intense arm's-length negotiations and hard bargaining," the case's plaintiffs asked a Georgia federal judge to sign off on the deal last week after he gave it preliminary approval in November 2024.

"Plaintiffs and class counsel strongly believe that this settlement is fair, reasonable, and adequate, and represents an excellent result for the settlement class," they said Thursday.

The suit against ParkMobile dates back more than three years, originating with a March 2021 breach of the company's databases. According to the plaintiffs' amended complaint, hackers pilfered the information of roughly 21 million users, which ParkMobile only acknowledged after the breach was first reported on a cybersecurity blog.

While ParkMobile attempted to downplay the size and scope of the breach, the plaintiffs alleged, the hackers were selling all manner of customers' information online, and eventually released the stolen information for free in a spreadsheet hosted on the dark web. The plaintiffs accused the company of failing in its duty to protect their private data despite Federal Trade Commission rules requiring companies to guard against hacks with reasonable measures.

The consumers also took issue with what they saw as ParkMobile's insistence that only "basic" information was accessed during the breach, arguing in their second amended complaint that the information could actually be used "to cause great harm to ParkMobile's users."

Some consumers have suffered from fraudulent activity since the breach, they said in the suit, including strangers logging into their PayPal, Comcast, Netflix and Venmo accounts and creating fake accounts using their names and data.

Just over a year ago, the plaintiffs asked U.S. District Judge Steve Jones to certify a **nationwide class** of U.S. residents who received notice of the data breach or whose information was included in the dark web posting of stolen data.

After a failed attempt at mediation, the parties announced last July that they had reached a deal to end the yearslong litigation.

Under the proposal, customers included in the class would receive up to \$25 per head in cash compensation for their trouble, according to last week's filings. Alternatively, those who don't opt into the cash payments will be eligible for a \$1 app credit, with the \$21 million fund representing every user whose data was compromised.

The lead class representatives, meanwhile, would receive \$5,000 each while the plaintiffs' attorneys have proposed to collect about \$7.2 million in attorney fees though that latter figure remains contested by some members.

The plaintiffs are represented by MaryBeth V. Gibson of Gibson Consumer Law Group LLC, Brian C. Gudmundson and Michael J. Laird of Zimmerman Reed LLP, Joseph P. Guglielmo and Sean C. Russell of Scott + Scott Attorneys at Law LLP, James J. Pizzirusso, Steven M. Nathan and Swathi Bojedla of Hausfeld LLP, Karen H. Riebel and Kate M. Baxter-Kauf of Lockridge Grindal Nauen PLLP, Bryan L. Bleichner of Chestnut Cambronne PA, Terence R. Coates of Markovits Stock & De Marco LLC, Joseph M. Lyon of The Lyon Firm, and Gary Lynch and Nicholas Colella of Lynch Carpenter LLP.

ParkMobile LLC is represented by Joshua L. Becker, Caroline M. Gieser, Alfred J. Saikali, Tammy B. Webb and Jason K. Ward of Shook Hardy & Bacon LLP.

The case is Baker et al. v. ParkMobile LLC, case number 1:21-cv-02182, in the U.S. District Court for the Northern District of Georgia.

--Additional reporting by Kelcey Caulder. Editing by Kristen Becker.

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



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

Some 'ComEd Four' Bribery Counts Vacated Over Jury Charge

By **Celeste Bott**

Law360, Chicago (March 3, 2025, 6:38 PM EST) -- An Illinois federal judge on Monday ordered a retrial on four bribery charges in the case against an ex-Commonwealth Edison executive and three lobbyists convicted of conspiring to bribe former Illinois House Speaker Michael Madigan, finding the jury was improperly instructed in the wake of a recent U.S. Supreme Court ruling but leaving intact the overarching conspiracy conviction.

Ruling from the bench during a hearing in Chicago on Monday morning, U.S. District Judge Manish Shah said that although there was sufficient evidence of quid pro quo bribery presented at the 2023 trial of former ComEd CEO Anne Pramaggiore and former lobbyists Michael McClain, John Hooker and Jay Doherty, he couldn't say whether the jury would still conclude there was a corrupt intended exchange if they'd received instructions in line with the high court's [Snyder v. U.S.](#) ruling last year.

In that case, the justices held that Section 666, a federal bribery law frequently used in public corruption prosecutions, criminalizes only quid pro quo bribery and not "gratuities," or rewards given after an official act has been taken.

The Supreme Court concluded the jury instructions in former Indiana mayor James Snyder's corruption case were erroneous "because they permitted the jury to convict on a gratuity theory," Judge Shah wrote, saying the instructions in the ComEd case were substantially similar.

"So the jury should have been given more detailed instructions," he said, vacating the Section 666 counts.

But he didn't disturb the other counts the so-called ComEd Four were convicted on, including falsifying the utility's records to hide payments made to Madigan associates in do-nothing jobs where they performed little to no work, because those charges did not depend on the legal definition of bribery, he said.

"Snyder does not affect the conviction on those counts," Judge Shah said. "The true nature of the payments was still concealed."

He also found there was evidence from which a jury could conclude beyond a reasonable doubt that "there was a this-for-that exchange throughout, and that that was the intent of the participants."

The judge pointed to evidence that ComEd hired Madigan allies as subcontractors and gave legal business to the law firm of one of his fundraisers around the time legislation ComEd wanted was moving through the legislature, saying jurors could reasonably conclude that Madigan "had his metaphorical hand out in advance" and received a "stream of benefits" in exchange.

"These are not the tokens of appreciation that the Supreme Court worried about in Snyder," Judge Shah said. "There was specific legislative action that defendants pursued and they wanted that action in return for giving things of value."

It's not yet clear how the case will move forward. Both sides could appeal the partial ruling to the Seventh Circuit. The government could retry on the four counts Judge Shah vacated, but Assistant U.S. Attorney Amarjeet Bhachu hinted to the court Monday that that could be unlikely, given the remaining counts carry a guideline range of "up to life" in prison.

Complicating matters is an executive order from President Donald Trump that ComEd defendants argue could lead to the dropping of the charges that they falsified company records in violation of the Foreign Corrupt Practices Act.

They filed a motion to stay proceedings in their case last month until U.S. Attorney General Pam Bondi specifically authorizes the government to continue prosecuting the FCPA counts in their case, citing Trump's Feb. 10 executive order directing the attorney general to review all existing FCPA investigations and enforcement actions "and take appropriate action with respect to such matters to restore proper bounds on FCPA enforcement."

They contend that there's good reason to think Bondi will not prioritize enforcing the FCPA counts in their criminal case, saying her office has already announced it will focus on investigations related to foreign bribery that facilitates the criminal operations of cartels and other criminal organizations, shifting resources away from investigations and cases without that connection.

Judge Shah also denied the defendants' motion to stay on Monday, saying that because he was ready to rule on their fully briefed renewed bid for acquittal or retrial, it wouldn't conserve judicial resources, though he acknowledged that may change if the government does ultimately opt not to prosecute those charges.

"Outside events over which the parties have had no control have affected this case, and it's been a long time for all concerned, I do understand and appreciate that," he said. "What tomorrow may bring, I don't know, but today, there's no need to stay the case."

The government is represented by Amarjeet S. Bhachu, Diane MacArthur, Sarah E. Streicker and Julia Schwartz of the U.S. Attorney's Office for the Northern District of Illinois.

Pramaggiore is represented by Scott R. Lassar, Jennifer M. Wheeler and Daniel C. Craig of Sidley Austin LLP.

McClain is represented by David P. Niemeier and Patrick Cotter of UB Greensfelder LLP.

Hooker is represented by Michael D. Monico, Ryan W. Mitsos and Jacqueline S. Jacobson of Monico & Spevack.

Doherty is represented by Michael P. Gillespie and Gabrielle Sansonetti of Gillespie & Gillespie.

The case is U.S. v. Michael McClain et al., case number 1:20-cr-00812, in the U.S. District Court for the Northern District of Illinois.

--Editing by Brian Baresch.