

Securities Law

March 6, 2025, 4:47 PM PST; Updated: March 7, 2025, 8:23 AM PST

E.I.f. Beauty, Two of Its Execs Hit With Securities Claims (1)

- **COURT:** N.D.Cal.
- **TRACK DOCKET:** [5:25-cv-02316](#) (Bloomberg Law subscription)

E.I.f. Beauty Inc., its CEO, and its CFO are facing a new class action alleging violations of federal securities laws.

Luke Rottman claims the company and pair of executives made false and misleading statements regarding the company's inventory levels, revenue, and profits.

The class period is November 1, 2023, through November 19, 2024, the complaint, filed in the US District Court for the Northern District of California, says.

The proposed class action is brought under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5.

Rottman is seeking class certification, including being appointed as the class representative. The complaint seeks to recover damages sustained by the proposed class. Rottman also seeks reasonable attorneys' fees, expert fees, and other costs.

Contacted by Bloomberg Law, the company said it intends to defend itself in court against Rottman's claims. "We believe the allegations are meritless and look forward to establishing that through the legal process," a spokesperson for e.I.f. said.

Judge Eumi K. Lee is assigned the case.

Pomerantz LLP and the Schall Firm represent Rottman and the proposed class.

The case is Rottman v. e.I.f. Beauty, Inc. , N.D. Cal., 5:25-cv-02316, complaint 3/6/25 .

This story was produced by Bloomberg Law Automation.

(Updates story published Feb. 6 to include statement from e.I.f. at sixth paragraph.)

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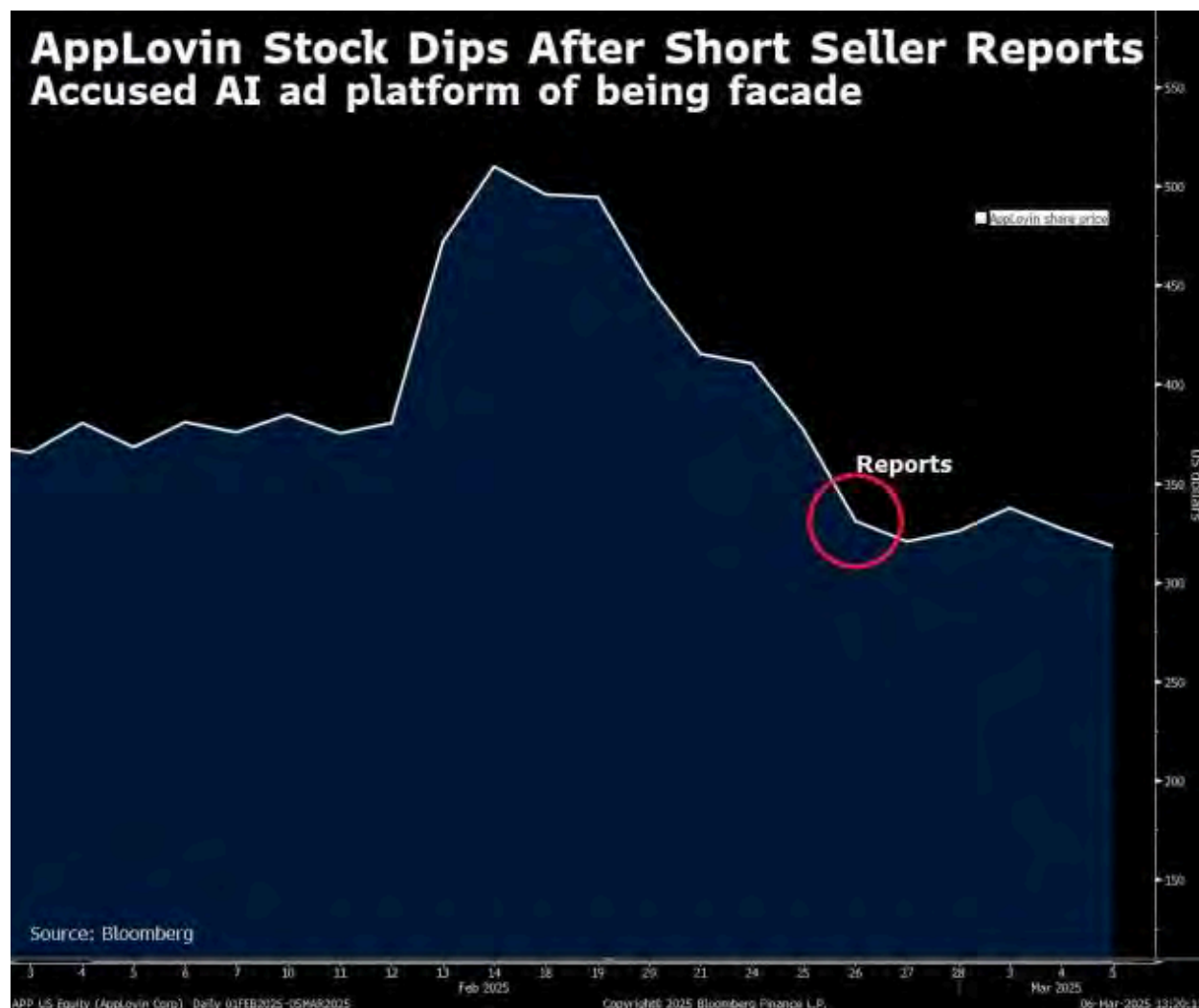
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AppLovin Sued by Investor Over AI Model Short-Seller Allegations

- **COURT:** N.D. Cal.
- **TRACK DOCKET:** No. [4:25-cv-02294](#) (Bloomberg Law subscription)

AppLovin Corp. touted its new AI advertisement-technology platform while secretly relying on a backdoor installation scheme that forced unwanted apps on customers to boost its numbers and profits, a proposed class action said.

Share prices sunk more than 12% on Feb. 26 after short-seller reports accused the company of inflating their ad click through and app download rates, said investor Michael Quiero's complaint filed in the US District Court for the Northern District of California on Wednesday. The artificial intelligence platform AXON 2.0's purported success was a facade, the Culper Research and Fuzzy Panda Research reports said per the complaint.



The reports alleged AppLovin had ads click on themselves and forced shadow app downloads, the complaint said. And accusations included that AppLovin was reverse engineering and using ad data from Meta Platforms Inc. to bolster the appearance of its e-commerce segment's success, Quiero said.

AppLovin and leadership had boasted AXON 2.0's "cutting-edge AI technologies" as meaningful to its financial growth since 2022, misleading investors, Quiero said. AXON 2.0 uses machine learning to match advertisements to mobile games, according to the complaint.

"It's disappointing that a few nefarious short-sellers are making false and misleading claims aimed at undermining our success, and driving down our stock price for their own financial gain, rather than acknowledging the sophisticated AI models our team has built to enhance advertising for our partners," Chief Executive Officer Adam Foroughi said in a note on Feb. 26.

The proposed class would include those who got AppLovin stock from May 10, 2023—when the company hyped its AXON 2.0 rollout—through Feb. 25, 2025.

Levi & Korsinsky LLP represents Quiero, who seeks damages for alleged federal securities law violations against the company, Foroughi, and AppLovin's chief financial officer.

AppLovin declined to comment in an email.

The case is Quiero v. AppLovin Corp. , N.D. Cal., No. 4:25-cv-02294, complaint filed 3/5/25 .

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Class Action

March 7, 2025, 6:34AM PST

Aetna Shareholder Appeals Decision Tossing Challenge to CVS Deal

CVS Health Corp. again is expected to defend itself before the US Court of Appeals for the First Circuit over concerns about its 2015 Omnicare Corp. acquisition—this time in litigation by an Aetna Insurance Corp. stockholder over its 2018 merger.

The Aetna investor group alleged it wouldn't have approved the deal between CVS and Aetna had it known about the financial impacts of CVS's previous takeover of Omnicare, a pharmaceutical services provider for long-term care facilities, that purportedly weighed on its stock. Lead plaintiff Los Angeles Fire and Police Pensions filed a notice of appeal in the US District Court for the District of Rhode Island on Thursday from Judge Mary S. McElroy's decision last month to toss its proposed class action.

- But the First Circuit in 2022 said a would-be class action brought by Omnicare investors over that deal was properly dismissed by McElroy for insufficiently alleging any actionable false statements or misleading omissions
- That affirmation led McElroy to dismiss the Aetna shareholders' most recent complaint, finding it was "wanting" and provided similarly imprecise correlations of timing as the Omnicare suit
- The fund's case, seeking to impose liability and originally filed around the same time as the Omnicare suit, had been stayed while the other alleging securities fraud was on appeal

Williams & Connolly LLP and Whelan Corrente & Flanders LLP represented CVS. Bernstein Litowitz Berger & Grossmann LLP is lead counsel for the fund. None of the firms immediately responded to emails seeking comment.

The case is *In re CVS Health Corp. Sec. Act Litig.*, D.R.I., No. 1:19-cv-00434, notice of appeal filed 3/6/25.

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Class Action

March 7, 2025, 9:21 AM PST

SunPower Executives Trim Investor Suit to Sufficient Cash Claim

- **Complaint adequately alleged cash status report misleading**
- **Plaintiffs can re-plead dismissed claims against executives**

SunPower Corp. leadership must defend against a claim they misled investors in a 2023 SEC filing saying the solar company could meet its cash obligations, a federal judge ruled.

But investors didn't sufficiently allege other claims over SunPower's accounting and financial woes ahead of its filing for bankruptcy last year, Judge Rita F. Lin for the US District Court for the Northern District of California said Thursday. She granted in part and denied in part former executives' motion to dismiss, allowing plaintiffs leave to amend the tossed claims.

"The Complaint plausibly alleges that by August 2023, SunPower was in a dire cash crunch that went far beyond 'spot episodes of illiquidity,'" Lin said, and that both the chief executive and chief financial officers "were well aware of the situation and could not have believed SunPower could continue to meet its cash obligations over the next year."

Chief executive officer Peter Faricy purportedly attended an all hands meeting about cutting costs and liquidating assets before the company filed its August 2023 form with the Securities and Exchange Commission, and chief financial officer Elizabeth Eby allegedly led meetings about the gravity of situation. Thus, the investors properly pled the level of intent required to bring securities fraud claims against the pair, the judge said.

But the plaintiffs didn't sufficiently allege falsity regarding SunPower's EBITDA guidance announced in February 2023, nor did they adequately plead falsity and intent regarding late 2023 statements regarding an October financial restatement, Lin said.

None of the alleged misstatements from February to June 2024 were actionable, Lin said. Expressions of optimism were inactionable puffery, and the plaintiffs insufficiently contended that SunPower wasn't "working diligently" to restate financials and file an SEC form, she said. And there weren't specific allegations indicating that the executives knew certain accounting was faulty before a second financial restatement was announced in April 2024, she said.

Plaintiffs Daniel Suarez and Charles Orr sufficiently alleged loss causation, the link between alleged wrongdoing and financial harm, related to the 2023 form and the stock sinking over 7% after the company announced an agreement over past due invoices that November, Lin said. Lead plaintiff Bezeyem Lemou and plaintiff Gabriel Rodrigues didn't, she said.

The proposed class would include those who bought SunPower stock from May 3, 2023, through July 19, 2024—after it fell 75% in a week—per the most recent complaint filed in September.

The SEC had started an investigation into SunPower's accounting practices by February 2024, Lin said, and the company's auditor resigned in June. SunPower filed for Chapter 11 bankruptcy in August, and substantially all of its assets have been sold, according to court filings as of February.

SunPower last month beat a different investor suit alleging it concealed product defect issues.

Pomerantz LLP, among other counsel, represent the plaintiffs. Wilson Sonsini Goodrich & Rosati represents Faricy, Eby, and principal executive officer Thomas Werner; allegations against him were dismissed with leave to amend. Neither firm immediately responded to emails seeking comment.

The case is In re SunPower Corp. Sec. Litig. , N.D. Cal., No. 3:23-cv-05544, 3/6/25 .

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Securities Law

March 7, 2025, 10:45 AM PST

Bed Bath & Beyond Investors Lose Effort to Rescue Class Status

- Cohen allegedly used social media to benefit from stock sale
- Investors lack grounds for rethink of class status, court says

Bed Bath & Beyond Inc. investors can't represent a class in their meme-craze market manipulation suit against activist investor Ryan Cohen, a federal court reiterated.

The lead investor's arguments requesting reconsideration of an earlier ruling denying class status "run the gamut from forfeited to recycled," Judge Trevor N. McFadden said Thursday for the US District Court for the District of Columbia.

Belgian investment company Bratya SPRL and other shareholders sued Bed Bath, its CEO Sue Gove, Cohen, and Cohen's RC Ventures LLC firm.

The investors alleged that Cohen and his firm acquired nearly 10% of the home goods retailer's stock in March 2022. But after his proposal that the company sell subsidiary store Buy Buy BABY failed, Cohen allegedly attempted to boost the stock price by influencing his thousands of social media followers to buy or hold their shares. He ultimately sold his entire stake in August of that year, causing the retailer's share price to plummet, the investors said.

In July 2023, McFadden paused the claims against Bed Bath, by then in bankruptcy, and dismissed the claims against Gove. But Cohen and his firm were still potentially liable for insider trading and misleading investors, the judge said.

Lead investor Bratya sought to represent a class of Bed Bath investors allegedly harmed by Cohen's and RC Ventures' actions.

McFadden denied that request in September 2024, saying Bratya hit a snag in showing that common issues predominate over individualized ones. To employ a presumption of classwide reliance on a misrepresentation in securities suits, a plaintiff can point to an efficient market, he said.

"But these were not normal circumstances," McFadden said in that ruling, citing evidence that the market for BBBY stock, part of the meme stock craze, was in "wild flux" during the period at issue.

Bratya fails in its arguments that the court reached an incorrect conclusion the first time, McFadden said in the new ruling. A price drop coinciding with Cohen's selloff was "more of an indication of a short squeeze bubble bursting than a showing that the stock price had been incorporating the alleged misrepresentations," he said.

Further, the judge said he had concluded there was "a mismatch between the contents of the misrepresentation and the corrective disclosure."

"Without a yin-and-yang relationship between the misrepresentations and Cohen's liquidation, there was no evidence that the misrepresentations had been built into the stock price all along," he said in rejecting the motion for reconsideration. "So there was no evidence that investors had relied on the misrepresentations in purchasing the stock."

Attorneys for the investors included Pomerantz LLP. Williams & Connolly LLP represented Cohen and RC Ventures.

The case is *Bratya SPRL v. Bed Bath & Beyond Corp.*, D.D.C., No. 1:22-cv-02541, 3/6/25 .

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Oscar Health Gets Dismissal of Investor Suit Over Cost Metrics

- Suit targeted insurer's post-IPO risk adjustment expense
- Court focuses on allegations of lack of 'internal controls'

Oscar Health Inc. investors can't proceed with a would-be class action alleging the health insurer's initial public offering papers misrepresented its systems for assessing cost risks, a federal court ruled Thursday.

The investors' complaint "fails to sufficiently plead any material misstatements or omissions regarding the adequacy of Oscar's internal controls," said Judge Vernon S. Broderick of the US District Court for the Southern District of New York, referring to its systems for submitting "risk adjustment" data for a government audit.

The "mere fact that Oscar incurred this risk adjustment expense following the audit is insufficient to establish that Oscar, in fact, failed to maintain adequate controls," Broderick said.

The investors alleged that Oscar Health's registration statement, ahead of its March 2021 initial public offering, described its risk adjustment process as including "ongoing monitoring" of its compliance with the government requirements and estimates that were refined with new information. But it later blamed a high medical loss ratio—the portion of its income spent on paying patients' claims—on an "unfavorable" government audit result, as well as growing Covid-19 testing and treatment costs, the investors said.

The registration statement failed to disclose that Oscar Health was facing these issues, according to the investors.

Broderick's ruling on Oscar's request for dismissal focused on the underlying issue.

"Although Plaintiffs challenge affirmative misrepresentations in the Registration Statement issued in connection with Oscar's IPO, the crux of Plaintiffs' Section 11 Claim is that these statements were rendered misleading by Defendants' failure to disclose the inadequacy of Oscar's internal controls," Broderick said. "In other words, I must first consider whether Plaintiffs plead facts to demonstrate that Defendants failed to disclose issues with Oscar's internal controls before evaluating whether Plaintiffs have sufficiently pled that the Registration Statement contained any material omissions."

But they didn't "identify which internal controls were allegedly insufficient," didn't show "contemporaneous facts demonstrating that any controls were faulty," and didn't connect a disclosed information technology weakness to the alleged problem that led to the risk adjustment expense, he said.

The plaintiffs will have a chance to amend their complaint, Broderick said.

Attorneys for the investors include Glancy, Prongay & Murray LLP. Skadden, Arps, Slate, Meagher & Flom LLP represents Oscar Health.

The case is *Carpenter v. Oscar Health, Inc.*, 2025 BL 72631, S.D.N.Y., No. 1:22-CV-03885, 3/6/25 .

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Judge may consider blocking Paramount-Skydance deal

 [reuters.com/markets/deals/judge-may-consider-blocking-paramount-skydance-deal-2025-03-06](https://www.reuters.com/markets/deals/judge-may-consider-blocking-paramount-skydance-deal-2025-03-06)

Tom Hals

Item 1 of 4 Paramount Global and Skydance logos are seen in this illustration taken December 17, 2024. REUTERS/Dado Ruvic/Illustration/File Photo

[1/4]Paramount Global and Skydance logos are seen in this illustration taken December 17, 2024. REUTERS/Dado Ruvic/Illustration/File Photo [Purchase Licensing Rights](#)  , opens new tab

WILMINGTON, Delaware, March 6 (Reuters) - A Delaware judge is willing to consider allegations in a class action lawsuit that Paramount Global's (PARA.O)  , opens new tab \$8 billion sale to Skydance Media should be blocked from closing because it short-changes public shareholders, according to a Thursday court filing.

Paramount's controlling shareholder, Shari Redstone, struck a two-step deal in July to sell her stake in the Hollywood studio as part of the deal with David Ellison's Skydance, a streaming-era upstart. The companies are awaiting regulatory approval for the deal to close.

In January, an investor group known as Project Rise Partners submitted a proposal valued at \$13.5 billion to acquire Paramount, but that was rejected by a special committee of Paramount's board.

In response, pension funds for New York City employees that own Paramount stock filed a class action lawsuit in Delaware's Court of Chancery alleging that Paramount's special committee breached its fiduciary duties to the company's public shareholders by not considering the bid from Project Rise Partners.

On Thursday, Chancellor Kathaleen McCormick agreed to expedite the pension funds' lawsuit but declined to issue a temporary restraining order, or TRO, to block the deal because it did not appear the deal was about to close.

"Although plaintiffs have demonstrated harm sufficient to support expedition, there does not seem harm proximate enough to warrant a TRO," McCormick wrote in her eight-page ruling.

McCormick said the companies must notify the pension funds "optimally" five business days before closing so the funds can seek a TRO to block the deal.

Paramount and Skydance did not immediately respond to requests for comment.

As part of the deal, Skydance had agreed to a 45-day "go shop" period that allowed Paramount to solicit and evaluate other offers. That period ended on Aug. 21. If the company chooses another suitor, it must pay Skydance a \$400 million break-up fee. The board

weighed a competing offer from media veteran Edgar Bronfman Jr., who subsequently withdrew, clearing the way for Skydance Media to take control of Redstone's media empire.

The closing of the Skydance deal is subject to approval by the Federal Communications Commission, and according to McCormick's ruling Paramount said the earliest the deal can close is March 20.

The merger has an April 7 end date, although it can be extended twice by 90 days if FCC approval has not been obtained, according to McCormick's ruling.

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Reporting by Tom Hals in Wilmington, Delaware; additional reporting by Dawn Chmielewski in Los Angeles; Editing by Leslie Adler

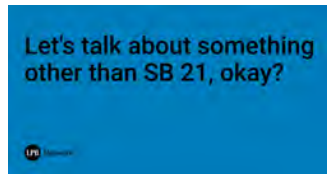
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- Suggested Topics:
- Boards, Policy & Regulation

Let's talk about something other than SB 21, okay?

 [businesslawprofessors.com/2025/03/lets-talk-about-something-other-than-sb-21-okay](https://www.businesslawprofessors.com/2025/03/lets-talk-about-something-other-than-sb-21-okay)

March 7, 2025



By Ann Lipton on March 7, 2025

Like this Walgreen's deal with Sycamore.

Very quick thing I note about it: It includes the equivalent of an earnout, namely, in addition to the cash consideration Walgreen's shareholders receive, they also receive a "Divested Asset Proceed Right," or DAP Right, which will entitle them to an additional \$3 per share if Sycamore is able to sell VillageMD, (They get 70% of the net proceeds of the sale, up to \$3 per share).

I don't think the merger agreement is public yet, but this from the press release caught my eye:

WBA shareholders will receive, at closing of the Sycamore transaction, one non-transferable DAP Right per WBA share.

Why non-transferable? After all, it would be more valuable to shareholders if they could sell their DAP right, and that way informed traders could price it based on the likelihood of it reaching the \$3 max payout, etc etc.

After all, that's how Bristol did this not long ago, when it acquired Celgene:

If the merger is completed, Celgene stockholders immediately prior to the completion of the merger will be entitled to receive \$50.00 in cash, one share of Bristol-Myers Squibb common stock and one contingent value right (each, a "CVR") for each share of Celgene common stock held by them...The merger agreement obligates Bristol-Myers Squibb to use its reasonable best efforts to cause the Bristol-Myers Squibb common stock and the CVRs to be issued in the merger to be listed on the NYSE...

But look what happened! And also.... (There's also an ongoing contract dispute). And a similar thing happened when Genzyme acquired Sanofi and paid with CVRs.

So the next time Bristol got the bright idea to buy a company using a CVR component, well:

Section 2.1 CVRs. Each CVR represents the contractual right of a Holder (granted to each Initial Holder as part of the consideration of the Merger pursuant to the terms of the Merger Agreement) to receive the Milestone Payment pursuant to, and subject to the terms and conditions of, this Agreement.

Section 2.2 Nontransferable. The CVRs shall not be sold, assigned, transferred, pledged, encumbered or in any other manner transferred or disposed of, in whole or in part, other than through a Permitted CVR Transfer; the foregoing restrictions shall apply notwithstanding that certain of the CVRs will be held through DTC. Any attempted sale, assignment, transfer, pledge, encumbrance or disposition of CVRs, in whole or in part, in violation of this Section 2.2 shall be void ab initio and of no effect. The CVRs will not be listed on any quotation system or traded on any securities exchange.

I can only assume the change was made so that the CVR would look less like a security – more like a contractual agreement – and therefore could not be the subject of a class action securities fraud claim.

And my *guess* is, that's the same logic for the Walgreens/Sycamore DAP Right. Whether that's enough to defeat the *Howey* test ... well, that would be an intriguing Section 12(a)(1) claim, let me tell you.

And another thing. I lied, I'm still talking about SB 21, only this time in a *Shareholder Primacy* podcast with Mike Levin (we cover the original version as introduced by the Delaware legislature last month). Here at Apple, here at Spotify, and here at YouTube.

TikTok Slammed With Children's Digital Privacy Class Actions in California

 [law.com/therecorder/2025/03/06/tiktok-slammed-with-childrens-digital-privacy-class-actions-in-california](https://www.law.com/therecorder/2025/03/06/tiktok-slammed-with-childrens-digital-privacy-class-actions-in-california)

Kat Black

What You Need to Know

- Five new complaints alleging violation of federal children's privacy law were filed in California this year against TikTok and its parent company, ByteDance.
- The class actions contend that TikTok illegally collects children's data without their parents' consent for monetization purposes in violation of the Children's Online Privacy Protection Act.
- TikTok is currently facing lawsuits from the DOJ and 14 state attorneys general, as well as a probe by the FTC.

At least five class actions claiming that TikTok illegally siphons children's data without parental consent have been filed in California district courts since January, joining a mounting firestorm of federal and state litigation related to the platform's impact on children's mental health and privacy.

The complaints, backed by Chimicles Schwartz Kriner & Donaldson-Smith, Milberg Coleman Bryson Phillips Grossman, Kopelowitz Ostrow and Keller Rohrbach, were filed against TikTok and its Chinese parent company, ByteDance, between Jan. 7 and March 4 in the U.S. District Court for the Northern District of California and the U.S. District Court for the Southern District of California. None of the firms immediately responded to requests for comment.

The plaintiffs allege, among other causes of action, violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, the California Invasion of Privacy Act and California's Unfair Competition Law.

This action was surfaced by Law.com Radar.

All five complaints, filed by parents and guardians of minor children, contend that TikTok unlawfully mines the highly sensitive and personal information of the children that use its short-form video app in violation of the Children's Online Privacy Protection Act, which requires websites to obtain verifiable parental consent before collecting, using or disclosing the data of children under the age of 13.

TikTok and ByteDance, they claimed, share this information with third parties and use it to deliver targeted advertising and curated TikTok content feeds to its youngest consumers. "The sole motive behind this illegal conduct is profit," wrote attorneys for the plaintiffs in the class action filed March 4.

In addition to COPPA, the plaintiffs alleged, TikTok has consistently flouted a permanent injunction imposed by the U.S. government against an earlier iteration of the company, Musical.ly, in March 2019, which was issued as part of a \$5.7 million settlement that Musical.ly was ordered to pay by the Federal Trade Commission to settle COPPA allegations.

On Aug. 2, 2024, the Department of Justice spearheaded a wave of children's privacy-related litigation against TikTok in courts across the country by suing TikTok for COPPA violations that, it claimed, resulted in "millions" of children under 13 being subjected to "extensive data collection," interacting with "adult users" and accessing "adult content." The suit was filed on the heels of the Senate's approval of novel children's online privacy bills "COPPA 2.0" and Kids Online Safety Act (KOSA) in July 2024.

The complaints contended that these COPPA violations occurred even in "Kids Mode," a restricted version of the platform in which children can view but not post videos, that TikTok has provided since March 2019 to account holders who indicate they are younger than 13. Parents are not notified when minors create accounts in Kids Mode and, furthermore, the platform has no protocols in place to verify children's ages or ensure that users are not bypassing TikTok's "age gate" by lying about their birthdays, they said.

"TikTok has an algorithm to predict the user's age based on their behavior on TikTok," wrote Chris Springer of Keller Rohrbach, an attorney for the plaintiffs in the complaint filed Feb. 27. "But TikTok refuses to use its age-prediction algorithm to identify children under 13 and stop them from using regular TikTok accounts."

The suit filed on March 4, citing comments from anonymous former TikTok employees, claimed that TikTok content moderators routinely ignored or were instructed to ignore accounts they identified to be maintained by underage users, allowing them to remain online. In Aug. 2020, The New York Times reported that more than a third of TikTok's daily users were 14 or younger.

Despite barely escaping a projected ban in the United States in January after President Donald Trump took office, reversing former President Joe Biden's decision to order ByteDance to divest from TikTok over national security concerns, the platform continues to experience unabated regulatory and legal scrutiny about its collection of children's data across the globe. The United Kingdom's privacy regulator, the Information Commission's Office, launched an investigation Monday into the way TikTok uses U.K. children's

information, and TikTok is concurrently facing a probe from the FTC, as well as a spate of nationwide COPPA-focused litigation and a lawsuit filed by 14 state attorneys general, including California state attorney general Rob Bonta, alleging harm to children's mental health.

TikTok and its counsel at O'Melveny & Myers could not immediately be reached for comment.

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

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Phoenix Federal Courthouse Abandoned: Update

 talkingpointsmemo.com/edblog/phoenix-federal-courthouse-abandoned-update



PHOENIX, AZ - JANUARY 24: Media stands outside the Sandra Day O'Connor federal courthouse January 24, 2011 in Phoenix, Arizona. Jared Lee Loughner, the man accused of the January 8, shooting that killed six people a... MORE 

By Josh Marshall

|

March 6, 2025 7:06 p.m.



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Earlier this afternoon I told you how the GSA staffers who run the Sandra Day O'Connor Federal Courthouse in Phoenix were abruptly fired with no warning or notification to anyone who works in the building. A bit later this afternoon I was able to speak to Debra Lucas, the District Court Executive and Clerk of the Court. To explain that job title Lucas is the senior judicial branch official at the courthouse in terms of the administration of the function of the courthouse. What Lucas told me basically squared with what sources had already told and which I shared with you in that earlier post.

They got no advance warning that this was going to happen. And they still haven't gotten any explanation of what's happening. "We're still waiting for guidance," Lucas told me. When I asked, guidance from whom? she said the GSA.

As she further explained, the building has one contract for facility maintenance and another for cleaning. And for now those people are still showing up. So for now, not a lot has changed in terms of like trash piling up or like something falling apart. It's just that the people

in charge of the building and who the contractors report to are gone. I tried to suss out, like is this sustainable? Her response was pretty much identical to what I heard from the person I spoke to in the GSA field office in Phoenix. Lucas took a moment and said, “It’s too early to say.”

They’re two and half days in.

In other words, what it comes down to is that the GSA, at DOGE’s orders, have essentially abandoned this facility. It’s a courthouse. So they’re continuing to do judge stuff. And the people who clean the toilets and maintain the AC and so forth are continuing to showed up yesterday and today because that’s what they do. But no one has any idea what’s going on and that’s really it.

I get the impression that they’re trying to stay generally quiet about this. Probably because no one wants to antagonize DOGE but also because they genuinely have no idea what’s going on. I mean, think how bizarre this is. Courthouses aren’t really a very kinetic kind of real estate space. The government sets them up and that’s kind of it. And here you have a case where you work in this building and suddenly the people who are the closest analogue to the landlord or the management company just disappeared. That’s weird!

I suspect it’s pretty outside the experience of all these people.

My strong sense, based both on logic and hunches but also reporting I’m doing, is that stuff like this is happening all across the country right now. But we’re simply not hearing about because it’s happening so quickly and in so many places at once.



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Josh Marshall (@joshtpm) is the founder and Editor-in-Chief of TPM.

📌 Have a tip? Send it Here!

US federal workers hit back at Trump mass firings with class action complaints

 [reuters.com/legal/us-federal-workers-hit-back-trump-mass-firings-with-class-action-complaints-2025-03-06](https://www.reuters.com/legal/us-federal-workers-hit-back-trump-mass-firings-with-class-action-complaints-2025-03-06)

Daniel Wiessner

Labor union activists rally in support of federal workers during a protest on Capitol Hill in Washington, U.S., February 11, 2025. REUTERS/Craig Hudson/File Photo Purchase Licensing Rights , opens new tab

- Fired workers seeking to represent tens of thousands of people
- Mass firings of recent hires were unlawful, they claim
- Cases filed at civil service board amid political turmoil

March 6 (Reuters) - U.S. government employees who have been fired in the Trump administration's purge of recently hired workers are responding with class action-style complaints claiming that the mass firings are illegal and tens of thousands of people should get their jobs back.

Lawyers at two firms said on Thursday that they had filed six appeals with the federal Merit Systems Protection Board since last week and, along with other law firms, plan to bring about 15 more on an agency-by-agency basis on behalf of large groups of workers who were fired in recent weeks.

Federal workers must go through the merit board to challenge their terminations. But the panel's work could be brought to a standstill if President Donald Trump succeeds in removing the board's only Democratic member, Cathy Harris, who is locked in a legal battle with the administration to keep her job.

Harris on Tuesday ordered the U.S. Department of Agriculture to temporarily reinstate nearly 6,000 probationary employees, while the board considers a challenge to their firing. Probationary workers typically have less than a year of service in their current roles, though some are longtime federal workers.

The lawyers filing the new appeals, Christopher Bonk and Daniel Rosenthal, said the mass terminations of probationary employees amounted to layoffs that are supposed to be guided by complex rules.

Probationary workers have limited legal protections compared with other civil servants, but agencies are still required to explain why they are being fired and give them advance notice of mass layoffs.

"There are regulations in place to make sure that layoffs, when necessary and appropriate, are done with intentionality," said Bonk, of the Maryland firm Gilbert Employment Law. "The Trump administration has willfully ignored the law."

Appeals have been filed against the U.S. Department of Homeland Security, Department of Agriculture, Department of Veterans Affairs, Environmental Protection Agency, Department of Interior and the Federal Deposit Insurance Company, the lawyers said. Reuters reviewed a redacted complaint filed against the Interior Department.

The Interior Department and the FDIC declined to comment. The other agencies and the White House did not immediately respond to requests for comment.

POLITICAL TURMOIL

The three-member merit board reviews federal workers' appeals when they are fired or face discipline. Cases are typically first heard by administrative judges and then reviewed by the board, whose decisions can be appealed to a Washington, D.C.-based federal appeals court.

Trump fired Harris from the board last month, and the administration is appealing a federal judge's ruling this week that said her removal was illegal. The term of another Democratic board member expired last week, leaving Harris and Acting Chair Henry Kerner, a Republican.

If Harris is ultimately removed, the board will not have a quorum of at least two members that can decide workers' appeals. The agency's resources are also likely to be strained by an influx of new cases. More than 4,800 appeals were filed between the week Trump took office and March 1, according to the board.

Trump had separately moved to fire Hampton Dellinger, head of the Office of Special Counsel, a watchdog agency that can bring cases to the merit board on behalf of federal employees.

Dellinger filed the case that led Harris to reinstate workers at the Agriculture Department for 45 days. Only the Special Counsel, and not individual employees who file appeals with the board, can ask for a temporary ruling reinstating workers.

Dellinger sued over his firing and was briefly reinstated, but a federal appeals court temporarily allowed Trump to remove him and he dropped his legal challenge on Thursday. Bonk and Rosenthal said the political turmoil was even more reason for federal workers to band together to challenge mass firings.

"There's a lot that we don't know about what's going to happen, and that highlights the importance of bringing these appeals directly without going through the Special Counsel process," said Rosenthal, of the firm James & Hoffman in Washington, D.C.

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Trump Order Calls For DEI Policy Review of 'Leading Law Firms'

 [law.com/nationallawjournal/2025/03/06/trump-order-calls-for-dei-policy-review-of-leading-law-firms](https://www.law.com/nationallawjournal/2025/03/06/trump-order-calls-for-dei-policy-review-of-leading-law-firms)

Abigail Adcox

In a new executive order, President Donald Trump opened the door for widescale investigations into DEI practices at large law firms.

The order, signed on Thursday, directs the chair of the Equal Employment Opportunity Commission to review the practices of “representative large, influential, or industry-leading law firms for “consistency” with Title VII of the Civil Rights Act of 1964.

The order also calls for the U.S. attorney general to investigate the practices of large law firms that do business with federal entities for “compliance with race-based and sex-based non-discrimination laws.”

Specifically, it directs the chair of the Equal Employment Opportunity Commission to review the practices of large law firms for compliance with the Title VII of the Civil Rights Act of 1964, including whether firms “reserve certain positions, such as summer associate spots, for individuals of preferred races; promote individuals on a discriminatory basis; permit client access on a discriminatory basis; or provide access to events, trainings, or travel on a discriminatory basis.”

In addition, it calls for the U.S. attorney general, in coordination with the EEOC and consultation with state attorneys general, to investigate the practices of large firms “who do business with Federal entities for compliance with race-based and sex-based non-discrimination laws and take any additional actions the Attorney General deems appropriate in light of the evidence uncovered.”

“My Administration is committed to ending discrimination under ‘diversity, equity, and inclusion’ policies and ensuring that Federal benefits support the laws and policies of the United States, including those laws and policies promoting our national security and respecting the democratic process,” the order reads.

The far-reaching order specifically targeted Perkins Coie, revoking security clearances for employees at the firm and calls for terminating any existing government contracts with the firm and contractors that use the firm. It also specifically calls for a review of the firm’s DEI policies.

The order detailed Perkins Coie’s reported role in the commission of the Steele Dossier, its work for activist donors such as George Soros, and its involvement in lawsuits against the Trump administration.

A firm spokesperson for Perkins Coie said they intend to challenge the order.

"We have reviewed the Executive Order. It is patently unlawful, and we intend to challenge it," the spokesperson said.

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New Suit - Trademark

The Liverpool Football Club and Athletic Grounds Limited filed a trademark infringement lawsuit on March 6 in Illinois Northern District Court over the alleged sale of counterfeit goods bearing the plaintiff's 'LFC' marks. The suit, filed by Greer, Burns & Crain, pursues claims against unidentified online retailers. The case is 1:25-cv-02413, The Liverpool Football Club and Athletic Grounds Limited v. The Partnerships and Unincorporated Associations Identified on Schedule A.

[Read More](#)

New Suit - Copyright

Andre Rebelo Soares and JOGO Studios Inc. were slapped with a copyright infringement lawsuit on March 6 in California Central District Court. The lawsuit, filed by Dorsey & Whitney on behalf of MM Games, accuses the defendants of producing and publishing derivative works of the plaintiff's audio-visual work on their YouTube page without authorization. The case is 2:25-cv-01969, MM Games D.o.o. v. Rebelo Soares.

[Read More](#)

Trump Targets Law Firms Over Steele Dossier, Diversity Moves (1)

President Donald Trump on Thursday suspended security clearances for Perkins Coie and ordered investigations of at least 15 law firms over diversity programs.

The directive targets Perkins Coie employees because the firm in 2016, while working for presidential candidate Hillary Clinton, “hired Fusion GPS, which then manufactured a false ‘dossier’ designed to steal an election,” according to an executive order signed by Trump.

“It’s weaponization,” Trump said in the Oval Office, “you could say weaponization against a political opponent, and it should never be allowed to happen again.”

Perkins Coie in a statement called the order “patently unlawful, and we intend to challenge it.”

The order also directs the Equal Employment Opportunity Commission to investigate possible racial discrimination at “representative large, influential, or industry leading law firms.” The order doesn’t name the targets, but Trump asked aide Will Scharf, “You’re looking at about 15 different firms?” and Scharf responded, “That or more sir, yes.”

Trump’s targeting of Perkins Coie comes on the heels of his order to revoke security clearances and any active business with Covington & Burling for its representation of former special counsel Jack Smith, who brought two failed criminal cases against the president.

Democratic Ties

Perkins Coie has been a top outside legal adviser to Democrats in previous election cycles. It came under fire for its role in opposition research on Trump ahead of the 2016 White House election. Former Perkins Coie partner Michael Sussmann, a lawyer to Clinton, in 2022 was acquitted on a criminal charge of lying to the FBI.

The firm is the former home to significant Democratic lawyers including Marc Elias and Bob Bauer. Elias, who served as counsel for the Harris-Walz presidential campaign, ran the firm’s political practice group before launching his own boutique in 2021. Bauer served in the Obama administration and was tapped as former President Biden’s personal lawyer in 2023.

Trump's order asks agencies to review any contracts with the law firm, and with entities that do business with it, for possible termination. It also tells agency officials to refrain from hiring employees of Perkins Coie and to place limitations on the firm's employees entering federal government buildings.

Elias, formerly a lawyer for the 2016 Clinton campaign and the Democratic National Committee, retained Washington firm Fusion GPS to conduct the research that resulted in the Steele dossier, the Washington Post reported in 2017. The dossier alleged Trump's campaign coordinated with Russian government officials.

DEI at Law Firms

Trump's section of the order regarding racial discrimination also asks the Justice Department to investigate law firms that do business with the federal government "for compliance with race-based and sex-based non-discrimination laws." It instructs Justice to "take any additional actions the Attorney General deems appropriate in light of the evidence uncovered."

The order singles out Perkins Coie as a firm that "racially discriminates against its own attorneys and staff, and against applicants." It said Perkins Coie publicly announced percentage quotas in 2019 for hiring and promotion on the basis of race and other categories prohibited by civil rights laws and "proudly excluded" applicants on that basis.

Perkins Coie was one of many law firms to overhaul its diversity and inclusion programs and initiatives following the Supreme Court's June 2023 decision to curb the use of race in college admissions. Perkins Coie and Morrison Foerster were both sued by group run by Edward Blum's anti-affirmative action group.

Attorney General Pam Bondi on Feb. 28 urged the American Bar Association to completely scrap its diversity mandate for law schools. The ABA already had temporarily suspended enforcement of its diversity mandate for law schools, citing recent messaging from the Trump administration. Law schools have dropped "diversity" from their websites and rankings.

(Adds additional reporting throughout)

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Trump Targets Perkins Coie, Other Firms in Broad Order

 [law.com/nationallawjournal/2025/03/06/-trump-goes-after-perkins-coie-in-latest-memo-targeting-a-law-firm](https://www.law.com/nationallawjournal/2025/03/06/-trump-goes-after-perkins-coie-in-latest-memo-targeting-a-law-firm)

Abigail Adcox

This article has been updated with more details from the order.

President Donald Trump signed an executive order on Thursday targeting Perkins Coie, just a week after a similar memo attacking Covington. The far-reaching order also directs the Equal Employment Opportunity Commission and the Attorney General to review the DEI practices of “large, influential, or industry-leading law firms.”

In all, the executive order revokes security clearances for employees at Perkins Coie and calls for terminating any existing government contracts with the firm and contractors that use the firm as legal counsel. The order also calls for a review of the firm’s DEI policies and seeks to limit its use of federal resources.

The order goes on to revoke security clearances for Perkins Coie employees and limit their access into federal government buildings.

“The heads of all agencies shall, to the extent permitted by law, provide guidance limiting official access from Federal Government buildings to employees of Perkins Coie when such access would threaten the national security of or otherwise be inconsistent with the interests of the United States,” said the order posted online, adding “the heads of all agencies shall provide guidance limiting Government employees acting in their official capacity from engaging with Perkins Coie employees to ensure consistency with the national security and other interests of the United States.”

The order goes much further than a previous memo signed last week targeting Covington. The previous memo suspended security clearances for Covington attorneys and directed agencies to review all government contracts with the firm.

It also opens the door for widescale investigations into other large law firms over their DEI policies.

Specifically, it directs the chair of the Equal Employment Opportunity Commission to review the practices of large law firms for its “consistency” with Title VII of the Civil Rights Act of 1964, including whether firms “reserve certain positions, such as summer associate spots, for individuals of preferred races; promote individuals on a discriminatory basis; permit client access on a discriminatory basis; or provide access to events, trainings, or travel on a discriminatory basis.”

In addition, it calls for the Attorney General, in coordination with the EEOC and state attorneys general to investigate the practices of large firms “who do business with Federal entities for compliance with race-based and sex-based non-discrimination laws and take any additional actions the Attorney General deems appropriate in light of the evidence uncovered.”

Perkins Coie

The order specifically details Perkins Coie’s reported role in the commission of the Steele Dossier, its work for activist donors such as George Soros, and its involvement in lawsuits against the Trump administration.

“Perkins Coie has worked with activist donors including George Soros to judicially overturn popular, necessary, and democratically enacted election laws, including those requiring voter identification,” the order cites about the firm’s work.

Perkins Coie, led by Marc Elias, represented Hillary Clinton’s campaign in 2016 and hired Fusion GPS for Trump opposition research, which resulted in the Steele dossier. Elias left Perkins Coie in 2021 to start his own firm, Elias Law Group.

In the order, it says the firm “hired Fusion GPS to manufacture a false ‘dossier’ designed to steal an election while representing failed presidential candidate Hillary Clinton.”

“President Trump’s administration will not tolerate Perkins Coie LLP’s unethical and discriminatory actions that threaten our elections, military strength, and national security,” the order said.

Perkins Coie has remained one of the top-paid law firms by the Democratic National Committee in recent years. Perkins Coie was paid over \$481,000, according to FEC records from January to July last year.

A Perkins Coie spokesperson did not immediately respond to a message seeking comment on the order. Elias could not be reached for comment.

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California bar approves bar exam probe as angry test takers sound off

 [reuters.com/legal/legalindustry/california-bar-approves-bar-exam-probe-angry-test-takers-sound-off-2025-03-06](https://www.reuters.com/legal/legalindustry/california-bar-approves-bar-exam-probe-angry-test-takers-sound-off-2025-03-06)

Karen Sloan

A man types on his laptop in Beijing, China, July 31, 2008. REUTERS/Tim Wimborne
Purchase Licensing Rights , opens new tab

March 6 (Reuters) - The State Bar of California on Wednesday launched an independent investigation of its February bar exam, a newly created test that was marred by widespread technical and logistical problems.

The state bar's board of trustees approved the retention of an outside investigator following two hours of public comment from bar examinees who expressed frustration and anger over the faulty rollout of the state's new exam.

More than 90 test takers spoke, with many asking for the board to adopt remedies, including score adjustments, a lower passing score, a waiver that would enable examinees to become licensed without taking another bar exam, and a provisional licensing program where they could work under the supervision of an experienced attorney.

Several speakers called for the resignation of State Bar Executive Director Leah Wilson and board members.

"I feel cheated and disrespected," February bar examinee Ramon Baldonado told the board. "You have failed all of us test takers."

Examinee Phil Movaghar said the state bar displayed "stunning incompetence" in its handling of the February bar exam. "I no longer believe this body is capable of measuring competence," he said.

A state bar spokesperson did not immediately provide comment on Thursday but several trustees on Wednesday said they are taking examinees' concerns seriously.

"We heard you," said trustee Raymond Buenaventura. "We're asking questions."

The board did not approve any specific licensing or scoring changes during its Wednesday meeting — some changes would require the approval of the California Supreme Court — but trustees said they are taking test takers' comments into consideration. The state bar is planning a limited re-test on March 18 and 19, and has said any of the 4,300 who took the February test and fail may retake the July exam for free.

Exams must be graded before testing experts can examine potential scoring adjustments, state bar staff told the board. Trustee Mark Toney urged the bar to hire additional graders to speed up that process.

On Tuesday, The California Supreme Court separately ordered [this](#), opens new tab the state bar to return to all in-person testing for the July exam, setting off a scramble to secure convention centers and other large sites throughout the state with just 16 weeks to go. The state bar is also looking for a new test vendor, after staff recommended cutting ties with Meazure Learning, which administered the February exam.

The state bar moved to a hybrid format of in-person and remote testing in February with the goal of saving money by eliminating the need to rent out convention centers and other large spaces, which it had done for decades. That transition proved difficult.

Some February test takers were unable to log into the exam at all, while many experienced delays, lax exam security, distracting proctors, and a copy-and-paste function that didn't work, the state bar staff said in a presentation Wednesday.

Early data from Meazure Learning suggests most examinees were able to complete the bulk of the test, even if they encountered delays or glitches, state bar staff said. Among examinees, 98% had some content in all six of the written essay and performance test portions. The same percentage also completed at least 195 of the 200 multiple-choice questions, early numbers show.

Read more:

After California bar exam chaos, state poised to nix remote testing

California bar exam meltdown on Tuesday prompts offer of March retakes

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Thomson Reuters

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Addressing Risks from Perkins Coie LLP

 [whitehouse.gov/presidential-actions/2025/03/addressing-risks-from-perkins-coie-llp](https://www.whitehouse.gov/presidential-actions/2025/03/addressing-risks-from-perkins-coie-llp)

March 6, 2025



Presidential Actions
EXECUTIVE ORDER
March 6, 2025

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

Section 1. Purpose. The dishonest and dangerous activity of the law firm Perkins Coie LLP (“Perkins Coie”) has affected this country for decades. Notably, in 2016 while representing failed Presidential candidate Hillary Clinton, Perkins Coie hired Fusion GPS, which then manufactured a false “dossier” designed to steal an election. This egregious activity is part of a pattern. Perkins Coie has worked with activist donors including George Soros to judicially overturn popular, necessary, and democratically enacted election laws, including those requiring voter identification. In one such case, a court was forced to sanction Perkins Coie attorneys for an unethical lack of candor before the court.

In addition to undermining democratic elections, the integrity of our courts, and honest law enforcement, Perkins Coie racially discriminates against its own attorneys and staff, and against applicants. Perkins Coie publicly announced percentage quotas in 2019 for hiring

and promotion on the basis of race and other categories prohibited by civil rights laws. It proudly excluded applicants on the basis of race for its fellowships, and it maintained these discriminatory practices until applicants harmed by them finally sued to enforce change.

My Administration is committed to ending discrimination under “diversity, equity, and inclusion” policies and ensuring that Federal benefits support the laws and policies of the United States, including those laws and policies promoting our national security and respecting the democratic process. Those who engage in blatant race-based and sex-based discrimination, including quotas, but purposefully hide the nature of such discrimination through deceiving language, have engaged in a serious violation of the public trust. Their disrespect for the bedrock principle of equality represents good cause to conclude that they neither have access to our Nation’s secrets nor be deemed responsible stewards of any Federal funds.

Sec. 2. Security Clearance Review. (a) The Attorney General, the Director of National Intelligence, and all other relevant heads of executive departments and agencies (agencies) shall immediately take steps consistent with applicable law to suspend any active security clearances held by individuals at Perkins Coie, pending a review of whether such clearances are consistent with the national interest.

(b) The Office of Management and Budget shall identify all Government goods, property, material, and services, including Sensitive Compartmented Information Facilities, provided for the benefit of Perkins Coie. The heads of all agencies providing such material or services shall, to the extent permitted by law, expeditiously cease such provision.

Sec. 3. Contracting. (a) To prevent the transfer of taxpayer dollars to Federal contractors whose earnings subsidize, among other things, racial discrimination, falsified documents designed to weaponize the Government against candidates for office, and anti-democratic election changes that invite fraud and distrust, Government contracting agencies shall, to the extent permissible by law, require Government contractors to disclose any business they do with Perkins Coie and whether that business is related to the subject of the Government contract.

(b) The heads of all agencies shall review all contracts with Perkins Coie or with entities that disclose doing business with Perkins Coie under subsection (a) of this section. To the extent permitted by law, the heads of agencies shall:

(i) take appropriate steps to terminate any contract, to the maximum extent permitted by applicable law, including the Federal Acquisition Regulation, for which Perkins Coie has been hired to perform any service;

(ii) otherwise align their agency funding decisions with the interests of the citizens of the United States; with the goals and priorities of my Administration as expressed in executive actions, especially Executive Order 14147 of January 20, 2025 (Ending the Weaponization of the Federal Government); and as heads of agencies deem appropriate. Within 30 days of the date of this order, all agencies shall submit to the Director of the Office of Management and Budget an assessment of contracts with Perkins Coie or with entities that do business with Perkins Coie effective as of the date of this order and any actions taken with respect to those contracts in accordance with this order.

Sec. 4. Racial Discrimination. (a) The Chair of the Equal Employment Opportunity Commission shall review the practices of representative large, influential, or industry leading law firms for consistency with Title VII of the Civil Rights Act of 1964, including whether large law firms: reserve certain positions, such as summer associate spots, for individuals of preferred races; promote individuals on a discriminatory basis; permit client access on a discriminatory basis; or provide access to events, trainings, or travel on a discriminatory basis.

(b) The Attorney General, in coordination with the Chair of the Equal Employment Opportunity Commission and in consultation with State Attorneys General as appropriate, shall investigate the practices of large law firms as described in subsection (a) of this section who do business with Federal entities for compliance with race-based and sex-based non-discrimination laws and take any additional actions the Attorney General deems appropriate in light of the evidence uncovered.

Sec. 5. Personnel. (a) The heads of all agencies shall, to the extent permitted by law, provide guidance limiting official access from Federal Government buildings to employees of Perkins Coie when such access would threaten the national security of or otherwise be inconsistent with the interests of the United States. In addition, the heads of all agencies shall provide guidance limiting Government employees acting in their official capacity from engaging with Perkins Coie employees to ensure consistency with the national security and other interests of the United States.

(b) Agency officials shall, to the extent permitted by law, refrain from hiring employees of Perkins Coie, absent a waiver from the head of the agency, made in consultation with the Director of the Office of Personnel Management, that such hire will not threaten the national security of the United States.

Sec. 6. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE,
March 6, 2025.

Silent Treatment: Why Big Law Has Not Spoken Out on Trump's Covington Memo

 [law.com/2025/03/06/silent-treatment-why-big-law-has-not-spoken-out-on-trumps-covington-memo](https://www.law.com/2025/03/06/silent-treatment-why-big-law-has-not-spoken-out-on-trumps-covington-memo)

Gina Passarella Cipriani

Each week, the Law.com Barometer newsletter, powered by the ALM Global Newsroom and Legalweek brings you the trends, disruptions, and shifts our reporters and editors are tracking through coverage spanning every beat and region across the ALM Global Newsroom. The micro-topic coverage will not only help you navigate the changing legal landscape but also prepare you to discuss these shifts with thousands of legal leaders at Legalweek 2025, taking place from March 24-27, 2025, in New York City. Registration is now open.

The Shift: Silent Treatment: Why Big Law Has Not Spoken Out on Trump's Covington Memo

Covington & Burling attorneys who represented former special counsel Jack Smith last month saw their security clearances suspended by President Trump in a memo calling for an investigation into whether the firm participated in the “weaponization” of the judicial process. The president also called for a review of any federal contracts Covington may have, saying the firm’s representation of the man who once investigated Trump required a closer look.

While law firm leaders have noted that individual government hires or divisive representations have historically created the possibility of backlash, the step by Trump to suspend some attorneys’ security clearances was a shift into new and, for them, scary territory, many told us privately.

But what can—or should—they do about it?

In a Chatham House rules style conversation with firm leaders this week, we got a bit more insight into whether this was the first test of Big Law’s post-election response to hot-button topics or simply not the right time to speak out.

The Conversation

There’s no doubt the news about Covington sent shockwaves through the legal community as they were faced with perhaps the closest-to-home example of how Trump may wield his authority against those who oppose his views. While members of Big Law were clearly talking about it behind the scenes, they have been mum when it comes to speaking publicly. Around a dozen Am Law 100 leaders declined to go on the record for this piece by my colleagues Abigail Adcox and Dan Roe examining whether Trump’s order would have a chilling effect on the legal work firms choose to take on.

For its part, Covington has said: “For more than 100 years, Covington has represented clients facing government investigations, consistent with the best traditions of the legal profession. We recently agreed to represent Jack Smith when it became apparent that he would become a subject of a government investigation. Covington serves as defense counsel to Jack Smith in his personal, individual capacity. We look forward to defending Mr. Smith’s interests and appreciate the trust he has placed in us to do so.”

Some say that if Big Law doesn’t speak out, there’s no chance of tamping down this type of threat to the rule of law.

“If Big Law firms cave, I think that sends such a negative and weak signal to the broader profession because they’re the leaders. They have the resources. If they can’t stand up for what’s right in this situation, then it makes it hard to imagine other people doing it who are much more vulnerable,” Scott Cummings, a legal ethics professor at the UCLA School of Law, told Adcox and Roe.

It’s not that Big Law leaders don’t have opinions.

One Am Law 100 firm leader, speaking anonymously, said they and several colleagues at other Big Law firms agreed that the memo represented “despicable behavior by the administration in its shameless disregard for the rule of law.” Another described it as “insane,” adding that “the notion that the administration would retaliate against a lawyer providing constitutionally required criminal defense because the prosecutor in question investigated him—it’s bonkers. There is no precedent.”

A third Big Law firm leader said that although their cohort wasn’t yet “freaking out,” the retribution against Covington was “surprising.” Meanwhile, a fourth firm leader didn’t think the memo would prevent Big Law firms from representing corporations that have drawn the ire of the Trump administration, but acknowledged that certain pro bono and anti-administration clients might not find representation in Big Law.

When we got firm leaders together this week to discuss an entirely different topic, the memo on Covington came up. They said it’s a safe bet every member of firm management is thinking about this particular issue and the broader topic of how to keep doing good work—such as DEI efforts—while staying out of the administration’s crosshairs.

Firm leaders said there are commercial realities to who they hire or who they represent, from the perspectives of both what existing clients and talent think to what the government might do. But that, they said, is not a new phenomenon. Trump’s memo targeting Covington, however, was “highly unusual” because it called out a firm specifically for who it represents and the action impacted their ability to do their work. And as it relates to hiring, they all reiterated a sentiment some shared just after the election— hiring former Biden administration lawyers to do government-facing work just can’t be effective.

One leader of a global firm said there will be volatility every day, with new and unexpected twists, and they are just trying to keep their teams focused. The leader said there were people in the firm who wanted to write letters condemning Trump's memo, but the firm put a stop to it. They said the firm had to view it through the lens of what would be effective.

"Are you accomplishing anything, or just venting?" the leader said, outlining the calculus for when and how to act.

Most firm leaders didn't view individual public statements as helping the cause.

"Lending a hand isn't the smartest thing to do ... tactically," another firm leader said.

And while firm leaders didn't say as much, the risk to their firm may not have been worth the reward. But they did wonder whether there was more they could do together on the broader issue of protections to the rule of law—something that has also plagued the judiciary in recent weeks, leading to multiple statements from bar associations and other pockets of the profession calling for protections to the judicial process.

The Significance

In a roundtable discussion immediately following the election, Big Law leaders told us they would considerably pull back from making public statements about divisive issues. They also said the administration brought with it a new way of doing business—one that meant less predictable and unified applications of rules and more individual experiences and relationship-driven opportunities.

That new-found reality could signify, as the Covington scenario demonstrated, that no one firm's experience is viewed as a template for what would happen to others. While not quite rising to the level of "every man—or firm—for himself," the idea of adding a singular voice to the mix isn't viewed as anything that would compel change.

There's no doubt many were happy to have a reason to pull back from public comments around social issues not directly related to their legal work. But it just so happened that one of the first tests under the Trump administration of their wherewithal to speak out was on an issue directly related to their day-to-day work.

For now, it seems Big Law leaders are trying to figure out what could make a difference, with clear interest expressed around coalescing as a group to add their voice to the mix. Whether that will happen may be the real test.

The Information

If the last six weeks are anything to go by, it appears highly likely that Big Law will face multiple tests on issues related to both the rule of law and broader social topics under this administration. A reticence to speak out publicly is unlikely to change as firm leaders see how the administration actually operates now in office. We may also see firms pull-back on DEI messaging, even if the efforts persist. We know they will shy away from certain government hires, and they may pull back from certain representations.

But perhaps this should not be mistaken for apathy or cowardice. Behind the scenes, there does seem to be an appetite among some for coalitions of firms organizing to speak out together. There seems to be a clear sentiment that they want to continue to represent the clients of their choosing and run internal programs of their choosing.

Speaking up under this administration may feel too risky, but of course, there are well known ramifications for staying silent.

It looks like firm leaders weren't able to avoid circumspection around whether to issue public statements after all. But perhaps the bigger question now becomes—what can make an impact in the current environment? The new test has been issued.

Gina Passarella is SVP, Content, at ALM. Contact her at gpassarella@alm.com.

Trump Attacks on ABA Threaten Group's Funding and Membership

- ABA is criticized over diversity efforts
- Attacks underscore need for response

The Trump administration's latest attacks on the American Bar Association threaten the group's revenue streams, along with its power and prestige.

The professional legal organization is suing the Trump administration over its planned cuts to USAID from which it derives a significant amount of grant money. The ABA has had tens of millions of dollars in USAID and State Department funding frozen, it said in the lawsuit filed Feb. 11.

The Justice Department on Feb. 28 threatened to pull the ABA's accreditation powers for law schools if it doesn't drop a diversity rule. The administration and allies also cut ABA memberships, backed out of a conference at the last minute and called for a hiring-bias investigation.

There are "lots of things the Trump administration can do" to further hurt the group, like cutting federal contracts and scuttling more memberships, said Richard Pierce, a law professor at George Washington Law School. Losing accreditation authority "would be a tremendously big hit to the prestige and status of the ABA," he said.

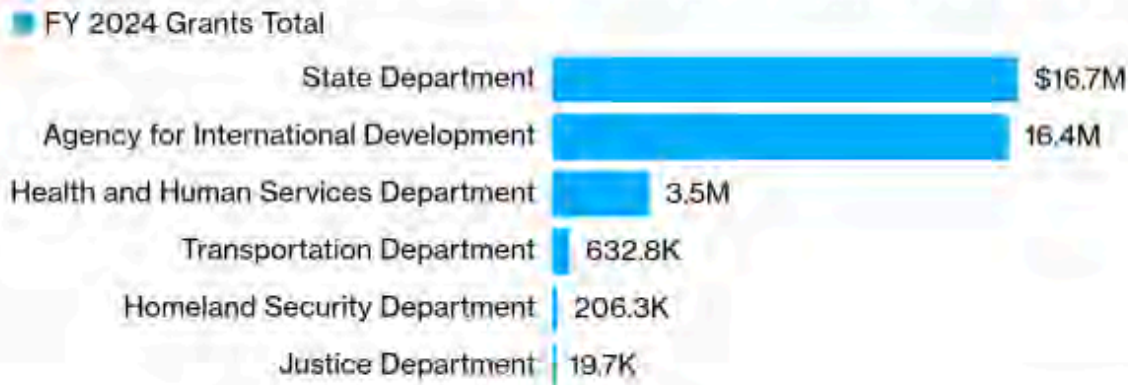
The ABA's access to federal grants may be at risk, said Skylar Croy, associate counsel at the Wisconsin Institute for Life and Liberty. It's one of the groups that asked the US Equal Employment Opportunity Commission to investigate the ABA over a diversity initiative.

"We will see the Trump administration be very, very skeptical to award future grants to entities with a history like the ABA that are viewed as being pro-DEI and pro affirmative action," Croy said. "They have a lot of risk exposure."

The group has recently been more dependent on grants in the face of declining membership.

ABA Receives Grants From Various Federal Agencies

As membership declined, the ABA increased its reliance on federal grants.



Source: USAspending.gov

Bloomberg Law

The threats underscore the urgency for the organization to come up with new ways to defend itself. The ABA has likely tapped outside counsel to help build a strategy that aims to appease the Trump administration and protect core ideals to satisfy members, said Esther Lander, an Orrick, Herrington & Sutcliffe partner who works on employment discrimination cases and investigations.

"I don't think the ABA is unique," Lander said. "A lot of companies are concerned about being on some list by some agency of the federal government because of those diversity, equity, and inclusion initiatives."

Trump on Thursday ordered the EEOC to investigate at least 15 of the country's largest law firms over their DEI programs.

ABA representatives declined to comment for this story on what steps it plans to take in response to the Trump administration's actions.

Holding Pattern

The ABA already had paused enforcement of a diversity, equity and inclusion mandate for the nearly 200 law schools it accredits by the time Bondi threatened to kill its accreditation power. The ABA also said it would consider changes to the policy.

The organization broadened its DEI requirements for a diversity clerkship program after Trump-aligned advocacy groups last month called on the EEOC to investigate.

The ABA also has issued general statements pushing back against the administration.

"We will not stay silent in the face of efforts to remake the legal profession into something that rewards those who agree with the government and punishes those who do not," the group said in a March 3 statement.

The ABA a month earlier condemned Trump administration moves "that appear to question the legitimacy of judicial review and demand impeachment of a judge merely because the court did not agree with the government's position."

The organization should keep making strong statements that will attract new dues-paying members to help sustain it, said Jenny Yang, former chair of the EEOC during the Obama administration.

"There will be more engagement from individual lawyers because the rule of law is what we've dedicated our life to, and we have a serious threat of an administration not following the rule of law," Yang said.

Target for Conservatives

The ABA since its founding 146 years ago has served as the preeminent voice of the US legal establishment. With 400,000 members and chapters in all 50 states and the District of Columbia, it sets ethics standards, provides continuing education training, holds conferences, and advocates for public service.

But the group has taken a turn to the left, according to conservatives.

President George W. Bush's administration in 2001 stopped sending judicial nominees to the ABA for vetting, a practice that had been in place since Dwight D. Eisenhower. Conservatives in the years since have increasingly voiced dissatisfaction with the group's opinions and actions.

"It doesn't have the neutrality, whether actual or perceived, that it might have once had," Derek Muller, a professor at the University of Notre Dame Law School, said of the ABA. "It's just lost its influence more generally as a result."

Federal Trade Commission Chairman Andrew Ferguson on Feb. 14 banned staff from holding ABA leadership positions, attending group events, or renewing memberships with the organization. He cited the ABA's "history of leftist advocacy" and its attacks on Trump's actions.

Senior Justice Department attorneys at the last minute backed out of an ABA white-collar crime conference this month in Miami.

"For the first time in my memory, organizations like the American Bar Association are being attacked in a way for just doing what they've always done," said Michael Posner, a lawyer and former assistant secretary of state in the Obama administration.

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Bar Bid by Attorney General's Brother Prompts Lawyers' Concerns

- Attorney general's sibling running to be DC Bar president
- Lawyers worried about ethics cases after Trump allies charged

Some Washington lawyers are raising concerns over a campaign by the brother of Attorney General Pam Bondi to lead the DC Bar, as the body fields ethics charges against attorneys linked to President Donald Trump.

Brad Bondi, a partner at Paul Hastings, was named in February as a candidate for DC Bar president. Also running for a bar leadership position is Alicia Long, chief deputy for Ed Martin, Trump's pick to lead the US attorney's office in Washington. She's one of two nominees for treasurer. If elected, both would be among the 20 lawyers who sit on the bar's board of governors.

Current and former bar officials and members said that, if elected, Bondi wouldn't oversee the disciplinary proceedings, and any other influence he could have over that work would be tempered by other bar leaders or the District of Columbia Court of Appeals. DC Bar elections begin on April 15 and run until June 4.

Concerns about the two attorneys come as Senate Judiciary Committee Democrats on Thursday filed a misconduct complaint with the bar's disciplinary counsel against Martin, alleging he abused his position while handling Jan. 6 Capitol riot cases.

If elected, Bondi—through his role on the bar's board of governors—would help recommend members for the Board on Professional Responsibility, a panel that reviews disciplinary findings against Washington attorneys. Final disciplinary decisions are made by the local District of Columbia Court of Appeals, which appoints the members of the professional responsibility board.

"The disciplinary system operates independently from the D.C. Bar, and we have no control or influence over cases that are investigated or prosecuted by the Office of Disciplinary Counsel," Robert Spagnoletti, CEO of the D.C. Bar, said.

The board of governors also approves the bar's budget, including money set aside for the disciplinary counsel's office. Any conflict over those funds are taken to the DC Court of Appeals, and former bar officials say they don't recall that ever happening.

The president also has influence over who chairs the bar's standing committees, which include panels overseeing the bar's budget and investments. The treasurer helps oversee the budget, but changes would require approval from a majority of the board of governors.

David Cole, a Georgetown University law professor, said that even though the disciplinary proceedings aren't run by bar leadership, he's still concerned that the process could be manipulated as a retaliatory move due to cases against Trump allies. He raised the possibility of charges being filed against Washington lawyers who've worked on lawsuits against early Trump administration actions.

"There's a concern that they would seek to politicize the disciplinary process, and to politicize the bar more generally," said Cole, the ACLU's former national legal director.

Charles Work, who served as one of the bar's first presidents, said he's concerned that a person related to a top Trump administration official leading the group could give the impression of partisanship, even if Bondi doesn't take any overtly partisan actions.

"It's important because membership in the DC Bar is required," Work said.

Bondi and Long didn't immediately return requests for comment.

Bondi previously held roles within the bar, as he was twice elected to sit on the steering committee of its Corporation, Finance and Securities Law Community, according to his law firm website. He is running against Diane A. Seltzer, an employment lawyer.

Bondi, a longtime white collar attorney, currently co-chairs Paul Hasting's investigations and white collar defense practice. He was recently hired by YouTube personality "MrBeast" Jimmy Donaldson and a group of investors for legal advice on a bid to buy TikTok Inc., and has also given advice to top Trump ally and billionaire Elon Musk's Tesla, Inc. on SEC matters.

Long, a current member of the bar association's board of governors, is a career prosecutor for the D.C. US Attorney's Office and former staffer many years ago for Sen. John Thune (R-S.D.), now majority leader.

The Office of Disciplinary Counsel, housed within the bar, has charged Trump allies over their efforts to overturn the president's 2020 election loss to former President Joe Biden. Former Trump Justice Department attorney Jeffrey Clark and one-time Trump lawyer Rudy Giuliani are among those who have seen their law licenses come under scrutiny by that office.

Both Bondi and Long nominated themselves to run for the positions, according to Spagnoletti. Candidates are then considered by the bar's nomination committee, which selects two to three candidates for each open spot.

Martin, previously an advocate for Capitol riot defendants who has been nominated to permanently lead the Washington office, has fired more than a dozen prosecutors who worked on Jan. 6 cases and demoted supervisors handling major crimes and public corruption cases.

In their complaint to D.C.'s Office of Disciplinary Counsel, Senate Democrats noted Martin moved to dismiss an indictment against a Jan. 6 rioter on behalf of the federal government, while still on the record as the defense attorney in the case.

They also raised concerns about Martin's social media posts to Musk promising to investigate those who threaten his work to slash federal spending.

Martin's office didn't immediately provide comment on the ethics filing.

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Alito 'Stunned' By Court Exercising Judicial Power He Championed & Expanded Just Months Ago

A abovethelaw.com/2025/03/alito-stunned-by-court-exercising-judicial-power-he-championed-expanded-just-months-ago

March 7, 2025



(Photo by Alex Wong/Getty Images)

Here's a puzzle: When does a Supreme Court justice believe courts can review executive branch decisions? The answer, at least for Justice Alito, appears to be "whenever a Democrat is president, but only then."

There is plenty of commentary making the rounds regarding yesterday's 5-4 Supreme Court decision confirming that of course a judge can issue a Temporary Restraining Order to maintain the status quo and require USAID pay out the money that it owes to contractors for work already done. But beneath the straightforward legal question lies a revealing pattern of inconsistency from some of the Court's conservatives.

The eye-opening thing about Alito's dissent is how completely it contradicts positions he took just months ago. And not in subtle ways — we're talking about fundamental questions of judicial power that Alito seems to view entirely differently depending on which party controls the White House.

To understand this claim — and how there's basically no other explanation — we need to look at what actually happened here. Elon Musk and his DOGE crew went into USAID and halted nearly all payments, which created an interesting legal problem that had been mostly theoretical prior to the current administration. Congress has "the power of the purse" and requires the executive branch to spend money as directed. Not spending appropriated money (known as "impoundment") is pretty clearly illegal.

While this has kicked off a bunch of lawsuits, the one at issue here involves two contractors — AIDS Vaccine Advocacy Coalition and the Global Health Council — who pointed out that they already completed the work for which they have contracts, and they are owed money on

those contracts. Musk freezing the payouts violated the law.

The judge in the District Court, Amir Ali, agreed that this seemed like a pretty big issue and issued a Temporary Restraining Order. TROs are supposed to be used in rare situations, mainly to return things to the status quo to avoid irreparable harms. In this case, contractors not getting paid by the US government for work they already performed, on contracts and appropriations already blessed by Congress and the executive branch, could do real damage. And thus, Ali ordered them to proceed to abide by the contracts and the constitutionally required situations in which the executive branch does, in fact, pay out the money that Congress has appropriated.

By Above the Law

However, after doing so, the White House ignored the order and did not pay out the money. Judge Ali brought the DOJ back into court two weeks later to ask WTF, followed by issuing an order that they pay out the money they owed by that very night. This is when the DOJ tried to appeal, which quickly bumped its way up to the Supreme Court. With little time to spare, Chief Justice Roberts issued an “administrative stay” on the TRO, basically putting it on hold.

This administrative stay created an oddity worth examining. The whole point of both TROs and administrative stays is generally to “preserve the status quo” while the court can look at things more closely. But which status quo? The one where the government follows the law and pays its bills to contractors who already did the work? Or the one where Musk’s DOGE team is illegally impounding funds denying lawfully contracted work from being paid for? It sure feels like the former is the only status quo worth preserving.

After sitting on the issue for nearly a week, the Court finally ruled 5-4 in support of Judge Ali’s basic position, though they told him to come up with a new implementation plan since the original payment deadline had passed. But the really appalling part isn’t the majority ruling — it’s Alito’s dissent, which reads like it was written in an alternate universe where a bunch of other opinions, many of which Alito supported, don’t exist.

Alito’s dissent starts with what might charitably be called selective amnesia, both of the facts of this case, as well as recent Supreme Court jurisprudence that he supported:

Does a single district-court judge who likely lacks jurisdiction have the unchecked power to compel the Government of the United States to pay out (and probably lose forever) 2 billion taxpayer dollars? The answer to that question should be an emphatic “No,” but a majority of this Court apparently thinks otherwise. I am stunned.

Stunned, are you?

Let's pause here and note what Alito is doing. He's framing this as a question of judicial power over executive spending. Which would be a reasonable framing, if not for two rather enormous elephants in the room: First, Congress has already directed this spending, as its power under the Constitution. Second, Alito himself has repeatedly insisted that courts must enforce such congressional directives against presidential overreach — at least when Democrats are in office.

Look, I know some people (including Chief Justice John Roberts) will get mad that I suggest Alito is an extreme partisan, but that paragraph, combined with some recent rulings that went in the other direction when Joe Biden was President, seem to make it pretty clear that Alito's guiding philosophy is "When Republicans are in power, the president is a king; When Democrats are in power, presidents have no power at all."

Let's call out two previous rulings, both written by the Chief Justice, but to which Alito readily signed on. First was *Biden v. Nebraska*, the case in which the Supreme Court said that the President has no authority to cancel student loan debt without an act of Congress. In that case, the Court repeatedly made clear: the executive branch has zero authority to reinterpret or ignore an act of Congress, especially involving funds.

As Roberts wrote in that case, and which all of the Justices in the dissent on yesterday's case agreed to:

The dissent is correct that this is a case about one branch of government arrogating to itself power belonging to another. But it is the Executive seizing the power of the Legislature

Fast forward to the present USAID case, and suddenly Alito is "stunned" that a district court would prevent the Executive from seizing Congress's power of the purse. The contradiction couldn't be more glaring.

So, in the student loan case, Alito, Thomas, Gorsuch and Kavanaugh were insistent that the executive branch may not "seize power" from the Legislature. The same ruling also stated:

Among Congress's most important authorities is its control of the purse. U. S. Const., Art. I, §9, cl. 7;... It would be odd to think that separation of powers concerns evaporate simply because the Government is providing monetary benefits rather than imposing obligations.

And yet in the current case, these same justices suddenly find it "stunning" that a court would enforce Congress's power of the purse against executive overreach. Did Alito and the others just forget the Biden case?

Or how about this part of that same ruling:

... our precedent— old and new—requires that Congress speak clearly before a Department Secretary can unilaterally alter large sections of the American economy.

Does that not apply equally in this case? Then why is Alito somehow stunned that the lower court made the same ruling that Alito agreed to less than two years ago?

Okay, so maybe that's too far back in history. Let's consider last summer's ruling in the Loper Bright case, that got rid of Chevron deference. This case was also about separation of powers and whether the judiciary has the right to step in and overrule the executive branch.

In this case, which again came out just months ago, Alito enthusiastically endorsed the judiciary's authority to check executive power. Yet now he's "stunned" that a district court would enforce congressional appropriations law against executive impoundment. Even more tellingly, Alito's dissent summary in his opening paragraph strategically omits crucial facts — that Congress had appropriated these funds, contracts were signed, and work was completed — instead framing it as a judge arbitrarily "compelling" government payment.

Stunning! But not the way Alito thinks. It's Alito's blatant partisanship that should be seen as stunning.

In Loper Bright, the conservative wing of the Supreme Court was unanimous that the judiciary must always check the executive when it exceeds authorities granted by Congress. In that ruling, which again Alito joined, Roberts emphatically made clear that the judicial branch is the interpreter of the laws:

The Framers also envisioned that the final "interpretation of the laws" would be "the proper and peculiar province of the courts." Id., No. 78, at 525 (A. Hamilton). Unlike the political branches, the courts would by design exercise "neither Force nor Will, but merely judgment." Id., at 523. To ensure the "steady, upright and impartial administration of the laws," the Framers structured the Constitution to allow judges to exercise that judgment independent of influence from the political branches. Id., at 522; see id., at 522–524; Stern v. Marshall, 564 U. S. 462, 484 (2011).

This Court embraced the Framers' understanding of the judicial function early on. In the foundational decision of Marbury v. Madison, Chief Justice Marshall famously declared that "[i]t is emphatically the province and duty of the judicial department to say what the law is." 1 Cranch 137, 177 (1803). And in the following decades, the Court understood "interpret[ing] the laws, in the last resort," to be a "solemn duty" of the Judiciary. United States v. Dickson, 15 Pet. 141, 162 (1841) (Story, J., for the Court). When the meaning of a statute was at issue, the judicial role was to "interpret the act of Congress, in order to ascertain the rights of the parties."

And, as the ruling (again, I need to stress, this was from just a few months ago) states, the Judiciary often has to say no to the Executive:

The views of the Executive Branch could inform the judgment of the Judiciary, but did not supersede it. Whatever respect an Executive Branch interpretation was due, a judge “certainly would not be bound to adopt the construction given by the head of a department.” Decatur, 14 Pet., at 515; see also Burnet v. Chicago Portrait Co., 285 U. S. 1, 16 (1932). Otherwise, judicial judgment would not be independent at all. As Justice Story put it, “in cases where [a court’s] own judgment . . . differ[ed] from that of other high functionaries,” the court was “not at liberty to surrender, or to waive it.”

Alito signed on to that opinion just months ago. And now he’s “stunned” that a judge is, indeed, independently determining that the executive branch is violating the law.

There’s a broader point here worth considering. The Supreme Court’s role in our constitutional system isn’t just about deciding individual cases — it’s about establishing clear, consistent principles that lower courts and other government actors can rely on. When those principles shift dramatically based on which party controls the White House, it undermines the entire project of constitutional law.

Consider what message this sends to lower court judges. If you’re a district court judge facing an executive branch that’s defying Congress by refusing to spend appropriated money, what are you supposed to do? Follow the guidance from the student loan case that says you must vigorously check executive overreach? Or follow Alito’s (thankfully minority opinion for now) guidance from yesterday that says you should be “stunned” at the very idea of telling the executive branch how to spend money?

The answer, apparently, is to check the party affiliation of the current president first. Which is exactly the kind of outcome the Founders were trying to avoid when they created an independent judiciary.

But there’s an even more troubling aspect to all this. By making such nakedly partisan distinctions, Alito and his colleagues are effectively creating two different constitutions: one that applies when Democrats are in power (featuring strict separation of powers and aggressive judicial review) and another for Republican administrations (featuring expansive executive authority and judicial deference).

This isn’t just about Alito being inconsistent. It’s about whether we can maintain any coherent theory of constitutional law when Supreme Court justices treat identical legal questions differently based purely on partisan considerations.

What we're witnessing is not principled judicial philosophy but raw partisan power dynamics. The judicial doctrines these justices claim to revere — textualism, separation of powers, judicial independence — appear to be selectively deployed based on who occupies the White House. The message couldn't be clearer: Republican presidents deserve kingly deference, while Democratic presidents require constant judicial constraint.

Which brings us back to Chief Justice Roberts, who continues to insist it's unfair and inappropriate to suggest his colleagues might be motivated by partisan considerations rather than consistent legal principles. Perhaps he's right that we shouldn't question the motives of Supreme Court justices. But when those justices write opinions that directly contradict their own recent precedents based on nothing more than which party holds the White House, what other conclusion are we supposed to draw?

Alito "Stunned" By Court Exercising Judicial Power He Championed & Expanded Just Months Ago

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Suspicious Tesla Sales Surge Triggers Canadian Government Investigation

 motorillustrated.com/suspicious-tesla-sales-surge-triggers-canadian-government-investigation/149947

March 7, 2025

Canadian officials investigate Tesla's sudden surge in sales before the EV rebate program was paused.

- **Tesla reported 8,600 sales in three days, triggering \$43 million in government EV rebates.**
 - **A single Toronto Tesla location claimed over 1,200 sales, raising concerns about possible rebate misuse.**
 - **Transport Canada is investigating potential irregularities in Tesla's sales amid the suspension of the rebate program.**
-

Canadian officials are investigating an unusual spike in Tesla vehicle sales that coincided with the suspension of the federal EV rebate program in January. Over a three-day period, Tesla reported selling 8,600 vehicles at four locations across the country, resulting in \$43 million in government rebates.

One Tesla location in Toronto reported more than 1,200 sales on January 11 alone, accounting for \$4 million in rebates. These figures have raised concerns among industry analysts, who question whether the registrations were legitimate or whether Tesla knew about the rebate program's impending pause.

The Canadian Automobile Dealers Association has urged Transport Canada to investigate, citing potential misuse of the rebate system. Attempts to reach Tesla for comment have gone unanswered.

The federal EV rebate program, facilitating over 500,000 electric vehicle purchases since its inception, was paused on January 13, 72 hours after the government signaled its potential suspension. Officials are now reviewing the Tesla sales data to determine if any irregularities occurred during the program's final days.

Tesla's Sales Are Falling So Much That the Cash It Rakes in for Carbon Credits Is Under Threat

F futurism.com/tesla-sales-carbon-credits-europe

Victor Tangermann

A number of major carmakers — including Toyota, Stellantis, Mazda, and Subaru — "pooled" their emissions with EV makers Polestar and Tesla earlier this year, in an effort to comply with tougher European Union carbon emissions rules.

Put differently, the companies are hoping to meet yearly emissions targets by teaming up with EV companies, which have racked up an abundance of carbon credits — since their vehicles don't produce any carbon emissions like gas guzzlers.

It's a clever accounting trick that allows makers of internal combustion vehicles to skirt around EU regulations and avoid hefty penalties.

It's also a mutually beneficial agreement, with EV makers like Tesla making billions on emissions deals. Just last year, the company made a whopping \$2.76 billion, representing a 54 percent increase in the income stream year-over-year.

But as *Politico* reports, that source of revenue could quickly dry up in 2025.

That's in large part thanks to Tesla CEO Elon Musk's extremely divisive remarks and actions, including two Hitler salutes during president Donald Trump's inauguration proceedings. In the wake of those outbursts, Tesla sales in Europe have been a complete disaster so far this year.

Those weak sales stand to directly undermine the ongoing plan to "pool" carbon credits. The company is already far behind its 2025 emissions targets, according to an analysis from the International Council on Clean Transportation (ITCC). That's despite a healthy 34 percent increase in EV sales overall, suggesting the problem is Tesla, not waning demand.

"If things go bad for Tesla and they don't sell enough cars this year, they might not have enough credits for what they promised Stellantis and the others," ITCC managing director Peter Mock told *Politico*. "Tesla is under pressure."

It's a looming crisis, with sales data suggesting Tesla's popularity is taking a prolonged nosedive. Sales are down across Europe, with France seeing a 26 percent drop in February compared to the same period last year.

Tesla dealerships have also seen a surge in demonstrations and vandalism worldwide, highlighting growing anti-Musk sentiment.

Beyond Musk's behavior, the carmaker has also struggled to keep up with a surge in competition in the space, particularly from China.

And adding to all that, Tesla's lineup is also looking notably out-of-date.

"The much bigger impact on Tesla is the fact that the models are outdated," German used car platform Cardino cofounder Lukasz Pajak told *Politico*. "And then you have the pricing element where new players on the market are much more affordable."

More on Tesla: *Tesla Just Got Even More Bad News*

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<https://www.wsj.com/business/autos/tesla-elon-musk-consumer-backlash-19326a57>

Tesla's Fortunes Fall as Musk Rises in Trump World

CEO's politics erode brand's appeal among some core buyers of electric vehicles; 'I used to idolize the guy'

By [Becky Peterson](#) [Follow](#) and [Sean McLain](#) [Follow](#)

March 6, 2025 9:00 pm ET

Few brands have their image as closely tied to their CEO as [Tesla](#) TSLA -3.29% ▼ . For most of the electric-car maker's history, that was good for business.

[Elon Musk's](#) pledge to reduce the world's reliance on fossil fuels and his push to broaden the appeal of electric cars attracted legions of buyers looking to make a statement—to declare their allegiance to his grand vision of techno-environmentalism.

Now that Musk has allied himself with [Donald Trump](#) and plunged into the deep end of national politics, many Tesla owners and would-be buyers are asking themselves what kind of statement it makes to get behind the wheel of a Tesla these days. Such doubts have begun showing up in worrisome numbers for the company.

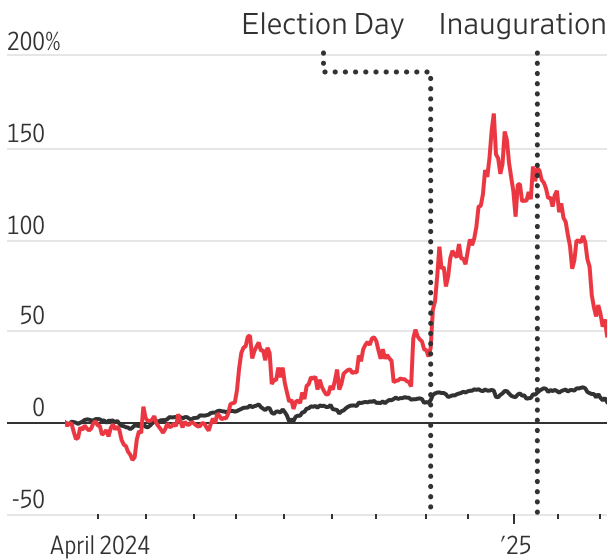
Garth Ancier, a TV executive from Los Angeles, recalled discussing more than a year ago with two fellow owners what it felt like to be seen in a Tesla. "They said, 'You know, I'm getting uncomfortable driving this car around because it's like driving a big red MAGA hat,'" Ancier said.

Now Ancier wants to sell his 4-year-old Model X. "If not for his behavior, I'd probably stick with a Tesla."

Tesla, the nation's largest producer of electric vehicles by far, has long led the auto industry in consumer loyalty, and surveys show many owners have no intention of abandoning the brand now. Yet recent polling shows that the brand's appeal has been eroding, and sales data suggest it has begun taking a financial toll.

Change over the past year

■ Tesla shares ■ S&P 500



Source: FactSet

Back in 2022, before Musk waded into presidential politics, automotive consulting firm Strategic Vision found that 22% of car shoppers surveyed said they would “definitely consider” a Tesla for their next vehicle purchase. That put Tesla on par with other luxury car brands such as Mercedes-Benz and BMW, said Alexander Edwards, the firm’s president.

By last summer, that percentage had dropped to 7% —roughly in line with Lincoln and Dodge—and it has stayed there, a precipitous decline that is rare in the car business, Edwards said.

“At this point, we don’t see any signs of recovery,” Edwards said, noting that Tesla’s historic appeal to

environmentally minded buyers and Musk’s right-leaning politics are at odds. About 63% of those surveyed in December said they wouldn’t consider buying a Tesla, a roughly 10-percentage point jump from spring of last year.

Neither Tesla nor Musk responded to requests for comment for this article.

Survey results indicate that the percentage of car shoppers who said they would consider buying a Tesla has declined since Musk waded into presidential politics. Musk and Trump at the White House in February. PHOTO: ALEX BRANDON/ASSOCIATED PRESS

In recent weeks, after Musk pushed for mass firings of federal workers and backed a far-right political party in Germany, protesters have demonstrated at Tesla showrooms in the U.S. and Europe, and some Tesla stores and Supercharger stations have been vandalized, including with [spray-painted swastikas](#).

Tesla's challenges extend well beyond any backlash to Musk's politics. The company's sales and profitability have been under pressure because of its relatively old vehicle lineup and intensifying competition from other automakers trying to lure buyers with aggressive promotions. [Quality problems](#) and [plunging resale values](#) also have weighed on Tesla's brand perception, especially as competitors have caught up with the electric-car pioneer on technology and battery range.

Sales hits

Last year, Tesla's worldwide vehicle deliveries slipped 1%, the first drop in more than a decade, even though industrywide EV sales rose 25%. In the U.S., Tesla sales fell 7% last year, and by 2% in the first two months of this year, according to estimates by research firm Wards Intelligence.

And worrisome numbers have begun surfacing in foreign markets. In February, Tesla new-vehicle registrations plummeted by 76.3% in Germany and 26% in France, according to government and industry association data. Tesla China, which exports to other countries, delivered 30,688 new cars in February, down 49% from the year-earlier period, partly because of [increased competition](#) from domestic EV makers.

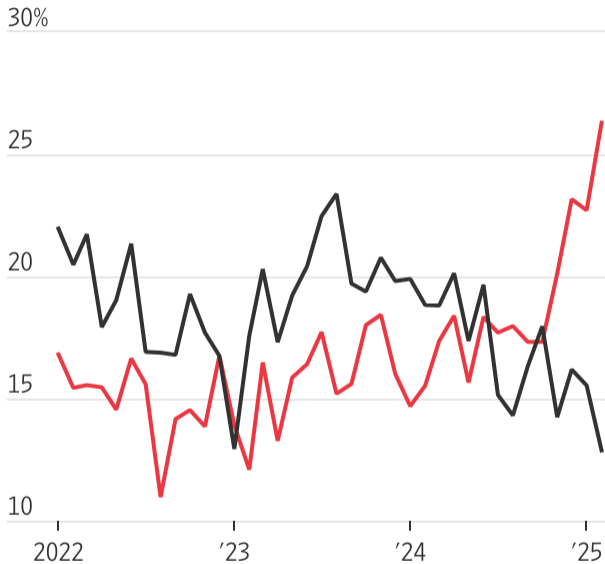
Analysts attribute the declines partly to market factors, including customers waiting for a refreshed Tesla Model Y scheduled to be released in this month. Still, they say, Musk's actions are a factor, particularly in Germany.

"When you play politics, there is always a risk," said Felipe Munoz, an analyst with the automotive consumer-research firm JATO Dynamics.

The value of Tesla's stock skyrocketed after President Trump's victory, with investors hopeful that Musk's proximity to the president would benefit his businesses. Investors also liked Musk's heightened focus on artificial intelligence and robotics at Tesla, which plans to start building its first fully self-driving car in 2026.

Survey respondents who would consider buying a Tesla, by party affiliation

■ Democratic ■ Republican



Source: Morning Consult; Results are based on daily surveys conducted between Jan. 1, 2022, and Feb. 25, 2025, among an average sample of 69,307 respondents across a total of 1,127 polls with an approximate margin of error of +/- 0.37 percentage points.

This year, though, the shares have dropped 35%, wiping out most of the postelection gains. Still, Tesla is valued at about \$847 billion, according to FactSet, more than any other car company.

Sales and survey data suggest that politics is affecting demand. Republicans are now more likely to say they would buy a Tesla than Democrats, a sharp reversal from much of the company's history, according to survey data from research firm Morning Consult.

The percentage of Democrats who said they would consider buying a Tesla as their next vehicle declined from 23% in August 2023 to 13% in February, the data show. Over that same period, the percentage of would-be Republican buyers grew from 15% to 26%.

Some analysts said conservatives are more hesitant to pull the trigger on an EV purchase, which might make it more difficult to turn rising Republican support into sales.

Protesters gathered earlier this month outside a Tesla showroom in New York. PHOTO: ADAM GRAY/ASSOCIATED PRESS

Tesla doesn't disclose sales figures by state, but data on new-vehicle registrations collected by S&P Global Mobility suggest that sales declined sharply last year in some left-leaning metropolitan areas that have been core to the company's growth, including New York, Los Angeles, San Francisco and Dallas, while rising in Las Vegas, Salt Lake City and Miami-Ft. Lauderdale.

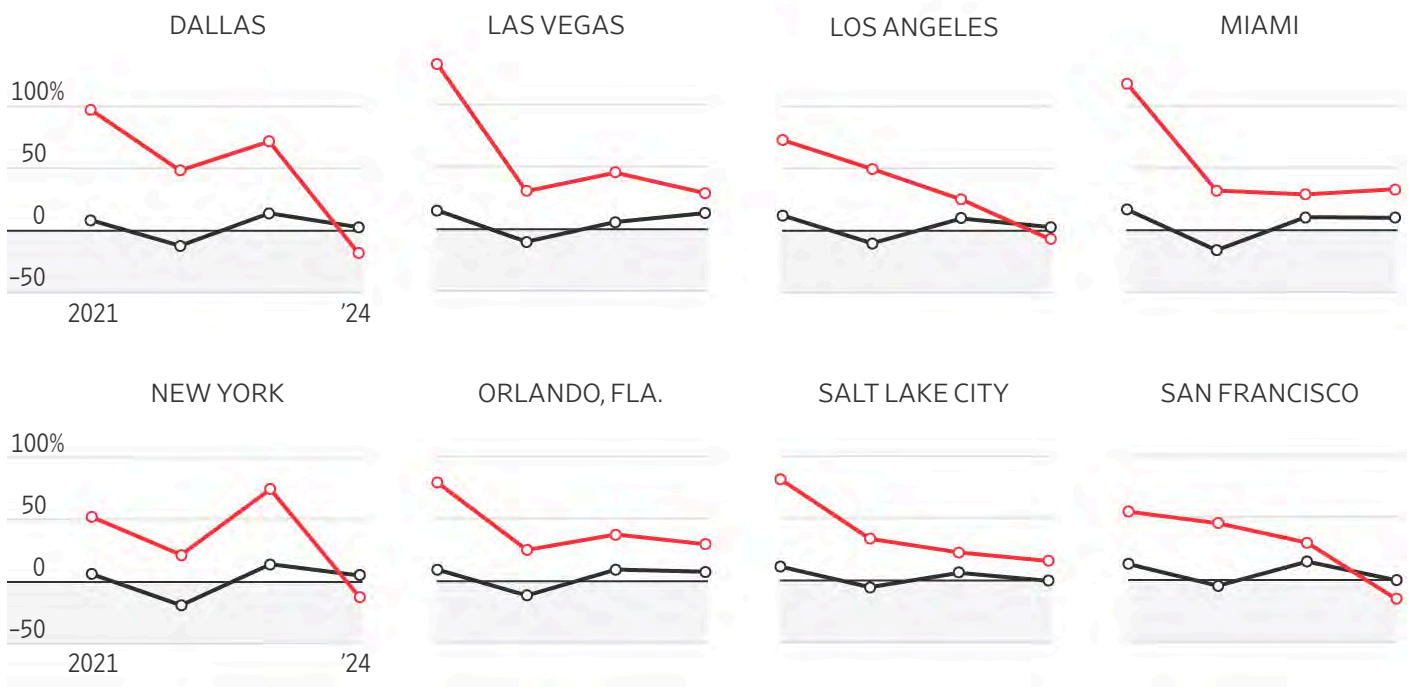
"I used to idolize the guy," said Diego Leporini, a Southern California entrepreneur who bought his first Tesla in 2023. Now, he wants to distance himself from Musk. He sold off his 83 shares of Tesla stock in protest of the CEO's ties to Trump, he said, and he is trying to get out of his Model Y lease.

Leporini, who comes from a family of immigrants, said his wife, in-laws and colleagues have criticized him for driving the car. "People have been pretty vocal about it, and honestly, I get it," he said.

Musk built Tesla into the world's most valuable automaker largely by courting customers attracted to the company's environmentalism and techno-optimism. Tesla's stated mission of accelerating "the world's transition to sustainable energy" was what drew many employees to the company, too.

New-vehicle registrations, change from a year earlier

■ Tesla ■ All vehicles



Source: S&P Global Mobility

Playing politics

Over the years, Musk became [more outspoken about divisive political issues](#). He pushed back on Covid-era restrictions in 2020, [defying lockdown orders](#) and [suing Tesla's home county](#) for the right to keep its factory running. Last July, following the Trump assassination attempt, Musk threw his full support behind the Republican nominee, ultimately pouring about [a quarter-billion dollars](#) into pro-Trump political groups.

In recent months, he has posted on X that [“alarmists”](#) have exaggerated the speed of climate change. In December, he stunned many Europeans by endorsing Germany's [far-right AfD party](#), a political group that has opposed Tesla's Berlin factory and denied climate change is man-made. He also has expressed support for Reform UK, a populist party that wants to scrap policies to fight climate change.

At Trump's inauguration, he twice made a gesture in which he held out his arm straight, with his palm facing down. Some viewers said it resembled a Nazi salute. Musk hasn't directly commented on what he intended, but wrote on X: “The ‘everyone is Hitler’ attack is sooo tired.”

Musk's gesture on Inauguration Day stirred controversy. PHOTO: MIKE SEGAR/REUTERS

The reaction was swift. At Tesla's factory in Berlin, activists projected next to the Tesla sign an image of Musk making the gesture, and the words “heil.”

Some U.S. owners have found fliers on their cars urging them to sell their vehicles. Police in Arcata, Calif., said that four Tesla drivers reported threatening messages left on their

windshields.

Inside Tesla, managers have been confronting questions about Musk's behavior and its impact on sales, as well as on hiring and recruitment, particularly in Palo Alto, Calif., where Tesla has its engineering office, according to a person familiar with those conversations.

Jared Ottmann, who had worked for nearly seven years as a supply-chain engineer, expressed concern about the arm gesture and other controversial comments by Musk in a LinkedIn post in January.

"I've raised the issue internally multiple times, with managers, HR, legal compliance, investor relations," wrote Ottmann, who is Jewish. "And while overwhelmingly people offer personal support, Tesla as a company has remained silent. The silence from Tesla is deafening."

After refusing to take the post down, Ottmann was terminated, his lawyer said.

Thomas Temme, a senior software engineer at Tesla in Germany, said Musk "now supports political actors who not only don't care about the mission, but who proactively deny climate change and have a history of fighting everything Tesla stands for." Temme said he feels more comfortable speaking publicly than some of his colleagues because of Germany's worker protections.

Anil Patel, who worked as an engineer at Tesla for more than four years, left in December, telling colleagues in an email: "I will take my one chance on the soapbox to say that Elon's company leadership and political actions are the biggest reasons I'm leaving Tesla. It's become impossible for me to cling onto the climate mission statement when I fear so much harm to people and the environment coming in this country's future."

Some board members and one executive have told people they see Musk's close relationship with the president as a positive, giving him influence over issues that could benefit the company longer term, according to people familiar with the conversations.

Tesla Cybertrucks at the company's Gigafactory Texas. PHOTO: ILANA PANICH-LINSMAN FOR WSJ

Two Tesla board members and some senior executives have expressed support publicly for Musk's political involvement and some of the policies he has embraced.

Some Tesla owners, though, have said the controversy has gotten to be too much.

Bob Eckert, who described himself as a onetime Musk fan, said his desire to sell his 2021 Model Y had been building since Trump's inauguration. "As the days and weeks went on, we realized it was not something we could afford to support, even if we lost money," he said.

He unloaded his vehicle in February, taking a \$3,000 financial hit because he owed more on his loan than the car was worth, replacing it with an electric Ford Mustang Mach-E. The Ford dealer offered him 0% financing and a \$1,000 cash bonus for defecting from Tesla.

Larry Broughton, a 76-year-old retired mortgage banker from Houston, said he was watching the news about Musk's plans for the DOGE in early January and decided he no longer wanted the two Cybertrucks he had ordered. He walked to his office and canceled his reservations.

"As soon as he started doing all this stuff that Trump wanted him to do, I didn't want to be a part of it," Broughton said. "I actually own some Tesla stock, and I'm thinking of selling that as well."

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Appeared in the March 7, 2025, print edition as 'Tesla's Fortunes Fall While Musk Rises in Politics'.

SEC Expands Nonpublic Reviews, Boosting Small Companies Seeking IPOs, Attorneys Say

 [law.com/nationallawjournal/2025/03/06/sec-expands-nonpublic-reviews-boosting-small-companies-seeking-ipos-attorneys-say](https://www.law.com/nationallawjournal/2025/03/06/sec-expands-nonpublic-reviews-boosting-small-companies-seeking-ipos-attorneys-say)

Dan Novak

The U.S. Securities and Exchange Commission is expanding the opportunity for companies to submit draft registration statements for nonpublic review, a move that will promote capital formation for small companies going public, attorneys said this week.

A draft registration statement permits companies to submit information to the SEC for review without disclosing sensitive information to the public and alerting the market to an initial or secondary public offering.

In 2017, the SEC began permitting any company regardless of size to file a nonpublic statement to begin the IPO process or within a year of the public offering. Now, any company can submit a draft registration statement at any point, the SEC announced Monday.

“In short, this makes it easier for smaller companies to register public security offerings, which is major,” said Thompson Hine partner Jurgita Ashley. “It’s very much a welcome change.”

The acting director of the SEC’s Division of Corporation Finance, Cicely LaMothe, said in a statement that the commission has observed more companies seeking to raise capital taking advantage of nonpublic disclosures.

“Expanding these popular accommodations will provide new and existing companies greater flexibility to explore and plan public offerings,” LaMothe said. “These enhanced accommodations will further support capital formation while retaining investor protections available to purchasers in public offerings.”

The SEC places some limits on smaller public companies in raising capital. If a company wishes to introduce a secondary offering, it can submit to the SEC a form S-3, or shelf registration statement. But the company cannot sell more than one-third of its public float in any 12-month period, which may be too short a timeframe to meet a firm’s capital needs, said Alex McClean, a partner at Harter Secrest & Emery.

A company could also submit an S-1 form, but that requires public disclosure and could tip the market and make it very difficult for smaller companies to raise capital for new offerings, McClean added.

“It was very common that companies [filing the S-1] might lose 30 to 40 percent of their market cap before they could actually get to a place where they need to do that offering because everyone would short the stock because they would know that an offering was forthcoming,” he said.

Expanding draft registration statements levels the playing field for small companies with less revenue to support the costs of going public, McClean added.

“Small public companies are at a marked disadvantage with larger public companies in many ways,” he said. “They couldn't even raise capital like a large company could because there were limitations placed upon them by the SEC. So this change kind of puts them more on equal footing with larger companies.”

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Bank of England Governor Says Staley Letter Looked 'Ill-Founded'

- Andrew Bailey ran the FCA when it investigated Jes Staley
- Former Barclays boss is challenging watchdog over industry ban

Bank of England Governor Andrew Bailey testified that a letter sent by Barclays Plc to regulators meant to assuage concerns over chief executive **Jes Staley's** relationship with disgraced financier **Jeffrey Epstein** seemed "ill-founded."

Barclays told the Financial Conduct Authority in a letter in October 2019 that there was no close relationship between Staley and the late pedophile financier. Bailey met with then-BOE Governor **Mark Carney** that December, after JPMorgan Chase & Co., Staley's former employer, handed over a cache of more than 1,000 emails that shed new light on the relationship.

"We had received an answer that looked straightforward; that there had been no close relationship. Now it looked like that answer was ill-founded," Bailey said in a witness statement prepared for the London hearing over Staley's lifetime ban from finance. "The letter was short, to the point, unambiguous."

Bailey's testimony paints a bleak picture of a bank, led by Chairman **Nigel Higgins**, that was desperate to contain the fallout from the FCA's probe. The central bank governor said Higgins urged the FCA to limit the length of its investigation in order to allow it to avoid the need to have to disclose the existence of any probe when it filed its annual report in February 2020.



Andrew Bailey, governor of the Bank of England, arrives at The Rolls Building in London, UK, on Friday, March 7, 2025.

Photographer: Chris Ratcliffe/Bloomberg

Earlier on Friday, Barclays' former chief lawyer revealed that the bank's board gave Staley its full support despite bank officials seeing those emails.

Barclays said in a February 2020 statement that Staley retained the "full confidence" of the board, adding that its CEO had been "sufficiently" transparent with the lender about his relationship with Epstein. The support came after the lawyer said that the UK authorities had already shown his team the entire cache of emails in December 2019.

The lawyer, Bob Hoyt, said the emails were "at odds" with the letter he helped draft to regulators.

Jes Staley's FCA Court Showdown: Here's Who's Taking the Stand

Bailey, for his part, testified that JPMorgan had made an "unusual request" to the UK financial regulator by asking it to compel the bank to hand over documents in its possession that shed light on Staley's relationship with Epstein. That was when it received the cache of emails.

Bailey said in his witness statement that Carney said at the time that he "did not have a presumption of guilt, not until I read the emails."

Staley, who resigned as CEO of Barclays in late 2021, has consistently denied any wrongdoing. The FCA ruled that he had “recklessly misled” the regulator after failing to give a full account of his links to Epstein, who died in 2019 while in jail on sex trafficking charges. It hit Staley with a lifetime ban and fined him £1.8 million (\$2.3 million) — which the former banker is challenging.

The emails offered a detailed picture of his relationship with Epstein. In several messages that have subsequently emerged in legal and regulatory filings, the men extolled the closeness of their friendship, with Staley sharing internal documents, as well as seeking career advice from his former friend.

Bailey said Higgins told him the FCA’s investigation into Staley’s links to Epstein should not be about “the girls.” Bailey said Higgins told him that that could mean “Mr. Staley may never see his wife and children again.”

A spokesman for Barclays declined to comment. Staley himself and Higgins are due to testify next week.

(Updates to add Andrew Bailey comments throughout.)

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Marion Dakers

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Bankman-Fried Bashes Biden, Gensler on Tucker Carlson's Podcast

- Interview comes as SBF's parents seek a pardon from Trump
- SBF calls Sean Combs 'kind,' says he spends time playing chess

Samuel Bankman-Fried appeared on former Fox News host **Tucker Carlson's** podcast, bashing former President Joe Biden and Securities and Exchange Commission Chair Gary Gensler as his parents seek a pardon from Donald Trump.

Bankman-Fried, who is serving a 25-year sentence over his role in the collapse of his FTX cryptocurrency exchange, said that he was "shocked" by the first two years of Biden's administration and said that crypto regulation under Gensler was "something of a nightmare." In contrast, he said on the podcast, released Thursday, that he was hopeful about what he had heard from Trump.

"Obviously, the follow through is what matters and that's where we're at now," said Bankman-Fried, who turned 33 this week. "Changing the guard helps, but financial regulators, they're big giant bureaucracies in the federal government. They're not used to changing overnight."

The interview is the second that the onetime crypto billionaire has given from a federal detention center in Brooklyn, New York, to a conservative outlet since Bloomberg reported in January that his parents are exploring ways to secure a pardon from Trump. The conversation with Carlson, clocking in at just over 40 minutes, ranged from his relationship with fellow inmate **Sean "Diddy" Combs** — he's "kind" to him and other prisoners — to what he uses to barter for goods while in custody — prewrapped muffins.

Bankman-Fried's spokesman, Mark Botnick, said he resigned on Thursday after learning of the interview on X. The Bureau of Prisons didn't immediately respond to an email seeking comment on the interview.

But Carlson frequently asked about Democratic politicians who he gave millions of dollars in political donations. Bankman-Fried said that he refrained from calling them as FTX imploded in late 2022 because he didn't want to do anything "inappropriate." He also said he had started donating to Republicans as he was "really, really shocked at what I saw" from the Biden administration.

"By late 2022 I was giving to Republicans privately as much as Democrats," he said. "That started becoming known right around FTX's collapse. So that probably played a role."

Bankman-Fried described his time in prison as “sort of dystopian,” but said that he spends his time reading novels and playing chess. He said some of the most violent criminals in the prison have become very good at the game despite a lack of education and how he loses to them “all the time.”

“I was not expecting that,” he said.

He said he’s had a lot of time “to reflect on how to communicate,” and that he wasn’t effective at it when the crisis hit, noting he often gets “swept up in details” and forgets how to project “the bigger picture.”

But while Bankman-Fried said the collapse of FTX has been a “colossal disaster” and that not stopping it is “by far the biggest regret of my life,” he said he doesn’t think he is a criminal.

“Clearly, I think the DOJ thinks I may have been,” he said.

--With assistance from **Ava Benny-Morrison**.

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Ex-Credit Suisse Banker in Tuna Bond Scandal Avoids Prison (2)

- Andrew Pearse admitted to role in \$2 billion Mozambique fraud
- Pearse served as government's star witness at two US trials

A former Credit Suisse Group banker who pleaded guilty to engaging in a \$2 billion fraud and money-laundering scheme in Mozambique avoided a prison term after serving as the government's star witness at two US trials.

Andrew Pearse was sentenced on Thursday in federal court in Brooklyn, New York, over what became known as the tuna bond scandal for its dubious maritime projects including a fishing fleet. He was sentenced to time served, referring to the brief period when he was in the government's custody, and has agreed to make millions of dollars in payments and forfeitures.

"I hope one day I will be remembered not as the poster child for greedy and immoral bankers but for telling the truth, and hope that one day I can make my children proud of me again," Pearse told US District Judge Nicholas Garaufis just before he was sentenced.



Andrew Pearce arrives at federal court in Brooklyn on March 6.

Photographer: Yuki Iwamura/Bloomberg

Pearse, once compared to the James Bond villain Goldfinger by another federal judge, had faced a maximum prison term of more than 12 years for his role in the fraud. He pleaded guilty in 2019 and testified to taking \$45 million in kickbacks tied to loans for Mozambique. Hundreds of millions of dollars were looted from the African nation, helping to tip it into an economic crisis.

Federal prosecutors said Pearce deserved leniency because his cooperation helped win the conviction last year of **Manuel Chang**, Mozambique's former finance minister, as well as the 2021 guilty plea of a Credit Suisse unit. Credit Suisse got a three-year deferred-prosecution agreement with the US Justice Department and was ordered to pay more than \$500 million in global fines and other penalties, according to prosecutors.

Invaluable Assistance

Prosecutor Jonathan Siegel said in court on Thursday that Pearce's decision not to fight extradition to the US from the UK was critical, noting that Chang had battled extradition while another defendant continues to do so in Lebanon.

In providing prosecutors with a wealth of key documents to help them build their case, Pearce "made a choice and went all in on what is right and truthful," Siegel said.

Garaufis said the sentence “takes into account his criminal conduct” but also “his substantial cooperation” during the two trials. The judge said Pearse had been estranged from one of his sons over his criminal conduct and added that the son might want to reconsider.

“I would hope he takes a look at what his father has done over the last six years to rehabilitate himself and make himself a stronger, better person,” Garaufis said.

Government’s ‘Rosetta Stone’

Prosecutors called Pearse their “Rosetta Stone,” saying he helped explain the complex international fraud scheme to the jury. Chang was sentenced in January to 8 1/2 years in prison for his part in the fraud.

During the two trials, in 2019 and last year, Pearse described for the jurors how he helped arrange Credit Suisse loans for three companies owned and controlled by the Mozambican government, allowing him and two bank colleagues to pocket millions of dollars in kickbacks. The bank arranged a total of \$2 billion in loans.

The 2019 US trial ended in the acquittal of an employee of shipbuilder Prinvest Group who was accused of defrauding investors in the bond scheme.

Prosecutors said Pearse has agreed to pay \$2.5 million and to forfeit his vineyards in South Africa, an interest in Polish gas fields worth \$35 million to \$40 million at one point and an interest in an Australian mine worth about \$2.3 million, as well as other assets.

Pearse’s lawyer **Lisa Cahill** had asked that her client be spared from prison, arguing he “did the right thing” and spent 11 grueling days on the stand. She said her client had “suffered grievously” for his crimes.

In a letter to Garaufis, Pearse apologized to Credit Suisse and investors as well as to his own family, saying he had worked hard in hopes of earning back the trust of those he had betrayed.

Suspicious Projects

In the sprawling international fraud, the Mozambique government fraudulently got billions of dollars in loans from Credit Suisse and Russia’s VTB Bank PJSC to fund three maritime projects, including the tuna fishing fleet as well as shipyards and anti-piracy boats.

On March 4 the Financial Conduct Authority placed bans on Pearse and a second former banker for their roles in arranging the corrupt loans.

UBS Group AG inherited the case when it acquired Credit Suisse in 2023 amid a banking crisis.

The case is US v. Pearse, 18-cr-681, US District Court, Eastern District of New York (Brooklyn).

(Updates with payments and forfeitures Pearse has agreed to make in third section. An earlier version of this story corrected the amount he said he took in kickbacks.)

--With assistance from **Upmanyu Trivedi**.

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Beyond Meat Cites New Tariff Risks on Pea Protein From Canada

- Meat alternative brand also notes “anti-American sentiment”
- Cost hikes may be hard to pass on to consumers, 10-K says

Beyond Meat Inc. told investors that its costs are poised to rise under new tariffs hitting pea protein it purchases from Canada.

The maker of “plant-based” meat substitutes said in its 10-K annual report to shareholders that the new tariffs, or any countermeasures taken by other countries, might force the company “to raise our prices or increase inventory levels, or find new sources of supply for products that we import.”

Pea protein is the second ingredient listed in Beyond Meat’s “plant-based patties.” Already last year, before the threat of tariffs, the company flagged its reliance on the protein as a risk and told investors that it was working to diversify its supply chain “to better ensure stability of prices of our raw materials.”

President Donald Trump launched a 25% tariff on Canadian goods this week, though the administration granted a one-month reprieve to the auto industry and is considering delays for other sectors. Beyond Meat didn’t immediately respond to a request for comment.

The meat alternatives producer isn’t the only food business to point shareholders to worries about tariffs. Salad chain Sweetgreen said in its annual report last week that its bowls and plates, as well as some of its ingredients, are sourced outside the US. Chipotle said earlier in February that tariffs could drive up the prices for avocados and limes used in its dishes.

Beyond Meat also cited the threat of Canadian discontent with US policies hurting demand for its products.

“There is no assurance that we would be able to pass on any cost increases, in full or at all, to our customers, and/or we could lose customers in countries such as Canada due to anti-American sentiment, any of which could materially affect our revenue, gross margin and results of operations,” Beyond Meat said in its 10-K filing late Wednesday.

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Wheeling & Appealing: The Latest Must-Know Appellate Action

By **Jeff Overley**

Law360 (March 6, 2025, 8:32 PM EST) -- Believe it or not, there's still important litigation happening that doesn't involve President Donald Trump, and the proof exists in this month's circuit court calendars. During the remaining weeks of March, arguments will explore numerous high-profile topics, including a law firm's severe punishment for alleged misconduct in 9/11 litigation and a judicial rebuke of Trader Joe's for "an attempt to weaponize the legal system."

Although a gathering storm of **suits against the Trump administration** is hurtling inexorably toward the appellate realm, March's top oral arguments consist — at least for now — of cases unrelated to the president's aggressive agenda. Key arguments include a Second Circuit showdown over allegations of systemic racism in the National Football League and en banc arguments at the Sixth Circuit in a certified class action against General Motors. Wars of words are also scheduled in significant suits against the federal government, but those cases mainly involve policies predating Trump's second term.

This edition of Wheeling & Appealing will explore all that and more, but as always, we begin with a test of your appellate trivia skills.

Trivia Time

When your columnist had the good fortune in 2023 to land on Law360's appellate beat, our predecessor shared a document with tips for staying apprised of each circuit's oral arguments, and it offered some amusing appraisals. There were, for example, plaudits for calendars that listed cases "with summaries!" And there were demerits for calendars that weren't posted until just a few days before arguments — "not ideal!"

The tip sheet exists because circuits possess considerable local control to set their own policies, and it came to mind when yours truly had the additional good fortune recently of getting a copy of a new book — "Written and Unwritten: The Rules, Internal Procedures, and Customs of the United States Courts of Appeals" — by U.S. Circuit Judge Jon O. Newman of the Second Circuit and professor Marin K. Levy of the Duke University School of Law.

Unlike the book, the tip sheet is not 200 pages long and does not have a foreword by retired U.S. Supreme Court Justice Stephen Breyer (fancy!). But its *raison d'être* is essentially identical: amassing fragmented policies in one useful place. Here's how the book's introduction puts it: "In the more than 130 years since the Evarts Act established the modern courts of appeals in 1891, there has never been a comprehensive examination of their internal operations and practices — until now."

"Written and Unwritten" is chock-full of fun facts, including statistics illustrating that "the percentage of appeals argued orally" — as opposed to being decided based solely on briefs — "varies significantly among the circuits."

That variation is the subject of this month's trivia question: Which circuit has the lowest percentage of argued appeals, and which two circuits have the highest percentage?

The answers appear at the end of this column. (And we'll provide a small hint: The Federal Circuit isn't one of the answers, because it wasn't included in the statistics.)

February's Noteworthy Appellate Wins

Before our rundown of March's most anticipated arguments, let's spotlight a few of February's most impressive appellate wins, starting with an attention-grabbing win for Canada-based Trudell Medical after a Federal Circuit argument in October by Laura A. Lydigsen, a Chicago-based partner at Crowell & Moring LLP.

Trudell's triumph appeared in a unanimous opinion, and it made waves by **stripping the case** from a North Carolina federal judge who oversaw a jury trial that cleared a North Carolina-based medical device maker of patent infringement allegations. "From the moment this case fell in his lap, the trial judge's statements indicate that he did not intend to manage a fair trial," the opinion said.

Next up, Paul D. Clement of Clement & Murphy PLLC had a fabulous February at the First Circuit, where **his oral argument** last year for Regeneron Pharmaceuticals Inc. persuaded a three-judge panel last month to **adopt a defense-friendly interpretation** of the Anti-Kickback Statute. The AKS is a healthcare corruption law that triggers False Claims Act liability, and the First Circuit's holding created a 3-1 circuit split favoring defendants.

Finally, in what might be the last big chapter in the sensational, yearslong criminal case against former leaders of Silicon Valley blood-testing startup Theranos, the Ninth Circuit **affirmed the fraud convictions** of ex-CEO Elizabeth Holmes and onetime Theranos executive Ramesh "Sunny" Balwani. The milestone decision followed **oral argument last year** from Kelly I. Volkar, a prosecutor at the U.S. Attorney's Office for the Northern District of California and a former associate at O'Melveny & Myers LLP.

March's Most Anticipated Oral Arguments

Federal Circuit — Washington, D.C.

March 13: For the first time in seven years, the full Federal Circuit will rehear a case involving utility patents, which cover "new and useful" goods, processes or improvements of those things. The circuit is specifically scrutinizing the expert testimony used to calculate damages in **EcoFactor Inc. v. Google LLC** 🍷, and almost everyone **expects far-reaching fallout**.

It's pretty easy to see why: A jury awarded \$20 million in damages for Google's alleged infringement of an EcoFactor patent, and that amount was based on licenses EcoFactor has with other companies. A Federal Circuit panel ruled 2-1 against a new damages trial, but now, the full court is reviewing Google's objections. And so, the case has become a major vehicle to explain the damages arithmetic when there's infringement of one patent bundled with others in license agreements.

Arguments will feature Ginger D. Anders of Munger Tolles & Olson LLP for Google and Brian D. Ledahl of Russ August & Kabat for EcoFactor.

Second Circuit — New York City

March 7: Tense moments are likely at the Thurgood Marshall U.S. Courthouse this month, beginning with arguments in a deeply contentious clash pitting the Kingdom of Saudi Arabia against New York-based firm Kreindler & Kreindler LLP as part of multidistrict litigation known as **In re: Terrorist Attacks on Sept. 11, 2001**.

We won't try to fully recap the elaborate dispute here — Law360's past coverage **summarizes it well** — but the gist is that a consultant for the firm leaked a confidential deposition transcript to a reporter, an investigation ensued, and the firm ended up being punished with removal from a plaintiffs' executive committee and millions of dollars in sanctions.

At the Second Circuit, the parties disagree over issues involving jurisdiction, evidence and the rule used to impose sanctions. In one brief, the Middle Eastern country said a magistrate judge "had ample basis in her personal credibility observations and in contemporaneous documentary evidence to find that [supervising attorney James] Kreindler and his cohorts lacked candor in protesting their innocence of the leak." The firm subsequently averred that Saudi Arabia's brief "ignores or distorts the objective, documentary evidence undercutting the magistrate judge's findings."

U.S. Circuit Judges Guido Calabresi, Raymond J. Lohier Jr. and Alison J. Nathan will hear arguments for the firm from Raymond D. Moss of Morvillo Abramowitz Grand Iason & Anello PC and for Saudi Arabia from Gregory G. Rapawy of Kellogg Hansen Todd Figel & Frederick PLLC.

March 20: On a mellower note, the circuit **will examine** an Internal Revenue Service rule prohibiting workarounds to the federal cap on state and local tax deductions, commonly known as SALT. The \$10,000 cap was part of the Tax Cuts and Jobs Act enacted in Trump's first term, and it dramatically reduced allowable deductions on itemized tax returns, disproportionately affecting wealthy filers in left-leaning states.

That impact is reflected in the cap's challengers: Connecticut, New Jersey, New York and the affluent village of Scarsdale in upstate New York. The state and local governments lost in district court, but the ruling against them relied on **Chevron** deference, which the U.S. Supreme Court last year overturned in a decision that instructed courts to adopt the "best reading" of statutes, rather than deferring to agencies.

In a recent brief, Scarsdale asserted that the IRS rule "cannot credibly be defended as the best reading" of the Internal Revenue Code, and that "without deference to fall back on," the government is defending the rule as within its authority under the Administrative Procedure Act.

Arguing counsel include Daniel A. Rosen of Baker McKenzie LLP for Scarsdale, Christopher John Ioannou of the New Jersey Office of the Attorney General for the states and Rebecca Sol Tinio of the U.S. Attorney's Office for the Southern District of New York for the government.

March 25: A crowded courtroom is likely for arguments in a proposed class action brought by former Miami Dolphins head coach Brian Flores accusing the NFL and some of its teams — including the New York Giants, Houston Texans and Denver Broncos — of racist hiring practices.

The high-profile case, which **began in 2023**, has shined a light on the incongruity between NFL athletes, who are overwhelmingly Black, and NFL coaches, who are overwhelmingly white. At issue in the appeal is the NFL's effort to compel arbitration, which a district court rejected.

In a recent brief, Flores dubbed his arbitration agreement "highly oppressive" and expressed incredulity at the idea of NFL Commissioner Roger Goodell serving as arbitrator, writing that Goodell is "handsomely paid to protect" the league and that "to say Mr. Goodell is biased would be an understatement."



In text messages with Brian Flores, former New England Patriots head coach Bill Belichick said the New York Giants had decided to hire a white coach, Brian Daboll, three days before Flores was set to interview with the team. (Court documents)

In response, the defendants observed that Flores "offers little defense of the district court's reasoning," instead relying on alternate grounds for affirmance because "he has no compelling responses in the face of the district court's obvious errors."

Arguing counsel include Douglas H. Wigdor of Wigdor LLP for Flores and Kannon K. Shanmugam of Paul Weiss Rifkind Wharton & Garrison LLP for the league and the teams.

Third Circuit — Philadelphia

March 11: The yearslong saga surrounding alleged cancer risks of Johnson & Johnson baby powder has included product liability claims on behalf of tens of thousands of consumers, **a recent trial** over J&J's latest resolution-via-bankruptcy plan and a securities class action involving J&J investors.

Those investors are urging the Third Circuit to preserve **their class certification win**, while J&J is warning that it would essentially turn mass torts into double-whammies that create securities fraud liability.

"Product liability litigation would routinely lead to tagalong securities fraud claims based on companies' attempts to defend their products," the company wrote in a recent brief.

U.S. Circuit Judges Patty Shwartz, L. Felipe Restrepo and Cindy K. Chung will hear the case. Joseph D. Daley of Robbins Geller Rudman & Dowd LLP will argue for the investors and Robert N. Hochman of Sidley Austin LLP will argue for J&J.

Fifth Circuit — New Orleans

March 31: In a relatively rare example of Texas Attorney General Ken Paxton battling big business and right-leaning legal groups, the Fifth Circuit **will review** the Lone Star State's "Right to Examine" law. The law authorizes the attorney general to inspect the records of companies doing business in Texas, but a lower court declared it unconstitutional in a suit brought by Boeing Co. supplier Spirit AeroSystems Inc.

Spirit has picked up supportive amicus briefs from the Cato Institute and the New Civil Liberties Alliance, which tend to be simpatico

with conservatives but also tend to dislike muscular government policies. Cato's brief says the Fourth Amendment and Supreme Court precedent "prohibit and condemn" inspection of corporate records without independent review beforehand, and the NCLA's brief says Texas' law creates "a standing general warrant" that is "among the most reviled of governmental instruments."

The judges and arguing attorneys haven't yet been disclosed. Spirit's attorneys include Matthew T. Martens, Jaclyn N. Moyer and Leah M. Fugere of WilmerHale, and Paxton's legal team includes Benjamin Wallace Mendelson, an assistant solicitor general.

Sixth Circuit — Cincinnati

March 19: The Sixth Circuit's oral argument calendar — one of those "with summaries!" — includes en banc rehearing of **Speerly v. General Motors LLC** 🟡, where a panel in August **upheld class certification** for consumers whose vehicles allegedly had transmission defects that caused their cars "to shudder, jerk or clunk when accelerating or decelerating," per the summary.

GM contends that common issues don't predominate among class members because the alleged defects have "different causes, manifestations, fixes and rates of occurrence." And the automaker has **cautioned** that the panel's holding "will transform the Sixth Circuit into a national outlier and magnet for class action lawsuits."

Amicus briefs backing GM have **poured in** from corporate America and the defense bar. The U.S. Chamber of Commerce, for instance, has urged the circuit to hold that "no damages class can be certified without evidence that each class member has Article III standing," echoing a request that's also before the Supreme Court in **a pending case, LabCorp v. Davis** 🟡.

An amicus brief from consumer group Public Citizen pushed back on that contention, insisting that "assessing class members' injuries at certification is often infeasible because their identities are unknown."

Richard C. Godfrey of Quinn Emanuel Urquhart & Sullivan LLP will argue for GM, and Douglas J. McNamara of Cohen Milstein Sellers & Toll PLLC will argue for the consumers.

Eighth Circuit — St. Paul, Minnesota

March 18: Arguments in a challenge brought by helicopter companies will be watched for clues to the future of new restrictions on commercial air tours above and within a half mile of the Badlands National Park and Mount Rushmore National Memorial.

The companies contend that patrons are being improperly deprived of bird's-eye views of majestic cliffs that will soon display a towering granite **sculpture of Trump's head**. Just kidding — the companies actually contend that the Federal Aviation Administration relied on outdated information and "did not articulate a satisfactory explanation for their justifications of the total ban of the air tours."

The FAA notes that the restrictions are roughly two decades overdue, and it says that helicopter noise and other effects have "severely impacted the visitor experience, were strongly opposed by tribal nations who consider the lands sacred, and have adversely impacted multiple species within the parks."

U.S. Circuit Judges Steven M. Colloton, Ralph R. Erickson and L. Steven Graszo will hear the case. Katelin Shugart-Schmidt of the U.S. Department of Justice's Environment and Natural Resources Division will argue for the FAA and Peter T. Jenkins will argue for environmental groups supporting the FAA. An attorney from KMA Zuckert LLP is expected to argue for the challengers.

March 19: In a quartet of consolidated cases, television and radio broadcasters **are challenging** the Federal Communications Commission's latest rules on local media ownership, which preserved and even tightened anticonsolidation policies despite the rise of digital age competition.

A November brief from the National Association of Broadcasters and other challengers accuses the FCC of "blatantly ignoring mountains of record evidence documenting the intense competition broadcasters face from new media sources."

On the same day in November, the FCC told the Eighth Circuit that new competition "has not diminished the need for the agency's rules limiting ownership of multiple radio and television stations in local markets," citing the public's interest in "localism and viewpoint diversity."

U.S. Circuit Judges Raymond W. Gruender, Duane Benton and Bobby E. Shepherd will hear the case. Arguing attorneys include James M. Carr for the FCC, Andrew G.I. Kilberg of Gibson Dunn & Crutcher LLP for the National Association of Broadcasters, Jessica Ring Amunson of Jenner & Block LLP for NCTA - The Internet & Television Association and David D. Oxenford Jr. of Wilkinson Barker Knauer LLP for various media companies.

Ninth Circuit — Pasadena, California

March 7: It's not the busiest of months at the Ninth Circuit, but there is one case that piqued our interest, partly because we enjoy cases where the plaintiffs and defendants have the same name, which calls to mind that "Spider-Man pointing at Spider-Man" meme.

The case is **Trader Joe's v. Trader Joe's** 🟡 — or, more formally, Trader Joe's Co. (the business) v. Trader Joe's United (the union). And it's not just the name that's interesting: The company is trying to reverse **the dismissal of its trademark suit** targeting union merchandise as well as the award of roughly \$112,000 in attorney fees based on a district judge's conclusion that Trader Joe's was trying to "weaponize the legal system to gain advantage in an ongoing labor dispute."



Trader Joe's, purveyor of the tote bag at left, sued Trader Joe's United, purveyor of the tote at right, for trademark infringement. (Court documents)

"The similarities between Trader Joe's marks and the union's designs are negligible," and in light of "the extensive and ongoing legal battles over the union's organizing efforts at multiple stores, Trader Joe's claim that it was genuinely concerned about the dilution of its brand resulting from these trivial campaign mugs and buttons cannot be taken seriously," U.S. District Judge Hernán D. Vera wrote.

In an October brief, Trader Joe's (the company) told the Ninth Circuit that Judge Vera wrongly conducted his own fact-finding and inferred ulterior motives, even though the grocer filed suit quickly after the union launch a "merch" store.

"Nothing about that timing — or anything else in the record — supports bad faith," the company wrote.

U.S. Circuit Judges Gabriel P. Sanchez and Holly A. Thomas and U.S. District Judge James Donato will hear the case. Melissa Arbus Sherry of Latham & Watkins LLP will argue for the company, and Sonya Z. Mehta of Siegel Yee Brunner & Mehta will argue for the union.

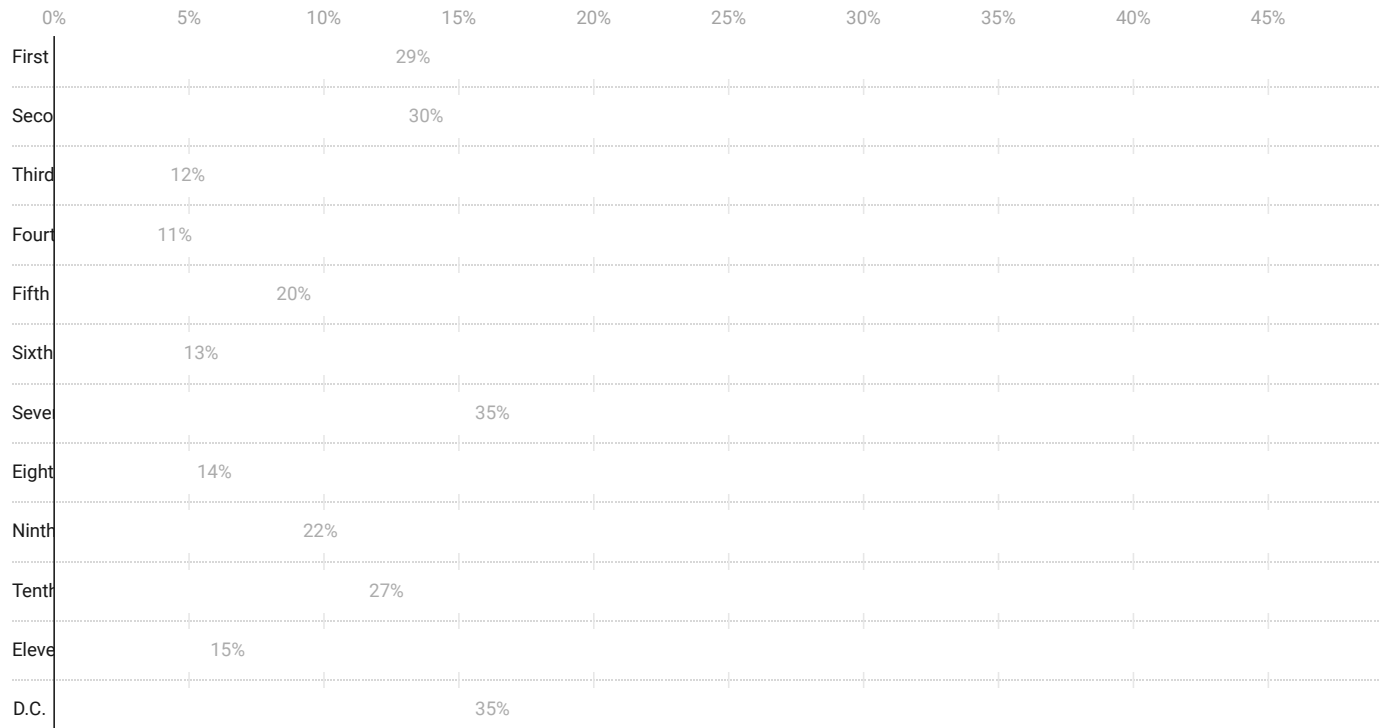
Trivia Answer

This month's trivia question asked you to identify the circuits with the lowest and highest percentages of argued appeals (according to 2022 data in the book "Written and Unwritten"). As you can see in the nifty chart below these words, the lowest rate (11%) can be found at the Fourth Circuit, and the highest rate (35%) can be found at the Seventh and D.C. circuits. High five to everyone who guessed correctly!

For those who didn't, we'll note the Fourth Circuit's rate is just barely below the rates of the Third Circuit (12%), Sixth Circuit (13%), Eighth Circuit (14%) and Eleventh Circuit (15%). So, if you guessed any of those circuits had the lowest rate, you can still give yourself a pat on the back. But we're afraid there's no consolation prize if you guessed wrong about the highest rate — the Seventh and D.C. circuits are pretty clearly at the top of the heap.

Decisions After Dialogues

The percentage of oral arguments for appeals terminated on the merits varies widely by circuit.



Note: Data is for 2022. Federal Circuit not included.

Source: Administrative Office of U.S. Courts; *Written and Unwritten The Rules: Internal Procedures, and Customs of the United States Courts of Appeals* by Jon O. Newman and Marin As for why the argument rates vary so much, there's some correlation between the rates of argument by circuit and the annual number of weeks set aside for argument. "Written and Unwritten" also hints at possible factors in its discussion of each circuit's particular procedures for processing cases.

For example, among courts with high argument rates, the Seventh Circuit is "unique among the circuits [because] the circuit executive screens cases for oral argument," and the D.C. Circuit's Staff Attorneys' Office takes a first look while "erring on the side of sending the case on for oral argument."

Among the circuits with lower rates, the book mentions that the Third Circuit has fairly demanding criteria for permitting oral argument, looking for legal issues that are "substantial and novel," carry "institutional or precedential value" or have relevance for an "important public interest."

But the most interesting approach, we think, is found at the Ninth Circuit. Per the book, staff attorneys assess the complexity of each case, decide if a case warrants argument, and then "assign it a weight (again based on complexity) and give 24 points worth of cases for each day of argument to equalize the workload."

According to the book, staff attorneys also write up descriptions of each case. That may explain how the Ninth Circuit's calendar became one of our favorites — it includes an overview of each case, and as a bonus, it's posted far ahead of time. It's also absolutely enormous, so maybe it's "not ideal," but it's pretty close.

--Additional reporting by Andrew Karpan and Dani Kass. Graphics by Ben Jay. Editing by Jay Jackson Jr.

Editor's note: *Wheeling & Appealing* is not an exhaustive list of recent and upcoming decisions, arguments and legal industry developments. Court calendars are subject to change. If you'd like to submit a recent or upcoming decision, argument or law firm news item for consideration in a future installment of *Wheeling & Appealing*, please email jeff.overley@law360.com.



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Attys Seek \$30M Fees In Walgreens Rx Overcharge Deal

By **Lauraann Wood**

Law360 (March 6, 2025, 4:31 PM EST) -- Attorneys for unions and consumers who struck a \$100 million settlement of Walgreens prescription overcharge fee claims asked an Illinois federal judge for a \$30 million cut of that pot, arguing the amount would pay for seven years of meaningful work they put into the case.

Awarding that amount in fees is warranted, particularly since lead counsel spent seven years litigating the plaintiffs' claims, including completing fact discovery and briefing class certification and other significant issues, plaintiffs in the case told U.S. District Judge Edmond Chang in their Tuesday **motion**.

Walgreens had also significantly advanced its arguments regarding liability, damages and the likelihood of Judge Chang certifying a class by the time the parties agreed to settle, the plaintiffs told the court. That means the plaintiffs were "fully cognizant" of their claims' strengths and weaknesses, as well as the risks of continued litigation, by the time they entered the settlement, the motion asserted.

"Moreover, the settlement provides certainty and finality over the outcome and ensures that the settlement class can obtain a monetary recovery without further delay," the plaintiffs said in a memorandum supporting the motion also filed Tuesday.

Representatives for the parties didn't immediately respond Thursday to a request for comment.

Prescription drug customers and an International Brotherhood of Electrical Workers benefits fund sued Walgreens in 2017, accusing the company of illegally charging insured consumers more for generic drugs than it charged uninsured customers who paid for prescriptions through the company's Prescription Savings Club program.

A previous judge rejected Walgreens' bid to **escape the suit** in 2018, holding that the customers plausibly alleged the company failed to report its low PSC program costs as the "usual and customary" prices paid by insurers.

The customers and unions moved for class certification in November 2022, which Walgreens opposed, but settlement discussions began in December 2023 while the request was still pending.

Beyond its monetary payout, Walgreens has also promised to shutter its PSC program. And the parties have agreed to certify a class comprising all individuals who paid for any prescription drugs from Walgreens using insurance benefits, dating to Jan. 1, 2007.

Class members will receive settlement awards based on an estimation of the money they spent on some or all of Walgreens' eligible prescription drugs.

Swiftly approving the proposed deal during a November hearing, Judge Chang said it seemed fair and adequate particularly given the plaintiffs' **ongoing litigation risks**. They had largely beat back the pharmacy giant's dismissal, but couldn't guarantee they'd prevail at class certification or summary judgment "in the face of more rigorous burdens of proof," he said.

Beyond their fees, class counsel also asked Judge Chang for more than \$2.4 million in out-of-pocket

litigation expenses and \$15,000 worth of incentive awards to certain plaintiffs, including several benefit funds that had served as class representatives.

Judge Chang is set to weigh final approval for the proposal in September, according to court records.

The plaintiffs are led by Scott + Scott Attorneys at Law LLP and Robbins Geller Rudman & Dowd LLP.

Walgreens is represented by Reed Smith LLP.

The case is Russo et al. v. Walgreen Co. et al., case number 1:17-cv-02246, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Celeste Bott. Editing by Melissa Treolo.

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SEC Urged To Address Impact Of Slack Ruling On Investor Suits

By **Jessica Corso**

Law360 (March 6, 2025, 9:13 PM EST) -- Investor advocates on Thursday urged the U.S. Securities and Exchange Commission to address the growing number of companies that may be taking advantage of a recent U.S. Supreme Court ruling in order to avoid getting sued after going public.

The SEC's investor advisory committee has recommended that the commission begin a rulemaking process that will address the high court's 2023 **ruling** in **Slack Technologies v. Pirani** , which they say threatens the protections afforded to investors under Section 11 of the Securities Act of 1933.

"Issuers and underwriters' ability to extinguish plaintiffs' standing threatens to minimize compensation available to investors — and to undermine the deterrent effect of Section 11," the draft recommendation posted to the SEC's website said.

The Supreme Court decided in *Slack* that investors cannot sue under Section 11 if they cannot trace their newly purchased shares to a registration statement, a document that provides financial and operation information about a company about to go public.

Because Slack went public via a direct listing, early investors were allowed to place unregistered shares on the market at the same time the company placed its registered shares.

That made it impossible for lead investor Fiyaz Pirani to trace his shares to the registration statement, the Ninth Circuit **said** in a ruling issued last month that threw out the case following the Supreme Court's ruling.

Under a traditional initial public offering, underwriters institute a lockup period that prohibits unregistered shares from being traded for a set amount of time, ensuring that the tracing issue is not a problem for most Section 11 suits.

But Colleen Honigsberg, secretary of the investor advisory committee and Stanford Law School professor, said "more and more underwriters" are waiving the lockup period in the wake of the *Slack* ruling, and some lawyers are even recommending that they do so.

"Even if they are not waiving the lockup period in all situations as of right now, I think that what you would have is increasing frequency of that," Honigsberg told the committee before the vote on the recommendation. "And you would have maybe a company — and this is what some of the lawyers are proposing — [say] let's get some unregistered shares out right away."

The recommendation calls on the commission to write a rule imposing a lockup period on all companies going public in order to preserve Section 11 liability.

In a statement made before the committee Thursday morning, Republican SEC Commissioner Hester Peirce expressed skepticism about the recommendation. She said that only 11 companies chose to go public via a direct listing between 2021 and 2023 and that early lockup releases "may be on the rise" but "are often bespoke and in at least some instances might accord with the draft recommendation."

"How large of a problem would this recommendation solve, and should the commission expend its limited resources to solve it?" Peirce asked.

She also wondered if it wasn't good enough that investors could still sue newly public companies under the fraud provisions of Section 10(b).

But Section 10(b) includes a scienter requirement, placing a higher burden on plaintiffs and potentially giving companies more reason not to fully disclose their financial state ahead of a public offering, according to the recommendation.

"Without the prospect of strict liability lawsuits, issuers may feel less pressure to accurately disclose information in their registration statements, potentially leaving all investors less informed," the draft recommendation said.

In addition to putting forth a recommendation on Section 11 liability, the committee also discussed how the SEC can address the growing use of artificial intelligence and how that use is disclosed to investors.

It made no formal recommendations but discussed with a panel of experts whether it should do so.

While the SEC **put forth** a rulemaking proposal under the Biden administration that would have curtailed the use of predictive data analytics by brokerage apps, that rule was not finalized before the new administration took power.

Committee Vice Chair Paul Royce wondered whether it might be too soon for an AI disclosure rulemaking and whether guidance from the SEC staff might be more appropriate at this point in time.

"Are we in a situation where we should be urging the SEC to provide guidance about how companies should approach AI disclosures, as opposed to trying to standardize, trying to put rules in place?" Royce asked. "Because this is such a fast-moving area that by the time you put some rules in place, they're obsolete."

Panelist Paul Washington, CEO of the Society of Corporate Governance, said that it may be too soon to standardize disclosures because many companies are still in the "experimental phase" when it comes to AI.

Instead of rulemaking, the SEC could serve to "help companies think through and be more consistent about the questions that companies are thinking about internally when it comes to AI," Washington said.

"I think actually helping companies think through the range of areas of impact will then lead to more robust disclosure, naturally, more tailored to each company," he later added.

--Editing by Michael Watanabe.



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AppLovin Hit With Suit Over 'Forced Shadow Downloads'

By **Emilie Ruscoe**

Law360 (March 6, 2025, 9:25 PM EST) -- Technology company AppLovin faces a proposed investor class action alleging it invoked "cutting-edge AI technologies" in touting growth that allegedly resulted from manipulative practices triggering forced shadow downloads of its apps.

In a Wednesday complaint in California federal court, plaintiff Michael Quiero pointed to market records showing trading prices for AppLovin shares fell by over \$46 from about \$377 to \$331 in February after a pair of short-seller reports alleged the company was using manipulative practices to inflate certain key performance indicators, such as its app installation metrics.

According to Quiero, "by having ads click on themselves or utilizing design gimmicks to trigger forced shadow downloads," AppLovin misled investors about its products' popularity, profiting off its alleged deceit.

Queiro's suit takes aim at Palo Alto-based AppLovin, its CEO Adam Foroughi and its Chief Financial Officer Matthew Stumpf.

The investor described the company as offering "a software-based platform for advertisers to enhance the marketing and monetization of their content."

During a proposed class period starting in May 2023, Quiero said, AppLovin had touted "impressive financial results, outlooks, and guidance to investors," including by heralding the launch of its AXON 2.0 digital ad platform.

The company also told investors it would be deploying "cutting-edge AI technologies" to better match ads to mobile games and said it had plans to expand into web marketing and e-commerce.

But according to Quiero, those claims were made as the company was using "dishonest advertising practices" all the while.

Among other things, the investor claimed the company was benefiting from a "backdoor installation scheme" that forced its unwanted apps on customers.

Quiero also claimed the company was "reverse-engineering and exploiting advertising data from Meta Platforms to make it appear that their e-commerce segment is performing better than it is.

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

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

Counsel information for AppLovin was not immediately available Thursday.

The case is Quiero v. AppLovin Corporation et al., case number 4:25-cv-02294, in the U.S. District Court for the Northern District of California.

--Editing by Vaqas Asghar.



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E.L.F. Beauty Hit With Investor Suit After Muddy Waters Report

By **Gina Kim**

Law360 (March 6, 2025, 6:51 PM EST) -- Cosmetics giant e.l.f. Beauty's shareholders filed a proposed class action in California federal court on Thursday, accusing the company of overstating its revenue while hiding growing inventory issues due to inadequate sales — troubles that investment research firm Muddy Waters revealed in a November report that caused share prices to plunge.

In a **29-page complaint**, shareholder Luke Rottman sued Elf and its co-defendants alleging securities laws violations on behalf of a proposed class of investors who held onto Elf securities between Nov. 1, 2023, and Nov. 19, 2024. The complaint asserts violations of Sections 10(b) and 20(a) of the Exchange Act of 1934 and Rule 10b-5.

Rottman accused the defendants of not telling shareholders during the class period that Elf's inventory was growing because of flagging sales, and then falsely attributing the rising levels to the company's sourcing practice changes.

Rottman's suit pointed to a report published on Nov. 20 by investment research firm Muddy Waters Research, titled, "Elf Beauty Inc., A Revenue and Inventory Mystery," which accused the beauty company of significantly overreporting revenue for the last three quarters.

"The Muddy Waters report accused Elf of overstating its revenue by approximately \$135 million to \$190 million over several quarters," Rottman alleged. "Further, Muddy Waters accused the company of concealing its inventory challenges from investors by falsely attributing its rising inventory levels to supposed changes in its sourcing practices rather than the true cause — insufficient sales. On this news, Elf's stock price fell \$2.71 per share, or 2.23% to close at \$119.00 per share on November 20, 2024."

The drop in Elf share prices didn't cease, Rottman continued. On Feb. 6, the company announced its third quarter results for the fiscal year 2024 along with its fiscal year 2025 outlook, and revealed it forecasted net sales growth to be 27% to 28% lower than the prior guidance of 28% to 30%, the suit said.

"On March 5, 2025 — i.e. the last trading session before the filing of this complaint — Elf's stock price closed at \$64.67 per share, representing a total decline of \$57.04 per share, or nearly 47%, since the truth about the company's inventory management and revenue first came to light," the suit said.

Elf Beauty sells skincare, mineral-based makeup, eyeliner, lipsticks, blush, brushes, mascara, bronzer and more, according to the company's website. The company also distributes skincare products under multiple brands, including e.l.f. Cosmetics, e.l.f. Skin, Well People, Naturium and Keys Soulcare. Elf products can be bought online or at retail establishments in the U.S., including Target, Walmart, Ulta Beauty or pharmacy drugstores.

According to the suit, Elf's profitability largely depends on maintaining a certain amount of inventory that would allow it to meet customer demand, according to the suit. However, if the company holds onto more inventory than what it sells, it could result in keeping inventory that cannot effectively be sold. When that happens, the inventory would be written down or sold at a loss, Rottman explained.

Rottman's suit alleged that the defendants, including Chief Financial Officer Mandy Fields and CEO Tarang P. Amin, made several misleading statements. Those statements — made during an earnings

call in the second quarter of 2024 — had to do with the company's net sales growth and its calculations that its ending inventory balance that quarter was \$147 million, which Elf said was "up from \$81 million a year ago."

Rottman said the company told investors at the time it planned to "build back its inventory levels" to support strong consumer demand.

"In addition, approximately \$37 million of the increase is the result of taking ownership of inventory from China when it ships versus when it enters our distribution center here in the U.S.," Fields said in a second quarter earnings call with investors, according to Rottman's suit. "We ended the quarter with approximately \$168 million in cash on hand compared to a cash balance of \$85 million a year ago."

Fields then told investors in a third quarter earnings call for 2024 that Elf's balance sheet remained strong and that it ended the quarter with approximately \$72 million in cash on hand, compared to a cash balance of \$87 million the prior year.

"Our ending inventory balance was \$205 million in-line with our expectations and up from \$81 million a year ago," Fields said in that third quarter call, according to the complaint. Fields went on to again attribute some of the increase as a result of taking ownership of inventory from China when it ships, as opposed to when it comes to the company's distribution warehouse in the U.S., the suit said.

However, when Muddy Waters Research's report broke on Nov. 20, share prices dropped \$2.71 per share to close at \$119 per share, the suit said.

Although Elf attributed the \$37 million growth in its reported inventory to the inclusion of product while it was coming to California from China, Rottman alleged that Elf's staff and China-based suppliers had "significantly undermined Elf's explanation for the additional \$36.9 million in inventory," the suit said.

"Significantly, 'a former China-side manager and three of ELF's largest suppliers' indicated that Elf's 'longstanding general practice was to take title to goods on the China side,'" the suit said, quoting Muddy Waters. "Accordingly, the company's increase in inventory instead appeared to be 'due to insufficient sales — not a change in buying practices' — an indication that Elf had also been misleading its auditor."

Elf denied Muddy Waters' claims the following day, calling them "meritless" and accusing the company of "presenting speculation as fact."

"Nevertheless, Elf's subsequent financial reporting hardly disproved the Muddy Waters report's conclusion," Rottman alleged. "On February 6, 2025, Elf released its fiscal Q3 2025 results and provided fiscal 2025 outlook. With defendant Fields citing 'softer than expected trends in January,' Elf's results represented a sharp departure from the preceding five quarters, as the company reported softer consumption trends driven by, among other things, 'consumers stocking up in a highly promotional December and lower social conversation around beauty' and slower than anticipated new product launches."

Elf's stock prices plunged again as a result, this time at \$17.36 per share, to close at \$71.13 per share the following day, Rottman said.

Rottman accused Elf's co-defendants of engaging in insider sales of Elf shares while they were trading at artificially inflated prices. For example, Elf's CEO sold at least \$435,574 shares and netted at least \$68.7 million as a result, while Fields sold at least 28,168 shares and made at least close to \$5 million, Rottman claimed.

Brian Schall of The Schall Firm told Law360 Thursday afternoon the plaintiffs had no comment.

Rottman is represented by Jennifer Pafiti, Jeremy A. Lieberman, and J. Alexander Hood II of Pomerantz LLP, and Brian Schall of The Schall Firm.

Counsel information for the defendants was not immediately available.

The case is Luke Rottman v. Elf Beauty Inc. et al., case number 4:25-cv-02316, in the U.S. District Court for the Northern District of California.

--Editing by Michael Watanabe.

Update: This article has been updated to reflect a statement from the plaintiff's counsel.

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Meet Attys Facing Off Over \$199M Ruling In Del. Merger Dispute

By **Rose Krebs**

Law360 (March 6, 2025, 4:45 PM EST) -- Attorneys from Mayer Brown LLP and Bernstein Litowitz Berger & Grossmann LLP are set to face off next week before the Delaware Supreme Court on TC Energy Corp.'s challenge to a lower court ruling ordering the business to pay \$199 million in damages to former Columbia Pipeline Group Inc. shareholders in connection with a 2016 merger.

Delaware's high court will hear arguments Wednesday in the bid by TC Energy, formerly TransCanada, to undo Chancery Court decisions that put it **on the hook for damages** for an aiding and abetting liability claim related to its \$13 billion acquisition of Columbia.

In an opening brief filed in September, TC Energy told the justices that the Chancery Court erred in holding it liable for aiding and abetting fiduciary breaches by Columbia's brass and board. The company contends it "had no actual knowledge of those breaches" and called the Chancery ruling unprecedented, saying "it is the first time a Delaware court has found a third-party buyer liable for damages for aiding and abetting sellside fiduciary breaches during a sale process."

"If left uncorrected, the decision will dramatically expand liability for third-party buyers, effectively requiring buyers to supervise the sellers' officers and directors," TC Energy asserted.

In an answering brief in October, the investor plaintiffs argued that "the trial court's extensive factual findings deserve deference and TransCanada's attempts to relitigate them should be rejected."

The appeal "arises from unusual facts," the investors said, arguing that "for months, TransCanada identified and exploited conflicts on the part of Columbia's officers, including by persistently and knowingly breaching a standstill agreement."

TransCanada exploited those conflicts to drop its purchase price and "made a coercive threat it knew violated the standstill," they said.

"The merger was a success for TransCanada, but Columbia's stockholders were harmed," the brief argued.

"This appeal arises from an unusual posture as well," the investors said. "The trial court effectively tried the case twice: once as an appraisal case and again as a breach of fiduciary duty case. TransCanada objected to consolidating both cases for trial, and the appraisal proceeded first. TransCanada's strategy backfired."

The discovery process "in the second case uncovered much that had been withheld in the first" and led "to discovery of highly relevant new information," they said.

They argued that deference should be given to the Chancery Court's analysis of that evidence and its decision.

"The trial court not only heard and considered the evidence; on certain key issues it effectively heard from the same witnesses twice," the investors said. "It is particularly ironic that TransCanada — facing literally hundreds of pages of factual findings based on thousands of pages of deposition and trial testimony and thousands of exhibits — now relitigates those findings, as though the trials never happened and the witnesses never testified."

Now the two sides will argue the case in front of the full five-member high court on Wednesday. Nicole A. Saharsky of Mayer Brown will be arguing for TC Energy, and Gregory V. Varallo of Bernstein Litowitz will state the investors' case, members of their counsel teams told Law360 Pulse.

Here, Law360 Pulse takes a look at the attorneys.



Nicole A. Saharsky

Mayer Brown

A partner based in Mayer Brown's D.C. office, Saharsky is co-leader of the firm's Supreme Court and appellate practice group, her LinkedIn profile says.

She has argued 31 cases at the U.S. Supreme Court and briefed hundreds of cases there, her profile on the firm's website says. She also argues cases in federal and state appellate courts in areas such as administrative law, antitrust, banking, bankruptcy, constitutional law, environmental law, labor and employment law, corporate criminal liability, securities fraud, intellectual property and tax, the profile

says.

Among her recent case work, Saharsky is one of the attorneys representing U.S. Steel at the D.C. Circuit over its **blocked \$14.9 billion merger** with Japan's Nippon Steel Corp., and in January, she **argued for Cornell University** in a U.S. Supreme Court appeal in which university workers are seeking to revive their case that their retirement plan was mismanaged and charged excessive fees.

Also, she was one of the attorneys who secured a **\$24 million settlement** for the U.S. Women's National Soccer Team in their equal-pay fight in federal court against the U.S. Soccer Federation.

Saharsky has been at the firm for more than six years, having previously worked at Gibson Dunn & Crutcher LLP and O'Melveny & Myers LLP, her LinkedIn profile says.

She also spent just over a decade as an assistant to the U.S. solicitor general, her LinkedIn profile says.

She earned a law degree in 2002 from the University of Minnesota Law School and an undergraduate degree from Northwestern University.



Gregory V. Varollo

Bernstein Litowitz

An experienced corporate lawyer, Varallo is the leader of plaintiffs' giant Bernstein Litowitz's Delaware office. The firm **opened its Wilmington office** in 2019 with his hiring, after he had spent 35 years as a corporate litigator at Delaware firm Richards Layton & Finger PA.

Varallo was Richards Layton's president from 2016 to 2019, his LinkedIn profile says. He was executive vice president for three years before that and vice chair of the firm's corporate department from 2007 to 2013, the profile says.

His work at Richards Layton focused on high profile corporate cases, including mergers and acquisitions, securities litigation and corporate governance matters, according to his LinkedIn profile. He focused on corporate defense work at Richards Layton, his profile on Bernstein Litowitz's website says.

After he joined Bernstein Litowitz, the firm quickly started taking on more plaintiff-side work in the First State, especially its Chancery Court.

Among Varallo's other recent cases, he was on the counsel team that **secured a win** in Chancery Court last year for a plaintiff who challenged Elon Musk's \$56 billion compensation package. That decision **has been appealed** to the state's Supreme Court.

He is one of the attorneys representing Anaplan Inc. shareholders in their Delaware Supreme Court **appeal of a Chancery Court ruling** that dismissed their suit over the company's \$10.4 billion sale to private equity firm Thoma Bravo LLC in 2022; is on the team representing former shareholders of Cvent Holding Corp. in Chancery Court litigation over a **\$4.6 billion take-private sale** to affiliates of Blackstone Inc.; and he helped Walmart Inc. shareholders broker a **\$123 million settlement** to end a Chancery Court suit accusing the retail giant of opioid prescription oversight failures.

In recent weeks, Varallo has vocally criticized proposed legislation that would make significant changes to Delaware General Corporation Law. He was among those who **signed a letter** this week arguing the proposed legislation would put Delaware's nationally known incorporation franchise "at grave risk."

Provisions in the legislation include new safe-harbor protections for one or more directors, officers, or controlling stockholders or control groups, shielding them from liability if they have interests or relationships that render them "not independent" with regard to deals or actions.

In an earlier comment to Law360, Varallo **called the legislation** "an outrageous assault on the last half-century or so of Delaware leadership in overseeing fiduciary responsibilities of public company directors."

Varallo earned a law degree from Temple University School of Law, now called Beasley School of Law, and an undergraduate degree from the University of Pennsylvania.

Saharsky and Varallo declined to comment about the Columbia Pipeline case.

The investors are represented by Gregory V. Varallo, Jeroen van Kwawegen, Christopher J. Orrico and Thomas G. James of Bernstein Litowitz Berger & Grossmann LLP, Ned Weinberger and Brendan W. Sullivan of Labaton Sucharow LLP and Stephen E. Jenkins and Marie M. Degnan of Ashby & Geddes PA.

TC Energy is represented by David E. Ross, S. Michael Sirkin, Roger S. Stronach and Thomas A. Barr of Ross Aronstam & Moritz LLP, James M. Yoch Jr. of Young Conaway Stargatt & Taylor LLP and Brian J. Massengill, Matthew C. Sostrin, Nicole A. Saharsky, Minh Nguyen-Dang and Carmen N. Longoria-Green of Mayer Brown LLP.

The case is In re: Columbia Pipeline Group Merger Litigation, case number 281,2024, in the Supreme Court of the State of Delaware.

The lower-court case is In re: Columbia Pipeline Group Merger Litigation, case number 2018-0484, in the Court of Chancery of the State of Delaware.

--Additional reporting by Jeff Montgomery, Jade Martinez-Pogue, Kellie Mejdrich and Katryna Perera. Editing by Brian Baresch.



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Coinbase Investors Ask Court To Lead Direct Listing Suit

By **Sydney Price**

Law360 (March 6, 2025, 7:52 PM EST) -- Two new contenders have filed to lead a shareholder class action over crypto exchange Coinbase's direct listing hours after its original lead plaintiff dropped out following the Ninth Circuit's dismissal of a similar case brought against Slack Technologies.

Movants Justin McMichael and Vincent Casola asked the court to lead the suit against Coinbase on the same day the previous lead plaintiff, Hsiu-Mei Yu, **said she would exit the suit**. Yu previously notified the court that the Ninth Circuit's recent Slack ruling might have an effect on the litigation.

The district court must review Yu's notice of voluntary dismissal to determine whether it would prejudice the class, McMichael and Casola's motion states.

"McMichael and Casola seek appointment as lead plaintiff because they believe they have viable securities claims," the motion states. "As set forth in their lead plaintiff motion papers, McMichael and Casola have the second largest loss of any movant and are otherwise adequate and typical."

Counsel for McMichael and Casola did not immediately respond to requests for comment on Thursday.

Yu's notice did not provide a reason for the dismissal, but a joint status report filed last month cites the Ninth Circuit's recent ruling releasing Slack from a similar securities action that was previously ruled on by the U.S. Supreme Court.

The circuit court went a step further than the high court in ruling that none of the suing investors' claims were salvageable due to the unique way Slack went public.

The Ninth Circuit in **Pirani v. Slack Technologies Inc.** determined that the plaintiff could not prove any of the Slack shares he purchased were "traceable" to Slack itself since a direct listing allows early investors to place their shares up for sale at the same time newly created shares are listed by the corporation.

A typical initial public offering includes a lock-up period under which early investors are prevented from trading their shares on the market for a set period of time. In 2018, the U.S. Securities and Exchange Commission greenlighted the New York Stock Exchange's request that it allow direct listings, in which companies go public without any underwriters or a lock-up period.

Slack and Coinbase are two of the few companies that took advantage of the new rules to go public. Investors in both companies sued over allegations that company brass made misleading statements that led to a drop in stock prices.

McMichael and Casola are represented by Thomas L. Laughlin IV and John T. Jasnoch of Scott + Scott Attorneys at Law LLP and Brian J. Schall of The Schall Law Firm.

Coinbase is represented by Morgan E. Whitworth, Andrew B. Clubok and Susan E. Engel of Latham & Watkins LLP.

The case is *In re Coinbase Global Inc. Securities Litigation*, case number 3:21-cv-05634, in the U.S. District Court for the Northern District of California.



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Del. Chancery Fast-Tracks Review Of \$8B Paramount Merger

By **Dorothy Atkins**

Law360 (March 6, 2025, 8:57 PM EST) -- Delaware's chancellor on Thursday rejected Paramount shareholders' bid for a temporary restraining order that sought to block its proposed \$8.2 billion sale to Skydance Media, but she agreed to expedite the proceeding at a "break-neck pace" over breach of fiduciary duty claims involving Paramount's response to an alternative \$13.5 billion offer.

In an **eight-page letter**, Chancellor Kathaleen St. Jude McCormick denied the TRO, but ordered the defendants to give the investors advance notice "optimally of no less than five business days" of the merger's closing date once it's set so that they can renew their TRO bid if necessary.

In granting the motion to expedite, the chancellor noted that, given the uncertainty regarding the deal's closing date, the parties must assume that the merger could be finalized before April 7, which is the date specified in the merger agreement, and they must work toward a schedule that allows the court to resolve the claims at issue in advance of the merger's closure.

"This is a break-neck pace but doable," Chancellor McCormick wrote, adding. "Perhaps the parties can negotiate a more civilized schedule in the event they learn that the [regulatory review] process is not likely to conclude by April 7."

The ruling speeds up litigation that shareholders initially filed on Feb. 4, the same day they filed a motion to expedite. Five New York employee public pension fund stockholders **argue** 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.

According to the pension funds, Skydance 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.

On Feb. 18, investors asked the court to issue a temporary restraining order blocking the deal pending the resolution of their claims.

But the special committee fired back, arguing that the chancellor should reject any TRO bid and expedition motion, in part because the investors didn't name Paramount and Skydance as defendants. The investors quickly filed a motion for joinder to add the parties, and the chancellor allowed the investors to **amend their complaint** to include the additional entities as defendants.

In her letter Thursday, the chancellor noted that it's unclear when the proposed merger will close. Although Paramount's counsel said the earliest it could close is March 20, the merger agreement itself sets an April 7 end date, and the deal is subject to approval by the Federal Communications Commission, which could cause further delays.

Adding to the uncertainty, the parties can push back the closing date by 90 days twice while they await FCC approval, according to the chancellor's letter.

Nevertheless, the chancellor found that the investors have met the relatively low legal bar of showing that they could be irreparably harmed if the deal closes without expediting litigation.

"If the merger closes before plaintiffs' claims are heard, they face being 'deprived forever of the opportunity to receive a ... topping bid in a process free of taint from ... improper activities' and motivations," the chancellor's letter said. "The potential loss of this unique opportunity is enough."

The letter added that the shareholders have also supported their expedition request by claiming that Redstone single-handedly approved the deal in breach of her fiduciary duties and by alleging that Skydance parties knowingly participated in the alleged fiduciary duty breaches.

"Defendants raise multiple factual defenses that may prevail, but plaintiffs have met the low bar sufficient for expedition," the chancellor wrote.

In light of her ruling, the chancellor ordered the parties to confer and submit a proposed case schedule.

Counsel and representatives for the parties didn't immediately respond to requests for comment on Thursday.

The investor pension fund plaintiffs — 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 Upadhyia 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.

Skydance Media LLC is represented by David E. Ross, S. Michael Sirkin and Elizabeth M. Taylor of Ross Aronstam & Moritz LLP and Blair Connelly, Zachary L. Rowen and Alexander L. Mills of Latham & Watkins LLP.

Shari Redstone, NAI Holdings LLC and others named with them are represented by A. Thompson Bayliss, Adam K. Schulman and Caleb R. Volz of Abrams & Bayliss LLP and Peter Welsh, Martin J. Crisp and Ani-Rae Lovell of Ropes & Gray 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.

--Additional reporting by Jeff Montgomery. Editing by Dave Trumbore.



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Apria Healthcare To Pay \$6.4M To End Data Breach Litigation

By **Allison Grande**

Law360 (March 6, 2025, 10:09 PM EST) -- Apria Healthcare LLC has agreed to pay \$6.375 million to resolve a proposed class action over a pair of data breaches that affected more than 1.8 million individuals' personal data, according to documents filed in Indiana federal court, on the heels of the medical equipment provider reaching a separate deal with the state's attorney general over the incident.

Under the terms of the proposed deal, which were revealed Wednesday in an unopposed **motion for preliminary approval** lodged by the 21 plaintiffs suing Apria over two "hacking events" that Apria disclosed in May 2023, the home healthcare equipment company will be required to establish a nonreversionary, all-cash settlement fund that will be used for several purposes, including to reimburse settlement class members for out-of-pocket losses or expenses.

Individuals who submit valid claims will be eligible to claim up to \$2,000 for reimbursement of such expenses that are "fairly traceable to and reasonably resulting from" the data breaches, according to the proposed deal. The fund will also be used to pay fee awards and costs, notice and administrative expenses and service awards of \$3,000 for each of the 21 plaintiffs, the parties' deal stipulates.

Once those fees, expenses, service awards and approved out-of-pocket losses claims are distributed, the settlement administrator will make pro rata cash payments of the remaining fund to each member of the proposed nationwide settlement class, which consists of the approximately 1,869,598 patients, employees and other individuals who "received actual or constructive notice from Apria that their information may have been compromised as a result of" the unauthorized cybercriminals having infiltrated the company's network during two separate periods in 2019 and 2021.

Apria has also agreed to make "adjustments" to its data security business practices in order to settle the suit, which accuses the company of failing to implement adequate data security to protect personal information and improperly delaying notice to affected individuals. These agreed-upon changes include boosting cybersecurity training and data security policies, further restricting access to personal information and strengthening monitoring and response capabilities, according to the plaintiffs, who added that the costs associated with putting in place these measures "will be borne by Apria, separate and apart from the settlement fund."

"Plaintiffs sued Apria to compensate the settlement class for their losses and protect their protected information following the Illegal hacking events, and the settlement achieves just that," the plaintiffs said in urging the court to preliminarily find the proposed deal to be "fair, reasonable, and adequate" and to certify the settlement class.

The motion also asks the court to approve the proposed settlement notice and claims process and to appoint the plaintiffs as settlement class representatives, Kroll as settlement administrator and a pair of attorneys from Cohen & Malad LLP and Milberg Coleman Bryson Phillips Grossman PLLC as class counsel, who have said that they intend to seek an award of attorney fees of up to one-third of the cash settlement fund.

The proposed deal follows Indiana Attorney General Todd Rokita asking the same court last month to enter a consent judgment and order in a separate case that he brought against Apria Healthcare in February 2024 over the data breaches.

Rokita accused Apria of violating the Health Insurance Portability and Accountability Act and the Indiana Deceptive Consumer Sales Act through its handling of the data breaches, which exposed personal health information and personally identifiable information, such as Social Security numbers, birth certificates, credit and debit card information, medical histories and addresses belonging to at least 42,000 Hoosiers and 1.8 million people nationwide.

The attorney general claimed that Apria's failure to implement HIPAA policies and procedures and its lack of security and technical safeguards enabled unauthorized third-party hackers to access its systems between April and May 2019 and again between August and October 2021. Rokita also faulted Apria for waiting until May 2023 — 629 days after it discovered the breaches in September 2021 — to notify affected individuals.

In a Feb. 25 **brief** filed in support of the proposed consent judgment, Rokita told the federal court that the parties had reached a deal that requires Apria to pay \$1 million to the state and to submit to several injunctive terms, including complying with HIPAA and other relevant laws, implementing and maintaining an information security program with specific technical safeguards and controls, and undergoing third-party compliance assessments.

The group of private plaintiffs suing Apria notified the court of the Indiana attorney general's lawsuit in an April 2024 filing, but Apria countered in a reply the following month that the state's suit had "no bearing" on the private litigation or the company's partial motion to dismiss that dispute for improper venue, which raised the separate issue of whether the plaintiffs had signed service and rental agreements or employment agreements that required them to arbitrate the dispute.

"The Indiana AG lawsuit in no way confirms plaintiffs' bald and unsupported assertion that Apria's motion to dismiss and motion to stay are 'transparent delay tactics.' Rather, Apria seeks to enforce its valid and binding arbitration provisions," the company said in its reply brief. "Plaintiffs' notice is nothing more than a diversion tactic, and this court should treat it as such."

The private plaintiffs began filing a series of proposed class actions over the data breaches in June 2023. The matters were subsequently consolidated into this action, which asserted nearly two dozen claims for negligence, breach of contract, breach of fiduciary duty, conversion, invasion of privacy, unjust enrichment and violations of consumer protection statutes in Indiana, California, Illinois, Washington, Missouri and New York.

The private plaintiffs are represented by Lynn A. Toops and Amina A. Thomas of Cohen & Malad LLP and Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman PLLC.

The state of Indiana is represented by Jennifer M. Van Dame of the Office of the Indiana Attorney General.

Apria is represented by John F. McCauley, Gregory A. Neibarger, Jessica Laurin Meek, Zechariah Lee Banks and Joseph Heavrin Harrison III of Dentons Bingham Greenebaum LLP.

The private case is Smith et al. v. Apria Healthcare LLC, case number 1:23-cv-01003, in the U.S. District Court for the Southern District of Indiana. The attorney general action is State of Indiana ex rel. Rokita v. Apria Healthcare LLC, case number 1:24-cv-00377, in the U.S. District Court for the Southern District of Indiana.

--Editing by Rich Mills.



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Del. Corporate Law Rework Under Pressure At Tulane

By **Jeff Montgomery**

Law360 (March 6, 2025, 6:52 PM EST) -- An attorney whose firm largely represents investors and consumers told a corporate law conference in New Orleans on Thursday that the list of plaintiff-friendly rulings that would be effectively overturned by a pending corporation law bill in Delaware "will probably be just as long as the bill itself."

During a panel discussion at the 37th annual Tulane University Corporate Law Institute, Ned Weinberger, partner with Labaton Keller Sucharow LLP, told a group that included Delaware Chief Justice Collins J. Seitz Jr. that the nine-page S.B. 21, up for a Senate committee hearing in Delaware next week, will turn stockholder-friendly precedential cases into "historic relics" if passed.

"We are rewriting Delaware law. We're disempowering our courts, disempowering judges, which I have always thought of, since law school, as Delaware's special sauce," Weinberger said. He asserted that a new safe harbor provision in the bill "changes the standard and rules in a sale of control and is completely incompatible with enhanced scrutiny in a sale process" under the Delaware Supreme Court's 1986 decision in *Revlon Inc. v. MacAndrews*.

The Revlon doctrine obliges company directors to maximize shareholder value in the sale or auction of a business. It was mentioned several times during the early hours of the two-day conference, which drew more than 1,000 participants to New Orleans — in person and virtually — to assess a legal arena facing intense flux in Delaware's capital and around the globe.

Topics under discussion at Tulane ran the gamut from "Delaware developments" to merger and acquisition markets to political and economic rumblings — as well as controlling stockholder issues. Often cited was the bill in Delaware, where nearly 68% of Fortune 500 companies are chartered and more than a million business entities are headquartered.

Former Delaware Supreme Court Chief Justice Leo E. Strine Jr., now of counsel with Wachtell Lipton Rosen & Katz, told a different panel that "it's not honest to say there isn't widespread concern. Delaware's traditional response is to listen to its stakeholders."

Strine said separately later that "[t]here has been legitimate concern from companies in every industry, in every region of the country about things becoming more unpredictable" in the First State.

Recently elected Democratic Gov. Matt Meyer was a central force in organizing the bill-drafting effort, which began amid mounting concerns over high-profile corporate "redomestication" decisions, including by Elon Musk-controlled Tesla, that saw charters moved to other states — particularly Texas and Nevada.

The bill now under consideration in the Senate would provide liability protections for directors who approve various purportedly conflicted transactions and guidelines for identifying controlling stockholders and disinterested directors and stockholders, with controlling stockholders shielded from some liability for breaches of the duty of care.

Also potentially amended are requirements for stockholder demands to inspect a corporation's books and records — and the range of documents available.

In a separate conference session on hot topics in M&A Law, Scott Barshay of Paul Weiss LLP said the legislation "really puts a lot more discretion and power in the hands of truly independent directors, and that really is the hallmark of what Delaware corporate decision-making has always been about."

During mention of corporate moves to other states and court systems, Chief Justice Collins J. Seitz Jr. noted that Delaware courts provide rapid, focused attention to corporate disputes.

"Your discussion has been more oriented to, 'What does the board do?' The court is very protective of the stockholder franchise. We have a long history of cases in Delaware which says it's sacrosanct, essentially. When a board tries to interfere with the free exercise of stockholder voting rights, we apply greater scrutiny."

Delaware Vice Chancellor Lori W. Will, the chief justice recalled, worked through the Christmas holiday to deliver a Dec. 28, 2023, decision voiding a biopharmaceutical company's "onerous" advance notice requirements for director nominations while upholding the rejection of an activist shareholder's nominees.

"I wonder whether you're going to get that in Texas or Nevada," the chief justice said while discussing the case, which was upheld in part and reversed in part. "But I digress."

Jennifer Muller, a Houlihan Lokey managing director, said during a session on mergers and acquisitions that "the pace of global change is leaving some markets paralyzed," although details are still coming in.

January merger and acquisition activity was down from December, Muller said, noting that corporate buyers were "flat on value" at a time when the focus is on "shedding non-core assets, right-sizing balance sheets and regulatory scrutiny."

Barshay said during the M&A session that "the laws on controllers have really moved over the last few years to make things much more difficult. Even if you were going to win at the end of the day, you are going to go through very costly litigation."

Delaware's Legislature, Barshay said, "seems to be stepping in to fix the problem and move things back to the law we've all known."

The Tulane conference is set to continue on Friday.

--Editing by Philip Shea.

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Gerber Inks Settlement In Baby Formula False Ad Suit

By **Jonathan Capriel**

Law360 (March 6, 2025, 8:53 PM EST) -- Gerber Products Co. has reached a deal that could end a long-running class action accusing it of falsely claiming its baby formula could reduce the risk of children developing allergies, with terms that promise parents a partial refund and class counsel as much as \$11.25 million in attorney fees.

Lead plaintiffs Jennifer Hasemann and Wendy Manemeit asked a New York federal court Wednesday for preliminary approval of the proposed settlement it penned with Gerber.

The deal allows the company to continue to deny any wrongdoing, but it offers millions of dollars worth of compensation to New York and Florida consumers who purchased Gerber's Good Start Gentle infant formula between October 2011 and April 2016.

According to the motion, these payments give the buyers a sum that is even "greater than a full refund" on the price premium — the amount they allegedly paid on the formula above what they would have otherwise been willing to pay had they not been misled.

This is an "excellent" deal for the consumers, especially when considering the dangers of continuing the now decade-old class action, which has survived many attempts by Gerber to totally toss it, the memorandum said.

Both sides actually came together and hammered out terms in January "just days before a trial" was set to begin, said Carlos F. Ramirez, counsel for the classes.

"This Settlement is an outstanding result for Plaintiffs and the Settlement Class," Ramirez said in a declaration to the court submitted Wednesday. "The amount the Settlement makes available to pay claims exceeds three of the four damage estimates calculated by Plaintiffs' damages experts."

Class experts calculated the price premium damages to be between \$1.77 and \$1.09, according to Ramirez's filing.

The Hasemann and Manemeit lawsuits were consolidated into a single class action against Gerber alleging deceptive marketing of its Good Start Gentle infant formula. They claimed Gerber falsely advertised it as being able to reduce allergy risks in infants and being endorsed by the U.S. Food and Drug Administration, despite the FDA rejecting these claims in 2006 and 2009. Hasemann and Manemeit represent classes from Florida and New York, respectively. Hasemann's suit is the elder, being filed in 2015. They secured class certification in March 2019. There was a third suit with a North Carolina subclass, but it was denied certification.

Under the settlement, Florida class members will get \$3.00 payment per unit of formula purchased. This maxes out at \$15, unless the consumer has a proof of purchase in which case the buyer can get as much as \$60. New York consumers get slightly more, with \$4.00 per unit of formula bought, \$20 without receipts and \$80 for those with them, according to the terms.

Additionally, Gerber has agreed to pay up to \$11.25 million in attorneys' fees to the class counsel and \$10,000 each to the two lead plaintiffs.

Gerber is represented by Daniel J. Thomasch, Justine Goeke, Christopher Chorba and Jason R. Meltzer of Gibson Dunn & Crutcher LLP and Geoffrey W. Castello and Jaclyn M. Metzinger of Kelley Drye & Warren LLP.

The classes are represented by Brett Cebulash and Miles Greaves of Taus Cebulash & Landau LLP, Shanon J. Carson and Jacob M. Polakoff of Berger Montague PC, Michael R. Reese and Carlos F. Ramirez of Reese LLP, and Jean Martin and Francesca Burne of Morgan & Morgan Complex Litigation Group.

The case is Hasemann et al. v. Gerber Products Co. et al., case number 1:15-cv-02995, in the U.S. District Court for the Eastern District of New York.

--Editing by Andrew Cohen.

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State AGs Want Fees In Kroger Wash., Ore. Merger Cases

By **Bryan Koenig**

Law360 (March 6, 2025, 9:02 PM EST) -- A total of 10 attorneys general kicked off two separate bids Wednesday for attorney fees in the state and federal court cases in Washington and Oregon that blocked Kroger's \$24.6 billion bid to buy Albertsons, arguing in the federal lawsuit that their substantial participation alongside the Federal Trade Commission means they "substantially prevailed."

The Washington state attorney general filed a **bill of costs** in state court, while promising a petition for attorney fees and expenses next week, as its peers from the likes of Oregon, California, New Mexico and the District of Columbia filed a **separate federal court motion** seeking a declaration that they're entitled to so-far-unnamed attorney fees and costs.

Both motions were made possible by the twin same-day **December rulings** from an Oregon federal judge who temporarily blocked the deal in an FTC challenge and then from a Washington state judge who issued a permanent, national block. The companies promptly abandoned the transaction, and Albertsons is now **suing Kroger** for botching the deal and its defense. The AGs claimed Wednesday that the win came in no small part from their efforts during the investigation and trial, justifying their bid to recoup costs.

"The states substantially prevailed when they established the threat to competition and obtained the injunctive relief they sought and, subsequently, when defendants abandoned their anticompetitive merger. As a result, the Clayton Act requires the court to award reasonable attorney's fees," said the enforcers of Arizona, California, Illinois, Maryland, Nevada, New Mexico, Oregon, Wyoming and D.C.

The Washington attorney general in turn submitted a \$2,776 bill of costs while stating its plans to file a separate fees and expenses petition March 14.

Representatives for the grocery giants, the FTC and the attorneys general of Washington and Oregon did not immediately respond to requests for comment late Thursday.

In the federal court case, the attorneys general on Wednesday detailed how they played a crucial part in the FTC-led challenge.

"The states contributed at each stage of the litigation, reviewing thousands of pages of documents produced by defendants and third parties, taking 15 depositions (and assisting on many more), drafting and editing filings, preparing and serving subpoenas, fully briefing a motion in limine, examining two witnesses at trial, and preparing for a third," they said. "The plaintiff states weighed in on all major strategic decisions, which ultimately led to a successful outcome."

It doesn't matter that the successful outcome was a preliminary injunction, rather than a permanent one, the enforcers said, because the companies openly admitted that a preliminary block would force them to abandon the deal. The filing also anticipated other challenges to the motion, particularly arguments based on cases in other FTC-led suits where state attorneys general were denied fees, arguing those out-of-circuit cases "run counter to the express statutory language of Section 16 of the Clayton Act, which requires an award of attorney's fees to a plaintiff that 'substantially prevails' in 'any action under this section.'"

Oregon U.S. District Judge Adrienne Nelson issued the preliminary injunction Dec. 10, concluding the

transaction "would lead to undue market concentration in multiple geographic markets in both the supermarkets and large format stores markets."

To Judge Nelson's north, Washington state's King County Superior Court Judge Marshall L. Ferguson said from the bench the same day that the current competition between the two companies in the state was "fierce" and that a planned divestiture to C&S Wholesale Grocers LLC would "not be able to replicate the ferocity of that competition."

Despite having expressed "serious doubts" that he could block the merger, Judge Ferguson enjoined the deal without saying the block was specific to Washington state. In doing so, he rejected arguments from the grocers that a state court injunction was unconstitutional, saying states never abdicated their legislative authority to restrict mergers and acquisitions that affect competition, even though that role has largely been taken on by the FTC.

Judge Nelson also faulted the divestiture plan, finding "ample evidence" that the divestiture doesn't have the scale needed to compete toe-to-toe with the merged company, and that the sale is "structured in a way that will significantly disadvantage C&S."

The cases in Washington and Oregon were also joined by **a private lawsuit** and one from the Colorado attorney general. A Colorado state judge threw out the state suit Wednesday, finding it **rendered moot** by the transaction's abandonment.

The FTC is represented in-house by Susan A. Musser, Charles Dickinson, Rohan Pai, Laura R. Hall, Elizabeth C. Arens, Jeanine Balbach, Katherine Bies, Emily Blackburn, Katherine Drummonds, Paul Frangie, Jacob Hamburger, Lily E. Hough, Janet Kim, Kenneth A. Libby, Eric Olson, Harris Rothman, Joshua Smith, Barrett Anderson, Alexander J. Bryson, Guia Dixon, Trisha Grant, Le'Orla Tyree, Theodore Zang Jr. and Albert Teng.

Oregon is represented by Cheryl F. Hiemstra, Tim D. Nord and Chris Kayser of the state Department of Justice.

Illinois is represented by Brian M. Yost, Paul J. Harper and Alice Riechers of the state attorney general's office.

Arizona is represented by Jayme L. Weber, Vinny Venkat and Connor Nolan of the state Office of the Attorney General.

California is represented by Nicole Gordon of the state Department of Justice.

D.C. is represented by C. William Margrabe of the district's Office of the Attorney General.

Maryland is represented by Schonette J. Walker and Byron Warren of the state Office of the Attorney General.

Nevada is represented by Lucas J. Tucker and Samantha B. Feeley of the state attorney general's office.

New Mexico is represented by Julie Ann Meade and Jeff Dan Herrera of the state Department of Justice.

Wyoming is represented by William Young of the state attorney general's office.

Albertsons is represented by Enu A. Mainigi, Jonathan B. Pitt, A. Joshua Podoll, Thomas W. Ryan, Tyler Infinger and William Ashworth of Williams & Connolly LLP, James A. Fishkin, Michael G. Cowie, Elena Kamenir, Howard. M. Ullman, Ross Ufberg and Yosef Weitzman of Dechert LLP, Edward D. Hassi, Michael Schaper, Shannon Rose Selden, J. Robert Abraham and Natascha Born of Debevoise & Plimpton LLP and David H. Angeli and Peter D. Hawkes of Angeli & Calfo LLC. In Washington state, Albertsons is also represented by Daniel M. Weiskopf and Claire Martirosian of McNaul Ebel Nawrot & Helgren PLLC.

Kroger is represented by Sonia K. Pfaffenroth, Matthew M. Wolf, Michael B. Bernstein, Joshua M.

Davis, Matthew M. Shultz, Yasmine Harik, Kolya D. Glick, Jason C. Ewart, Michael E. Kientzle, David B. Bergman, Michael L. Walden, Allison Gardner, Barbara H. Wootton, Christian Schultz, David Emanuelson, Mei-Wah Lee, Wilson DeLoss Mudge, Brian K. Condon, Jeremy T. Kamras and John Holler of Arnold & Porter Kaye Scholer LLP, Mark A. Perry, Luna Barrington, Bambo Obaro, Thomas B. Fiascone and Luke Sullivan of Weil Gotshal & Manges LLP and B. John Casey, Rachel C. Lee and Jacob Goldberg of Stoel Rives LLP. In Washington state, Kroger is also represented by Pallavi Mehta Wahi, Aaron Millstein, Ruby A. Nagamine and Tyler K. Lichter of K&L Gates LLP.

Washington is represented by Paula Pera, Amy Hanson, Miriam Stiefel, Helen Lubetkin, Valerie Balch, Ashley Locke, Jonathan Mark, Jessica P. So and Tyler Arnold of the Washington State Office of the Attorney General and Glenn D. Pomerantz, Kuruvilla J. Olasa, Robert E. Bowen, Lauren Beck, Jonathan Kravis, Lauren Ross, Xiaonan April Hu, Helen E. White and Carson J. Scott of Munger Tolles & Olson LLP.

The state case is *State of Washington v. The Kroger Co. et al.*, case number 24-2-00977-9, in King County Superior Court. The federal case is *Federal Trade Commission et al. v. Kroger Co. et al.*, case number 3:24-cv-00347, in the U.S. District Court for the District of Oregon.

--Additional reporting by Greg Lamm and Nadia Dreid. Editing by Michael Watanabe.

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