

Boeing must face shareholder class action following MAX 9 blowout

 [reuters.com/legal/boeing-must-face-shareholder-class-action-following-max-9-blowout-2025-03-08](https://www.reuters.com/legal/boeing-must-face-shareholder-class-action-following-max-9-blowout-2025-03-08)

Reuters

By Reuters

March 7, 2025 4:23 PM PST Updated 3 days ago



The company logo for Boeing is displayed on a screen on the floor of the New York Stock Exchange (NYSE) in New York, U.S., March 11, 2019. REUTERS/Brendan McDermid/File Photo Purchase Licensing Rights [↗](#), opens new tab

March 7 (Reuters) - A federal judge on Friday certified a class action accusing Boeing (BA.N) [↗](#), opens new tab of prioritizing profit over safety and overstating its commitment to safe aircraft, prior to the January 2024 mid-air cabin panel blowout on an Alaskan Airlines 737 MAX 9.

U.S. District Judge Leonie Brinkema in Alexandria, Virginia, said shareholders led by Rhode Island's state treasurer who owned Boeing stock between January 7, 2021 and January, 8, 2024 may sue as a group for damages.

Shareholders wanted the class period to begin in 2019, but Brinkema said it should start when Boeing resolved a U.S. Department of Justice criminal case related to MAX safety.

Class actions can allow greater recoveries at lower cost than individual lawsuits. Boeing shareholders said the company's misleading statements inflated its stock price after two MAX planes crashed in October 2018 and March 2019, killing 346.

Reporting by Jonathan Stempel in New York; Editing by Sandra Maler

- Suggested Topics:
- Boards, Policy & Regulation

Boeing MAX Safety Shareholder Class Narrowed, Certified by Judge

- Investors sued after Alaska Airlines door panel blowout
- Timeline and scope of class narrowed by federal judge

Boeing Co. must face a class of investors certified Friday to sue over allegations that it defrauded shareholders about aircraft safety and the company's safety procedures.

Judge Leonie M. Brinkema of the US District Court for the Eastern District of Virginia greenlit the shareholder class, but trimmed the scope the plaintiffs proposed. Shareholders sued in January 2024, shortly after a 737 MAX 9 door panel blew out on an Alaska Airlines flight.

The investors had proposed a class of shareholders who purchased or acquired stock or options between Sept. 30, 2019 and May 14, 2024. The period should start Jan. 7, 2021 and end Jan. 8, 2024, Brinkema said.

The approved start date aligns with Boeing and federal prosecutors' announcement of a deferred prosecution agreement over a criminal charge stemming from Boeing 737 MAX airplane safety issues, Brinkema wrote.

The end date is shortly after the Alaska Airlines blowout.

At that point "it was clear that the Alaska Airlines incident resulted from the materialization of safety-related risk at Boeing," Brinkema wrote.

Brinkema also rejected the investors' attempt to expand the class to include Boeing options holders.

Growing the class at this stage would be unfair to Boeing, the filing said. It would complicate litigation while the parties conduct discovery and mediation looms a month away, Brinkema wrote.

Labaton Keller Sucharow LLP and Robbins Geller Rudman & Dowd LLP were appointed to serve as class counsel. Cohen Milstein Sellers & Toll PLLC and Craig C. Reilly of Alexandria, Va., were appointed to serve as liaison counsel for the class.

The case is *In re The Boeing Co. Sec. Litig.*, E.D. Va., No. 1:24-cv-00151, 3/7/25.

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Ready Capital Sued Over Record Stock Fall After Book Value Drop

- **COURT:** S.D.N.Y.
- **TRACK DOCKET:** No. [1:25-cv-01883](#) (Bloomberg Law subscription)

Ready Capital Corp. overstated its financial edge before fully reserving for all the non-performing loans in its corporate real estate portfolio to stabilize its balance sheet, a proposed class action said.

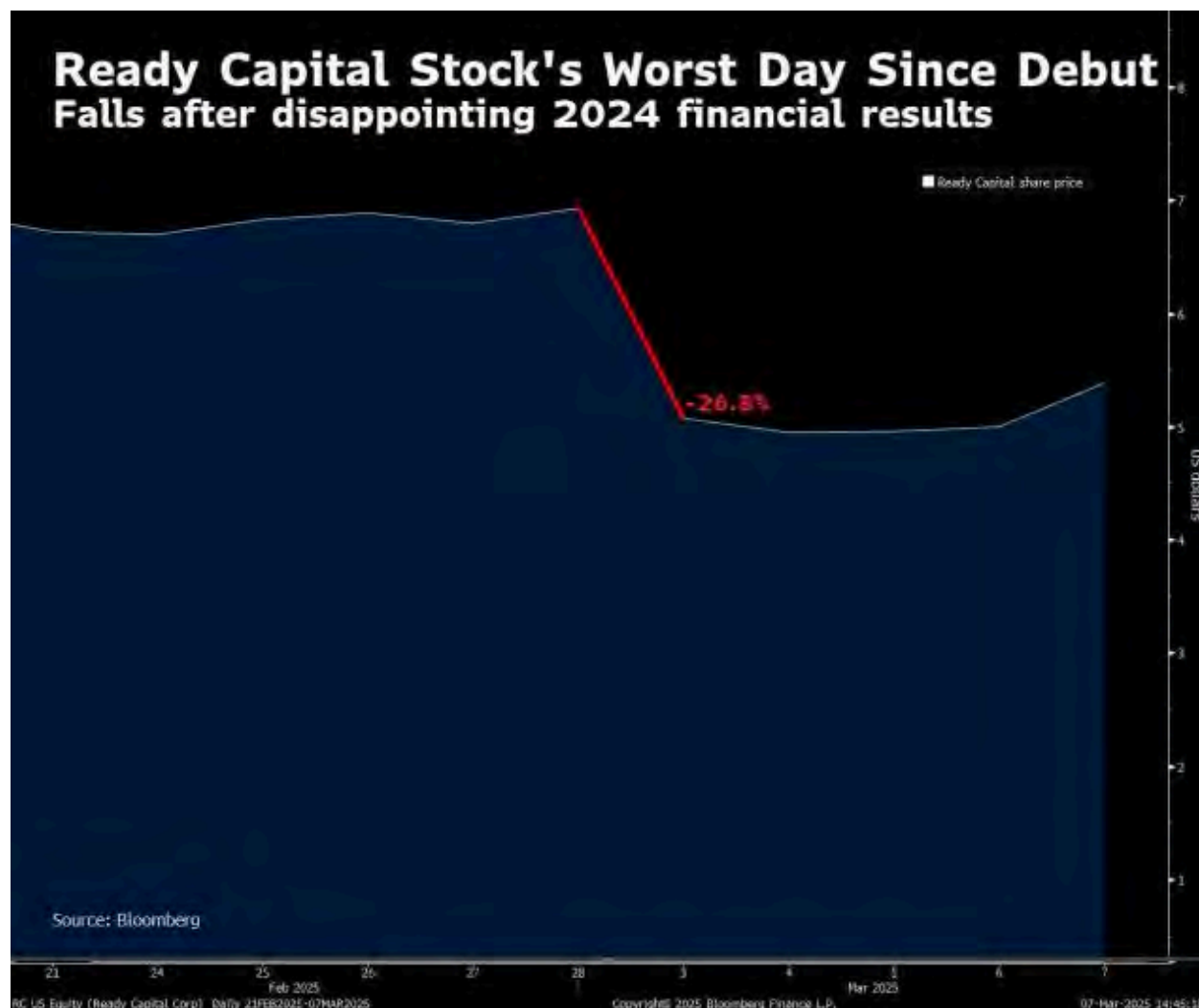
The real estate finance company's stock collapsed 27% March 3 after it shared net losses of \$1.80 per share for the fourth quarter of 2024 and \$2.52 for the full fiscal year, said Jerry Quinn's complaint filed in the US District Court for the Southern District of New York Thursday.

It was a record single-trading-day plummet since the stock's 2013 market debut, according to data compiled by Bloomberg.

Ready Capital, which services lower-to-middle-market commercial real estate loans among other offerings and investments, had touted its net book value at \$12.59 per share in the prior quarter, Quinn said. Book value estimates what shareholders would get if a company liquidated.

Before markets opened March 3, Ready Capital's chief executive officer Thomas Capasse said in a press release its book value dropped to \$10.61 a share after "fully reserving for all of our non-performing loans in our CRE portfolio."

Capasse explained "aggressive actions to reset the balance sheet" in a subsequent earnings call included taking \$284 million in combined Current Expected Credit Losses, an accounting standard that forecasts expected losses over the life of an asset, and valuation allowances to mark non-performing loans to current values, according to Quinn's complaint.



Share prices closed at \$5.07 that day, Quinn said. The company had misled investors about the extent of problematic loans, that it would then fully reserve them to stabilize its portfolio, and that financial results would be hindered as a result, he alleged.

The proposed class would include those who bought stock from Nov. 7, 2024, through March 2, 2025.

Glancy Prongay & Murray LLP and Law Offices of Howard G. Smith represent Quinn, who seeks damages for alleged Securities Exchange Act of 1934 violations by Ready Capital and two top executives.

Ready Capital didn't immediately respond to an email seeking comment.

The case is Quinn v. Ready Cap. Corp. , S.D.N.Y., No. 1:25-cv-01883, complaint filed 3/6/25 .

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Social Media Moderator Faces Investor Ire for Allegedly Inflated Glassdoor Score

 [law.com/therecorder/2025/03/07/social-media-moderator-faces-investor-ire-for-allegedly-inflated-glassdoor-score](https://www.law.com/therecorder/2025/03/07/social-media-moderator-faces-investor-ire-for-allegedly-inflated-glassdoor-score)

Alyssa Aquino

The founders of one of Facebook's content moderation providers are facing shareholder ire for allegedly inflated Glassdoor ratings, which an investor claims were used to give the false impression that the company stood out among an industry known for high employee turnover.

TaskUs Inc. founders Bryce Maddock and Jaspar Weir and several of its directors were sued by Calvin Tucker on claims that they used high Glassdoor ratings and a misleading employee attrition rate ahead of two 2021 offerings to trick investors into believing that it enacted an employee-centric culture that allowed it to keep recruitment and training costs down.

"The Company is not actually different than its [business process outsourcing] peers. Following several Individual Defendants cashing out, the truth was finally revealed, causing the Company's stock price to fall by approximately twenty percent," according to the lawsuit, which was filed on Thursday in Manhattan federal court.

Tucker is represented by Rigradsky Law. Counsel for Tucker didn't immediately respond to a Friday request for comment.

When reached for comment, a TaskUs representative said, "We believe these claims are without merit and intend to vigorously defend ourselves."

Counsel information for TaskUs is not yet available.

TaskUs, which is headquartered in New Braunfels, Texas, provides personnel to third-party businesses, including Facebook and DoorDash, to perform customer support, content moderation and other tasks. Founded in 2008, the company rapidly grew after receiving a \$250 million investment from Blackstone in October 2018. With Blackstone's support, TaskUs looked to go public in 2021.

Tucker argued that TaskUs was aware the success of the IPO would depend on convincing investors that TaskUs was different from its competitors, most of whom experience high employee turnover. In investor communications and regulatory filings, the company touted an employee-centered approach, frequently referencing a workplace rating on Glassdoor.com that exceeded 4.7 stars, as well as a 14.9% employee attrition rate, Tucker said.

Tucker argued the attrition rate only covered employees who worked at TaskUs for more than 180 days. TaskUs' attrition rate exceeded 40%, as more than half of employees left within 60 days, according to Tucker.

He further claimed that TaskUs boosted its Glassdoor ratings by reprogramming its system to require new employees to review the workplace after one week on the job. That new policy grew TaskUs' rating from 4.3 stars in 2018, to 4.4 in December 2020, and then to 4.7 stars in June 2021, according to the complaint.

Tucker argued that the alleged scheme primarily benefited the company's founders and directors. While TaskUs generated \$330 million in net proceeds from its June 2021 IPO, the bulk of the money went to Weir, Maddock and a Blackstone affiliate, Tucker alleged.

Weir and Maddock later sold their stock at an allegedly inflated price during a secondary offering, held months later in September, and "each reaped net proceeds of over \$121 million," Tucker said.

In his suit, Tucker brought breach of fiduciary duty, unjust enrichment and waste of corporate assets claims against TaskUs' founders and directors, as well as claims under Section 11(f) of the Securities Act and Section 10(b) and 2B of the Exchange Act.

He filed his case a few weeks after a Manhattan federal court refused to toss a securities class action that makes similar claims against TaskUs.

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Two Companies Hit with Separate AI-Washing Securities Lawsuits

K [dandodiary.com/2025/03/articles/securities-litigation/two-companies-hit-with-separate-ai-washing-securities-lawsuits](https://www.dandodiary.com/2025/03/articles/securities-litigation/two-companies-hit-with-separate-ai-washing-securities-lawsuits)

March 10, 2025



By Kevin LaCroix on March 10, 2025

Posted in Securities Litigation



A recurring theme at the recent PLUS D&O Symposium related to the risks associated with the rise of artificial intelligence (AI), risks that may among other things translate into D&O claims. Among other AI-related litigation concerns is the fear that companies seeking to catch some of the AI buzz will overstate their AI prospects. Last week, in the latest examples of the kinds of AI-related D&O claims that can arise, two companies were sued in separate securities lawsuits alleging that the companies overstated their AI capabilities or prospects – a phenomenon that has been described as “AI washing.”

AppLovin Corporation

The first of the two recent lawsuits involves AppLovin Corporation, a California-based company that provides a software-based platform for advertisers to use to enhance the marketing and monetization of their content. The recently filed securities lawsuit alleges that during from May 2023 to February 25, 2025, the company, in order to project financial growth and stability, made statements to investors concerning its launch of its AXON 2.0 digital ad platform and its use of “cutting-edge AI technologies” to match advertisements to mobile games and to allow its customers to expand into web-based marketing and e-commerce support financial growth. Throughout the period, the company reported impressive financial results, outlooks, and guidance.

On February 26, 2025, the company was the subject of short-seller reports suggesting that the company allegedly was using manipulative practices to artificially inflate its ad click-through and app download rates, such as by having ads click on themselves or utilizing design gimmicks to trigger forced shadow downloads, inflating installation numbers and profitability. The securities lawsuit complaint alleges that on this news the company’s share price declined.

On March 5, 2025, a plaintiff shareholder filed a securities class action lawsuit in the Northern District of California against the company and certain of its executives. The complaint purports to be filed on behalf of investors who purchased the company's shares between May 10, 2023 and February 25, 2025.

The complaint alleges that during the class period the defendants "continually touted the new and improved AXON 2.0 platform and cutting-edge AI technologies as the main reason why the Company has seen exponential growth since 2022. In actuality, AppLovin used manipulative practices that forced unwanted apps on customers via a 'backdoor installation scheme' in order to erroneously inflate installation numbers, and in turn, profit numbers."

The complaint alleges that the defendants violated Section 10(b) and 20(a) of the Securities Exchange Act of 1934. The complaint seeks to recover damages on behalf of the class.

Skyworks Solutions, Inc.

The second of the two recently filed lawsuits involves Skyworks Solutions. Skyworks develops and manufactures semiconductors for a broad range of applications, including aerospace, automotive, cellular infrastructure, as well as for smartphones, tablets, and wearables.

According to the subsequently filed securities complaint, during the period July 2024 to February 5, 2025, the company projected favorable growth in its smartphone segment and for the company as a whole, among other things, saying that it expected that the rise of AI would "ignite a transformative smartphone upgrade cycle," and that the company was in the early stages of this "multi-year trend," and that the company was "well-positioned to capitalize on it."

However, on February 5, 2025, the company reported disappointing results for its fiscal first quarter and lowered its guidance for the second quarter, citing a "competitive landscape" that had "intensified." According to the securities complaint, the company's share price declined 24% on this news.

On March 4, 2025, a plaintiff shareholder filed a securities class action in the Central District of California against the company and certain of directors and officers. The complaint purports to be filed on behalf of a class of investors who purchased the company's securities between July 30, 2024, and February 5, 2025.

The complaint alleges that the during the class period, the defendants made misrepresentations or failed to disclose that "its long-standing relationship with Apple, its largest customer, did not guarantee that Apple would maintain its business with Skyworks for its anticipated iPhone launch. Additionally, Defendants oversold Skyworks' position and

ability to capitalize on AI in the smartphone upgrade cycle.” The complaint alleges that the company’s statements “absent these material facts” caused investors to purchase the company’s securities at “artificially inflated prices.”

The complaint alleges that the defendants violated Sections 10(a) and 20(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. The complaint seeks to recover damages on behalf of the class.

Discussion

Over the last couple of years, investors have shown a willingness to pay a premium for the shares of companies that appear positioned to capitalize on rise of AI. The share prices of AI-connected companies have (at least until recently) soared. These financial market features create incentives for companies to try to portray themselves as poised to capitalize on the advent of AI. However, when projected AI benefits fail to materialize, company share prices decline, investors are disappointed, and, as these two new lawsuits demonstrate, securities class action lawsuits can follow.

In both of these new lawsuits, the defendant companies allegedly attempted to project themselves as being in a position to benefit from the rise of AI, allegedly setting investors up for later disappointment when reality fell short. The shareholder plaintiffs in both of these actions allege that the companies overstated their AI capabilities or prospects, in a demonstration of what has been called “AI-washing.”

According to the Stanford Law School Securities Class Action Clearinghouse (here), the filing of these two new lawsuits brings the total of AI-related securities suits to be filed so far this year to four, after 15 AI-related securities suits were filed in 2023. Most if not all of these lawsuits involve AI-washing type allegations, in that the lawsuits allege that the defendant companies overstated their AI capabilities or prospects.

The likelihood is that in the weeks and months ahead we will continue to see these kinds of AI-washing cases filed. Investor pressure on companies to show that they are positioned to profit from the advent of AI, and the resulting incentives for companies to make positive statements about their AI prospects, sets up companies whose results fall short of aspirations for investor disappointment and at least potentially for litigation. These kinds of lawsuits were a significant factor in the number of securities lawsuits that were filed last year, and they it seems like they will continue to be an important factor again this year.

Del. Court Holds Merger Litigation Not “Meaningfully Linked” to Prior Suits

K [dandodiary.com/2025/03/articles/d-o-insurance/del-court-holds-merger-litigation-not-meaningfully-linked-to-prior-suits](https://www.dandodiary.com/2025/03/articles/d-o-insurance/del-court-holds-merger-litigation-not-meaningfully-linked-to-prior-suits)

March 9, 2025



By Kevin LaCroix on March 9, 2025

Posted in D & O Insurance



The 2019 merger between Viacom and CBS to form ViacomCBS (later renamed Paramount Global) generated extensive litigation that ultimately settled. The Merger — and the Merger-related litigation — followed events involving the two companies going back to 2016, and in fact there had been prior litigation back in 2016 as well. National Amusements, Inc. (NAI), which owned a majority of the voting shares of both CBS and Viacom, sought coverage for the defense and settlement of the 2019 litigation from its D&O insurers. The insurers contended that the 2019 post-Merger litigation and the 2016 lawsuits were interrelated, and therefore that the settlement was covered under policies in force in 2016, rather than under the policies in force in 2019.

In an opinion dated February 17, 2025, but only recently made public, the Delaware Superior Court granted NAI's motion for summary judgment, holding that the 2019 Suit is not interrelated with the 2016 Suits, and therefore that costs associated with the 2019 Suit were covered under the 2019 Policy and not under the 2016 Policy. The court's analysis, in which it concluded that the two sets of litigation were not "meaningfully linked," is detailed and interesting, and helps to explain what factors are relevant in the analysis of the meaningfully linkage issue. A copy of the court's opinion can be found [here](#).

Background

In 2016 and 2018, prior attempts to merger CBS and Viacom failed. Events surrounding the 2016 attempt were the subject of five separate lawsuits (collectively, the 2016 Suits), one of which was a suit brought against NAI and other defendants by Viacom's Class B shareholders (the Class B Suit), alleging that the defendants had breached their fiduciary duty by allowing an incapacitated Sumner Redstone to remain as a director and controller of Viacom. The plaintiffs asked the court to declare that Sumner Redstone was incapable of serving as a director and that all actions taken by Sumner Redstone were invalid. All of the 2016 Suits were settled or dismissed.

After the 2019 merger, former Viacom shareholders filed several actions, later consolidated, alleging that the Merger was unfair to Viacom shareholders because the deal's exchange ratio overpriced CBS's stock. The plaintiffs in the 2019 Suit sought damages for the allegedly inadequate merger consideration. Among other things, the 2019 suit referred to the Merger as the culmination of Shari Redstone's four-year scheme to assume control of the media empire of her father, Sumner Redstone.

Shari Redstone, Viacom, and NAI sought indemnification for the 2019 Suit from the insurers, alleging, at the time, that the 2019 Suit should be treated as having been first made in 2016, because the 2016 Suits and the 2019 Suit involved related Wrongful Acts. In the subsequent coverage litigation, however, NAI and Shari Redstone contended that the two sets of litigation were *not* interrelated, and that the 2019 Suit should be covered under the 2019 policies.

The parties' coverage litigation has been the subject of a number of prior decisions, including an August 2023 decision by Judge Rennie that the policies' bump-up exclusion did not preclude coverage for the settlement of the 2019 Suit, as discussed here.

The Relevant Policy Provisions

The 2019 Policy Interrelated Claim Provision states that "all Claims arising out of the same Wrongful Act and all Interrelated Wrongful Acts of the Insureds shall be deemed to be one Claim, and such Claim shall be deemed to be first made on the date of the earliest of such Claims is first made."

Interrelated Wrongful Acts are defined in the 2019 policies as "all Wrongful Acts that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes."

The Court's February 17, 2025, Order

In his February 17, 2025, Opinion, Superior Court Judge Sheldon K. Rennie granted NAI's motion for summary judgment, holding that the 2019 Suit was not interrelated with the 2016 Suits.

In reaching this conclusion, Judge Rennie considered existing Delaware case law (including the Delaware Supreme Court's recent holding in the *Alexion Pharmaceuticals* case, discussed here) stating that in order for claims to be interrelated they must have "some meaningful linkage." In order to determine whether meaningful linkage exists, the primary factor, the court said, is "if they involve the same conduct." Beyond the relatedness of the underlying conduct, courts should consider four additional factors, the parties; the relevant time period; a sampling of relevant evidence; and the claimed damages. While "absolute identify is not required," a "tangential link" is insufficient.

Judge Rennie also noted the Delaware Supreme Court has “instructed lower courts to implement ‘meaningful linkage’ in a coverage context broadly, where possible, to find coverage.”

Judge Rennie found that the primary relatedness factor – the conduct underlying the 2019 Suit and the 2016 Suits – “weighs in favor of finding that the claims are not meaningfully linked. Indeed, he said, “the complaints seem to suggest the opposite result.” Though both sets of suits involve alleged breaches of fiduciary duty, the suits “challenge distinct wrongful acts and involve different legal theories.” The 2019 Suit alleged that Viacom and CBS boards ignored CBS’s financial difficulties and overvalued CBS’s stock, resulting in inadequate consideration for Viacom stockholder. The Class B Action sought to invalidate certain corporate actions because of Sumner Redstone’s incapacity. Accordingly, because the two sets of litigation alleged different Wrongful Acts, “the most important meaningful linkage factor supports finding that the two suits are not related.”

The second factor, the identify of the parties, does not, the court said, support either side. Several defendants, including NAI and Shari Redstone, were named in both suits, whereas the Class B suit also named Sumner Redstone and levied most of the allegations against him. The plaintiffs in the two suits were slightly different as well, as the Class B lawsuit involved a specific set of Viacom shareholders, whereas the 2019 Suit involved all Viacom shareholders. Judge Rennie said that this factor “does not support either parties’ relatedness position.”

The third factor, the suits’ time periods, slightly supports the conclusion that the two sets of litigation are not interrelated. While the 2019 Suit relates to the 2019 Merger and the 2016 Suits relate to 2016 board governance and control decision, the 2019 Suit references conduct in 2016 that formed the basis of the 2016 suits. However, Judge Rennie said, the majority of the 2019 complaint deals with actions after 2016, and so, he said, this factor weighs slightly in favor of finding the suits are not meaningfully related.

The fourth factor, a sampling of the evidence, also supports finding that the two sets of litigation are not related. The relevant evidence in the Class B suit pertained to Sumner Redstone’s mental capacity. The 2019 suit focused on the 2019 Merger negotiations. While there is “some overlap,” most of the these pools of evidence are distinct.

The fifth factor, the damages claimed, supports the conclusion that the two sets of litigation are not meaningfully linked, as the 2019 Suit sought monetary damages for inadequate merger consideration, while the Class B suit sought declaratory and judgment relief.

In reaching his conclusion that the two sets of litigation are not interrelated, Judge Rennie also rejected the insurers’ argument that prior to filing this coverage lawsuit, NAI and Shari Redstone had themselves contended that the 2019 Suit and the 2016 Suits were

interrelated, the opposite of the position they argued for in this case. Judge Rennie refused to consider this evidence falling outside of the policies' text, saying that, under the Delaware Supreme Court's *First Solar* decision (discussed here), such extrinsic evidence can be considered only if there is "remaining doubt" whether claims are interrelated. Because here there is no "remaining doubt" here that the two sets of litigation are not related, the court said it could not consider the proposed extrinsic evidence.

Discussion

If nothing else, the court's analysis shows what an intricate and fact-specific inquiry the "meaningful linkage" analysis can be. The court found that given the various identified factors, the linkage between the two sets of litigation was not sufficiently meaningful for the court to conclude that claims were interrelated.

I can imagine the insurers' frustration with the court's conclusion given that both sets of litigation related to Shari Redstone's four-year campaign to try to merge Viacom and CBS. I can imagine that in their eyes that because the Merger and ensuing litigation were the culmination of a continuous effort on Ms. Redstone's part to assume control of her father's media empire, there clearly is a "common nexus" running through all of the litigation.

I can also imagine the insurers' frustration that the court refused to even consider the fact that originally NAI and Ms. Redstone had in fact even argued that the 2019 Suit and the 2016 Suits were interrelated. As Geoffrey Fehling of the Hunton Andrews Kurth law firm said in his March 6, 2025, *LinkedIn* post about this decision (here), the court's conclusion that where the outcome of the "meaningful linkage" analysis is clear, the court cannot consider extrinsic evidence, represents "a meaningful limitation on Delaware courts' ability to look at extrinsic evidence to negate coverage."

The most direct answer to the insurers' frustration is that despite some apparent commonality between the claims, the overall relevant specific facts, under the court's careful analysis, led to the conclusion that linkage between the two sets of litigation was not sufficiently meaningful to support a finding that they were related.

Perhaps a more instructive response to the insurers' frustration can be found in Judge Rennie's citation, prior to his analysis of the respective linkage factors, to the Delaware Supreme Court's admonition to lower courts "to implement 'meaningful linkage' in a coverage context broadly, where possible, to find coverage." That is, as Judge Rennie put it, ambiguity is to be "resolved in favor of finding coverage." As the insurers undoubtedly might put it, Judge Rennie viewed it as his job to try to find coverage here, and that explains his analysis more than anything else.

Long-time observers with a certain cynical cast of mind might well say that this is just another example of the Delaware courts' predisposition in favor of policyholders in coverage disputes. Indeed, given insurers' longstanding concerns about this supposed predisposition, I have long wondered why insurers don't add choice of forum and choice of law provisions to their policies, to ensure that Delaware's courts are not deciding coverage disputes on their policies.

While I certainly can appreciate the frustration the insurers might feel from this opinion, and while I can understand that the outcome here might feed the perception that this decision is just one more example of Delaware's courts' policyholder friendliness, it is worth noting that in its recent *Alexion Pharmaceuticals* decision, discussed here, the Delaware Supreme Court ruled in the *insurers'* favor, and *against* the policyholder, in *reversing* a Superior Court's ruling in that case that a later lawsuit and an earlier noticed subpoena were not interrelated. The Supreme Court held that they *were* interrelated. The Supreme Court's opinion in that case suggests that perhaps the Delaware courts are not irreversibly policyholder friendly. It may also suggest to the insurers at least the possibility that they might do better on appeal of this decision to the Supreme Court.

This Week in Chancery Court: Legislative Debate, Kraft Heinz

A proposal to overhaul Delaware's corporate law codes to address fears that business moguls will follow Elon Musk in reincorporating their companies elsewhere gets its first public legislative hearing on Wednesday.

Here's a look at what's on the calendars in the Delaware Supreme Court and Chancery Court this week:

Monday: Jeffries v. Abercrombie & Fitch Co., Del. Ch., No. 2024-1225, hearing 3/10/25.

At issue: Former Abercrombie & Fitch Co. CEO Mike Jeffries wants the Delaware Chancery Court to grant summary judgment in his case attempting to get the apparel giant to pay the legal fees associated with his criminal indictment for alleged sex trafficking of male models. Jeffries argues in a brief that the company should be obligated to pay fees related to the indictment in the same way it had to pay fees in a civil class action over the same conduct. Abercrombie claims the indictment is fundamentally different from the civil lawsuit because Abercrombie isn't a party, and isn't alleged to have participated in Jeffries' alleged misconduct.

Court action: The hearing will be held in Wilmington, Del.

Ex-Abercrombie CEO Says Company Must Pay Criminal Defense Costs

Wednesday: In re Columbia Pipeline Grp. Inc. Merger Litig., Del., No. 281,2024, oral arguments 3/12/25.

At issue: The state's top court hears arguments in an appeal regarding TC Energy Corp., the former TransCanada Corp., and its acquisition of Columbia Pipeline Group Inc., which the Chancery Court has determined was acquired in an underpriced \$13 billion transaction. The lower court also determined TC Energy Corp. owed \$199 million plus interest to ex-Columbia investors. The Chancery Court rulings threaten to "dramatically expand liability for third-party buyers, effectively requiring buyers to supervise the sellers' officers and directors," TC Energy says in an appeals brief. The US Chamber of Commerce filed an amicus brief supporting TC Energy's appeal.

Court action: The Delaware Supreme Court hears oral arguments in Dover, Del.

TC Energy Owes \$199 Million in Columbia Pipeline Deal Case (1)

Wednesday: Sciannella v. AstraZeneca UK Ltd., Del., No. 303,2024, oral arguments 3/12/25.

At issue: The high court hears arguments in an appeal seeking reversal of a Chancery Court ruling allowing AstraZeneca Plc to escape a lawsuit from shareholders over its \$3 billion sale of biotech firm Viela Bio Inc. The shareholders argue in a brief that the trial court “attempted to make findings regarding multiple contested facts and resolve a host of factual issues” too early in the litigation instead of at a scheduled trial.

Court action: The Delaware Supreme Court hears oral arguments in Dover, Del.

AstraZeneca Wins Dismissal Of Shareholder Suit Over Viela Sale

Wednesday: Erste Asset Mgmt. GmbH v. Hees, Del., No. 374, 2024, oral arguments 3/12/25.

At issue: The high court will hear arguments seeking the reversal of a Chancery Court ruling that allowed Kraft Heinz Co. to prevail over an Austrian asset manager’s attempt to reopen litigation over \$1.2 billion in stock sales shortly before Kraft’s share price plummeted in 2018. Erste Asset Management GmbH, an affiliate of Erste Group Bank AG, argues in a brief that it sufficiently pleaded fraud and has newly discovered evidence.

Court action: The Delaware Supreme Court hears oral arguments in Dover, Del.

Kraft Heinz Defeats Effort to Revive Insider Trading Lawsuit

Thursday: Food Investments SPA v. Quiroga, Del. Ch., No. 2024-1098, oral arguments 3/13/2025.

At issue: Vice Chancellor J. Travis Laster will hear arguments on South Lake One LLC’s motion to dismiss a lawsuit brought by Australis Seafoods over an allegedly fraudulent transaction made by former owner Isidoro Quiroga. Australis, a Chilean salmon company, claims in their complaint that Quiroga artificially inflated the firm’s value when he sold the company for \$900 million. South Lake One, which bought properties from Quiroga, claims the case should be resolved in arbitration in Chile instead of Delaware.

Court action: The oral arguments will be held in Wilmington, Del.

China’s Legend Sues Chilean Investor in US Over Salmon Deal

Friday: Bass v. Geneve Holdings Inc., Del. Ch., No. 2022-0778, settlement hearing 3/14/25.

At issue: Vice Chancellor J. Travis Laster must give final approval to a proposed settlement to resolve shareholder litigation challenging Independence Holdings Corp.’s \$333 million take-private buyout by controlling stockholder Geneve Holdings Inc. According to a brief, the \$11 million all-cash settlement also includes a \$2.58 million attorneys’ fee award.

Court action: The settlement hearing will be held in Wilmington, Del.

Geneve Holdings Sued Over \$333 Million Independence Holding Deal

[Securities Law News](#)

March 7, 2025, 6:34 AM PST; Updated: March 7, 2025, 1:12 PM PST

Aetna Investor Appeals Decision Tossing Suit Over CVS Deal (1)

- Aetna shareholder told district court it's appealing toss
- First Circuit ruling in another CVS case led to the dismissal

CVS Health Corp. will again have to defend itself before the US Court of Appeals for the First Circuit in litigation over concerns about its 2015 Omnicare Corp. acquisition—this time brought by an Aetna Insurance Corp. stockholder over the insurer's 2018 merger with the pharmacy chain.

Los Angeles Fire and Police Pensions says CVS misled them before that deal about the financial impact of having added Omnicare, a pharmaceutical services provider for long-term care facilities, that then purportedly weighed on its stock.

The pensions fund on Thursday gave notice it was appealing US District Court for the District of Rhode Island Judge Mary S. McElroy's decision last month to toss its proposed class action.

The First Circuit in 2022 said a would-be class action brought by Omnicare investors over the 2015 acquisition 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, which she described as "wanting" and had provided similarly imprecise correlations of timing as the Omnicare suit.

The Aetna investors case, led by the fund, seeks to impose liability and was originally filed around the same time as the Omnicare suit in 2019. The Aetna case had been stayed while the Omnicare suit alleging securities fraud was on appeal.

Rhode Island's Supreme Court also recently affirmed dismissal of another investor lawsuit over the CVS acquisition of Aetna.

Williams & Connolly LLP, which represented CVS together with Whelan Corrente & Flanders LLP, declined to comment.

A spokesperson for Bernstein Litowitz Berger & Grossmann LLP, lead counsel for the fund, declined to comment via email.

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 .

(Updates with additional reporting throughout.)

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Playstudios Agrees to Pay \$6.5 Million to End Securities Lawsuit

- Proposed class says money offer exceeds average recovery
- Settlement would resolve the investors' Exchange Act claims

Playstudios Inc. agreed to settle a proposed class of shareholders' claims that it materially misled them ahead of a billion-dollar merger.

The shareholders asked the US District Court for the District of Nevada in an unopposed motion to preliminarily approve its proposed settlement for \$6.5 million in cash. They also asked Judge Richard F. Boulware II on Thursday to certify the proposed class and rule that its proposed manner of settlement notice is satisfactory.

"The settlement amount significantly exceeds the average recovery as a percentage of estimated damages in securities class actions, supporting preliminary approval," the investors said.

The investors said the proposed cash payment represents about 18% of the roughly \$35.4 million the proposed class' estimated aggregate statutory damages under Section 11 of the Exchange Act. The amount also equals 15% of the roughly \$42.7 million in estimated aggregate damages for their Section 14 claims, the shareholders said.

Playstudios allegedly concealed bugs in its role-playing game Kingdom Boss to aid its merger with Acies Acquisition Corp. The company allegedly claimed in its proxy/registration statement the game would launch in the second half of 2021, boosting revenue from \$269.8 million in 2020 to \$435.2 million in 2022.

The plaintiffs—who includes Christian A. Felipe, The Phoenix Insurance Company Ltd., and the insurer's pension fund—alleged the company's misleading statements caused its stock price to plummet by nearly 70% after the merger, according to their complaint.

The proposed resolution would provide for an incentive award of up to \$20,000, up to \$110,000 in reimbursed expenses, and attorneys' fees of up to 20%, the investors said. They also said approving the proposed settlement is strongly favored based on both public and judicial policy and that it's fair, adequate, and reasonable.

The proposed class also pushed for certification under Federal Rules of Civil Procedure 23(a) since they satisfy its numerosity, commonality, typicality, and adequacy requirements, they said in their motion. They also meet the standards under Rule 23(b) since their claims predominate one another's and a class action is the superior method to resolve the matter.

Pomerantz LLP and Muehlbauer Law Office Ltd. represent the proposed class. Campbell & Williams, Latham & Watkins LLP, Fenwick & West LLP, and Snell & Wilmer LLP represent the defendants.

The case is Felipe v. Playstudios Inc. , D. Nev., No. 22-cv-01159, motion for preliminary approval 3/6/25 .

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Musk to Face Questioning in Suit Over Twitter Buyout Flip-Flop

Elon Musk is set to be questioned under oath about his 2022 acquisition of Twitter Inc. in an investor lawsuit alleging that his on-again off-again move to purchase the social media platform was a ruse to lower its stock price.

After attorneys for the world's richest person initially balked at making him appear in person for a deposition, Musk has agreed to meet with lawyers for the investors on April 3 in Washington, DC, according to a court filing submitted Friday by lawyers on both sides.

While Musk has been busy lately as a key adviser to President Donald Trump on government cost-cutting efforts, he's also entangled in numerous court fights related to his half dozen companies and personal investments.

Investors claim his flip flopping on whether to go through with buying Twitter — including his public attacks on how the platform was managed — cast doubt over whether the deal would close and sunk its stock price, hurting investors, while improving Musk's bargaining position. Ultimately, Musk completed the \$44 billion buyout after he was sued for trying to back out. He later rebranded the company as X Corp.

A San Francisco federal judge in December 2023 rejected Musk's request to dismiss the case, saying that his statements "did give an impression materially different from the state of affairs that existed."

The US Securities and Exchange Commission sued Musk in January, days before Trump was sworn in as president, over claims the billionaire missed a deadline for disclosing his growing stake in Twitter ahead of the acquisition. The agency claims that by stockpiling shares at an unfair discount behind the scenes, Musk cost Twitter shareholders who unwittingly sold too soon more than \$150 million.

[Read More: Musk Facing SEC Claims in Trump Era Means 'All Bets Are Off'](#)

The case is *Pampena v. Musk*, 22-cv-05937, US District Court, Northern District of California (San Francisco).

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Musk-Linked Corporate Law Rewrite Would Stymie Investor Scrutiny

- Overhaul bill would cut investor access to board texts, emails
- Changes would put evidence of board conflicts out of reach

Investors taking aim at corporate wrongdoing will face a steeper climb in Delaware court if lawmakers adopt changes aimed at placating Elon Musk and other business titans.

The overhaul proposed by Delaware Gov. Matt Meyer (D) follows news of potential relocations by several major companies, including Meta Platforms Inc. The “DExit” trend remains a trickle so far, with opposing camps divided about whether the new measures would stanch the bleeding by giving dealmakers more leeway—or worsen it by undercutting the state’s elite courts.

Most of the attention is going to sections of Senate Bill 21 that would override legal guardrails around controlling stockholders like Musk, who has spent a year on the attack after a Delaware judge voided his record \$56 billion Tesla Inc. pay package.

But provisions that mostly cut investors off from board members’ texts and emails during the litigation planning stages could have just as far-reaching an impact.

Those parts of SB21 would combine with sections strengthening the presumption that directors are independent of controllers—and one another—to create a Catch-22, said Labaton Keller Sucharow LLP partner Mark Richardson. The bill would raise the bar for showing conflicts of interest while putting the evidence out of reach, he said.

“They’re gutting shareholders’ ability to identify problems,” Richardson said. “The circular logic is fully intentional.”

‘Discrete Rifle Shot’

The edits to the investor access law known as Section 220 reflect the ballooning toll of lawsuits seeking corporate “books and records,” often in a bid to drum up fiduciary breach claims. Although Delaware’s Chancery Court is staffing up, the rise in records litigation over the past 15 years has contributed to a workload crisis.

Those disputes “have gotten extremely burdensome to both companies and the court,” according to Widener University law professor Lawrence Hamermesh, a drafter of the legislation. “It has blown up way beyond what the statute was originally about, which was a discrete rifle shot to look at key documents.”

There are several culprits for the growing records docket. Judges started taking a more skeptical view of claims by investors who failed to use “the tools at hand”—Section 220—and conferring the right to lead high-stakes deal challenges on the shareholder with the most detailed complaint, not the first filer.

“That began a process of expanding what counts as a book or record,” according to Lawrence Cunningham, director of the University of Delaware’s Weinberg Center for Corporate Governance.

Until then, “nobody thought you could get text messages in a 220 request,” said Columbia University law professor Dorothy Lund.

Caremark

Those changes converged with the emerging *Caremark* doctrine, a famously hard-to-win oversight liability theory that requires proving corporate leaders turned a blind eye to red flags. Because the cases are such long shots—only about a third go anywhere, and none has ever reached trial—it’s all but impossible to bring one without getting company files.

The claims generally target the most serious scandals—corporate “traumas” inviting broader fallout over presidential elections, data privacy, the opioid crisis, workplace harassment, or aviation disasters.

Reducing records access would “cripple *Caremark*,” according to Southern Methodist University law professor Carliss Chatman.

The original text of SB21, unveiled last month, would have categorically limited shareholders to official board records. A fine-tuned version circulated March 3 by the Corporation Law Council—the influential state bar committee that ordinarily produces corporate law amendments—would make informal materials available, but only if a shareholder offers “clear and convincing evidence” of a “compelling need.”

The proposal would also limit investors to documents that specifically track the stated reason for their request, overturning a court decision that gave shareholders the right to any records within the scope of Section 220, regardless of their particular purpose.

Board Conflicts

The restrictions would work in synergy with safe harbor clauses in the same bill that largely block judges from deciding when director conflicts of interest justify elevated scrutiny, transferring that responsibility to boards themselves, said Tulane University law professor Ann Lipton. Those decisions could be made by boards with conflicts of their own, she said.

“That’s a loophole you could drive a truck through,” Lipton said.

Rebutting the presumption of board independence would usually call for texts and emails that would be off the table under SB21, according to Richardson. “The door would be closed from the beginning,” he said.

A large subset of corporate cases, moreover, are shareholder derivative lawsuits filed on a company’s behalf against its leaders. Because the claims technically belong to the business, investors filing them have to clear the threshold step of demanding board action or showing director conflicts would make it futile.

If the beefed-up presumption of independence extends to the derivative context—something that may have to be litigated—the cutback on informal materials could close the courthouse across the board, not just to deal challenges, according to Lipton.

“Texts and emails are where the real conversation happens,” she said.

Whack-a-Mole

The goal of SB21 is to minimize fishing expeditions “on the chance you might turn up something viable” while ensuring shareholders still get what they need to pursue meaningful litigation, according to Hamermesh. Erring in either direction has costs, but “that’s a legislative judgment,” he said.

“Tell me what you knew about Robyn Denholm and Elon Musk without digging into their emails,” Hamermesh said, referring to Tesla’s board chair. “My guess is it was a lot. If you can’t show lack of director independence without getting all the emails and texts, maybe that’s not a good case.”

But the bill could spur a game of whack-a-mole, prompting judges to revise the rules that make records litigation a central part of the corporate ecosystem in the first place, according to Chatman.

Relaxing the *Caremark* requirements or taking a less forgiving view of relationships among board members would be “fair game,” she said. “If I were a judge, that’s what I would do.”

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Delaware Corporate Overhaul Opposed by Pension Fund Coalition

- Proposed changes seek to head off potential corporate exits
- It would 'destroy decades of careful precedent,' funds say

A group of pension funds came out Friday against a proposed overhaul of Delaware corporate law, saying it would gut shareholder rights while giving powerful insiders carte blanche to loot public companies.

The public letter to Delaware Gov. Matt Meyer (D) was signed by nearly 50 union and municipal funds, including the New York City and Los Angeles retirement systems.

Meyer, who took office in January, is backing Senate Bill 21 after hearing from some corporate leaders that Delaware's recent court crackdown on controlling stockholders including Elon Musk may drive them to relocate, a phenomenon dubbed "DExit."

Musk, who moved Tesla Inc. to Texas after losing a \$56 billion court case last year, has slammed the state and urged other businesses to follow him out the door. A few, including Meta Platforms Inc., recently said they will or might—shifts that may, in some cases, be more about currying favor with the increasingly powerful billionaire than traditional legal concerns.

If Delaware's status as America's corporate capital faces threats, the response "must be measured and not destroy decades of careful precedent," according to the funds, which said they'll wield their clout as institutional investors against board members who authorize reincorporations to jurisdictions like Nevada with fewer shareholder rights.

"These amendments will cause a substantial wealth transfer from our beneficiaries, and millions of normal stockholders nationwide, to misbehaving fiduciaries," the letter said. It alluded to Musk—though not by name—saying the proposal was "drafted by lawyers representing billionaire controlling stockholders" over "the complaints of a handful of disgruntled litigants."

SB21 "will encourage value-destroying behavior" and undermine the balance enshrined in Delaware law "between protecting the rights of public stockholders, while allowing well-meaning directors and officers to manage the affairs of companies," the funds said.

The bill, unveiled last month, is expected to sail through the state Senate after it reconvenes March 11, but a rapidly mobilizing opposition has made its chances less certain in the General Assembly. The legislation is dividing Delaware's tight-knit legal community, which descended on New Orleans this week for the annual Tulane Corporate Law Institute, a major gathering of dealmakers and attorneys.

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Liberty Mutual Unable to Strike All 401(k) Suit Expert Testimony

- Expert opinions allowed on administrative fees, mid-cap fund
- Judge blocks some expert testimony on money market option

Liberty Mutual Group Inc.'s effort to kneecap litigation over its 401(k) plan by dinging expert witnesses yielded mixed results when a federal judge allowed testimony on administrative fees and an allegedly underperforming investment.

Judge Mark G. Mastroianni declined to exclude expert opinions contending that the plan overpaid for recordkeeping and managed account services, as well as that it offered a mid-cap fund that significantly underperformed a suitable alternative. Mastroianni announced his decision in a pair of electronic orders docketed Thursday in the US District Court for the District of Massachusetts.

But Mastroianni blocked expert testimony on other issues, including opinions suggesting that the plan's money market fund from Wells Fargo & Co. was imprudent because it lagged a stable value fund from Vanguard.

The plan participants' expert witnesses used valid methods for comparing the plan's Sterling Mid-Cap Value Portfolio to alternative investments, and for assessing the market value for 401(k) recordkeeping and managed account services, Mastroianni said.

But their attempts to compare the plan's Wells Fargo money market fund to a purportedly better-performing Vanguard fund failed, according to the judge, because they were driven by instructions from class counsel rather than a principled analysis of alternative options.

The 50,000-person class action challenges two investments in the Liberty Mutual plan: a mid-cap fund that allegedly lagged its benchmark for years and a money-market fund that workers say provided "historically abysmal returns and greater risk" than a stable value fund. It also says plan participants were forced to overpay for recordkeeping and managed account services.

Mastroianni's prior rulings declined to dismiss the lawsuit in June 2021 and certified it as a class action in June 2023.

Schlichter Bogard LLC and Naumes Law Group LLC represent the Liberty plan participants. Skadden, Arps, Slate, Meagher & Flom LLP represents Liberty.

The case is Ahmed v. Liberty Mut. Grp., Inc., D. Mass., No. 3:20-cv-30056, electronic orders 3/6/25 .

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Litigation Trends to Watch: Claims Surge Over Corporate 'Greenwashing,' Toothpaste Contamination and AI-Driven Promises

 [law.com/therecorder/2025/03/07/litigation-trends-to-watch-claims-surge-over-corporate-greenwashing-toothpaste-contamination-and-ai-driven-promises](https://www.law.com/therecorder/2025/03/07/litigation-trends-to-watch-claims-surge-over-corporate-greenwashing-toothpaste-contamination-and-ai-driven-promises)

Mike Neighbors

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

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

Here are some noteworthy litigation patterns surfaced by the platform this week:

- ▶ 'Greenwashing' cases are on the rise in the food, beverage and consumer goods sectors.
- ▶ Colgate-Palmolive is in the crosshairs over lead, arsenic and bacteria in its toothpastes.
- ▶ Environmental groups are fighting back against the Trump administration's energy policies.
- ▶ Shareholders claim that companies are failing to deliver on AI-driven promises.
- ▶ Novo Nordisk is cracking down on sales of knockoff weight loss drugs.

Litigation Trend - Food, Beverage & Tobacco | Class Actions

Class actions are gaining momentum in the food and beverage sector, according to Law.com Radar. The platform surfaced 24 federal class actions in February targeting entities on Radar's sector watchlist, continuing a rising trend which traces back roughly 12 months.

Of note, at least three false advertising cases were filed accusing companies of 'greenwashing,' or making false claims about the sustainability of products or services. For instance, [avocado companies](#) Calavo Growers, Fresh Del Monte and Mission Produce were sued on Feb. 21 for allegedly concealing soil degradation, deforestation and other impacts of avocado production in Mexico, and a Feb. 26 lawsuit against milk company [Fairlife](#) and its parent company Coca-Cola alleges that the companies tolerated animal cruelty in their supply chain and misrepresented nonrecyclable packaging as recyclable. Both suits were filed in California Central District Court.

The suits are part of a broader trend of cases accusing companies of misleading consumers about the sustainability of products and business practices. In January, Igloo and CamelBak were sued for allegedly misrepresenting the biodegradability and recycled content of their coolers and water bottles, and another suit accuses Procter & Gamble of misleading consumers about the impacts of Charmin toilet paper production on forests. Sprouts Farmers Market was also sued in January over claims that its single-use tableware is not compostable as advertised.

[View Surge Data](#)

Litigation Surge - Class Actions | Colgate-Palmolive

Consumer goods conglomerate Colgate-Palmolive was hit with a cluster of federal class actions in February. At least three suits were filed, two of which center on the company's Tom's of Maine toothpaste products.

One suit, filed on Feb. 6, contends that strawberry-flavored Tom's of Maine Kid's Natural Fluoride-Free Toothpaste contains unsafe levels of lead and arsenic. The claims are similar to those asserted in a wave of class actions targeting baby food manufacturers in the wake of a Feb. 2021 Congressional investigation regarding trace metals in baby food products. Another suit, brought on Feb. 11, alleges that certain Tom's of Maine toothpaste products were made with bacteria-contaminated water. The suit is part of a string of cases following a Nov. 2024 investigative report by the U.S. Food and Drug Administration.

[View Surge Data](#)

Litigation Surge - Public Interest & Nonprofit | Environmental Protection Agency

Nonprofit groups launched a flurry of lawsuits against the U.S. Environmental Protection Agency on March 3 in District of Columbia District Court. At least three suits were filed, two of which were brought by the Environmental Defense Fund under the Freedom of Information Act. Both cases seek records pertaining to pollution standards and other environmental policies after President Donald Trump signed an executive order titled 'Unleashing American Energy.'

The EPA was also named in a lawsuit by the Center for Biological Diversity targeting the newly created Department of Government Efficiency or 'DOGE.' The suit contends that an executive order requiring federal agencies to create 'DOGE Teams' violates the Federal Advisory Committee Act, which imposes procedural requirements for establishing advisory committees.

[View Surge Data](#)

Litigation Surge - Securities | Glancy Prongay & Murray

Plaintiffs firm Glancy Prongay & Murray filed a cluster of securities cases in California federal courts in February. At least four suits were brought by the firm, two of which accuse companies of concealing issues with rolling out AI products and services. For instance, a Feb. 20 suit accuses semiconductor and digital systems company [Semtech](#) of failing to disclose that sales would decline based on a need to fix CopperEdge products after receiving negative feedback from AI giant Nvidia, while another suit filed on Feb. 19 claims that software development platform [GitLab](#) overestimated demand for its new AI features and was forced to roll back a price increase after struggling to retain customers. Other firms have brought similar suits against Semtech and GitLab.

AI-related shareholder litigation is ramping up: Customer experience platform [Telus International](#) was sued in January over claims that its expansion into AI data solutions caused profit margins to decline, and [Monolithic Power Systems](#) was hit with a lawsuit in February after Nvidia reportedly cut ties with the company based on quality issues with its power modules. Plus, a March 6 suit claims that advertising platform [The Trade Desk](#) fell short of revenue projections due to a slow rollout of its generative AI forecasting tool Kokai.

[View Surge Data](#)

Litigation Surge - Tennessee | Novo Nordisk

Novo Nordisk brought a swarm of lawsuits in Tennessee Middle District Court on Feb. 28. At least four cases were filed, all pursuing claims against medical wellness spas under the Lanham Act and Tennessee Consumer Protection Act. The suits are part of a wave of cases accusing spas and medical clinics of selling semaglutide-based compounded [weight loss drugs](#) and falsely representing that the drugs are FDA-approved equivalents to Novo Nordisk's Ozempic, Wegovy and Rybelsus medications. Who's bringing the heat? Riley & Jacobson is representing Novo Nordisk in the Tennessee actions.

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NOT FOR REPRINT

Class action targets Bronco, Escape fuel injector failures

DJ [dailyjournal.com/articles/384151-class-action-targets-bronco-escape-fuel-injector-failures](https://www.dailyjournal.com/articles/384151-class-action-targets-bronco-escape-fuel-injector-failures)

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Ford Motor Company was accused of knowingly selling two defective fleets of compact SUVs, the Bronco Sport and Ford Escape, and failing to timely notify federal regulators about the vehicles' faulty fuel injectors causing "life threatening" fires while drivers were on the road.

The putative class action complaint, filed Thursday in San Francisco federal court, claims that the company mishandled two previous recalls of its 2021-2023 Broncos and 2020-2022 Escapes, dismissed "numerous reports" of vehicle fires from customers, and breached its duty under federal law to notify the U.S. Secretary of Transportation of the problem.

Ford is currently under investigation by the National Highway Traffic Safety Administration over the fuel injector defect.

Ford's media relations office could not be reached for comment Friday. In March 2024, Ford announced the recall of nearly 43,000 vehicles from the two fleets over the fuel injector issue. Two years before, in November 2022, the company recalled more than 521,000 Broncos and Escapes over the same problem.

On the company's website informing customers of the defect, Ford said the cause was under investigation. The company did not instruct customers to stop driving their vehicles but acknowledged the threat of vehicle fires and reiterated its commitment to safety.

"There is nothing more important to us than the safety of our customers, which is why Ford is issuing a safety recall on some 2021, 2022 and 2023 Bronco Sport and 2020, 2021 and 2022 Escape models," the company wrote. "There is a chance the fuel injector can crack, which may lead to an underhood fire. The cause is still under investigation, but the source is a cracked engine fuel injector. When the injector cracks, gasoline may leak down onto hot surfaces and potentially cause a fire."

The plaintiffs' attorneys, Timothy G. Blood, Thomas J. O'Reardon II and Adam M. Bucci of Blood Hurst & O'Reardon LLP in San Diego; Ben Barno and Anthony L. Parkhill of Barnow and Associates PC, could not be reached for comment Friday.

In the complaint, which seeks relief under several state statutes including fraudulent business practices, plaintiffs' counsel called Ford's latest recall of the fuel injectors "false and deceptive" and repairs "futile" because the fuel injectors were "uniformly defective."

"Ford's recall was false and deceptive because they recommended a 'fix'--a software update and drain tube--that did not resolve the fuel injector defect. The recall instituted by Ford was not adequate and subject vehicles are still defective," the complaint states.

The attorneys added, "The so-called remedy was not merely inadequate; it was wholly ineffective and dangerously misleading, giving class members a false sense of security while leaving them exposed to the ongoing risk of catastrophic failure and vehicle fires."

In an April 2024 letter to the company, the National Highway Traffic Safety Administration stated:

"Based on our review of the alleged defect, the resulting consequences, and the recall's remedy program, Office of Defects Investigation believes that the remedy program does not address the root cause of the issue and does not proactively call for the replacement of defective fuel injectors prior to their failure; therefore, Office of Defects Investigation has decided to investigate the adequacy and various safety concerns of the remedy program."

#384151

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Insurers sue Edison over Eaton Fire as State Farm rate hike faces pushback

DJ [dailyjournal.com/articles/384148-insurers-sue-edison-over-eaton-fire-as-state-farm-rate-hike-faces-pushback](https://www.dailyjournal.com/articles/384148-insurers-sue-edison-over-eaton-fire-as-state-farm-rate-hike-faces-pushback)

More than 100 insurance companies have sued Southern California Edison in Los Angeles County Superior Court seeking compensation for insurance claims that they paid and expect to pay in the aftermath of the Eaton Canyon wildfire.

At the same time, a consumer advocacy group is urging the California insurance commissioner to reject State Farm's request to hike its homeowner's insurance rate by 22%, saying State Farm's request stems from "its own mismanagement and potentially unlawful, anticompetitive behavior."

The subrogation plaintiffs' complaint was filed by attorneys from six law firms nearly two months after the first individual plaintiffs' complaint was filed. It alleges two causes of action - negligence and inverse condemnation. The plaintiffs accuse the utility of leaving old, unused electrical equipment near energized high voltage transmission lines that they believe sparked flammable vegetation nearby. The plaintiffs are represented by Grotefeld Hoffmann; Schroeder Loscutoff Stevens LLP; Berger Kahn; Law Offices of Shawn E. Caine APC; Cozen O'Connor and Bauman Loewe Witt & Maxwell PLLC.

"Upon information and belief, Tower M16T1 was taken out of service in 1971. Despite having over 50 years to remove this aged and de-commissioned equipment, SCE deliberately left Tower M16T1 and its attached conductors -- spanning nearly 6 miles -- in place and dangerously near other high voltage, electrified transmission powerlines," the complaint states.

"Subrogation Plaintiffs are further informed and believe that Tower M16T1 was improperly maintained because the tower's grounding wire was left partially exposed to the air and permitted to make contact with surrounding vegetation. SCE's failure to maintain tower M16T1 in such a condition such as not to create a hazard maintenance was a violation of CPUC General Order 95," the complaint continues.

Edison says the cause of the fire is under investigation.

"Our hearts are with the communities affected by the wildfires in Southern California. SCE is reviewing the lawsuit that was recently filed and will respond accordingly through the legal process," Edison spokeswoman Gabriela Ornelas said in response to a request for comment.

California Public Utilities Commission General Order 95, Section III, Rule 31.2 states, "Lines shall be inspected frequently and thoroughly for the purpose of insuring that they are in good condition so as to conform with these rules. Lines temporarily out of service shall be inspected and maintained in such condition as not to create a hazard."

The complaint goes on to say that the Eaton Fire is estimated to have caused at least \$10 billion in insured property damage. *Ace Fire Underwriters Insurance Co. et al. v. Southern California Edison Co.*, 25STCV06125 (L.A. Super. Ct., filed Mar. 4, 2025).

Seemingly absent from the lawsuit is State Farm. The insurer asked California Insurance Commissioner Ricardo Lara in February to approve rate increases ranging from 15% for renters and condominium unit owners to 38% for rental dwellings. A letter to the commissioner signed by State Farm CEO Dan Krause and other executives states the company has received 8,700 claims stemming from the January wildfires and has paid over \$1 billion to customers as of Feb. 1. It does not specify which of the wildfires those payments stemmed from.

"We know we will ultimately pay out significantly more, as these fires will collectively be the costliest in the history of the company. Although reinsurance will assist us in paying what we owe to customers, the costs of these fires will further deplete capital from [State Farm General Insurance Company]," states the letter dated Feb. 3. It goes on to say that the company has nearly 3 million policies in the state. But State Farm last year declined to renew some 1,600 policies in Pacific Palisades. It says it is trying to "limit overexposure in high-risk areas."

The Consumer Watchdog advocacy group says State Farm has not shown a reason for approving any "interim" rates.

"Instead, per a Wall Street Journal analysis, State Farm engaged in an anticompetitive strategy to underprice competitors to gain market share," reads a letter to Lara signed by Consumer Watchdog's litigation director, William Pletcher, and dated March 6.

"You should not sanction this type of predatory pricing by rewarding this now-failed business strategy with customer-funded bailouts. You should instead take seriously the allegations in the article and investigate these alleged anticompetitive pricing strategies that weakened the California insurance market and has harmed thousands of consumers," Pletcher's letter continues.

State Farm referred a request for comment to the company's website: "We don't have anything further to add beyond what is on our newsroom pages," a State Farm representative wrote in an email.

Dropbox fights class action, says no identity theft risk in breach

DJ [dailyjournal.com/articles/384152-dropbox-fights-class-action-says-no-identity-theft-risk-in-breach](https://www.dailyjournal.com/articles/384152-dropbox-fights-class-action-says-no-identity-theft-risk-in-breach)

Attorneys for Dropbox Inc., a cloud storage platform, argued on Friday that the lead plaintiffs in a consolidated, putative class action "cannot possibly allege" to be at risk of identity theft after hackers breached the company's network and stole varying degrees of personal information from users of the company's e-signature tool, Dropbox Sign.

Friday's reply brief in support of Dropbox's pending motion to dismiss, filed by the company's legal team from Wilson Sonsini Goodrich & Rosati, pushed back on the plaintiffs' opposition to the motion.

Class counsel argued that the company "handed criminals access to plaintiffs' confidential documents."

The dispute stems from an April 19, 2024 incident when, the plaintiffs claim, hackers accessed the names, emails and general account settings of every Dropbox Sign user. A "small subset" of Dropbox Sign users' account authentication information, such as encrypted account passwords, was also stolen, according to the company.

The plaintiffs' consolidated complaint seeks damages and an injunction requiring Dropbox to beef up its security systems claiming the incident poses a serious threat to consumers because Dropbox Sign accounts hold highly sensitive documents containing information such as Social Security numbers and medical records.

Dropbox's media relations office and counsel from Wilson Sonsini Goodrich & Rosati could not be reached for comment Friday.

The attorneys argued in the filing that the case must be thrown out because the plaintiffs never actually claimed to have had their encrypted passwords stolen or their documents accessed by hackers and the hackers' exposure of their names and emails doesn't put them at reasonable risk of identity theft.

"Plaintiffs attempt to save their Consolidated Amended Complaint by relying on unpleaded allegations, misleading rhetoric, and legal arguments that have been rejected by numerous courts, including this one," the defense attorneys wrote. "None of their arguments save their fatally deficient complaint, which fails to establish standing or state a claim because Plaintiffs simply cannot plausibly allege that any of their highly sensitive information was exposed."

The plaintiffs' legal team, comprised of attorneys from Clarkson Law Firm PC, Sterlington PLLC, Cole & Van Note, and Zemel Law LLC, could not be reached for comment Friday.

In their initial opposition to the dismissal, filed on Feb. 20, class counsel defended the complaint and argued that hackers did in fact access their sensitive documents by using a "digital master key" the account information provided them.

"The complaint adequately alleges sufficient factual basis that sensitive documents were accessed, including detailing hackers' obtaining keys to the vaults of document, and having the ability to download in bulk those documents in seconds, without even needing a username or password while seemingly acting as an authorized user," the opposition brief stated. "Defendant will be free to argue its version of the facts at the appropriate stage, but now, well pleaded facts must be credited with all inferences in plaintiffs' favor."

In an update to the blog post from June 21, the company said it concluded its investigation and found, "no evidence of unauthorized access to the contents of users' accounts (i.e. their documents or agreements)."

The cases were consolidated by U.S. District Judge Jeffrey White in Oakland in July. The plaintiffs seek damages and an injunction that would force Dropbox to beef up its security apparatus. They claimed it has previously been breached by hackers.

Dropbox is simultaneously seeking to send the consolidated action to arbitration if White does not grant the motion to dismiss the entire case during a hearing on May 23. *In re Dropbox Sign Data Breach Litigation*, 4:24-cv-02637 (N.D.Cal. filed May 2, 2024).

According to an SEC filing on May 1, hackers first gained access to Dropbox account information on April 19 and last had access on April 20. The company claims it learned of the breach the same day it notified the public in a blog post on its website on April 24.

The company's security systems and account logins have been compromised by hackers in the past.

Dropbox announced in September 2016, that four years before, hackers had broken into the website and accessed the login information for 68 million user accounts. The company announced the initial breach, but the extent of the breach was not revealed until 2016.

The following Wilson Sonsini Goodrich & Rosati attorneys represent Dropbox: Joshua A. Baskin of San Francisco; Kelly M. Knoll of Palo Alto; and Julia Hu of Los Angeles.

The following attorneys represent the plaintiffs: Ryan J. Clarkson, Yana Hart, Mark I. Richards of Clarkson Law Firm P.C. in Malibu; Scott Edward Cole, Laura Van Note of Cole & Van Note in Oakland; Edward Ciolko, Jennifer Czeisler of Sterlington PLLC in New York City; and Daniel Zemel of Zemel Law LLC in Englewood Cliffs, New Jersey.

New York sues Allstate over data breach, security lapses

 [reuters.com/technology/cybersecurity/new-york-sues-allstate-over-data-breach-security-lapses-2025-03-10](https://www.reuters.com/technology/cybersecurity/new-york-sues-allstate-over-data-breach-security-lapses-2025-03-10)

Reuters

The Allstate logo is seen in this illustration taken on January 29, 2025. REUTERS/Dado Ruvic/Illustration/File Photo Purchase Licensing Rights , opens new tab

NEW YORK, March 10 (Reuters) - New York state sued Allstate (ALL.N) , opens new tab on Monday, accusing the insurer's National General unit of failing to report a data breach that exposed drivers' license numbers, and not developing reasonable safeguards to protect policyholders' private information.

The lawsuit by New York Attorney General Letitia James was filed in a state court in Manhattan, and seeks civil fines.

Allstate did not immediately respond to a request for comment.

New York said the case arose from back-to-back breaches in 2020 and 2021 when hackers targeted National General's online auto insurance quoting tools, exposing license numbers of more than 165,000 New Yorkers and nearly 200,000 people overall.

According to the complaint, National General did not alert drivers or New York state agencies about the first breach, which occurred between August and November 2020, and needed about three months to uncover the second breach in January 2021.

New York said National General violated the state's Stop Hacks and Improve Electronic Data Security Act for failing to protect customer information, and violated state consumer protection laws by misleading customers about its safeguards.

Allstate, based in Northbrook, Illinois, bought National General for about \$4 billion in January 2021.

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Reporting by Jonathan Stempel in New York; Editing by Mark Porter and Deepa Babington

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- Suggested Topics:
- Cybersecurity

Class Action

March 10, 2025, 10:20 AM PDT

LesserEvil Snack Maker Likely to Trim Health Deception Claims

- **Implied nutrition benefit claims should get cut, judge said**
- **Consumer deception claims should be proceed, too early to cut**

LesserEvil LLC convinced a federal magistrate judge to recommend dismissing some nutrition deception claims in a suit alleging the company duped buyers into thinking its snack products were healthy despite containing dangerous levels of saturated fats.

Magistrate Judge Jeremy D. Peterson on March 7 told the US District Court for the Eastern District of California that the consumer's implicit nutrient content claims and a claim for injunctive relief should be dismissed, but other false advertising claims should proceed.

Plaintiff Twyla Cogswell alleged that label statements including the words "healthier," "Good Source of Fiber," "Nutrient Dense," as well as representations like "40% Less Fat," mislead consumers into thinking the products are good for their health. But the product contain levels of saturated fat that can increase the risk of heart disease, she said.

Cogswell brought multiple claims under California consumer protection claims and sought to represent a nationwide purchaser class.

Federal law prohibits label claims about the relationship between a level of a certain nutrient and a disease or health condition, but allows food makers to make statements about the amount of nutrients in the product.

Cogswell alleged LesserEvil's popcorn products contained nutrient statements that implied the products were healthier than others.

Deception Claims OK

"The sentence in which 'healthier' appears is more accurately characterized as describing defendant's business ethos rather than a specific nutrient in its product," Peterson said. As a result the use of the word "healthier" is not an implied nutrient claim, he added.

Peterson also trimmed Cogswell's claim for injunctive relief because alleging she would consider buying the products again if not for the alleged deception isn't enough to establish standing for an injunction.

Cogswell's deception claims should proceed because whether a business practice is considered deceptive isn't an appropriate question to resolve on a motion to dismiss, Peterson said.

Based on Cogswell's allegations that the label statements on the products gave her the impression that they were healthy and better for her than other products, Peterson said he couldn't conclude that reasonable consumers wouldn't be misled by the packaging.

Cogswell is represented by Good Gustafson Aumais LLP. LesserEvil is represented by Braunjagey & Borden LLP.

The case is Cogswell v. LesserEvil LLC , E.D. Cal., No. 1:23-cv-00311, 3/7/25 .

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US Supreme Court nixes challenge to state climate suits against oil firms

 [reuters.com/legal/us-supreme-court-nixes-challenge-state-climate-suits-against-oil-firms-2025-03-10](https://www.reuters.com/legal/us-supreme-court-nixes-challenge-state-climate-suits-against-oil-firms-2025-03-10)

Nate Raymond

The U.S. Supreme Court is pictured in Washington, U.S., October 8, 2024.

REUTERS/Annabelle Gordon/File Photo Purchase Licensing Rights , opens new tab

- Five Democratic-led states seek damages from oil firms
- Companies are accused of concealing climate consequences
- Suits target Exxon, Chevron, ConocoPhillips, Shell, BP

March 10 (Reuters) - The U.S. Supreme Court rejected on Monday a bid by 19 Republican-led states led by Alabama to block five Democratic-led states from pursuing lawsuits accusing major oil companies of deceiving the public about the role fossil fuels have played in causing climate change.

The justices declined to hear a case that was filed directly with the Supreme Court by Republican state attorneys general that took aim at cases filed in various state courts against companies including Exxon Mobil (XOM.N) , opens new tab, Chevron (CVX.N) , opens new tab, ConocoPhillips (COP.N) , opens new tab, Shell (SHEL.L) , opens new tab and BP (BP.L) , opens new tab. Those lawsuits were filed by California, Connecticut, Minnesota, New Jersey and Rhode Island.

Nearly all the cases heard by the Supreme Court are appeals of rulings by lower courts. But the top U.S. judicial body has "original jurisdiction" in a small set of cases pitting states against states.

The suits by the Democratic-led states, seeking monetary damages, generally accused the energy companies of creating a public nuisance or violating state laws by concealing from the public for decades the fact that burning fossil fuels would lead to climate change. The companies denied wrongdoing.

The 2024 litigation led by Republican Alabama Attorney General Steve Marshall was joined by his counterparts in Alaska, Florida, Georgia, Idaho, Iowa, Kansas, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Oklahoma, South Carolina, South Dakota, Utah, West Virginia and Wyoming.

They argued that by suing major energy companies in state courts and seeking damages for the harms of climate change, the Democratic-led states were unlawfully trying to regulate global emissions and the U.S. energy system.

Only the federal government can regulate interstate gas emissions, and the Democratic-led states have exceeded their authority by seeking "sweeping injunctive relief or a catastrophic damages award that could restructure the national energy system," the Republican-led states argued.

The Supreme Court, which has a 6-3 conservative majority, has rejected several attempts by the oil companies themselves to dismiss various climate change cases by state and local governments or move them to federal court.

For instance, the Supreme Court on Jan. 13 declined to hear a bid by Sunoco and other oil companies to scuttle a lawsuit by Honolulu after the Hawaii Supreme Court allowed the climate change case to move forward.

Democratic former President Joe Biden's administration in 2024 argued that the Supreme Court should skip hearing both the industry's Honolulu case appeal as well as the lawsuit by the 19 Republican-led states.

Republican President Donald Trump's administration is expected to oppose such lawsuits going forward. The Trump campaign ahead of the 2024 election pledged to "stop the wave of frivolous litigation from environmental extremists."

The Democratic-led states, led by California Attorney General Rob Bonta, in a filing called the Republican case against them "meritless" and said it rested on a misunderstanding of their climate change lawsuits.

They argued the lawsuits did not seek to impose liability on oil companies based on their fossil fuel production generally but instead sought to "address local harms resulting from unlawful deceptive conduct by private defendants."

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Reporting by Nate Raymond in Boston; Editing by Will Dunham

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Employers Face New Biometric Privacy Suits as Litigators Revive Old Illinois Law

 [law.com/2025/03/07/employers-face-new-biometric-privacy-suits-as-litigators-revive-old-illinois-law/](https://www.law.com/2025/03/07/employers-face-new-biometric-privacy-suits-as-litigators-revive-old-illinois-law/)

Allison Dunn

Credit: NicoElNino/Adobe Stock

Analysis

"Until someone disincentivizes the plaintiffs not to bring the cases and there's no real opportunity for making money from it, the ambiguity and angst surrounding the statute is going to encourage more filings," said Sean G. Wieber, who serves as the co-chair of Winston & Strawn's global privacy and data security practice.

March 07, 2025 at 04:15 PM

Privacy

By Allison Dunn



Illinois has been a hot spot for biometric privacy litigation in the past few years, and, despite recent legislative changes aimed at limiting potential damages, the venue still appears set as a litigation hotspot as attorneys may be gravitating toward a new line of privacy claims.

In recent years, waves of privacy disputes have emerged under the state's Biometric Information Privacy Act as employees challenged how employers stored data, such as fingerprints used to clock in and out of work. Plaintiff-favorable rulings in BIPA cases potentially put corporations at risk for exorbitant costs for each violation, but recent legislative changes put a limit on the lucrative payout potential of \$5,000 per violation.

However, plaintiffs attorneys may be catching on to another area of biometric litigation under the Illinois Genetic Information Privacy Act, which has statutory damages three times higher than BIPA, among other alluring factors. While the law has been on the books for nearly 25 years, it hasn't been utilized until recently.

"In the last nine months to a year, we've seen more of these cases filed against companies involving the medical history [theory], and the trend in the case law has not been very good for the defendants—motions to dismiss have largely been denied," said Matthew C. Wolfe, chair of Shook, Hardy & Bacon's biometric privacy litigation practice in Chicago.

Some of the earliest uses of GIPA took issue with DNA data stored by genealogy company Ancestry.com, but lawsuits are now popping up against employers who allegedly required employees or job seekers to provide "genetic information," or family medical background, as

a condition of employment. While GIPA cases play out, experts say they don't expect to see the number of cases filed to slow down anytime soon.

"I think we will continue to see them filed. I'm a little bit surprised that we're not seeing more of them, but I think it's going to continue to happen," Wolfe added.

In 2023, approximately 50 GIPA cases challenged employers' health-related inquiries, and filings continued into 2024. Since the beginning of the year, more than 25 lawsuits have been filed against corporations like Nestle, FedEx, and the Dairy Farmers of America, according to data compiled by Law.com Radar.

"The statute has uncapped statutory damages," Sean G. Wieber, who serves as the co-chair of Winston & Strawn's global privacy and data security practice, said about GIPA. "It has a profile that is attractive to the plaintiffs. On the defense side, it has a profile of being potentially material to companies—small, medium, and large.

"Until someone disincentivizes the plaintiffs not to bring the cases and there's no real opportunity for making money from it, the ambiguity and angst surrounding the statute is going to encourage more filings," Wieber added.

Siri Glimstad and Wallace Miller were among some of the first law firms to bring some of the initial class actions against employers, according to Kyle McLean, an attorney at Siri Glimstad's Los Angeles office. The firms have jointly filed similar suits in 2025.

"We believe that historically GIPA has been under-enforced, and we are pleased to spearhead these efforts to advance GIPA's purpose of protecting the genetic privacy of Illinois residents," McLean told Law.com

One of their cases, *Branson v. Caterpillar*, recently got clearance to proceed. In an August ruling, U.S. District Judge Manish S. Shah of the Northern District of Illinois denied a motion to dismiss GIPA claims against Caterpillar, one of the world's largest construction equipment manufacturers. Caterpillar, which is repped by Seyfarth Shaw, has denied any wrongdoing, according to the defendant's response to the complaint filed last month.

Other firms, including Milberg Coleman Bryson Phillips Grossman and Feldman Shepherd Wohlgelemer Tanner Weinstock & Dodig, among several others, have also filed suits in Illinois state courts against employers from across industry sectors.

"We hope that companies will swiftly redress any past privacy intrusions and take the necessary steps to immediately come into compliance with GIPA," Feldman Shepherd and Milberg said in a joint statement provided to Law.com. "If not, we will continue to vigorously pursue these important matters on behalf of Illinois employees."

But for now, it's a waiting game for litigators to see how the cases will pan out. The state law is rife with references to federal health care law and complex terms like "genetic monitoring." It could be anyone's game until the courts sort through the technical details, Wieber explained.

"It could end up being that we'll get some cases that will go to summary judgment that will explain more down the line as to what is or is not occurring," he said.

As GIPA cases multiply, it doesn't mean that the similarly acronymed BIPA or other related biometric matters are going anywhere soon. The "low-hanging fruit" in BIPA's fingerprint scan cases have largely been litigated, but there's potential for the statute to be used in cases involving advanced or emerging technology, Wieber said.

Wolfe agreed.

"Face recognition is a complicated area because the technology is used in all kinds of ways—often not to identify an individual, but sometimes just to say that a face is in the frame," Wolfe added.

Wolfe said he is also watching for issues to arise over cookie banners, which are the notifications on websites that ask for consent to collect data. The Shook attorney said there's potential for wiretap violations, but it could also put companies at risk for consumer fraud allegations.

"It's important for companies to watch for and make sure that the cookie banners are buttoned down and audited for new things that are added to the website," he said. "You want to be accurately disclosing what you're doing."

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Latest

Trending

'We're in a dark space,' US judge says on rising threats

 [reuters.com/legal/were-dark-space-us-judge-says-rising-threats-2025-03-06](https://www.reuters.com/legal/were-dark-space-us-judge-says-rising-threats-2025-03-06)

Luc Cohen

The federal court building at 500 Pearl Street is pictured in the Manhattan borough of New York, August 26, 2014. REUTERS/Carlo Allegri/File Photo Purchase Licensing Rights , opens new tab

Summary

- Judge says threats have gone up 'exponentially'
- Lawyers should not 'add fuel to the fire,' judge says
- Musk, Trump allies ramp up efforts to discredit judges

MIAMI, March 6 (Reuters) - Threats against U.S. judges are rising and lawyers should do more to push back against heated rhetoric, four federal judges said in a panel discussion on Thursday.

Speaking at an American Bar Association meeting on white collar crime in Miami, U.S. District Judge Richard Boulware of Las Vegas federal court said threats against the judiciary had gone up "exponentially."

"We're in a dark space, and we have to stop pretending like we're not in that space," Boulware said to applause from the audience of mostly white collar defense lawyers.

U.S. Marshals have warned federal judges of unusually high threat levels as tech billionaire Elon Musk and other allies of President Donald Trump ramp up efforts to discredit judges who stand in the way of White House efforts to slash federal jobs and programs, Reuters reported exclusively earlier this week, citing several judges with knowledge of the warnings. Republican lawmakers also have moved to impeach judges who have ruled against Trump's policies, though it would take a two-thirds majority in the Senate to remove a judge from office - a likely insurmountable barrier.

Among the judges targeted for impeachment are U.S. District Judge Paul Engelmayer in Manhattan, who in February blocked Musk's team from accessing U.S. Treasury Department systems responsible for trillions of dollars in payments. Engelmayer's decision prompted a wave of social media criticism by Musk and other Trump allies.

"It became the subject of high-level Twitter, X discussion to a point where he and his family started receiving really disturbing communications, some at the level of threatening," another federal judge in Manhattan, Paul Oetken, told the audience. "That's really troubling."

Boulware said judges do not always disclose the threats they receive to lawyers in their cases, but that they were an "almost regular occurrence." Neither he nor the other judges on the panel provided statistics on threats.

The judges said the proper method for lawyers who disagreed with their decisions was to appeal. They said lawyers' questioning in public of judges' motives undermined trust in the judiciary and contributed to the rise in threats.

"We can handle criticism. It's the type of criticism. If it's done in a way that subjects us to harm, that's problematic," said Darrin Gayles, a federal judge in Miami. "The kinds of attacks from lawyers who should know better now, it adds fuel to the fire."

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Reporting by Luc Cohen in Miami; Editing by Noeleen Walder and Daniel Wallis

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Trump Law Firm Attacks Inflict Pain, Even on Shaky Legal Ground

- Perkins Coie has several clients with federal contracts
- Trump wants contractors to disclose ties to firm

Perkins Coie risks losing clients over President Donald Trump's threat to terminate federal contracts for companies doing business with the law firm.

Boeing Co., T-Mobile USA Inc., and Microsoft Corp. are among Perkins Coie clients with extensive federal contracts. The firm last year represented Booz Allen Hamilton Holding Corp. and KBR Services LLC when competitors challenged those companies' contracts with the military, according to Government Accountability Office dockets.

Trump signed an executive order last week requiring those companies and other Perkins Coie clients to disclose their ties to the firm. The order also authorizes federal agencies to tear up contracts with the companies.

"When you are inhibiting a firm's ability to advise their clients, it's going to have a significant impact," Cari Brunelle, co-founder of legal industry advisory firm Baretz + Brunelle, said.

Trump said he issued the order, which also suspends Perkins Coie's security clearances and bars the firm's personnel from entering federal buildings, because the firm was involved in "weaponization against a political opponent" during the 2016 presidential campaign. Perkins Coie lawyers advised Hillary Clinton and retained Washington firm Fusion GPS for research that resulted in the so-called Steele dossier, which alleged Trump's campaign coordinated with Russian government officials.

The move marked Trump's second direct attack on a Big Law firm in slightly more than a week. The president signed a memo Feb. 25 directing agencies to suspend security clearances for Covington & Burling employees who assisted Jack Smith, a former prosecutor who brought two criminal cases against Trump.

Representatives of Perkins Coie and Covington & Burling didn't respond to requests for comment.

The Perkins Coie order requires “government contractors to disclose any business they do” with the law firm and authorizes federal agencies to terminate any contract “for which Perkins Coie has been hired to perform any service.” The order is subject to existing law.

The order is “clearly very punitive” for Perkins Coie, said Walter Olson, a fellow at the Cato Institute. “If they are a pariah status, it will very likely be a weaker sector of lawyers handling government contracts, which is what many people in the administration want.”

The law firms will suffer from the president’s actions more than any of their clients, said Stephen Gillers, a professor emeritus at NYU Law School. “The client can go to another law firm,” Gillers said, “but the law firm is now excluded. It’s a multiplier effect for the firm.”

‘Blackball’ Effort

Perkins Coie plans to challenge the “patently unlawful” order, the firm said in a March 6 statement. It will have a strong case against the “arbitrary and capricious” directive, said Bruce Green, a legal ethics professor at Fordham Law School.

“This violates those parties’ right to legal assistance from lawyers of their choosing as well as to a fair opportunity to contract with the government,” Green said. The order also violates the firm’s due process rights, according to Green.

Larry Lorber, an attorney at Seyfarth Shaw, said the call for contractors to disclose work with the law firm also raises issues about attorney-client privilege. There is no legal authority for contractors to disclose work with Perkins Coie, and the order alone doesn’t establish one, said Lorber, a former director of the Labor Department’s Office of Federal Contract Compliance Programs.

Still, the orders can inflict damage. James Nagle, a lawyer Smith, Currie & Hancock, said he’d advise clients seeking representation outside his firm to steer clear of Perkins Coie until the dust settles.

Firms are analyzing new matters from clients for potentially explosive political ramifications, according to Brunelle.

“Many law firms are instituting new procedures for examining new matters and looking at them through a new lens,” she said. “Is there any potential risk for taking on this new matter or taking on a new client?”

The order appears to be “trying to blackball” Perkins Coie, said David Lopez, a Rutgers Law School professor and former general counsel at the Equal Employment Opportunity Commission. The order reads like “anti-DEI theater” mixed with a “specific political payback,” he said.

The New York City Bar Association issued a statement Feb. 27 that “denounces in the strongest possible terms” the president’s order against Covington. The order is intended to discourage firms from representing clients whose interests are not aligned with the administration, the group said.

“While the order purports to investigate and combat the weaponization of the judicial process, the irony is that it makes a mockery of that same process,” said the association, which declined a request for further comment.

— With reporting by Isabel Gottlieb

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Trump's orders targeting law firms raise constitutional concerns, experts say

 [reuters.com/world/us/trumps-orders-targeting-law-firms-raise-constitutional-concerns-experts-say-2025-03-08](https://www.reuters.com/world/us/trumps-orders-targeting-law-firms-raise-constitutional-concerns-experts-say-2025-03-08)

Mike Scarcella

U.S. President Donald Trump sits in the Oval Office of the White House in Washington, D.C., U.S., March 7, 2025. [Purchase Licensing Rights ↗](#), opens new tab

- Trump targeted law firms Perkins Coie, Covington & Burling
- Perkins Coie represented 2016 Trump rival Hillary Clinton
- Covington & Burling represents Trump cases prosecutor Jack Smith

WASHINGTON, March 8 (Reuters) - President Donald Trump's executive orders terminating security clearances and taking other actions against two prominent law firms may violate constitutional protections and represent exceptional acts of retribution against lawyers who have crossed him in the past, according to legal experts.

The two firms targeted by the Republican president have represented Trump adversaries. Perkins Coie represented the campaign of 2016 Democratic presidential nominee Hillary Clinton, who Trump defeated in his first presidential run. Covington & Burling currently represents Jack Smith, the special counsel appointed during Democratic former President Joe Biden's administration who brought criminal charges against Trump in two cases.

Legal experts interviewed by Reuters said the manner in which Trump targeted the firms could run afoul of the U.S. Constitution's First Amendment protections against government abridgment of speech and Fifth Amendment guarantee of due process - a requirement for the government to use a fair legal process.

Trump on Thursday directed Attorney General Pam Bondi, Director of National Intelligence Tulsi Gabbard and all U.S. agency chiefs to restrict access by lawyers at Perkins Coie, a firm founded in Seattle, to federal buildings and end their security clearances.

In his separate executive orders concerning the firms, Trump ordered reviews intended to end contracts they currently hold with various federal agencies. Trump also initiated a review intended to end the government contracts of Perkins Coie clients.

Trump's February 25 executive order targeting Washington, D.C.-based Covington revoked security clearances for two lawyers who advised Smith rather than the clearances for all the firm's attorneys.

Security clearances give individuals access to classified information. The U.S. government has broad authority to grant and rescind such clearances and to control federal contracts for reasons of economic policy, according to legal experts.

To comply with the Constitution's due process mandate, the order against Perkins Coie would have needed to give the firm notice and opportunity to challenge the claims, according to University of Toledo College of Law professor Evan Zoldan.

Trump's order accused Perkins Coie of "dishonest and dangerous activity." It said Perkins Coie "racially discriminates" in its hiring - referring to the firm's efforts toward hiring a diverse workforce in terms of race and other traits. Trump and his allies have portrayed such policies as discriminatory against white people. The order also criticized the firm's work representing Clinton's campaign.

In addition, the order called on government officials to investigate more "large, influential or industry leading law firms" over their compliance with laws against racial discrimination, another reference to diversity policies.

Perkins Coie in a statement said Trump's order is "patently unlawful, and we intend to challenge it."

"For more than 100 years, Covington has represented clients facing government investigations, consistent with the best traditions of the legal profession," Covington said in a February 25 statement.

"We recently agreed to represent Jack Smith when it became apparent that he would become a subject of a government investigation," Covington added.

Smith oversaw two federal cases against Trump - one involving his efforts to overturn his 2020 election loss and the other involving sensitive government documents he kept after leaving office in 2021. Trump pleaded not guilty in both. Neither went to trial.

Trump has called Smith "deranged" and has accused him of taking part in a politically motivated "witch hunt." Trump faced criminal charges in two other cases as well. In the only one of the four criminal cases to go to trial, Trump was convicted in New York state court last year of 34 felony charges involving hush money paid to a porn star. Trump has vowed to hold "accountable" the officials responsible for the criminal cases.

'HARD TO SEE'

University of Colorado Law School professor Maryam Jamshidi said challenging the termination of security clearances is legally difficult, but that it is "hard to see what constitutional authority would authorize" restricting Perkins Coie's government contracting work.

Zoldan said Trump's allegations against Perkins Coie could damage the firm in a way that the Supreme Court has ruled requires "some official proceeding to allow the person impugned to challenge these accusations."

White House spokesperson Harrison Fields said on Friday that Trump "is fulfilling his commitment to end the weaponization of government and protect the nation from partisan actors who exploit their influence."

Federal databases show that Perkins Coie and Covington have held contracts with various federal agencies and currently represent companies that contract with federal agencies.

Perkins Coie's federal contracting clients have included Microsoft (MSFT.O) [↗](#), opens new tab, Northrop Grumman (NOC.N) [↗](#), opens new tab and Boeing (BA.N) [↗](#), opens new tab, according to its website, and it advertises that it has security clearances that allow it to represent companies with sensitive government business.

Microsoft declined to comment. The other companies did not immediately respond to requests for comment.

'PIECE OF THEIR LIVELIHOOD'

University of Pennsylvania law school professor Claire Finkelstein said the reliance of lawyers on security clearances to access information and serve clients can be considered a part of their practice of law.

"By removing these security clearances, they have removed a piece of their livelihood, and they've done that without due process of law," Finkelstein said.

Stanford Law School professor Mark Lemley said Trump's targeting of Covington and Perkins Coie based on clients they represented raises concerns under the First Amendment's free speech protections, calling it a potential example of "blatant viewpoint discrimination."

Legal scholars said that any legal challenge against the orders could be messy and protracted, especially given their unusual nature. They said they could not cite other examples of a U.S. president taking official action against a law firm over its representation of a client.

Trump "swore up and down that he'd seek 'retribution' against his political opponents," said UCLA School of Law professor Jon Michaels, adding that the president's actions show disregard for the rule of law.

Covington and Perkins Coie are among nearly a dozen major U.S. law firms representing clients in lawsuits against the Trump administration, challenging policies related to

immigration, federal spending cuts and other issues.

Government records show that some other firms involved in the lawsuits also have been federal contractors, such as Arnold & Porter, Cleary Gottlieb and WilmerHale. Arnold & Porter declined to comment and the other two firms did not immediately respond to requests for comment.

Groups advocating for the interest of lawyers said this week that Trump's actions could deter law firms from taking clients whose interests conflict with his.

American Bar Association President William Bay said in a statement that clients have a right to access lawyers without government interference.

"The government has decided to punish two prominent law firms because they represent parties that the administration does not like," Bay said.

(This story has been refiled to add the full name of the law firm in paragraph 2)

Reporting by Mike Scarcella in Washington; Editing by Will Dunham and David Bario

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Trump's Bribery-Law Order Starts Upending Criminal Cases (1)

- Prosecutors seek delay in one case as trial set to start
- Lawyer says client stuck in 'limbo' amid DOJ 'uncertainty'

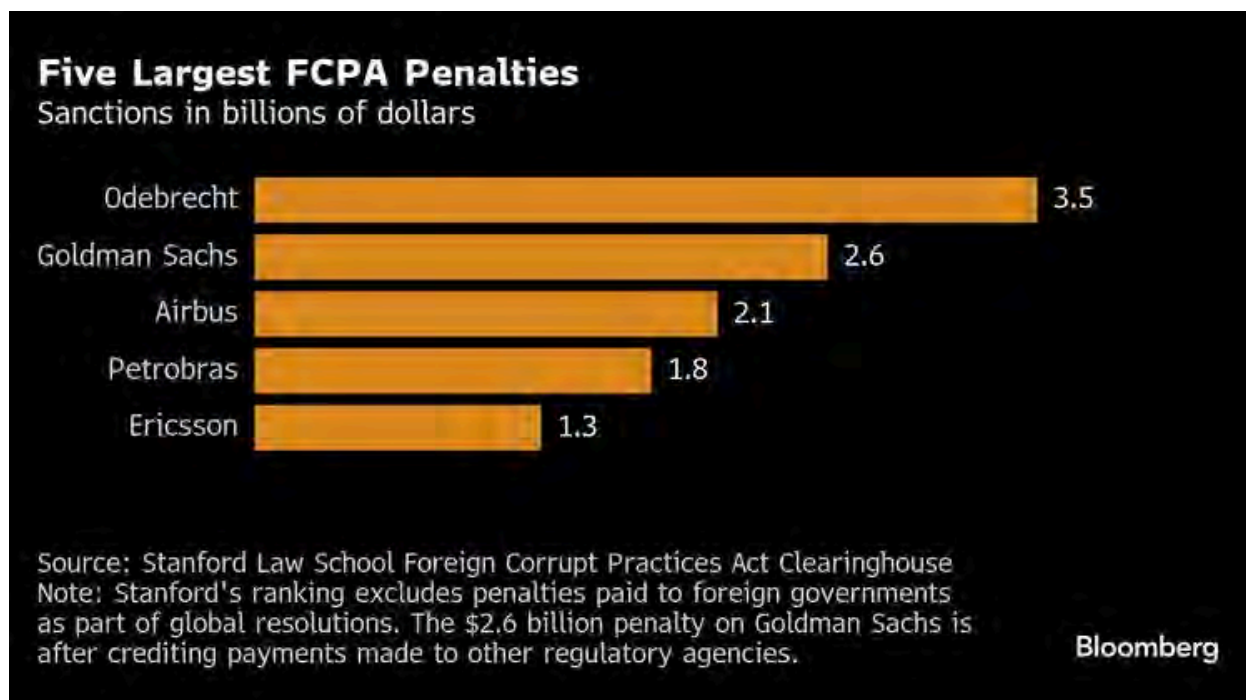
A federal trial in New Jersey shows how President Donald Trump's move to curtail enforcement of a bedrock bribery law can upend criminal prosecutions.

As recently as Feb. 21, US prosecutors said they had received government approval to take the case against a pair of former Cognizant Technology Solutions Corp. executives to trial this week. But a new interim US Attorney scuttled those plans at the last minute.

"I appreciate the inconvenience this may cause," interim US Attorney John Giordano wrote in a court filing Tuesday, the day after he was sworn in. "Nevertheless I submit this request to allow sufficient time for my consideration of the application of the President's Feb. 10, 2025, executive order."

The case is among several affected by Trump's executive order last month calling for a pause to enforcement of an anti-bribery law that the president says hinders American companies trying to do business in other countries. His order augurs a dramatic shift on decades of US policy that had led to hefty penalties against blue-chip companies, including Goldman Sachs Group Inc., Airbus SE and Siemens AG.

Giordano's "letter is a very loud, powerful signal in the direction that it is not going to be business as usual" for FCPA enforcement, said Michael Donnelly, a professor of law at Temple University.



During the first Trump Administration, former Cognizant Technology executives Gordon Coburn and Steven Schwartz were charged with approving a \$2 million payoff to secure a construction permit for a new building in India. The Department of Justice and a lawyer for Coburn declined to comment. A spokesman for Schwartz also declined to comment. Both men have pleaded not guilty.

Situations like the one in New Jersey are emblematic of the uncertainty reverberating through the Department of Justice as career prosecutors try to navigate court deadlines in the face of fierce resistance from defense attorneys that are seizing on the executive order to get their cases delayed, if not ultimately thrown out.

The FCPA, which was enacted in 1977, bars a company or person with US links to pay or offer gifts to foreign officials as a way to win business overseas. More than 40 other countries have adopted similar regulations. While Trump criticized the law during his first term, the DOJ still filed dozens of cases between 2017 and 2021.

Some career prosecutors were blindsided by a February memo by Attorney General Pam Bondi instructing staff to shift focus away from foreign bribery cases that aren't connected to facilitating cartels and transnational criminal organizations, according to people familiar. Trump then issued an executive order calling for a pause to FCPA enforcement while Bondi conducted a review.

Multiple lawyers attending the American Bar Association's White Collar Crime conference in Miami this week complained that it was difficult to get clarity on FCPA enforcement because DOJ officials had pulled out of the event.

Trump's directive led defense lawyers to call for their clients' cases to be delayed while Bondi undertook the review.

'Limbo'

In at least two other cases, prosecutors said at hearings that they were preparing to go to trial even while a review was underway. That's triggered a backlash from defense attorneys who argue their cases shouldn't go to trial for at least 180 days, which is the time Bondi has to conduct the review, with the option for an extension.

One lawyer said his client, who is charged with with engaging in a bribery scheme to secure coal contracts in Egypt, was stuck in "limbo" caused by the "uncertainty" at the Justice Department. James Price, who represents Charles Hunter Hobson, was able to push back an April trial date by at least six months, in part, by heavily citing the changes in the Cognizant Technology case.

"The lawyers of record are no longer the decision makers," Price said at a hearing Thursday as he rebuffed prosecutors' assurances that the case would be ready for trial in April. "There is no reason not to believe that what happened" in New Jersey "is exactly what is going to happen in this case."

A similar situation is playing out in a bribery case against Carl Zaglin, the owner of a Georgia-based manufacturer, who was charged with two other men for participating in an alleged scheme to pay bribes to secure contracts for providing uniforms to the Honduran National Police.

'Heartland of Cases'

"The last thing that anybody wants, I think, would be for a trial of this case to take place that would fall into what the Attorney General would find to be the heartland of cases that shouldn't go forward," Craig Gillen, a defense lawyer for Zaglin, said at a Feb. 18 hearing in Florida. The parties have for now agreed to push the trial back by three weeks to late April.

While these cases don't involve household names, they, could be harbingers of what will happen to more high-profile defendants including one against Asante Berko, an ex-Goldman banker who was charged with orchestrating bribes to Ghanaian officials while working at the investment bank. No trial date has been set.

"We need to look at how other cases develop," Donnella, the Temple law professor, said.

(Adds detail on law conference in 10th paragraph)

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Securities Law

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Matt Levine's Money Stuff: Arbs Want to Appraise Endeavor Opinion

Endeavor

Here's how a merger works. Some public company is trading at \$20 per share. Another company wants to buy it. The buyer goes to the target company's board of directors and offers to pay, say, \$28 per share in cash for all of the target's shares. The target's board thinks about it and decides that this is pretty good: \$28 is a good result for shareholders, and a 40% premium to the price today. So the board says yes, and the buyer and the target sign a merger agreement.

Then the target's shareholders get to vote on the deal. This is ordinarily just a majority vote : If 51% of the shares vote in favor of the deal and 49% vote against, the deal passes. And a merger is binding on all of the shareholders. If you think that the company is actually worth \$40 per share and you don't want to sell at \$28, you can vote against the deal, but if a majority of the shares vote in favor then the merger will close and everyone's shares – including yours – will automatically be sold to the buyer for \$28.

You might dislike this. You might dislike it for the simple reason that you think the company is worth more than \$28, but you might also have concerns about fairness. There might be conflicts of interest in the deal: The buyer might have teamed up with the chief executive officer or a controlling shareholder of the company to make its bid, or the buyer might be the CEO or controlling shareholder, and you might worry that the board gave the buyer a sweetheart deal rather than trying to maximize value for shareholders.

And so Delaware law gives you a safety valve. If you don't like the deal price, you can demand "appraisal": You can go to court and say "they sold my shares for \$28, but really they're worth \$40, and that's unfair." And if a judge agrees with you, she can make the buyer pay you \$40 instead of \$28. (Only the shareholders who demanded appraisal get the \$40, though; everyone else is stuck with the \$28. She will also make the buyer pay you *interest* on the extra money, at an oddly high statutory rate, which makes this an even better deal for you.) But you put yourself entirely in the hands of the judge: If she agrees with you that the company is worth \$40, you get \$40; if she agrees with the buyer that it's worth \$28, you get \$28; if she thinks "actually this company is only worth \$15 per share," then you get only \$15 and wish that you had taken the \$28.

A very stylized history of appraisal is that, for a while, "appraisal arbitrage" was a big business: Hedge funds would buy shares of companies that they thought were selling themselves too cheaply, they would demand appraisal, they would make arguments about (1) the unfairness of the deal process and (2) the high intrinsic value of the target company, courts would often award them more money than the deal price (with interest), and they would make a nice living.

But then, around 2017, appraisal arbitrage stopped being so attractive. Courts in Delaware decided that things had gotten out of hand, so:

They started deferring more to deal prices: The assumption is that if a company runs any sort of reasonably competent deal process to sell itself, and the highest bid it gets is for \$28, then the company can't be worth \$40. If the company was worth \$40, someone would have paid \$40.

- They started deferring more to the *unaffected* price of the company. If the company was trading at \$20 per share, and it agreed to a merger at \$28 per share, that suggests that the company probably isn't worth *more* than \$28, but it doesn't prove that it's worth \$28, either. The buyer might be overpaying. Or it might be paying for synergies – benefits from combining the target's business with the buyer's – which are not part of the value of the target and so can't be awarded in appraisal. The buyer can now argue in court "actually this company is worth \$20, as you can tell because *that was its stock price*, and we paid \$28 because of generosity and overconfidence and synergies." And the court will give the shareholders \$20, not \$28.

Notice that these are both essentially efficient-markets arguments: Courts started saying "look, the stock market is good evidence of actual value, and a public merger process is good evidence of actual value, and both of them are better than our guess at value, so we're going to rely more on markets to figure out the value."

In the golden age of appraisal arbitrage, you could sue for appraisal and (1) probably get paid more than the merger price and (2) almost certainly not get paid *less*. In the new, post-2017 age, if you sue for appraisal you (1) probably don't get paid more than the deal price and (2) have a real risk of getting paid less. In recent cases, shareholders have more often gotten less than the deal price than more.

So appraisal became considerably less attractive as a strategy. If you look at the deal price for a company and build your own discounted cash flow model and conclude that, on reasonable assumptions, the company is actually worth \$40, you won't bother: A court is just not that likely to defer to your discounted cash flow model, but will instead consider more objective facts like "the stock was trading at \$20 before the deal was announced" and "the best deal the board could get was for \$28." Your spreadsheet with "\$40" at the bottom can't compete.

But appraisal still exists, and there are still cases, and sometimes they pay out. Sometimes the deal process is so conflicted, and the shareholder's discounted cash flow model is so compelling, that the court decides the deal price is wrong and gives the shareholder \$40.

And there are circumstances where the shareholder might have more than a discounted cash flow model to offer. What if the company has \$1 billion worth of Bitcoin, and is selling itself for \$500 million? You can go to court and say "no there's literally \$1 billion of stuff there, it can't possibly be worth only \$500 million." And the court might agree with you, on efficient-markets grounds.

One technical point here. Generally the way mergers work is that the deal price – \$28 per share in my examples – is set when the merger agreement is *signed*, when the target's board agrees on the deal with the buyer. But normally the merger doesn't *close* for months after that: The target's shareholders get to vote, the buyer might have to line up financing, you need to get antitrust approvals, etc., before the buyer actually pays for the shares and gets the company. Appraisal value, though, is measured at a *closing*. It can change. What if the company has \$10 per share worth of Bitcoin at signing, but by closing those Bitcoins are worth \$30 per share? Well then, if the deal price is \$28, you've got a good appraisal case.

In theory you could imagine manipulating that. If the target owns a lot of Bitcoin, and you own a lot of target shares, you could go out and buy Bitcoin to push up its price before closing, which would also push up the value of the target shares and make you more likely to win your appraisal case. In practice this seems hard: Bitcoin is quite big and liquid, and you'd surely spend more to manipulate Bitcoin than you would make on the appraisal. To make this work, you'd need the target company to own a lot of an asset that (1) has a public market price that you can point to in court as objective evidence of value but (2) is not particularly liquid, so you can manipulate it.

Endeavor Group Holdings Inc. is a public company that grew out of Ari Emanuel's talent agency. It did a series of deals – adding William Morris Agency, IMG Worldwide and Ultimate Fighting Championship (UFC) over the years – with investment from Silver Lake, the private equity firm, which owned 68% of Endeavor by the time it went public in 2021. (It currently owns 74.4% of the total voting power.)

In 2023, UFC agreed to a merger with World Wrestling Entertainment, which resulted in the combined UFC/WWE company becoming part of a new separate publicly traded business, TKO Group Holdings Inc. Endeavor owns about 53.9% of TKO.

Later in 2023, Endeavor announced that it was exploring strategic alternatives, and Silver Lake expressed an interest in taking Endeavor private, buying the shares that it did not already own. Endeavor formed a special committee of independent directors to negotiate a deal with Silver Lake. In April 2024, they agreed on a deal in which Silver Lake would buy out the minority shareholders of Endeavor for \$27.50 per share, about a \$13 billion equity value, "representing a 55% premium to the unaffected share price of \$17.72 per share at market close on October 25, 2023, the last full trading day prior to Endeavor's announcement of its review of strategic alternatives."

There were various conditions to the deal, and it is scheduled to close in two weeks, on March 24, 2025. The shareholder vote was a formality: Silver Lake controls 74.4% of the voting power of Endeavor's stock, so it just consented to the deal and that took care of the shareholder vote. Some going-private mergers are conditioned on a vote of the minority shareholders, but this one wasn't: Silver Lake had full power to approve the deal and cash out the minority shareholders. They got an information statement explaining the deal, but they weren't asked to vote.

You could imagine how the minority shareholders might be annoyed: No one asked them for their opinion, but now they're being cashed out of the stock at a price agreed between the board and the controlling shareholder. It's the sort of situation that appraisal rights were made for. On the other hand, \$27.50 is a 55% premium to the pre-deal-discussions trading price of the stock, so maybe it's fine.

You can get a sense of how much *Endeavor* thought it was worth when its board approved the deal. Because it is a going-private transaction, Endeavor had to file all of the valuation materials it got from its financial adviser, Centerview Partners. Here is the final fairness deck that Centerview delivered to the special committee on April 2, the day it approved the merger. The “football field” chart on page 4 – where the bankers lay out various valuation methodologies and compare their results to Silver Lake’s bid – is not the most exciting one I have ever seen; two of the four valuation methodologies – based on analyst price targets and discounted cash flow analysis – produce ranges of valuations (\$28 to \$36 and \$27.58 to \$36.23) that are all above Silver Lake’s \$27.50 bid. But the deal price was above Endeavor’s 52-week trading range (\$17.67 to \$25.88 per share), and it was within the range of values that Centerview got from its comparable public companies analysis (\$22.44 to \$30.89).

All in all, Centerview gave an opinion that the deal was fair to the minority shareholders, and the board approved it. Roughly speaking, Centerview’s various analyses attribute about \$3.8 billion to \$5.2 billion of value to Endeavor’s own business, and about \$5.2 billion to \$9.4 billion of value to its then-51% stake in TKO. Centerview valued TKO from scratch, as it were, doing its own work to figure out how much TKO was worth, and then attributing 51% of that value to Endeavor. But you could check that work: TKO is a public company, and it has a market value. At the time, TKO was trading at about \$86.18 per share, for a total market capitalization of \$14.8 billion. Half of that is \$7.4 billion, so Centerview’s valuation – \$5.2 billion to \$9.4 billion – was in line with the market’s.

That was a year ago. This past Friday, TKO closed at \$143.73 per share, for a total market capitalization of \$28.4 billion. Half of that is \$14.2 billion, or a bit more than Silver Lake is paying for *all* of Endeavor. By taking Endeavor private, Silver Lake will get its equity stake in TKO at a discount to TKO’s current market price, and will get the rest of Endeavor – worth say \$4 billion or so – for free.

Ehh that’s awkward. Bloomberg’s Yiqin Shen reported last week :

A faceoff is unfolding between Silver Lake Management and event-driven hedge funds over the private equity firm’s bid for Endeavor Group Holdings Inc., the Beverly Hills talent agency backing the WWE and UFC – and the winner may be decided in court.

On the one side is Silver Lake, which announced an agreement in April to buy out Endeavor’s minority investors at \$27.50 a share. It already has a 71% voting stake in the talent shop led by superagent Ari Emanuel, and its involvement with Endeavor stretches back more than a decade.

On the other side are sophisticated traders at firms including Westchester Capital Management, who have piled into Endeavor stock in a bet they’ll get an even higher deal payoff – pushing the share price past the buyout offer. Their rationale has to do with Endeavor’s controlling interest in TKO Group Holdings, the parent of the popular wrestling and mixed martial-arts leagues, which has surged more than 70% since Silver Lake announced its bid.

By traders' logic, the rally in TKO's shares means Endeavor is worth more, and so that justifies a sweetened offer. But on Monday, Silver Lake stated it would close the deal on current terms this month. It also criticized hedge funds that have speculated on the deal, accusing them of causing "an artificial increase in the stock price." ...

Silver Lake's move this week "strikes us as a scare tactic to try to shake out weak or unsophisticated holders," said Roy Behren, co-chief investment officer at Westchester Capital Management, which runs the \$2.3 billion Merger Fund. "We are prepared to exercise our appraisal rights on behalf of our investors, and to pursue this as long as it takes, given how blatantly unfair the deal price is to minority shareholders."

From Silver Lake's press release:

It has been reported in the press that large blocks of shareholders have arbitrated the deal in order to demand appraisal. Silver Lake believes that the pervasive trading by these hedge funds, many of whom accumulated substantial positions in the stock of Endeavor (and presumably also its public subsidiary, TKO Group Holdings, Inc. (NYSE: TKO)) only after the deal was announced, has caused an artificial increase in the stock price. Appraisal entitles dissenters to the fair value of their Endeavor shares, not to amounts attributable to artificial inflation through arbitrage activity.

Here are, roughly, the two competing positions.

1. The appraisal arbitrageurs say: Look, okay, it's hard to win an appraisal case. Markets are efficient, and the market price of a stock is generally the best evidence of its value. If we tell you that Endeavor is worth more than \$13 billion, you might not believe us. But the market price of *just Endeavor's TKO stock* is more than \$13 billion: TKO trades publicly, it has a market price, and that market price tells you that Silver Lake is underpaying. So we want more money.

- 2. Silver Lake says: No, that TKO price is fake; the arbs have bid up the stock to try to get more money out of us, and we're not paying.

I don't know. TKO's stock trades more than \$100 million per day; it's not that easy to manipulate. (Amusingly it is joining the S&P 500 index on March 24, the closing date for the merger, which might further push up the price.) Also Endeavor was *buying* TKO stock last month, at prices even higher than today's price, which argues against it being an "artificial increase."

Appraisal can take a long time, and Silver Lake seems to be willing to wait out the arbitrageurs, saying that it "hereby advises all dissenters that it does not intend to pay them any merger consideration at closing – nor at any time until there is full resolution with respect to such appraisal claims – consistent with its rights under Delaware law." (Buyers often pay dissenting shareholders the merger price at closing, to save on interest expense over the appraisal proceeding; Silver Lake won't do that, to make it more difficult to finance an appraisal position.)

But you see why shareholders want appraisal. Usually, appraisal arbitrageurs argue that the market is wrong and the company's intrinsic value is not reflected in its market price, and in modern cases judges are reluctant to accept those arguments. But here the appraisal arbitrageurs want to get the market value, and the buyer is the one saying "no, the market price is wrong."

Beacon

Elsewhere in mergers and acquisitions. Often the way a hostile takeover works is that a bidder offers to buy a company for cash, and the company says "no, that price is outrageously unfair to our shareholders," and maybe even gets an opinion from its investment bank saying that the bid is inadequate. Generally the target company wants, or at least implies that it wants, much more money. But the bidder does not want to pay much more money. Eventually a deal is reached, where the bidder offers a little more money and the target says "ugh okay fine." And then it gets an opinion from its investment bank saying that the deal is fair, and puts out a statement saying "we are pleased to have achieved full value for our shareholders." And if the original offer and the final price are very close to each other, it's all a little awkward, but everyone gets through it. You don't always get everything you want in a negotiation.

QXO Inc. has been trying to buy Beacon Roofing Supply Inc. for a while, but Beacon has rebuffed its advances, and in January QXO launched a tender offer to buy Beacon for \$124.25 per share. Beacon's board and management have consistently told shareholders to reject the offer. Last week Beacon put out a press release calling QXO's offer "an opportunistic attempt to take advantage of the current macro environment and acquire Beacon at a discount to its intrinsic value for the benefit of QXO but the detriment of Beacon's shareholders" and saying that "the vast majority of Beacon shareholders are underwhelmed by QXO's first and only offer" and that "the Offer significantly undervalues the Company and its prospects for growth and value creation." Standard stuff.

Here's a joint press release that QXO and Beacon put out today:

QXO, Inc. (NYSE: QXO) and Beacon Roofing Supply, Inc. (Nasdaq: BECN) confirmed today that they are in discussions about a potential combination in which QXO would acquire Beacon for \$124.35 per share in cash, or total consideration of approximately \$11 billion.

They got an extra 10 cents a share! It's something.

Walnut Buffett

Last year, Super Micro Computer Inc. [had a rough patch](#). Hindenburg Research put out a report alleging that Super Micro was doing assorted accounting and sanctions badness, its auditor resigned, and there were reports of government inquiries into its accounting. This hasn't really gone anywhere yet – the company hired a new auditor and said it found no evidence of fraud – but the stock did drop a lot. And my core thesis around here is that "everything is securities fraud": If you are a public company and your auditor quits and your stock drops, you will be sued for securities fraud, whether or not anyone finds any proof of any accounting problems.

So Super Micro was duly sued for fraud by shareholders who lost money when the stock dropped. The way these cases work is that the *biggest* shareholder who wants in on the lawsuit often gets to lead the lawsuit; often that's a public pension fund. Here it's ... a walnut company? This is weird:

According to court filings, [Crain Walnut Shelling] quickly amassed a \$144 million stake in Super Micro stock and claims to have lost \$49 million after a report written by an investment research firm accused the tech company last year of accounting manipulation, misleading investors and exporting banned components to Russia – allegations that sent stock prices tumbling. ...

[Judge Edward] Davila considered Thursday whether the walnut company should serve as the lead plaintiff in a putative federal securities class action lawsuit filed against the tech manufacturer in the wake of the investment firm's report. ...

"Whether or not pouring this much money this quickly into a single stock is unusual for large institutional investors, it raises eyebrows when a walnut company does so," Davila wrote in court documents. ...

The nut company's founder Charles R. Crain, Jr. told the court that he uses Crain Walnut to make investments and generate returns, a structure that Davila noted in his order "only further begs the question why Mr. Crain would choose an entity actively operating in the walnut market to also serve as his investment vehicle."

While much of the documentation that Crain Walnut provided about its business was not made public, its attorneys said in court filings that its financials negated "any question about its solvency" and noted that its multi-million dollar investments in Super Micro were "not even its largest holding." The attorneys argued that these investments were not unusual, noting that the nut company has a "large, diversified stock portfolio" and "derives a substantial portion of its revenue from investments of surplus cash generated by walnut sales."

I need to get into the walnut business? I guess if you start a walnut company, and you sell a lot of walnuts at high prices, so that you end up with ... many hundreds of millions of dollars of excess cash, you will want to invest that cash in the stock market. At this point, you are probably pretty smart and self-confident and a good businessperson, so you might want to pick the stocks yourself. You might, as a matter of business formalities and general tidy-mindedness, take the cash out of the walnut company and put it into a *separate* investment vehicle – you know, pay yourself a big walnut dividend, put the cash into a new legal entity formed to make investments, etc. But if you own the walnut company anyway, you might not bother with that. "Now this is my walnut and investing company," you might reasonably think. Who cares; it's your money, and your company.

The judge is perplexed by it but I guess it's not *that* weird. Berkshire Hathaway Inc., as we have [discussed recently](#), was a random textile company that moved on to better things (being Warren Buffett's stock investing vehicle). Maybe Crain Walnut Shelling is on the same path. Not that Warren Buffett would necessarily have bought Super Micro but you know what I mean.

The Line

Imagine if this wasn't the case:

Behind Neom's problems: a dance of mutual delusion in which [Saudi Crown Prince Mohammed bin Salman] pushed for fantastical plans—and executives shielded him from the full scope of challenges and costs, according to former employees and a more than 100-page internal audit of the project presented to members of Neom's board last spring and reviewed by The Wall Street Journal.

The audit report, labeled "final draft," found that executives, at times aided by the project's longtime consultants, McKinsey & Co., plugged unrealistically rosy assumptions into Neom's business plan to justify rising cost estimates. The audit found "evidence of deliberate manipulation" of finances by "certain members of management."

Neom is the wildly ambitious multitrillion-dollar Saudi Arabian project to built a gigantic new city in the middle of the desert, "defined by cutting-edge technology and psychedelic architecture." It always seemed fantastical to *me*, but I don't hang out with Mohammed bin Salman. If I worked for him, and he was like "I want the city to consist of two buildings that are each 106 miles long and 1,640 feet high," I'd be like "sounds cool boss." And if he was like "can you accomplish that by 2035" I'd be like "I'll get right on that boss." What is the alternative? "No"? You don't get in that room by saying no to Mohammed bin Salman.

And while Neom always seemed like a wild vanity project to *me*, I suppose if you work on it you have to find a way for the math to work. Making the math work, in this case, means achieving an internal rate of return of about 9%, significantly higher than the standard wild vanity project rate of negative infinity. One of the best-known facts about finance is that you can achieve any IRR that you want, *in a spreadsheet*:

At Trojena, the planned ski resort, a fall 2023 review found that costs had surged by over \$10 billion, according to an internal presentation reviewed by the Journal. That caused the IRR to fall to 7%, below the project's target of around 9%.

To cover the gap, estimates for the rate at an "inventive glamping" site were readjusted to \$704 a night, up from \$216, according to the presentation. A "boutique hiking hotel" room was pegged at \$1,866 a night, up from \$489. The changes helped to push the IRR up to 9.3%.

The audit said Antoni Vives, who oversaw the broad vision at Neom and then ran Sindalah, justified rising costs with higher assumptions on revenue, rather than reassessing them as too expensive. He told colleagues and McKinsey consultants in an email before a key meeting that "we must not proactively mention cost at all."

How much would you pay to stay in a boutique hiking hotel at some point in the indefinite future in an unbuilt city in the Saudi desert? It's not like \$489 is the *right* number. No one was in these meetings because they wanted to build cost-effective profitable glamping sites. They made up the numbers he wanted to hear, he heard the numbers he wanted to hear, everyone played their expected role, what is even the problem.

Things happen

Stock Rout Picks Up Steam With [Recession Warnings](#) Blaring. Donald Trump Jr. Has Big Plans for Monetizing MAGA . Chinese investors privately take stakes in Elon Musk's companies. The Walgreens Billionaire Watching His Empire Come Apart. Lasers, Magnets and the \$40 Billion Fight to Store the World's Data. KPMG to merge dozens of partnerships in overhaul of global structure. "More potential investors have recently expressed interest in investing in the AI star despite concerns over DeepSeek's lack of a clear plan to make money." Thousands of Cat-Eared Robots Are Waiting Tables in Japan's Restaurants.

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- 1. The default statutory requirement is a majority of the shares eligible to vote, but sometimes there are other requirements negotiated into the deal. In particular, if the target company has a controlling shareholder (and particularly if the controlling shareholder is also the buyer), the merger will often be conditioned on a "majority of the minority" vote where a majority of the the non-controlling shareholders also have to approve the deal.
- 2. Most US public companies, still , are incorporated in Delaware, so it's where most of the action is on these things.
- 3. There are also unusually persnickety technical requirements to get appraisal – you need to hold your shares before the merger vote to demand appraisal – and sometimes shareholders mess them up and miss out on appraisal.
- 4. The turning point was Michael Dell's management buyout of Dell Inc., where the Delaware Chancery Court concluded that Dell had underpaid and awarded a big value in appraisal, but then the Delaware Supreme Court reversed , finding that "the market for Dell's shares was actually efficient and, therefore, likely a possible proxy for fair value." After Dell, it became more common for Chancery judges to award the deal price or less .
- 5. Here's a 2023 Cornerstone Research note on "Appraisal Litigation in Delaware: Trends in Petitions and Opinions 2006-2022," noting that "There has been a clear change in trends after Dell in 2016. As shown in Figure 5, between 2006 and 2016, court-awarded premiums averaged 27.2%. However, from 2017 onward, court-awarded premiums have averaged -8.4% ... Since 2017, 17 cases have seen awards, with nine cases having awards below deal price, three cases in which the deal price was accepted as fair value, and five cases with awards above deal price."
- 6. An absurd and unrealistic hypothetical: Companies with Bitcoin stashes tend to trade at huge premiums .

- 7. Much of the background here comes from the "Background of the Mergers" section in Endeavor's information statement.
- 8. Barron's notes: "Another plus for investors is that Silver Lake didn't allow a shareholder vote by public holders in the deal, a step that is considered to be good corporate governance. A favorable vote by public holders helps a company show that a deal price is fair."
- 9. The deck uses codenames; Endeavor is "Everest," Silver Lake is "Sierra" and TKO is "Kilimanjaro."
- 10. Technically Centerview valued the bid at \$27.74, including the \$27.50 merger price plus four \$0.06 dividends between signing and closing, so the bid was just within the DCF range.
- 11. See pages 8 (comparable companies) and 12-14 (DCF) of the fairness deck. Note that Endeavor's stake in TKO has shifted and continues to shift due to other transactions; currently it reports owning as much as 61%.
- 12. That's the closing price on April 1, 2024, the day before the deal was announced.
- 13. This is probably somewhat exaggerated (ignoring taxes) but directionally right.
- 14. Famously inadequacy opinions and fairness opinions are not mutually exclusive, and the same price can be both inadequate and fair, though it is awkward.
- 15. I don't know much about the legal entities here but it might be more tax-efficient to leave the money in the walnut company, no?

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State Street's Lost Mandates Expose Growing Risk in Europe (1)

- Increasing number of European pensions review US relationships
- Climate policies in the US are under attack by GOP lawmakers

Efforts by US asset managers to try to adapt their business to the political reality at home are now alienating some of their clients in Europe.

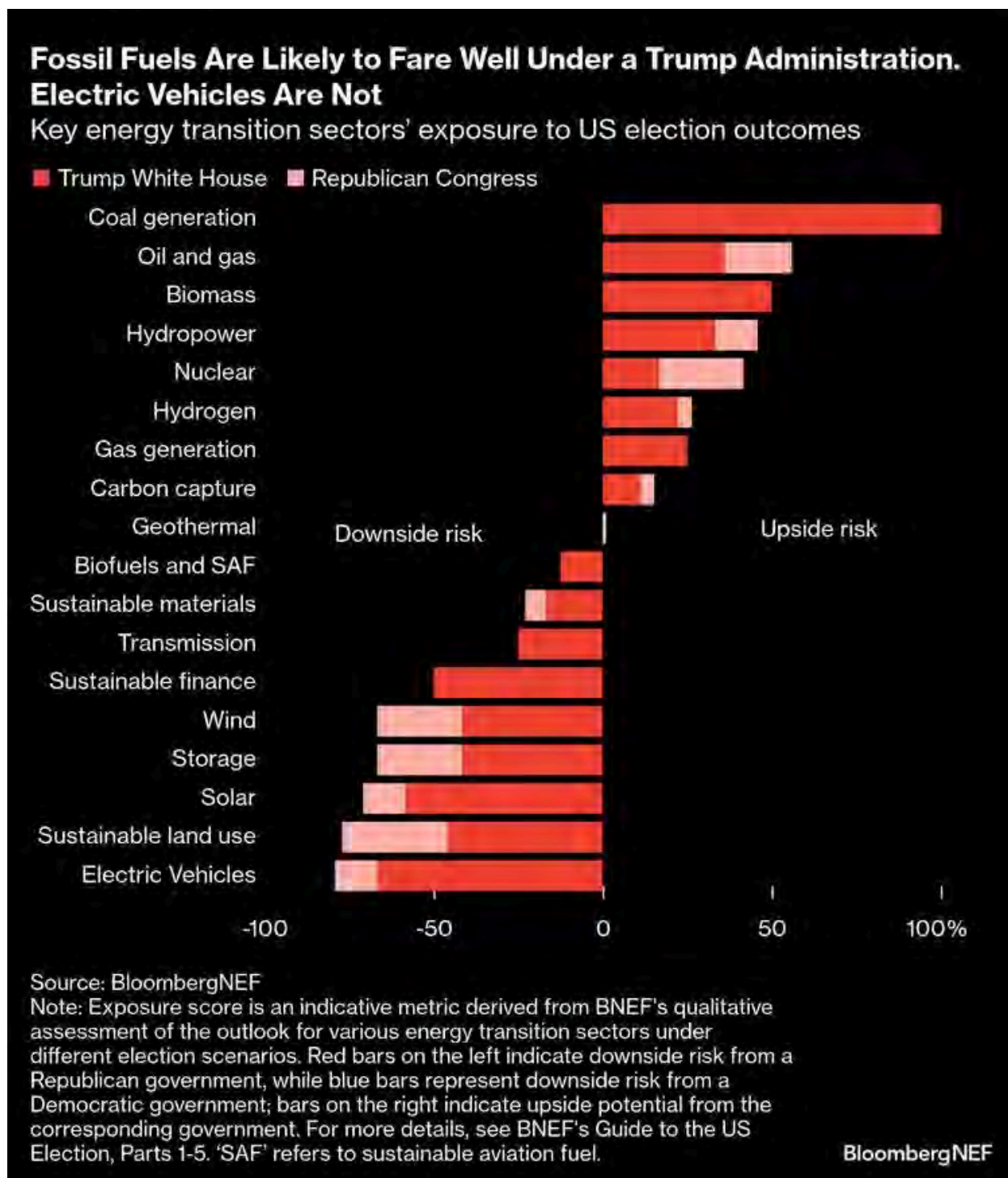
State Street Global Advisors has already lost mandates with pension funds in the UK and Scandinavia. And more Europe-based institutional investors, including PME in the Netherlands, are currently reviewing their relationships with US managers. The trigger, they say, is a trend on the other side of the Atlantic to downplay climate risks.

"We have relatively high standards with regard to sustainability and responsibility in our investing," said **Anders Schelde**, the chief investment officer of Danish pension fund AkademikerPension. He says he's recently informed State Street that he's pulling a mandate worth 3.3 billion kroner (\$480 million).

"Asset managers don't need to think exactly as we do, because these are of course very complex matters and there may be different routes to achieve the same goal," Schelde said in an interview. "But they have to be aligned to some degree with how we think and how we see the world."

AkademikerPension, which oversees total assets of about \$20 billion, is now reviewing its entire equity portfolio and plans to do a lot more in-house than it used to. The fund grades external managers on a scale of A to C, with firms falling to C facing exclusion. AkademikerPension recently downgraded State Street to C, marking the first time one of its external managers had received such a low grade, Schelde said.

"We haven't decided yet what the final new portfolio of external managers will be," Schelde said. "But all things being equal, I think the odds of a US manager getting to our portfolio going forward have become lower."



A spokesperson for State Street, which also recently lost mandates with UK-based the People's Pension, said AkademikerPension's decision to reduce the use of external managers was prompted by an exercise to increase "insourcing capabilities." State Street looks forward to continued discussions with the Danish fund about future opportunities, the spokesperson said.

Asset managers are increasingly having to navigate a world in which their investment strategies have become highly politicized. In the US, the administration of President Donald Trump has demonized the net zero financed-emissions goals that scientists say are needed to limit global warming to the critical threshold of 1.5C. And even before Trump's return to the White House, the Republican Party was attacking climate finance through bans and litigation threats across GOP states.

In response to such threats, a growing number of US asset managers have toned down their climate commitments. State Street, JPMorgan Asset Management, BlackRock Inc. and Pacific Investment Management Co. are among money managers that have backed away from Climate Action 100+, the world's biggest investor group devoted to tackling global warming.

Those moves have raised eyebrows in Europe, where institutional investors still consider climate risk a key parameter in determining allocations. Among those is PME, which has about €60 billion (\$65 billion) of assets. It's now reviewing its relationship with BlackRock.

PME has "concerns about BlackRock's diminishing ambitions and efforts in responsible and sustainable investing, such as halting support for ESG resolutions and weakening climate ambitions," according to an internal document seen by Bloomberg.

The document also explicitly refers to BlackRock's decision to withdraw its "main entity" from CA100+ as being "contrary" to PME's own climate goals. BlackRock last year transferred its membership in Climate Action 100+ to its international unit, which represents clients in Europe and Asia.

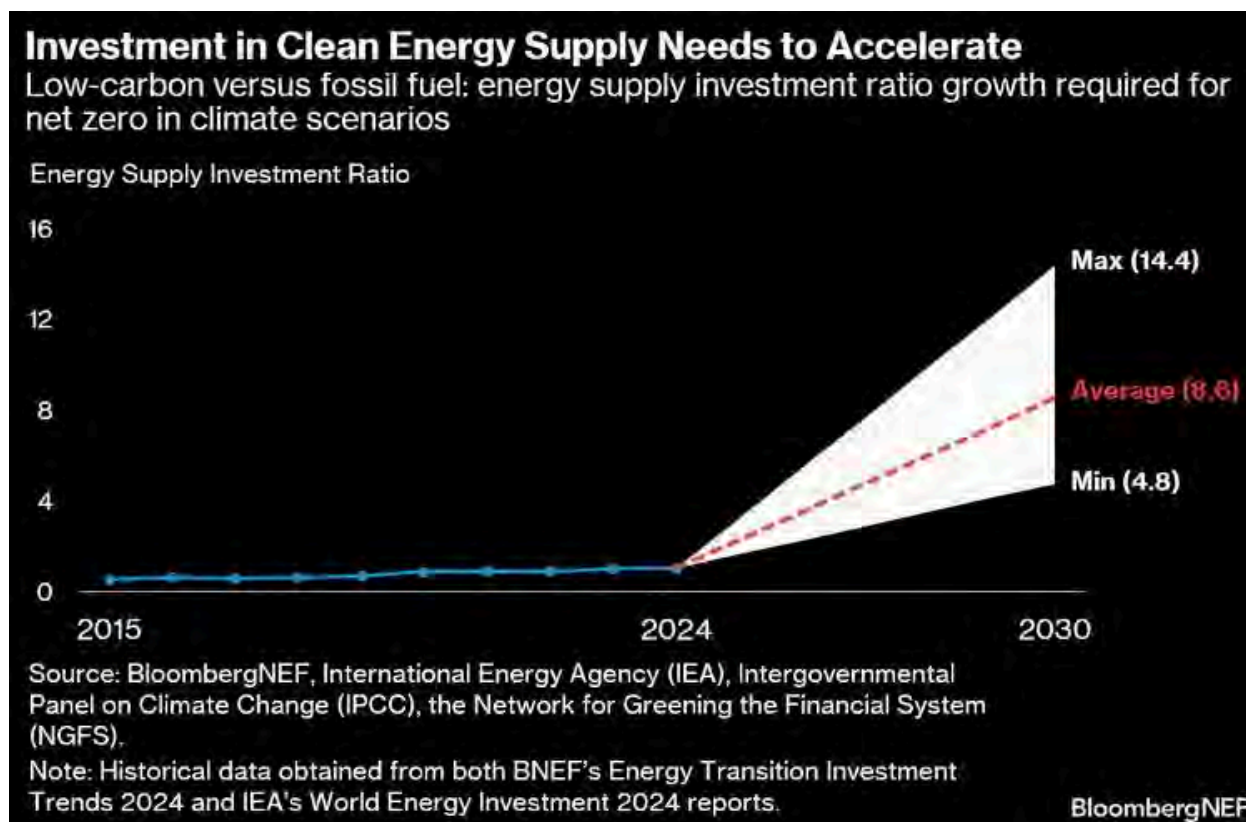
In a written comment to Bloomberg, PME said BlackRock's mandate is valued at €5 billion. PME will now "reconsider" that agreement and also undertake a broader review of external managers, it said.

PME wants "to allocate our funds through a manager that shares the same values but also points at the same direction and moves into the same direction," it said. "And that is where the difference between American managers and European managers is becoming clear."

A spokesperson for BlackRock said the asset manager is "a global leader" in sustainable and transition investing, and that it manages more than \$1 trillion of client assets in such strategies. BlackRock also noted that all its largest clients in Europe have made net zero commitments, and said it offers these clients a choice of products "to deliver performance in line with their investment objectives."

James Alexander, chief executive of the UK Sustainable Investment and Finance Association (UKSIF), said asset managers are watching developments around European mandates closely "and realizing that stepping back from commitments on sustainability is something that asset owners take seriously."

The takeaway is that "sustainable and responsible investment practices are far from niche," Alexander said. "Every major financial institution in the world will incorporate them to some degree in order to manage the full scope of risks they face, from litigation to reputational."



Source: Bloomberg

PFA Pension, a Danish pension fund with about \$120 billion in assets, finds the decision by some of the biggest US money managers to backtrack on their climate goals "regrettable," said **Rasmus Bessing**, its head of ESG investing and co-CIO.

"You need to make sure that if you give a mandate to a manager, they will manage in accordance with your own net zero, sustainability strategy," Bessing said in an interview. "I think it's natural, of course, to have a conversation on where an asset manager stands from a broader perspective, and I think that is something that you will see happening."

At the same time, US managers risk losing business to institutional investors in GOP states, where sustainable investing strategies are become deal-breakers. For example, Indiana's state pension plan recently replaced BlackRock with State Street as part of an effort to avoid investment practices that take environmental, social and governance goals into account.

"While we of course understand the bind" that US managers are facing, "we also have to take note" of the fact that "they actually then change," Schelde said. He pointed to the voting records of State Street and other US managers, where he says AkademikerPension has observed "a noticeable change."

Asset managers' support for ESG resolutions at annual general meetings hit a low last year, according to a February report by the nonprofit ShareAction. The world's largest asset managers including State Street and BlackRock supported 7% of key shareholder resolutions, the advocacy group said.

"For us, being a long-term investor, we do think that it's best not only for the climate and the globe we live on, but it's also best for our long-term investment returns that we handle this climate crisis," Schelde said.

(Adds comment from PME, details around BlackRock's climate affiliations, comment from NGO.)

--With assistance from **Saijel Kishan** and **Natasha White**.

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Tesla shares declined every week since Elon Musk went to Washington

[cnbc.com/2025/03/07/tesla-shares-declined-every-week-since-elon-musk-went-to-washington.html](https://www.cnbc.com/2025/03/07/tesla-shares-declined-every-week-since-elon-musk-went-to-washington.html)

Lora Kolodny

March 7, 2025

Key Points

- Tesla shares have given up almost all their post-election gains, declining for a record seven straight weeks.
- Analysts at several firms reduced their price targets for Tesla shares this week while at least two firms saw an opportunity to buy the dip.
- Tesla CEO Elon Musk has become the face of the Trump administration's sweeping cuts to federal programs.

In this article

TSLA-0.57 (-0.22%) 📉



Elon Musk speaks during the first cabinet meeting hosted by U.S. President Donald Trump, at the White House in Washington, DC, U.S., February 26, 2025.

Brian Snyder | Reuters

Tesla's stock has never had a stretch this red.

For seven straight weeks, since Elon Musk went to Washington to join the Trump administration, shares in his automaker have declined, closing Friday at \$270.48. It's the longest such losing streak for Tesla in its 15 years as a public company.

Tesla shares finished the week down more than 10% and at their lowest level since Nov. 5, Election Day, when they closed at \$251.44. Since the stock peaked at almost \$480 on Dec. 17, Tesla has lost well over \$800 billion in market cap.

Several Wall Street firms this week, including Bank of America, Baird and Goldman Sachs, cut their price targets on Tesla.

In slashing their target from \$490 to \$380, analysts at Bank of America cited concerns about the company's falling new vehicle sales and the lack of a recent update from Musk on a "low-cost model."

Goldman Sachs, which cut its price target on the stock to \$320 from \$345, also pointed to falling electric vehicle sales for Tesla in the first two months of the year across several markets in Europe, China and parts of the U.S.

The Goldman analysts noted that Tesla faces "a tough competitive environment for FSD" in China, where key competitors "do not generally require a separate software purchase for smart driving features." FSD, or Full Self-Driving (Supervised), is Tesla's partially automated driving system, which the company sells as a premium option in the U.S.

Baird added Tesla to its "bearish fresh picks" this week, with analysts at the firm writing that "production downtime" will complicate "the supply-side of the equation" for Tesla as the company shifts to manufacturing the new version of its Model Y SUV.



Elon Musk stands as he is recognized by U.S. President Donald Trump during Trump's address to a joint session of Congress at the US Capitol in Washington, DC, on March 4, 2025.

Saul Loeb | Afp | Getty Images

But Wall Street isn't just concerned about fundamental metrics such as sales and production figures. Investors are also trying to assess how much Musk's politics and work in the White House will pressure Tesla, and for how long.

"Musk's involvement with the Trump administration adds uncertainty to the demand-side," Baird analysts wrote.

Before taking on his role as advisor to President Donald Trump and as leader of the so-called Department of Government Efficiency, or DOGE, Musk was already heading up his many private ventures, including artificial intelligence startup xAI, social media company X, and aerospace and defense contractor SpaceX.

Concerned bulls

Now Musk, the world's wealthiest person, has become the public face of the Trump administration's effort to dramatically reduce the federal government's workforce, spending and capacity. Meanwhile, he continues to post incendiary political rhetoric on X, slamming judges whose decisions he doesn't like, and promoting false Kremlin talking points about Ukraine President Volodymyr Zelenskyy.

Anti-Musk and anti-Tesla sentiment have been rising in the U.S. and Europe, with an outburst of protests and suspected criminal acts of arson and vandalism at Tesla facilities.

Even the most bullish analysts, and many fans, have had to acknowledge the impact of Musk's politics on the desirability of Tesla and its products to a wide swath of customers and investors.

EV advocates at Cleantechnica, which has long promoted Tesla on its site, ran an ethics-focused column Thursday pondering whether Tesla owners should sell their cars and whether the Tesla board should fire Musk as CEO.

Musk and Tesla didn't immediately respond to requests for comment.

In a note out Friday, Wedbush Securities' Dan Ives wrote, "Tesla bulls find themselves with their back against the wall facing global negative sentiment around Musk/DOGE and the Trump Administration." He called it a "gut check moment for the Tesla bulls (including ourselves)."

Wedbush said it's using the sell-off as an opportunity to add Tesla to its "Best Ideas" list, and set its 12-month price target at \$550.

"The best thing that ever happened to Musk and Tesla was Trump in the White House as this will create a deregulatory environment with a federal autonomous roadmap central to the Tesla golden strategic vision," the firm wrote.

The Tesla bulls see the potential for the company to soon launch affordable new model EVs, a robotaxi and driverless ride-hail service, and to deliver humanoid robots capable of factory work in the not-too-distant future. Ives said he expects Musk will become more focused on Tesla and his other companies in the second half of 2025.

Analysts at TD Cowen are also optimistic. In a note Thursday, they wrote, “Tesla now appears to be in the early innings of a major 2025-26 product cycle, one that we believe could re-invigorate volume growth and boost overall share price sentiment.”

WATCH: Tesla has consequential catalysts beyond Q1



watch now

VIDEO03:20

Tesla has consequential catalysts beyond Q1 in EV and AV business, says TD Cowen's Itay Michaeli

What's Driving Tesla's Woes?

 [wired.com/story/whats-driving-teslas-woes](https://www.wired.com/story/whats-driving-teslas-woes)

Carlton Reid

March 8, 2025



Tesla sales fell in the US again last month, further fueling the suggestion that the growing backlash against billionaire CEO Elon Musk could be impacting Tesla at retail.

According to Kelley Blue Book, Tesla shifted 43,650 EVs in February, a decrease of nearly 6 percent from the 46,262 sold in the same month last year. Globally, sales are much worse, with drops of over 75 percent in Europe and over 65 percent in Australia for the first two months of the year. The UK is one of the only markets bucking the trend, with Tesla's February sales jumping by 20 percent compared with the same month last year.

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In the US, the month-over-month sales decline in February was primarily driven by significant drops in Cybertruck and Model 3 sales, which fell by 32.5 percent and 17.5 percent, respectively. But Stephanie Valdez Streaty, director of industry insights for Cox Automotive, says these drops aren't that bad when considered within the wider market.

"Compared to the overall EV market, Tesla's decline in February is relatively moderate compared to some other manufacturers," she says, "indicating that while there was a decline, it was not as severe as those seen by some competitors."

Some analysts blame Tesla's lackluster sales on inventory snafus, customers waiting for the refreshed Model Y, and fierce competition from auto rivals. Others point to the company's habit of making deliveries in batches, resulting in big variations in registrations between months.

Tesla's Model Y is awaiting a refresh.

Photograph: Luigi Iorio/Getty Images

Morgan Stanley analyst Adam Jonas even suggests the downturn in sales is all part of a key turning point for Tesla, as it moves beyond a car company into a robotics-focused behemoth.

"Tesla's softer auto deliveries are emblematic of a company in the transition from an automotive 'pure play' to a highly diversified play on AI and robotics," the Tesla bull told clients in a note.

"While the journey may be volatile and nonlinear," he adds, "we believe 2025 will be a year where investors will continue to appreciate and value these existing and nascent industries of embodied AI, where we believe Tesla has established a material competitive advantage."

However, there has been the feeling that at least some of the fall could be due to anger over Tesla CEO Elon Musk's political activism and the decisions made by the so-called Department of Government Efficiency under his leadership. Since mid-February, Tesla showrooms have attracted protesters in 100 or so cities across the US, eager to let passersby know their feelings about the chainsaw-wielding Musk.

These largely good-natured, sidewalk-staged protests—some with Mariachi bands, puppeteers, and large cardboard Cybertrucks to decorate—have been organized by a website called TeslaTakedown, and they attracted plenty of media coverage in the process.

Alex Winter, a Los Angeles-based documentary maker—and the titular Bill from 1988 time-travel comedy *Bill & Ted's Excellent Adventure*—is the creator of the website. He tells WIRED that the TeslaTakedown movement wants to topple Musk: "We aim to devalue the brand. It's a very simple and effective means for people to get onto the street and protest." Media coverage amplifies the movement's message, says Winter. "We want to spread verifiable, factual information on Musk, DOGE, and why Tesla should be devalued."

"Musk himself is toxifying the Tesla brand," Winter says. "We're just helping him."

TeslaTakedown started last month, kicked off by a February 10 posting on Bluesky by Joan Donovan, a disinformation researcher and assistant professor of journalism and emerging media studies at Boston University. "Come out and participate in an international picket #TeslaTakeover locally," she wrote, later agreeing with renaming the movement.

"I asked myself, what was I willing to physically do to raise awareness [about Musk]? Well, I'm willing to go out on Saturdays and protest in front of a Tesla dealership," Donovan tells WIRED. "I made a flyer and started circulating it online. Alex saw my post, and we started texting about what to do; it all came together super fast."

At the first demonstration in Boston on February 15, there were 50 people. By the third week, this had risen to 300. "I've met teachers, people who work in public health, people who are retired, students at universities—all Americans who want to see DOGE disappear," says

Donovan. "It's not only a strategic boycott of Tesla, it's a polyvocal protest where lots of grievances are aired."

Elon Musk and Tesla didn't respond to requests for comment.

Erica Chenoweth, a political scientist at Harvard University, has studied over 300 modern uprisings worldwide and found that change usually becomes inevitable when just 3.5 percent of a population join a movement.

"There are typically far more people who sympathize with movements than people who actively participate in them," Chenoweth tells WIRED.

So might TeslaTakedown work quickly? "Instead of thinking about how long it takes," she says, "I typically look to see whether a movement is building pressure and momentum with each subsequent action.

"In the social science of these movements, many people talk about eliciting defections—making people within different pillars of support shift their loyalty away from the status quo. In the case of corporations, those pillars can include shareholders, workers, suppliers, distributors, advertisers, consumers, and those around them."

Losing Loyalties

Those pillars may already be showing signs of instability. Across Reddit, TikTok, Facebook, and even X, posts have started to stack up of people saying they are ditching their Teslas. Singer Sheryl Crow was one of the more high-profile among them, who posted an Instagram video on Valentine's Day wishing good riddance to her Tesla as it was driven away on a flatbed truck.

"There comes a time when you have to decide who you are willing to align with. So long Tesla," she wrote, adding that she was donating the sale proceeds to National Public Radio, because it was "under threat from President Musk."

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Kitchen

The Best Home Coffee Makers Now Rival Any Café Pour-Over

By Matthew Korfhage

Sleep researcher Asa Farnham lives in Rochester, New York, and used to work in a Tesla showroom. He has owned five Tesla EVs, previously owned company stock, and has attended shareholder meetings. He also made the decision to part ways with his Tesla

recently.

"I'm not rich, so I really hemmed and hawed about getting rid of a perfectly fine vehicle but, not being a Vulcan, every time I drove the car I felt emotionally sick," he tells WIRED.

"Finally, in December, I couldn't take it anymore, and traded my Model 3 for a Rivian and reduced a significant amount of cognitive dissonance."

"The decision to ditch was difficult," he remembers, "like breaking up with someone. As an environmentalist, I was aligned with [Tesla's] mission statement to accelerate the world's transition to sustainable energy." But Farnham started souring on Tesla in 2022 after Musk purchased Twitter. "2024 was the nail in the coffin," he says. "Musk amplified election conspiracy theories, extreme far-right views, and tweeted more vile things. I was done."

Photograph: Chip Somodevilla/Getty Images

Another Tesla ditcher who spoke to WIRED has been a staffer at the US Department of Transportation in Washington, DC, for 25 years. He asked to remain anonymous due to concerns he could lose his job for speaking out. He had been a Tesla owner since 2018, but replaced his 2023 Model 4 for a Kia EV6 late last year.

"I used to think Musk was a goofy but intelligent man [who] had good intentions," he says. "My feelings changed around the time he bought Twitter. I loathe that, as a government employee, I have to submit five bullet points each week detailing what I've been doing at work. I cannot imagine the shame I'd feel if I still owned a Tesla."

That sentiment is not an outlier—many more ex-Tesla owners reached out to WIRED to share their reasons for ditching their cars, but none were prepared to be named, due to concerns for their safety.

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"I am the child of German immigrants," another tells WIRED, "and the [Nazi-style] salute was very much when I had enough. I owned a Tesla Model 3 RWD 2018 from the first year of delivery until last month; I got a Volkswagen ID4 instead. I am happier not to be driving a car associated with Musk. Every American knows that your car says something about you: Driving a Tesla used to say 'I am driving to a better future'—now it says 'I believe in destroying government.'"

Company Politics

And yet Tesla's US market dominance remains staggering. It has a 48.7 percent EV market share in the US, with the next biggest automaker being Ford at 7.5 percent.

Ivan Drury, director of insights at car-buying site Edmunds, believes that when it comes a big purchase like a car, the majority of people are more focused on price and perceived value than the politics of a company CEO.

"There's a huge swath of the population that doesn't care about politics," says Drury. "Many people will put aside their feelings about politics when purchasing a car. Tesla is utilizing several incentivization methods, including low APRs, leasing, outright discounts, and free supercharging. These might be enough for someone who sees the protesting in front of the stores and thinks nothing of it, especially as you can circumvent the dealership experience and buy online with delivery to your door."

Whether anti-Musk sloganeering, ownership ditching, and showroom picketing can meaningfully reduce new car sales at the EV behemoth is moot. Tesla's share price might be trending down right now, but the gains made after Trump's election mean there's still a long way to go before the stock even falls to last year's lows.

However, with the company's valuation recently dropping below \$1 trillion, Musk has lost more than \$100 billion from his paper fortune, and if Tesla tanks, he'll lose a whole bunch more.

This isn't fanciful. Barclays research analyst and Tesla bull Dan Levy argues that Tesla shares are "disconnected from fundamentals" with "stock trading at [many] times earnings." And for Levy, "what matters is narrative," with the "markets not really challenging any of the things Tesla is saying."

Markets can be slow, somehow yet to realize that Tesla's price-to-earnings ratio don't really add up. It would take 140 years to recoup an investment at Tesla's current earnings rate. Ford's ratio of 6.5 and Mercedes-Benz at 5.7 are the realistic ones.

But Tesla's share price is at profound risk from targeted activism. "We're doing [TeslaTakedown] to devalue the stock," says Winter. "We could see the rapid decline of Tesla's stock value and the diminishment of sales. Musk's attachment to Trump did a lot of that. And I think his [Nazi-style] salute did a lot of that."

Tesla's share price is currently 263, down from the 480s following Trump's inauguration. "If it gets down to 120, you'll start to see a lot of angry shareholders," believes Donovan, "people who bought the dream." She, and many others, hope TeslaTakedown will become a nightmare for Musk.

Opinion **Fund management**

What will Trump mean for personal wealth?

Pension funds, retail investors and money managers are worrying about the future of American capital markets

RANA FOROOHAR



© Matt Kenyon

Rana Foroohar

Published YESTERDAY



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For the past 50 years or so, the approach of most Americans to retirement has been to put as much money as possible into US markets and then forget about it until they're in their sixties. And for those who could do so, this has worked out very well. If you'd invested \$1,000 in an S&P 500 index fund in 1980, it would be worth nearly \$165,000 today.

But the stability and returns of American asset markets have been based on the stability and dominance of the US itself. So what happens if the Trump presidency upends that? What might it mean for the \$42tn in US retirement savings, and the trillions more in international pension savings held in US assets, if the basic rule of law in America can no longer be taken for granted?

It's a question that has come up in multiple conversations I've been a part of recently, as people grapple with the longer-term impact of the erosion of American democracy on their personal wealth.

Some of these individuals are selling tech stocks and buying gold exchange traded funds — not for the purposes of short-term speculation, but as a hedge against a longer-term future that suddenly seems less clear and prosperous at home. I know many people who are desperate for diversity in their portfolios now putting spare cash into apartments in Paris or Rome, sight unseen, rather than ploughing it into US markets.

These are random examples. But it's not only retail investors and money managers who are considering a future in which our assumptions about the longer-term security of American capital markets change in a big way. Pension funds are beginning to consider the question, too.

Kevin Thomas, the chief executive of Share, a Vancouver-based non-profit institutional advisory service representing a group of long-term global investors with \$90bn in assets, said that concerns about the basic stability and integrity of US markets under Trump came up at the firm's annual summit last week.

"Regional allocations don't just turn on a dime, and there's long been a bias towards US markets," Thomas says. "Even in the last few months, there had been a reluctance to admit that [Trump] would do all these stupid things."

But in the past few weeks, he adds, "there's been much more of a dynamic where you can't count on normal being normal. [Many investors] won't go into China because it's authoritarian and unpredictable. But what if the US is too, now?"

There is a large body of economic research that shows that when the rule of law is weaker, investment tends to fall, not only in fixed investment but also in more liquid assets. Democratic norms have been challenged in the US since Trump was first elected in 2016, and are being positively flouted today. Federal court rulings have been ignored and entire government [agencies dismantled by the White House](#) in what is almost certainly a violation of Article 1 of the constitution (which gives [Congress the power](#) to give and take away appropriations).

Back in 2023, with candidates who denied the result of the 2020 presidential election prevailing in a number of statewide races, Princeton professor Layna Mosley issued a report, along with the Brookings Institution and the States United Democracy Center, which looked at the financial and economic dangers of democratic backsliding in the country.

The report found, among other things, a major “democratic advantage in the realm of sovereign borrowing”, and a disproportionate effect of increased political risk in the US on financial markets. “The primary effect of democratic backsliding on investment portfolios could be dramatic . . . shocks to US bond and equity markets, the US banking system, and the US dollar would be transmitted throughout the global economy.”

Of course, unlike other markets, the US has tremendous leeway for bad behaviour given the primacy of the dollar and the overweighting of US assets in most portfolios. American institutional investors in the country typically keep 65-70 per cent of assets in US markets, and pension funds can only make swings of a few percentage points without board approval.

What’s more, as one former executive for a major pension fund pointed out to me, “most public pension funds wouldn’t want to speak out about their worries right now” — not only because of a reluctance to further spook the market, but also because of fears about retribution from the White House.

But that doesn’t mean they don’t have concerns about the traditional overweighting of US assets. While some fundamentals such as American corporate earnings and macroeconomic factors like demographics still favour the US relative to other markets, there’s also a clear sense that the global political economy is changing. American exceptionalism may well be over.

“Things really are going to be different in the next 10 to 20 years in a way that we have no precedent for,” says Richard Bookstaber, a veteran risk manager and financial regulator now a managing director at MSCI.

What happens in the White House over the next four years may influence financial markets for decades to come. Retirees, like most investors, are looking for places to hedge against increased political risk in the US. Opportunities abound for markets that can capture the pension pot.

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Barclays chair has shifted view on Jes Staley's relationship with Jeffrey Epstein, court hears

Nigel Higgins tells court that information which has come to light 'paints a different picture' of nature of ties



Nigel Higgins arriving at court on Monday. He said that, 'Based on the information of which I am now aware . . . it is likely that we would have taken a different approach' © Jaimi Joy/Bloomberg

Alistair Gray and Ortenca Aliaj in London

Published 3 HOURS AGO



Barclays chair Nigel Higgins has said he now has a different view about former chief executive Jes Staley's relationship with the late sex offender Jeffrey Epstein after previously defending him.

A London court heard on Monday that Higgins had explained "affectionate" emails that Staley sent to [Epstein](#) as being "the way he writes" to "lots of people".

However, in an accompanying witness statement, Higgins acknowledged that the bank would have questioned Staley more thoroughly about the relationship if it knew then what it knew now.

His evidence came as the trial in Staley's legal case against the Financial Conduct Authority entered its second week. The former chief executive is trying to overturn a ban and fine the FCA imposed in 2023 for "recklessly" allowing [Barclays](#) to mislead it in a letter the bank sent the regulator in 2019 over the nature of his relationship with the sexual predator.

In his witness statement, Higgins said: "From my interactions with Mr Staley up to the point of sending the 8 October 2019 letter, and indeed afterwards whilst he remained at Barclays, I had understood that the relationship between him and Mr Epstein was essentially business related.

"The information of which I am now aware paints a different picture in my mind as to the nature of the relationship."

He added: "Had my colleagues at Barclays and I been aware of all of the information of which I am now aware, I am sure that we would have questioned Mr Staley about that further information in depth.

"At this distance, and without the benefit of discussing this information with Mr Staley and other colleagues, I cannot be certain what we would have concluded.

"However, based on the information of which I am now aware (albeit without having had the chance to test it with Mr Staley) it is likely that we would have taken a different approach" in responding to questions from the FCA.

The case centres on two statements Barclays made in the letter, which Staley approved, that the chief executive "did not have a close relationship" with Epstein, and that his last contact with Epstein was "well before" he joined Barclays in 2015.

The FCA's lawyers, led by Leigh-Ann Mulcahy KC, argue that the cache of emails between the two show that the statements in Barclays' letter were inaccurate.

The court heard that officials at the FCA asked Higgins in an interview in 2021 about the emails, including one in which the banker described the relationship as "profound".

Higgins told the officials that "he writes what to an Englishman are extraordinarily affectionate emails to lots of people".

"You could I'm sure go through his emails and find this sort of intimate and affectionate style," he added. "That's the way he writes."

Staley's legal team, led by Robert Smith KC, disputes the FCA's characterisation of the relationship as "close".

His lawyers argue that it was flawed for the authority simply to compare the content of the emails between the two with Barclays' letter to the FCA, whose real purpose was not to provide an all-encompassing account of the pair's relationship but simply to assure the FCA that neither Staley nor Barclays knew of or were involved in Epstein's criminal conduct.

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Staley Gets His Shot at Redemption Over Epstein Relationship

- Ex-Barclays boss in court to challenge lifetime UK finance ban
- Former colleague said boss wouldn't abandon people in trouble

Four years after his resignation from Barclays Plc, **Jes Staley** will finally give his account of the events that ended his career — in the hopes of overturning a lifetime ban from the finance industry.

Staley has sat quietly in a windowless London court room for the past week, occasionally sipping from a can of Diet Coke as his closest former colleagues described how his friendship with **Jeffrey Epstein** led to his fall from the summit of global banking. On Tuesday, the 68-year-old former chief executive officer is scheduled to take the stand as part of the legal challenge he's mounted against British regulators.

Already, though, a detailed picture of his relationship with Epstein has been drawn by some of those who know Staley best.



Jes Staley arrives at court in London on March 7.

Photographer: Chris Ratcliffe/Bloomberg

“He had a particular view about not abandoning people in trouble,” **Stephen Doherty**, Staley’s former communications head at Barclays, said in a witness statement to the court.

Staley’s former chief of staff, **Sasha Wiggins**, seemed to agree. “I remember discussing with Mr. Staley why he remained friendly with Mr. Epstein after his conviction,” said Wiggins in her own statement. “He said that, in his opinion, Mr. Epstein had been arrested and convicted and has served his sentence.”

Epstein was jailed in Florida in June 2008 for soliciting sex from underage girls. He was arrested again in July 2019 on federal charges relating to, among other things, the sex trafficking of minors, shortly before his death in a New York jail cell.

Staley was working for JPMorgan Chase & Co. when he first met Epstein around the 2000s, and went on to develop a relationship over the decades that saw him visit the late sex offender’s private Caribbean island and fly on his jet.

The Financial Conduct Authority announced in 2023 that Staley had “recklessly misled” its officials about his bond with Epstein, as it gave him a lifetime ban from the British financial services industry and a £1.8 million (\$2.3 million) fine.

That's what Staley is seeking to overturn with his lawsuit this month — and he's long maintained that he cut off ties once he joined Barclays in 2015 and that he was honest about the extent of the relationship.

Already, though, the case has revealed some startling truths about the ties between the two men.

As part of the FCA's investigation, JPMorgan turned over hundreds of emails to the agency that offered a detailed picture of Staley's 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.



Andrew Bailey on March 7.

Photographer: Chris Ratcliffe/Bloomberg

Bank of England Governor **Andrew Bailey** testified that JPMorgan had made an “unusual request” to the UK financial regulator by asking it to compel the bank to hand over the documents. JPMorgan also told British regulators at the time that the bank believed Staley might have been involved in Epstein's crimes, according to testimony provided by **Mark Steward**, who was then head of enforcement at the FCA. Steward, for his part, said that he did not agree with JPMorgan's view.

Bailey's testimony also shone a light on the lengths to which Barclays Chairman **Nigel Higgins** went in order 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 Barclays to avoid disclosing the existence of any probe when it published its annual report in February 2020.

Bailey also 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."

The chief regulator had other concerns. "There was a potential risk to financial stability for this one. It is such a big institution and Mr. Staley's role was so prominent," Bailey recollected in court.

The upper tribunal is due to hear from Higgins this week.

Few Friends

Staley's lawyer has cited interviews and documents to create a picture of his client as a warm and well respected boss, yet also someone who struggled with dyslexia and who very few people knew well.

"I am pretty much a loner," said Staley in an interview with the FCA while it was investigating his links to Epstein.

"Jes has many, many, many, many, many business relationships, close business relationships," said Wiggins. "He doesn't have very many friends. I could count them on one hand, probably less than one hand."

"Almost of all our people that we associate with, my wife and I, are her close friends," Staley told the FCA. "A personal friendship would be far broader than the type of relationship he [Epstein] and I had."

Staley's former colleagues say he provided details about his relationship with Epstein, often without them asking, though they also say that he did not tell them everything.

Doherty told the court he had no idea his old boss had been in touch with Epstein right up until he was named as Barclays CEO in October 2015. Messages have subsequently emerged in regulatory probes showing Staley and Epstein discussing the job days before he was appointed.

"Concurrent communication with Mr. Epstein about press interest in their relationship and the potential role at Barclays is the type of information that would have obviously been relevant for me to have known at the time," said Doherty.

Wiggins also found she had not known as much about Staley's relationship with Epstein as she had thought. The first she had known about Epstein helping Staley's eldest daughter, Alexa, with her application to Columbia University came when the FCA presented her with the evidence during her interview with the regulator. Wiggins also said she'd not known that Epstein had been invited to Alexa's graduation from Columbia.

"I do not know why Mr. Staley did not mention these matters," said Wiggins.

Staley Was 'Surprised' at Epstein's 2019 Sex Trafficking Arrest

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March 10, 2025, 10:53 AM PDT

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- Former Barclays CEO begins giving evidence in case against FCA
- Jes Staley says he didn't know of Jeffrey Epstein's behavior

By Harry Wilson and Jonathan Browning

(Bloomberg) --

Jes Staley said he was “shocked and surprised” after Jeffrey Epstein was arrested in July 2019 by US federal authorities and charged with the sex trafficking of minors.

While Epstein had pleaded guilty in 2008 to two charges of soliciting a prostitute — and ultimately served 13 months in a Florida state prison for his crimes — Staley had believed that had been an “isolated transgression.”

Staley, the former Barclays Plc chief executive officer, on Monday laid out in detail for the first time why he remained in contact with Epstein for years after his conviction. He said “furthering my business relationships in general were always the purpose.”

“Throughout the entire period of my relationship with him I did not at any time have reason to believe that he was responsible for the conduct which resulted in his arrest,” Staley said in a witness statement shown to a London court, which is hearing his bid to overturn a lifetime ban from the UK finance industry.

Staley said his bosses told him to get to know Epstein around 2000, while he was working at JPMorgan Chase & Co., and once he left the bank in 2013 he became of less interest to the late financier. He has long maintained he cut off ties once he became the boss of Barclays in 2015 — a timeline that the UK's Financial Conduct Authority has disputed.

The testimony marks Staley's first public remarks since stepping down from Barclays in 2021. The 68-year-old banker is expected to take the stand for several days this week, and kicked off his testimony by saying his interactions with Epstein were no different than those carried out by others at JPMorgan.

"I have no doubt, as a result of knowledge of the financial services industry, that a number of senior investment bankers at JPM and at other institutions will have engaged in extensive email correspondence with Mr. Epstein and with other clients, without the relationship between them having become a 'close' one," said Staley in his statement to the court.

Epstein was an important client at JPMorgan, particularly for its private banking unit, according to Staley's statement. He added that Epstein's introductions to wealthy individuals helped him establish relationships with people he might otherwise have not met. However, Staley said he now deeply regretted his association with Epstein.

Jes Staley arrives at The Rolls Building in London, March 10.

Photographer: Jaimi Joy/Bloomberg

Staley said the UK financial regulator's investigation of his links to Epstein had "irretrievably damaged" his reputation. The former Barclays CEO said the FCA's investigation and lifetime ban issued in 2023 had left him unable to work.

"The FCA took the most serious and drastic step that it could, ending my long and distinguished career in financial services and destroying my reputation," said Staley in his statement.

Staley is challenging the regulator's finding that he "recklessly misled" the watchdog over his links to the late pedophile financier.

In a second witness statement, Staley denied that a number of emails between his eldest daughter Alexa and Epstein meant that she had acted as an intermediary for the pair. He said that he likely answered Epstein's queries relayed via Alexa as a "matter of basic courtesy."

Staley said it was clear that the emails to his daughter were initiated by Epstein. "I did not however make any attempt to contact Mr. Epstein at any time and he would have realised that any attempt to engage me in communication with him would be futile."

The hearings are due to continue through this week.

Read more

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

Barclays Chair Says He's Changed View on Staley's Epstein Links

Ex-Barclays Lawyer Says Epstein Emails 'At Odds' With FCA Letter

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

Embattled Boeing Chops CLO's Pay

[law.com/nationallawjournal/2025/03/10/embattled-boeing-chops-clos-pay](https://www.law.com/nationallawjournal/2025/03/10/embattled-boeing-chops-clos-pay/)

Greg Andrews



Chief Legal Officer Brett Gerry.
Courtesy photo

Boeing Chief Legal Officer Brett Gerry received compensation totaling \$4.4 million last year, a 48% plunge from the \$8.6 million he earned in 2023, the company revealed in its proxy statement filed late Friday with the Securities and Exchange Commission.

The proxy said the aircraft maker trimmed 2024 executive pay, and revised pay formulas for future years to more closely link compensation to safety and quality, after the blowout of a door plug on a nearly new Alaska Airlines 737 Max in January 2024. The incident renewed concerns that Boeing hadn't fixed deep-seated safety problems blamed in the crashes of two 737 Max jetliners six years ago that collectively killed 346 people.

Gerry's decline in pay also stemmed from Boeing's efforts to reverse the tide of shrinking shareholder support for its executive pay program. The program received just 62% support from shareholders at the company's May 2024 annual meeting. That was down from 74% in 2023 and 82% in 2022. Russell 3000 companies, on average, racked up 90% support for their plans during that span, according to data from the consultancy Semler Brossy.

Also, crimping pay was the company's bleak 2024 financial result. For the year, Boeing's revenue fell 14%, to \$66.5 billion, while its loss swelled from \$2.2 billion in 2023 to \$11.2 billion.

Myriad factors hurt results, including a cap on 737 Max production imposed by the Federal Aviation Administration in the wake of the Alaska Airlines incident, supply chain problems and a seven-week strike by machinists at the company's Seattle-area factories.

"2024 was another extraordinarily challenging year for the company. ... Because our pay programs are aligned to company performance, our incentive payouts reflect these poor financial and operational outcomes," the board's compensation committee wrote in the proxy.

Gerry, who's been the company's legal chief for six years, received a \$900,000 salary in 2024, unchanged from a year earlier. His plunge in pay stemmed from a drop in stock awards (\$3.1 million in 2024 vs. \$6.4 million in 2023) and a decline in cash incentive compensation (\$171,000 vs. \$850,500).

Between Jan. 5, 2024, the date of door plug incident, and March 11, 2024, the date the company doled out long-term incentive awards to senior executives, Boeing's stock price fell 22%. In an unusual move, the board reduced stock awards by 22% to reflect the stock swoon. That decline was on top of the board's decision in February 2023 to reverse course on increases in target stock awards for senior executives that it had adopted a year earlier.

The 2022 move increased Gerry's target from \$4 million to \$5.5 million, and the 2023 move returned it to \$4 million. After the compensation committee cut all targets by 22%, Gerry received \$3.1 million.

In the proxy, the company said it has set its long-term incentive compensation plan for 2025 to 2027 with a similarly cautious mindset.

"The backdrop for this decision is the extraordinary uncertainty of our current business environment, including our recent performance and operational challenges, regulatory and geopolitical uncertainty, lingering impacts of the ... work stoppage, geopolitical volatility and ongoing disruption in our supply base," the company said in the proxy.

"While the Compensation Committee recognizes the value of setting pre-established targets for long-term incentive award achievement, our ability to set realistic long-term financial goals with an appropriate amount of stretch is severely challenged by our current environment."

All the turmoil at Boeing has led to sweeping executive changes, but so far Gerry has been a survivor. Three of the eight executives for whom Boeing disclosed pay are no longer with the company. Among the eight, Gerry and Chief Financial Officer Brian West are the only two who are in the jobs they held when the Alaska Airlines incident occurred.

Gerry joined the aerospace manufacturer in 2008 following a two-year stint at the Department of Justice and one year at the White House, where he advised on national security and intelligence matters as associate counsel to the president from 2005-06.

Gerry became president of Boeing Japan in 2016 after holding several senior positions at Boeing's legal department. He took over in 2019 as general counsel and vice president of global compliance from Michael Luttig, who retired. The next year, Boeing promoted him to chief legal officer and executive vice president.

NOT FOR REPRINT

Georgetown Law To Ed Martin: F All The Way Off

A abovethelaw.com/2025/03/georgetown-law-to-ed-martin-f-all-the-way-off

March 7, 2025

Earlier this week, Interim U.S. Attorney for the District of Columbia Ed Martin, once again, used his office to advance the political positions of the Trump administration instead of uphold law and order. Martin sent out another threatening letter. This one (eventually) went to the Dean of Georgetown University Law Center, William Treanor, demanding the elite law school stop all diversity, equity, and inclusion efforts or else his office will no longer consider candidates associated with Georgetown Law (assuming they're back in the hiring business).



Using the federal government's hiring power to punish alumni (with no power over law school policies or procedure) for the sins of their alma maters is an established play by the right. And with donations from said alumni an integral part of high ed funding, it has the potential to be a powerful tool to force institutions to do the bidding of conservatives. And as a common response to Trump administration threats has been to obey in advance, Martin had good reason to believe Treanor would fold.

My friends, he did nothing of the sort.

You should absolutely read the letter from Treanor, available below, in its entirety, as it deserves all the snaps. But the letter is constructed in a way to be unique Kryptonite to conservatives, by leaning into the religious institution's First Amendment protections.

Your letter informs me that your office will deny our students and graduates government employment opportunities until you, as Interim United States Attorney for the District of Columbia, approve of our curriculum. Given the First Amendment's protection of a university's freedom to determine its own curriculum and how to deliver it, the constitutional violation behind this threat is clear, as is the attack on the University's mission as a Jesuit and Catholic institution.

Treanor goes hard for all the things that make Jesuit Catholicism good. Jesuits' beliefs include global justice, peace, and dialogue and the order has a storied tradition of educational excellence. Georgetown has a prominent role in that tradition, and Treanor will not be selling that out over some bullying.

As a Catholic and Jesuit institution, Georgetown University was founded on the principle that serious and sustained discourse among people of different faiths, cultures, and beliefs promotes intellectual, ethical, and spiritual understanding. For us at Georgetown, this principle is a moral and educational imperative. It is a principle that defines our mission as a Catholic and Jesuit institution.

But for my money, the closing shot Treanor lobs over the bow is the piece de resistance for its sheer self-assurance:

Georgetown Law faculty have educated world leaders, members of Congress, and Justice Department officials, from diverse backgrounds and perspectives. We pride ourselves on providing an excellent graduate and professional education, built upon the Catholic and Jesuit tradition. Georgetown-educated attorneys have, for decades, served this country capably and selflessly in offices such as yours, and we have confidence that tradition will continue. We look forward to your confirming that any Georgetown-affiliated candidates for employment with your office will receive full and fair consideration.

Seriously, so many institutions are just trying to survive this iteration of the Trump administration, and saying and doing whatever they have to in order to get by. But Treanor knows that surviving by betraying the principles you hold near and dear is no victory. There's not a ton of good news out there, but Georgetown Law's willingness to step into the fray is a great moment.

**GEORGETOWN LAW****William M. Treanor**Dean and Executive Vice President
Paul Regis Dean Leadership Chair

March 6, 2025

Edward R. Martin, Jr.
Interim United States Attorney
District of Columbia
Judiciary Center
555 4th Street, N.W.
Washington, D.C. 20001

Dear Interim United States Attorney Martin:

I write in response to your letter dated February 17, 2025, which you sent to me via email on March 3, 2025.

As a Catholic and Jesuit institution, Georgetown University was founded on the principle that serious and sustained discourse among people of different faiths, cultures, and beliefs promotes intellectual, ethical, and spiritual understanding. For us at Georgetown, this principle is a moral and educational imperative. It is a principle that defines our mission as a Catholic and Jesuit institution. Georgetown University also prohibits discrimination and harassment in its programs and activities and takes seriously its obligations to comply with all federal and local laws.

Your letter challenges Georgetown's ability to define our mission as an educational institution. It inquires about Georgetown Law's curriculum and classroom teaching, asks whether diversity, equity, and inclusion is part of the curriculum, and asserts that your office will not hire individuals from schools where you find the curriculum "unacceptable." The First Amendment, however, guarantees that the government cannot direct what Georgetown and its faculty teach and how to teach it. The Supreme Court has continually affirmed that among the freedoms central to a university's First Amendment rights are its abilities to determine, on academic grounds, who may teach, what to teach, and how to teach it.

Georgetown University Law Center
600 New Jersey Avenue, NW | Washington, DC 20001-2075

"This is a bedrock principle of constitutional law - recognized not only by the courts, but by the administration in which you serve. The Department of Education confirmed last week that it cannot restrict First Amendment rights and that it is summarily prohibited from 'exercising control over the content of school curricula.'"

Your letter informs me that your office will deny our students and graduates government employment opportunities until you, as Intranet United States Attorney for the District of Columbia, approve of our curriculum. Given the First Amendment's protection of a university's freedom to determine its own curriculum and how to deliver it, the constitutional violation behind this threat is clear, as is the attack on the University's mission as a Jesuit and Catholic institution.

Georgetown Law has one of the preeminent faculties in the country, fostering groundbreaking scholarship, educating students in a wide variety of perspectives, and thriving on the robust exchange of ideas. Georgetown Law faculty have educated world leaders, members of Congress, and Justice Department officials, from diverse backgrounds and perspectives. We pride ourselves on providing an excellent graduate and professional education, built upon the Catholic and Jesuit traditions. Georgetown-educated attorneys have, for decades, served this country capably and selflessly in offices such as yours, and we have confidence that tradition will continue. We look forward to your confirming that any Georgetown-affiliated candidates for employment with your office will receive full and fair consideration.

Sincerely,



William M. French
Dean and Executive Vice President
Ford Regis Dean Leadership Chair



Kathryn Rubino is a Senior Editor at Above the Law, host of The Jabot podcast, and co-host of Thinking Like A Lawyer. AtL tipsters are the best, so please connect with her. Feel free to email her with any tips, questions, or comments and follow her on Twitter @Kathryn1 or Mastodon @Kathryn1@mastodon.social.

Mondelez Seeks SEC Approval to Drop Russia Transparency Proposal

- Oreo maker says Russia is only a small part of the business
- New guidance makes it easier for companies to block proposals

Mondelez International Inc. is asking regulators for permission to ignore a shareholder proposal that calls for greater transparency on the Oreo maker's Russian operations.

The snack company is looking to exclude a resolution from Wespeth Institutional Investments LLC from the agenda of its next shareholder meeting, according to a letter to the Securities and Exchange Commission. Shareholders including Wespeth argue that Mondelez has a responsibility to show investors how it's conducting business in Russia and Ukraine in a way that protects human rights and are calling for a third-party assessment.

The Mondelez letter, dated March 3, cites SEC guidance released in February. That guidance is expected to make it more difficult for shareholders to get a vote on proposals that aren't directly related to a company's core business and effectively limit resolutions on issues such as the environment, ethics and governance.

Mondelez's operations in Russia and Ukraine "are a small part of the company's global business operations," according to the letter, which was written by the company's legal representative, Gibson Dunn.

The company and the SEC didn't respond to requests for comment from Bloomberg news.

Mondelez has said it's committed to transparency and engages with its shareholders. The company had pledged to isolate its Russia business as a standalone operation following that country's invasion of Ukraine in 2022, but has since watered down that strategy.

The Mondelez letter to the SEC says the company plans to print its proxy materials on March 25, which allows only weeks for the proponents to respond and for the SEC to decide on the company's request to exclude the proposal.

Companies can exclude proposals without SEC approval, at the risk of an enforcement action if the SEC disagrees with the decision. Generally, they will include proposals in proxies if the SEC hasn't responded, according to Sanford Lewis, director of the Shareholder Rights Group. "When they know they have a short timeline, they seem to be hustling to meet the print deadlines," said Lewis, who represents clients before the agency.

Last year, a similar proposal calling for Mondelez to disclose more information about its Russia and Ukraine operations garnered about 30% of shareholders' support, surpassing a key 20% to 25% threshold that can often get executives to take requests seriously, Susana McDermott, communications director of the Interfaith Center on Corporate Responsibility, told Bloomberg at the time.

Related: Zelenskiy Seeks Russia Pledge to Halt Air and Navy Strikes

Mondelez also submitted "no-action" letters dated March 3 on shareholder proposals about its lobbying efforts and how they relate to the company's goal to reach net zero greenhouse gas emissions as well as its supply chain for sugar in India.

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Brandon Harden

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Bird Flu, Weight Loss Drugs, DEI Emerge Among Corporate Risks

- Companies flag a series of novel business threats this year
- Egg prices and shifting consumer preferences draw concern

Corporate securities filings this year are littered with glimpses into new businesses risks, from costs related to President Donald Trump's immigration crackdown to threats to employees and property from wildfires.

Companies are divulging the flurry of new threats to shareholders in 10-K annual reports that typically flood into the Securities and Exchange Commission at the beginning of each year.

The onslaught of Trump executive actions ties into many of the concerns, prompting corporate disclosure about tariffs, immigration enforcement, and scrutiny of diversity policies. But companies are also on edge over a medley of recent events that don't relate directly to the new administration, including mounting worries about avian flu, potential dips in business from weight loss drugs, and safety issues in the wake of the murder of a UnitedHealth Group leader.

Most of the new language was added to the "general risk factors" section of company reports that typically explains threats to operations and financial stability, spanning everything from regulatory changes and potential enforcement actions to inflation or pandemics. Here are some of the themes emerging this year:

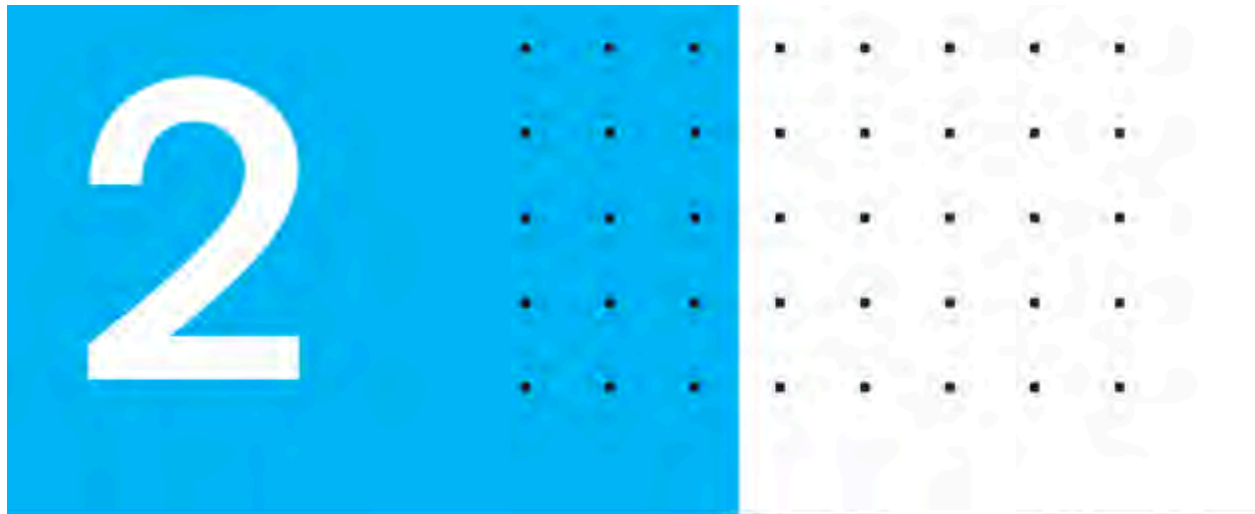
Diversity Programs

Trump's directive scrutinizing corporate diversity programs prompted companies including US Steel to warn shareholders in their annual reports that the DEI blitz could pose a risk to their business. JPMorgan Chase said it expects possible criticism over its diversity policies, including from politicians and members of the public.

The steel producer pointed to the executive order that called for potential federal investigations into corporate diversity practices. US Steel also added a reference to the conservative movement opposing environmental, social, and governance efforts.

The new risk factor comes as Corporate America grows increasingly tight-lipped about its diversity efforts. Scores of companies this year cut references to diversity in their annual reports, or changed their language to focus on terms such as “belonging.” Paypal and JetBlue, for example, removed almost all references to diversity, equity, and inclusion in their annual reports this year.

Immigration Enforcement



The Trump administration’s stricter immigration enforcement policies have startled the food service industry.

Sweetgreen said in its annual report that the immigration crackdown could increase its suppliers' costs if those suppliers rely upon labor from undocumented immigrants. The company noted that US Immigration and Customs Enforcement "recently intensified" its efforts.

Similarly, Chipotle said changes in immigration policies "could decrease the pool of candidates with legal work authorization, cause disruption in the workforce for all companies that rely on hourly workers and increase the costs, time and requirements to hire new employees."

Tariff Threats



Trump's unleashing of tariffs on China, Mexico, and Canada prompted a flood of companies to list trade risk concerns in their annual reports. Some businesses also told investors they feared retaliatory tariffs.

Restaurant chain Cava flagged in its annual report that some of its bowls, lids and food products, including avocados, are produced in the three countries. This could make dinnerware and ingredients more expensive or harder to procure, the Mediterranean food chain said.

There are broader implications other than rising costs: Coca-Cola said that tariffs could force it “to rely more on plastic packaging than desired.”

Executive/Office Safety

The death of Brian Thompson, the CEO of UnitedHealthGroup Inc.’s insurance unit who was shot and killed outside a hotel in New York City, unsettled companies including Nasdaq Inc.

The stock exchange operator said in its annual report in late February—just over two months after the attack—that its business could be “more likely than other companies to be a target for malicious disruption activities or physical attacks on our senior leadership team and/or our office locations.”

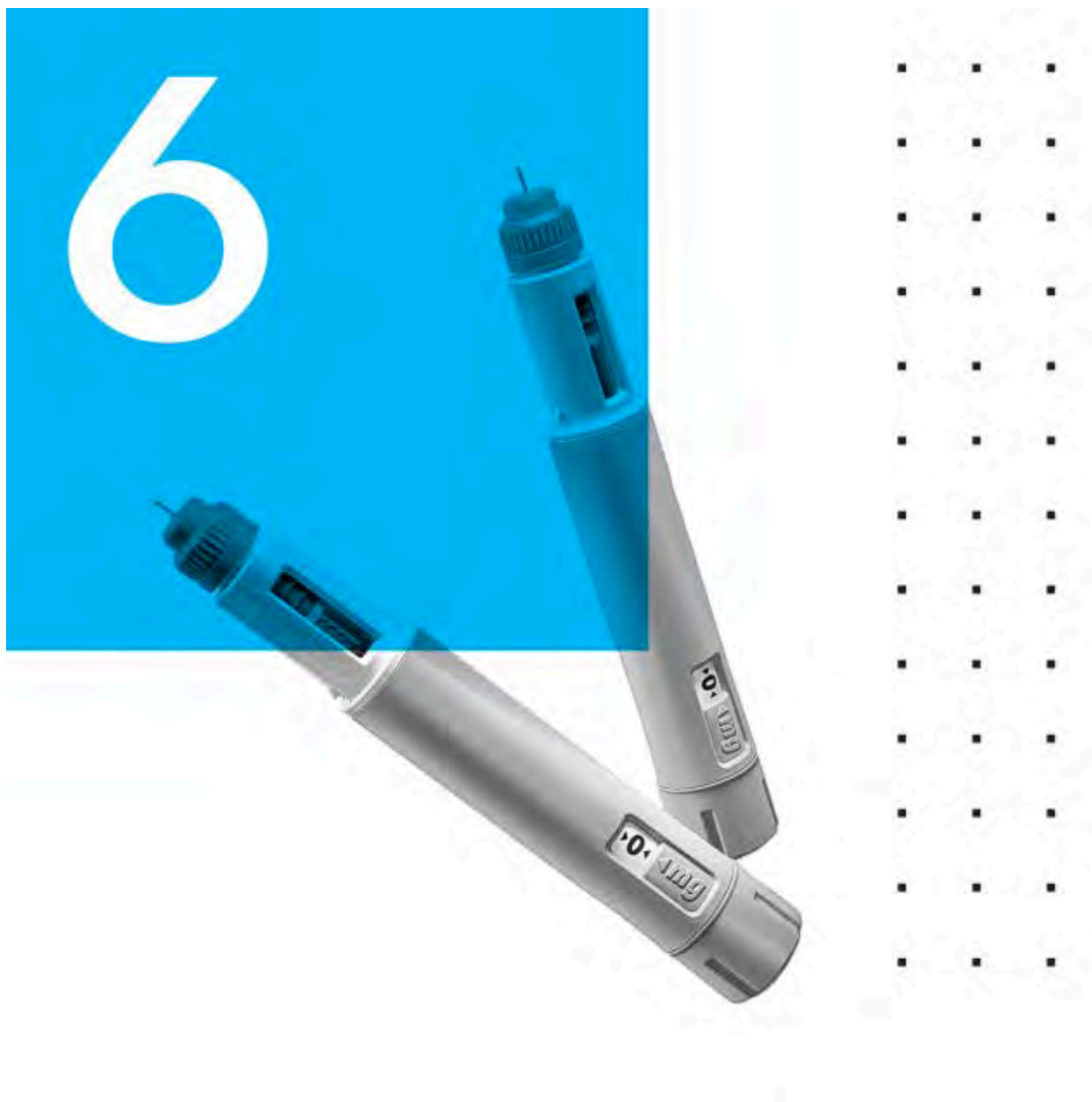
The shooting has put the health-care industry on edge in particular, though numerous businesses across industries ramped up security measures in its aftermath.

Egg Prices

The recent outbreak of avian flu, which has driven up the price of eggs and shaken supply chains, prompted dozens of disclosures.

Diner chain Denny’s Corp. cited rising egg prices driven by the avian flu as a risk. Shake Shack Inc. similarly noted that the avian flu “has impacts on the costs of poultry and eggs.” But the burger chain added that consumer preferences could also shift because of the avian flu, regardless of whether its supply chain is affected.

Weight Loss Drugs



The novelty of weight loss drugs, including brand-name Ozempic, has sparked worries at companies known for their indulgences.

The Cheesecake Factory Inc. told investors in its annual report that “new and current medical treatments such as GLP-1 agonists may shift consumer preferences.” Keurig Dr Pepper Inc. made a similar disclosure in its report to shareholders.

GLP-1 agonists are a class of medications used to treat Type 2 diabetes and obesity. The medications lower blood sugar levels and can promote weight loss by helping patients feel more satiated after eating. Coors also said weight loss drugs could shift consumer drinking behavior, considering that the medicine can help people reduce their alcohol intake.

Wildfires

A volley of companies, particularly those with ties to California, pointed to the threat of wildfires in their annual reports.

ZipRecruiter, whose corporate offices and primary data facilities are based in California, added a reference to the wildfires that devastated Los Angeles early this year as a risk to its business. And Cushman & Wakefield said in its annual report that while none of its offices “suffered major damage,” the LA wildfires “negatively affected certain of our employees and certain client sites.”

The wildfire warnings came amid a jump in companies flagging the rise in extreme weather and weather-related events overall as a possible risk for shareholders.

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SEC Rejects Goodyear Bid to Stop Investor's Microplastics Plan

- Tiremaker sought to bar shareholder vote at annual meeting
- Investor's proposal seeks policies to reduce dust from tire wear

The SEC declined to back a Goodyear effort to toss a shareholder proposal urging the tiremaker to pursue microplastics reduction goals, raising the odds that investors will vote on the resolution.

The Securities and Exchange Commission said in a March 3 letter it disagreed with Goodyear Tire & Rubber Co. plans to bar the resolution from the company's proxy ballot for its annual meeting later this year. Goodyear looked to block the vote under SEC rules that permit exclusion if a resolution micromanages a company or involves its ordinary operations.

The SEC can sue companies that scrap shareholder proposals in violation of agency rules. Companies usually seek the SEC's guidance on whether their plans comply with agency rules before they ax proposals. Goodyear likely now will include the resolution on its proxy ballot, unless it reaches a deal with John Chevedden, the investor who brought the proposal.

The SEC didn't elaborate in its letter about why the agency disputed Goodyear's claims that the proposal micromanaged the company and concerned day-to-day business matters. The proposal asks Goodyear's board to implement policies establishing tire wear reduction goals, saying dust from shedding causes significant microplastic pollution.

The agency's letter to Goodyear is an early example of the SEC's response to shareholders' environmental, social, and governance proposals under President Donald Trump's second administration. The correspondence came after the agency in February released guidance easing corporate efforts to bar votes on some environmental and social campaigns.

"Investors have the right to know how Goodyear is addressing these risks and whether the Company is taking meaningful action to mitigate its environmental impact," Conrad MacKerron, senior vice president of shareholder advocate As You Sow, said in a statement on Friday. The organization is helping Chevedden with his proposal.

A Goodyear representative didn't immediately respond to a request for comment. An SEC spokesperson declined to comment.

Goodyear has yet to announce the date of its annual meeting, but usually holds it in April.

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Boeing Investors Certified As Class In 737 Blowout Suit

By **Jared Foretek**

Law360 (March 7, 2025, 6:21 PM EST) -- A California federal judge on Friday certified a class of Boeing investors in a securities fraud suit accusing the aviation giant of making false statements about the safety of its 737 Max fleet.

While U.S. District Judge Leonie M. Brinkema certified a class of investors of Boeing common stock, she kept options holders out of the class, saying their addition would prejudice Boeing.

Judge Brinkema's six-page order certifying a class of individuals and entities who purchased or acquired Boeing common stock during a three-year class period came after attorneys for Boeing said in a hearing held earlier in the day that it was too late for plaintiffs to include options traders in their class.

She said that the suit's plaintiffs — the Rhode Island Office of the General Treasurer on behalf of the Employees' Retirement System of Rhode Island and Local #817 IBT Pension Fund — were trying to include Boeing options holders despite not including them in their amended complaint filed in May.

Judge Brinkema said that the plaintiffs shouldn't be allowed to "expand the class," adding that cases the plaintiffs had cited involved "narrowing, not expanding, the size of the class."

"To allow plaintiffs to enlarge the class at this juncture would prejudice defendants and unduly complicate the litigation while the parties are in the midst of extensive discovery and are headed to mediation next month," Judge Brinkema wrote.

Judge Brinkema also sided with Boeing's proposed start and end dates for the class period — another issue of contention at Friday's hearing.

While the plaintiffs sought a start date of Sept. 30, 2019, Judge Brinkema agreed with Boeing's contention that the start date should be Jan. 7, 2021 — the date Boeing and the U.S. Department of Justice announced a deferred prosecution agreement to resolve a criminal charge related to safety issues with the aviation giant's 737 Max airplanes.

Judge Brinkema also agreed with Boeing that the class period should end on Jan. 8, 2024, rather than the plaintiffs' proposed end date of May 14, 2024.

Judge Brinkema appointed the lead plaintiffs as class representatives and Labaton Keller Sucharow LLP and Robbins Geller Rudman & Dowd LLP as co-lead counsel.

Cohen Milstein Sellers & Toll PLLC and The Office of Craig C. Reilly will serve as liaison counsel for the class.

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

Attorneys for the parties had earlier in the day fought over the scope of the class, with Boeing's attorneys asserting that the investors' bid to include options traders in their class came far too late and was little more than a ploy to increase damages without winning any additional compensation for their stockholder plaintiffs.

"The plaintiffs just changed their mind," Richard Pepperman, representing Boeing, told Judge Brinkema earlier Friday, adding that the move would only complicate potential settlement talks.

The plaintiffs' amended complaint included only Boeing common shareholders. But in moving for certification, the plaintiffs included traders who sold put options and those who bought call options on Boeing, something none of the suit's original plaintiffs did during the relevant time period, Pepperman pointed out.

However, Jake Bissell-Linsk, representing the Rhode Island treasurer's office, said the options traders should be included because their claims are "identical" to those of the common shareholders.

"The damages methodology for the options ... is identical to the damages methodology for [stockholders]," he told the judge. "They have the exact same interest in prosecuting the case."

Brinkema asked Pepperman whether there was anything stopping options traders from bringing a suit of their own. Pepperman said there was not.

The **plaintiffs allege** that Boeing committed securities fraud by misleading investors about purported strides in the safety of its 737 Max fleet, only to have the stock price tumble when a 737 Max door plug blew out midair during an Alaska Airlines flight from Oregon to California in January 2024, and safety problems came to light as a result.

In **denying** Boeing's motion to dismiss the suit in September, Judge Brinkema said the plaintiffs' complaint showed a "strong inference of scienter" on the part of Boeing, saying it was "a real problem" for the company.

The parties had a significant disagreement on a second matter Friday. Though Boeing had asked the judge to deny class certification outright, the company had argued that the class period should start later and close earlier than the investors had proposed.

The plaintiffs had moved for a class period starting on Sept. 30, 2019, less than a year after the second of two 737 Max crashes that killed 346 people in a span of months, and when Boeing stock opened at \$383 per share. But Boeing argued that the period should begin no earlier than Jan. 8, 2021, just after the company entered into the deferred prosecution agreement with the DOJ over the crashes that included a criminal monetary payout of more than \$2.5 billion. That day, Boeing's stock opened at just \$213.61 per share.

Boeing has justified its proposed start date by arguing that the company underwent substantial changes from 2019 to 2021 and that its stock price did not move on the days in 2019 and 2020 when the plaintiffs claim the company made misleading statements about safety.

"Boeing repeatedly said, 'Boeing is worth nothing without safety. Boeing is worth nothing without safety. Boeing is worth nothing without safety,'" Bissell-Linsk said Friday, arguing that if Boeing had been honest about its safety problems during 2019 and 2020, its stock price would have fallen rather than staying flat.

But Pepperman told Judge Brinkema that the state of Boeing was "so different" in 2021 than in 2019, and that the plaintiffs had no basis for including 22 alleged misstatements that Boeing made in 2020 and 2021 because they clearly did not bring new investors into the stock.

"Not one of those 22 dates was there a significant increase in [Boeing's] stock price," Pepperman said. "If [Boeing was] convincing the markets that [it] turned the page, you'd expect the market ... to raise the price up."

The two sides also differ over when any class period should end, with Boeing claiming that the final day should be Jan. 8, 2024, at the latest, three days after the Alaska Airlines blowout. On that day, Boeing's stock closed at \$228 per share. It was when that incident occurred, Pepperman said, that any alleged revelations about Boeing were disseminated to the market. The investors, meanwhile, say there were even more events that "revealed that [Boeing's] assurances had been materially false and misleading" over the following months. They propose that the class period end on May 14, 2024, when the Department of Justice said that Boeing violated the 2021 agreement, sending the

company's shares tumbling down to just \$180.76 at close.

But all those supposedly adverse revelations stemmed from the Alaska Airlines incident, when "the truth was revealed," Pepperman said. Even the plaintiffs acknowledged that the truth had already come to light, because they filed their initial complaint on Jan. 30, 2024.

The pension funds plaintiffs are represented by Carol C. Villegas, Christine M. Fox and Jake Bissell-Linsk of Labaton Keller Sucharow LLP, Chad Johnson, Noam Mandel, Jonathan Zweig, Desiree Cummings and Brent Mitchell of Robbins Geller Rudman & Dowd LLP, and Steven J. Toll and S. Douglas Bunch of Cohen Milstein Sellers & Toll PLLC, and attorney Craig C. Reilly.

The Boeing defendants are represented by Richard C. Pepperman II and Judson O. Littleton of Sullivan & Cromwell LLP and Benjamin L. Hatch of McGuireWoods LLP.

The case is State of Rhode Island Office of The General Treasurer, on Behalf of The Employees' Retirement System of The State of Rhode Island v. The Boeing Company et al., case number 1:24-cv-00151, in the U.S. District Court for the Eastern District of Virginia.

--Additional reporting by Jared Foretek and Linda Chiem. Editing by Vaqas Asghar and Michael Watanabe.

Update: This article has been updated with details on Judge Brinkema's order partially granting the plaintiffs' motion for class certification and appointment of class representatives and class counsel.

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Cloud Network Co. Brass Face Suit Over Lockdown-Era Glut

By **Emilie Ruscoe**

Law360 (March 7, 2025, 8:08 PM EST) -- Officers and directors of cloud-based computer networking equipment maker Extreme Networks Inc. face shareholder derivative claims that they hurt investors by concealing how a glut of COVID-19 lockdown-era customer orders cast a yearslong shadow on its revenue.

In a **complaint** filed Thursday in San Francisco federal court, plaintiff Abbas Hemani claimed that the Extreme brass breached their fiduciary duties and harmed Extreme and its shareholders after trading prices for its shares gradually slumped from over \$32 to under \$13 following revelations about where its sales revenue was actually coming from.

Between July 2022 and January 2024, Hemani claimed, the company's shares traded at artificially inflated prices as it concealed that it was propping up its sales numbers by speeding up backlog fulfillment instead of selling its products at a steady clip.

Hemani described Extreme as a designer, developer and manufacturer of wired and wireless network infrastructure that has focused since 2019 on cloud-based networking.

Since refocusing on cloud-based networking, the investor said, the company won plaudits in its industry, with one analyst recognizing the company as the sector's fastest-growing vendor in a 2020 "Cloud-Managed Networking Market Report," Hemani said Thursday.

Despite the analyst's high hopes for Extreme, the investor said, between July 2022 and January 2024 the company saw "declining client demand as customers had over-ordered products during the COVID-19 pandemic to avoid supply shortages with limited alternative sourcing options."

Hemani said that the clients' pandemic over-ordering "cannibalized" those same customers' future purchasing needs, alleging that rather than disclosing this trend to investors, the company instead sped up its back order fulfillment, "creating the illusion of sustained organic growth and strong client demand" and concealing the challenges it faced.

According to Hemani, the company also hid its backlog-clearing strategy in statements to shareholders mischaracterizing trends in customer demand and "compounded the deception" by stopping its practice of offering quarterly reports on key metrics such as its backlog and book-to-bill ratios, leaving shareholders in the dark about sources for quarterly revenue.

"Defendants' statements, when considered in context and collectively, created the false and misleading impression that Extreme was experiencing robust organic customer demand, a sustained backlog, and market share gains poised to drive record revenues for years to come," Hemani claimed.

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

Hemani is represented by Betsy C. Manifold, Rachele R. Byrd and Alex J. Tramontano of Wolf Haldenstein Adler Freeman & Herz LLP and Justin A. Kuehn and Molly Brown of Kuehn Law PLLC.

Counsel information for the defendants wasn't immediately available Friday.

The case is Hemani v. Meyercord et al., case number 3:25-cv-02318, in the U.S. District Court for the Northern District of California.

--Editing by Rich Mills.

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Bed Bath & Beyond Investors Can't Move Judge On Class Cert.

By **Katryna Perera**

Law360 (March 7, 2025, 5:35 PM EST) -- Bed Bath & Beyond shares did not trade on an efficient market during the class period, a Washington, D.C., federal judge confirmed again, refusing to reconsider his class certification denial in a suit from the now-bankrupt retailer's investors who alleged they were misled by company executives and a billionaire investor.

U.S. District Judge Trevor N. McFadden **issued an order** Thursday saying, "Once more, this court must comb out a snarl in the securities fraud case against Bed Bath and Beyond investor Ryan Cohen."

The suit centers on a short squeeze of Bed Bath & Beyond stock that occurred in the summer of 2022 when the company's stock price jumped by 111% over the course of two weeks. During this time, Cohen, a billionaire investor and entrepreneur, and his firm RC Ventures owned a nearly 10% stake in Bed Bath & Beyond, which was struggling with declining revenue and lack of inventory, among other things.

During the short squeeze of the retailer's stock, Cohen responded to a negative article about Bed Bath & Beyond on Twitter and included a moon emoji, which Cohen's followers interpreted as "a rallying cry to buy Bed Bath stock," according to court filings.

However, a few days later, Cohen sold his and RC Ventures' entire Bed Bath & Beyond position, earning a profit of more than \$68 million. Following his exit, the retailer's stock price collapsed. Investors filed the **current action** alleging Cohen, RC Ventures, Bed Bath & Beyond and its CEO Sue Gove made misleading statements about the company and its financial prospects.

Cohen and RC Ventures are the only active defendants remaining in the suit as all claims against Gove were dismissed, and claims against Bed Bath & Beyond were stayed after the company **filed for bankruptcy** in 2023.

In September, Judge McFadden **declined to grant class certification** to the investors, finding that a causal connection between the defendants' alleged fraud and class members' injuries cannot be established since Bed Bath & Beyond stock, known as BBBY, did not trade in an efficient market during the proposed class period.

"The astronomical volume and share turnover rates during the class period do not signal market efficiency any more than tachycardia signals a healthy heart," Judge McFadden said in September.

The investors asked the judge a month later to reconsider his ruling, arguing that the court erroneously required the investors to prove reliance for several of its claims, in which a showing of reliance is not required.

The investors also argued that Judge McFadden wrongly concluded that BBBY did not trade in an efficient market during the proposed class period.

But Judge McFadden said Thursday the investors' arguments "run the gamut from forfeited to recycled."

"Neither type of claim is proper in a motion for reconsideration. In short, the court finds no reason to

depart from its previous holdings," the judge said.

When he denied certification in September, Judge McFadden found that although the investors' proposed class meets the numerosity, commonality and typicality requirements, and lead plaintiff Bratya SPRL — a Belgium-based family investment office — is an adequate lead plaintiff, Bratya could not lean on the presumption put forth in *Basic Inc. v. Levinson* , due to the inefficiency of the market at the time.

And because Bratya could not lean on the Basic Inc. presumption, reliance couldn't be proved, and individual questions would dominate over common ones, the judge said.

In its motion for reconsideration, Bratya first had argued that its control person liability claims do not require a showing of reliance, rendering the Basic Inc. presumption futile. But Judge McFadden said Thursday that Bratya forfeited those claims because it has not raised the related reliance argument until now.

"Because Bratya 'could have made' this argument at several points earlier 'but elected not to do so,' the argument is forfeited," Judge McFadden said.

Second, Bratya argued the defendants failed to meet their burden of showing a lack of price impact on Bed Bath & Beyond stock and therefore, the Basic Inc. presumption was "unrebutted."

"Bratya points to the drop in stock price on August 19, the day the market learned of Cohen's wholesale liquidation. ... Bratya contends the statistical significance of this 'corrective disclosure' undermines Cohen's duty to show a lack of price impact of the earlier misrepresentations," Judge McFadden said.

However, the judge said there are a "few problems" with Bratya's argument. First, the judge said, that while it is true that when a disclosure occurs, back-end price reductions can show a front-end misrepresentation was factored into a stock price, the court has "seen this film before."

"Bratya already pressed the court at length about the salience of the purported corrective disclosure. ... The court did not find Bratya's arguments compelling then. ... Bratya may not now use its motion for reconsideration to paddle in water under the bridge," the judge said.

He added that Bratya misunderstood the relevant sequence of events because Cohen would only need to show a lack of price impact if Bratya had established the Basic Inc. presumption.

"But Bratya did not fulfill its burden to show that it was entitled to the presumption in the first place. ... So Cohen never needed to explain away the 'corrective disclosure,'" the judge said.

Bratya had also argued that Judge McFadden erroneously concluded that Bed Bath & Beyond stock was trading in an inefficient market during the proposed class period.

However, the judge said Thursday that Bratya's "mere disagreement" with the court's conclusion is not enough to warrant reconsideration. Bratya has not offered any new facts in support of its position, and it does not claim that the court made a "clear error of law," he said.

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

The investors are represented by Joshua B. Silverman, Omar Jafri, Christopher P.T. Tourek, Genc Arifi and Jeremy A. Lieberman of Pomerantz LLP, Peretz Bronstein, Yitzchak E. Soloveichik and Eitan Kimelman of Bronstein Gewirtz & Grossman LLC, and Steven J. Toll, Daniel S. Sommers and Jan E. Messerschmidt of Cohen Milstein Sellers & Toll PLLC.

Cohen and RC Ventures are represented by Dane H. Butswinkas, Steven M. Farina, Brian T. Gilmore and Madeline C. Prebil of Williams & Connolly LLP.

The case is Bratya SPRL v. Bed Bath & Beyond Corp. et al., case number 1:22-cv-02541, in the U.S. District Court for the District of Columbia.



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Musk To Give Deposition In Twitter Shareholder Suit

By **Sydney Price**

Law360 (March 7, 2025, 9:44 PM EST) -- Elon Musk has agreed to sit for a deposition in early April in a proposed shareholder class action accusing him of fraudulently claiming Twitter had a bot problem to get out of his \$44 billion acquisition of the site, his attorneys said Friday.

According to the proposed order, Musk said he is unavailable to meet prior to the March 31 discovery cutoff, but can appear for deposition on April 3 in Washington, D.C.

The development comes just over a month after the Ninth Circuit **denied Musk's petition** requesting permission to appeal the district court's September 2024 class certification order.

The investors' suit alleges that when Twitter, which Musk renamed X after taking it over, entered into a deal to be acquired by a Musk-owned entity in April 2022, Musk pledged billions of dollars of his Tesla Inc. stock to raise cash. But that stock tanked by about \$1,000 in the days after the Twitter deal was announced, the suit states.

Musk tweeted in May 2022 that the deal was "temporarily on hold pending details" concerning spam accounts on the social media platform, according to the complaint.

A few days later Musk said during a tech conference in Miami that fake and spam accounts made up at least 20% of Twitter's users, the investors say, adding that Musk tweeted that the information about the number of bot accounts was "fundamental" to the company's financial health.

The lead plaintiffs assert that they sold 28,389 shares of Twitter common stock during the proposed class period at artificially deflated prices and collectively suffered losses of over \$558,000, according to their motion for class certification filed in May 2024.

Musk tweeted the next day that the actual number of bot accounts on Twitter could be "much" higher and said the deal "cannot move forward" until Twitter showed proof that the number was less than 5%. These statements were responsible for share declines, the plaintiffs allege.

When seeking class certification, the investors said common questions predominate, including whether Musk's May 13, 2022, tweet that the "Twitter deal [is] temporarily on hold pending details supporting calculation that spam/fake accounts do indeed represent less than 5% of users" contained material misrepresentations and omissions, and whether Musk's May 2022 statements that bogus accounts made up at least 20% of Twitter's users were false and misleading.

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

The shareholders are represented by Joseph W. Cotchett, Mark C. Molumphy, Tyson C. Redenbarger and Gia Jung of Cotchett Pitre & McCarthy LLP and Francis A. Bottini Jr., Albert Y. Chang and Aaron P. Arnzen of Bottini & Bottini Inc.

Musk is represented by Alex Spiro, Jesse A. Bernstein, Jonathan E. Feder, David M. Cooper, Michael Lifrak, Joseph C. Sarles, Stephen A. Broome, Nathan Archibald and Alex Bergjans of Quinn Emanuel Urquhart & Sullivan LLP.

The appeal is *Giuseppe Pampena et al. v. Elon Musk*, case number 3:22-cv-05937, in the U.S. District Court for the Northern District of California.



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Oscar Health Beats Shareholder Suit Over IPO Disclosures

By **Sydney Price**

Law360 (March 7, 2025, 7:13 PM EST) -- Health insurance company Oscar Health Inc. has escaped a proposed investor class action accusing it of making omissions in its registration statement ahead of its 2021 initial public offering, with the court ruling that the plaintiffs have not shown that the defendants misled investors about the adequacy of Oscar's internal controls.

According to the suit, Oscar filed its registration statement for its IPO on March 2, 2021. Nearly a year later, Oscar's Chief Financial Officer Scott Blackley disclosed that Oscar "did not design and maintain effective controls over certain information technology general controls for information systems," which the plaintiffs said was the cause of a \$20 million of risk adjustment expense announced several months prior that caused Oscar's share price to fall nearly 25%.

On Thursday, U.S. District Judge Vernon S. Broderick wrote in an opinion regarding the suit's dismissal that the investors do not plead specific facts showing that Oscar had faulty internal controls or that the defendants knew of any deficiencies. The plaintiffs' argument rests on the claim that the risk adjustment expense itself demonstrates that Oscar must have "failed to maintain adequate controls," but Judge Broderick said the "backward-looking assessment" is not permitted.

Judge Broderick gave the defendants 30 days to file a second amended complaint.

In addition to Oscar, the suit's other defendants include several of Oscar's directors and its IPO underwriters, including Goldman Sachs & Co. LLC and Wells Fargo Securities LLC.

Judge Broderick said the suit's allegations that the statements made by Blackley are "admissions" that Oscar lacked adequate controls are "improper and conclusory."

"The only factual support that plaintiffs rely on is the \$20 million risk adjustment itself," Judge Broderick said. "Thus, plaintiffs' characterization of these admissions as a well-pled allegation that I must accept as true, is incorrect."

Judge Broderick agreed with the defendants' assertions from their motion to dismiss that the suit does not show any weaknesses existed when the registration was filed. Additionally, the filing made adequate risk disclosures by stating that "the result of risk adjustment programs may impact [Oscar's] revenue, add operational complexity and introduce additional uncertainties that have a material adverse effect," Judge Broderick determined.

"Oscar's disclosures made clear that it faced significant risks associated with [risk adjustment data validation] audits," Judge Broderick said.

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

The investors are represented by Casey Edwards Sadler, Charles H. Linehan and Gregory Bradley Linkh of Glancy Prongay & Murray LLP and Shannon Lee Hopkins of Levy & Korinsky LLP.

Oscar and the individual defendants are represented by Jay B. Kasner, Alexander C. Drylewski and Tansy Woan of Skadden Arps Slate Meagher & Flom LLP.

The underwriter defendants are represented by Brady M. Sullivan, Charles D. Cording, Todd G.

Cosenza and Zeh Sheena Ekono of Willkie Farr & Gallagher LLP.

The case is Carpenter v. Oscar Health Inc. et al., case number 1:22-cv-03885, in the U.S. District Court for the Southern District of New York.

--Editing by Stephen Berg.

Correction: A previous version of this story partially misstated Judge Broderick's ruling. The error has been corrected.

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When Reincorporation Out Of Del. Isn't A Good Idea

By **Michael Kendall, David Sikes and Jon Novotny** (March 7, 2025, 5:06 PM EST)

Recent news reports have highlighted a number of high-profile moves or plans by Delaware corporations to reincorporate in other states, primarily Nevada and Texas. Much of the commentary has focused on the perceived benefits of exiting from Delaware, combined with questions regarding Delaware's long-held role as the preferred jurisdiction for many companies.

For some companies, reincorporation may make sense. But the purported advantages of such a move may turn out to be less than anticipated and for many companies, staying in Delaware may be the right decision.

For decades, Delaware has been the preferred jurisdiction for incorporation for a large majority of American public and private companies on a high-growth trajectory. That dominant position has been the result of a number of factors, including:

- A reputation for a wide and deep body of business law that dates back to 1792, covering many potential situations and questions, and allowing the rational assessment of potential outcomes by providing predictability;
- A sophisticated and responsive judiciary;
- Nonjury trials;
- Business-friendly governmental services;
- Substantial network effects — investors, lawyers, and other participants in the venture capital and private equity ecosystems are most familiar with Delaware, which encourages new companies that may be seeking to raise capital to incorporate in Delaware; and
- A state government traditionally intent on defending this reputation.

Over the past couple of years, however, some companies have made the decision to leave Delaware or are seriously considering leaving the state.

For example, Tesla Inc. stockholders **approved** a reincorporation from Delaware to Texas in June. Tesla's founder, CEO and controlling stockholder Elon Musk had championed the move in the wake of an adverse decision in a Delaware lawsuit against Tesla whereby the Delaware Court of Chancery



Michael Kendall



David Sikes



Jon Novotny

held in January 2024 that Tesla's board of directors had breached its fiduciary duties by awarding Musk a significant equity compensation package.

Prior to Tesla's move, the board of TripAdvisor authorized a reincorporation to Nevada, and stockholders subsequently **challenged** the conversion as unfair. On Feb. 4, the Delaware Supreme Court **ruled** that the reincorporation decision was subject to the deferential business judgment standard of review in that case and allowed the reincorporation — an ironically favorable decision for the proponents of leaving Delaware.

There are also news reports that Meta Platforms Inc. is **considering** reincorporating to Texas or another state.

Undoubtedly, some companies could benefit from reincorporating outside of Delaware. Those companies, most likely, are late-stage private or public companies with a controlling stockholder that, along with board members and management, could benefit from more permissive fiduciary duty standards, enhanced exculpation of officers and directors, and fewer impediments to controlling stockholders' actions. It is likely that these policy choices by Texas, Nevada and other jurisdictions have led late-stage companies, especially those with controlling stockholders or founders, to seriously consider reincorporation out of Delaware.

Other factors may also encourage companies to consider reincorporation from Delaware, such as reduced state tax obligations in other jurisdictions. Moreover, Delaware gives all stockholders a set of statutory inspection and information rights, while other states limit those rights to significant stockholders. For example, Nevada grants inspection rights to stockholders or groups of stockholders meeting certain ownership thresholds: 5% for governing documents or 15% for financial statements.

The perceived value in leaving Delaware, however, should be weighed against the lost benefits of staying in Delaware.

First, the higher level of protection potentially afforded controlling stockholders, directors and management in some other jurisdictions means that minority shareholders will lose challenges to some insider actions for which they would have had a remedy in Delaware. Limitations on stockholders' inspection rights will limit stockholders' ability to investigate potential wrongdoing or misconduct by corporate officers and directors. Ultimately, what makes sense for a powerful founder may not make sense for their investors and other stockholders.

Second, corporations can find themselves involved in myriad corporate lawsuits besides shareholder disputes with boards and controlling stockholders, and leaving Delaware means leaving behind its sophisticated judiciary and rich body of case law. For example, merger and acquisition transactions frequently result in lawsuits between buyers and sellers over issues like earnouts, purchase price adjustments, and breaches of representations. Delaware's law and judges provide valuable certainty as to the outcome of many of these disputes.

Conversely, Nevada and Texas have a fraction of Delaware's volume of corporate legal precedent, meaning that many rules governing important business questions are not yet settled in those jurisdictions or are otherwise subject to substantial uncertainty. Moreover, Texas retains juries in its business courts for certain matters, which can be expected to slow down and introduce variability in the decision-making process, and judges in Nevada are popularly elected and therefore directly subject to the changing attitudes of the state electorate.

Third, Delaware is unlikely to remain static in its approach to corporate law in the face of challenges to its predominant position. The Delaware Legislature meets annually, unlike Texas' and Nevada's, and has shown remarkable adaptability in addressing similar concerns in the past, including rapidly amending its corporate law to address issues arising from court decisions.

In fact, on Feb. 17, a bipartisan bill — explicitly intended to rebalance Delaware's approach to controlling-stockholder transactions and stockholder inspection rights — was **filed** in Delaware, together with a concurrent resolution mandating a study for further legislative action, such as caps on attorney fees. Delaware's newly elected governor has indicated that he supports all such efforts to ensure that Delaware remains the preeminent state for business incorporation.

Furthermore, Delaware's Supreme Court has recently weighed in with decisions reiterating business-friendly principles. It is likely that the coming months will see the adoption of these and/or similar reactive measures that will again align Delaware law closer to the expectations of the business community that it serves.

Reincorporation can be costly, particularly for later-stage companies with extensive capitalization tables, a diffuse stockholder base and many contractual obligations. Reincorporation requires approval of both the board and stockholders, which will require disclosures to stockholders, and legal counsel must review a company's contractual obligations to confirm what consent and/or notice rights may be triggered.

Besides the direct costs, there are other indirect costs — such as the potential impediments to future investment noted above. The cost-benefit analysis of a reincorporation will depend on a number of factors, and it is impossible to provide a blanket recommendation.

For some companies, a move from Delaware could provide substantial net benefits. We suspect, however, for many others, it will not.

Michael Kendall is a partner and co-chair of the global M&A group at Goodwin Procter LLP.

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Jon Novotny is a partner at the firm.

Goodwin partner Craig Schmitz and associates Toni Wormald and Stan Phillips contributed to this article.

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

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Goodyear Must Include Microplastic Proposal In Proxy

By **Sarah Jarvis**

Law360 (March 7, 2025, 7:47 PM EST) -- The U.S. Securities and Exchange Commission has rejected Goodyear Tire & Rubber Co.'s bid to exclude from its annual proxy statement a shareholder proposal calling for goals and timelines related to reducing tire wear shedding and subsequent microplastic pollution.

A **March 3 letter** from the SEC's Division of Corporation Finance, which was posted online Thursday, says Goodyear failed to show that the proposal from shareholder advocacy group As You Sow should be left out of the company's annual proxy statement. Goodyear shareholders will vote on the proposal at the company's annual meeting in the second quarter of 2025.

The division rejected Goodyear's argument that the company should be able to exclude the proposal on the grounds that it relates to the company's ordinary business operations. Nor should the proposal be excluded for seeking to micromanage the company, the division determined.

As You Sow touted the division's determination in a Friday press release, saying it "reinforces the importance of shareholder engagement on environmental and social issues of material importance."

"This is the first proposal related to the harms of tire shedding and builds on As You Sow's long-standing work to reduce corporate plastic pollution," the group said.

As You Sow Senior Vice President Conrad MacKerron said in a statement that car tires are "a growing source of toxic microplastic pollution that harms ecosystems and fish, and may pose danger to human health." The group said tire wear particles account for an estimated 78% of microplastic leakage into oceans, and that tire wear emissions become airborne and can pose "serious human health risks."

"Investors have the right to know how Goodyear is addressing these risks and whether the company is taking meaningful action to mitigate its environmental impact," MacKerron said.

As You Sow noted that new standards from the European Commission will be the first to regulate tire emissions, adding that there's no certainty Goodyear would apply those or similar standards beyond the European market.

Goodyear didn't immediately respond to a request for comment Friday.

Acting SEC Chair Mark Uyeda discussed corporate environmental disclosures during a Wall Street Journal event on Thursday, in the context of the agency's rule requiring public companies to disclose their greenhouse gas emissions. He took issue with the rule for "going after nonmaterial disclosures," but said some firms have to think about materiality for particular environmental, social or corporate governance-related factors.

"If you have a business where 60% of your real estate is located in areas that may be subject to rising sea levels, for instance, you're going to think about that as, 'I've got to think about materiality in terms of my risk factor disclosures, my management discussion and analysis,'" Uyeda said. "So it is there."

In February, the SEC **asked** the court overseeing the consolidated litigation against the climate disclosure rules not to schedule the case for oral argument, signaling it may not move forward with the regulation.

On the proxy front, the Division of Corporation Finance last month **rescinded** Biden-era guidelines on excluding certain shareholder proposals from proxy statements, reverting the agency's posture to an era that was generally more receptive to companies seeking such exclusions.

Experts **told Law360** that while the substance of that rescission was not surprising, given the change in administration, the release of the new guidance while proxy season was already underway threw a monkey wrench in some companies' plans for the season.

--Additional reporting by Jessica Corso. Editing by Amy French.

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New Bellwethers Score Cert. In Generic Drug Price-Fixing MDL

By **Nadia Dreid**

Law360 (March 7, 2025, 8:18 PM EST) -- The Pennsylvania federal court overseeing sprawling multidistrict litigation springing from claims that pharmaceutical giants worked together to hike the cost of off-brand drugs has certified several sets of classes for the cases for the MDL's latest bellwethers.

U.S. District Judge Cynthia M. Rufe handed down a pair of orders Friday on a handful of classes for both direct purchasers and end payor plaintiffs of two different drugs, a topical steroid and an antidepressant medication.

The end payors got their antitrust and consumer protection classes certified, but weren't as lucky when it came to their unjust enrichment class. The direct purchasers also had their classes for each medication certified.

The price fixing allegations in the civil litigation have been percolating for nearly a decade, during which Judge Rufe has been sorting through claims brought by direct buyers, resellers, consumers and state attorneys general who have accused a slew of drugmakers — including Novartis unit Sandoz, Actavis and Mylan — of working together to fix the prices of dozens of generic drugs.

She has also been overseeing the settlements. Swiss drugmaker Sandoz and its subsidiaries agreed to pay \$275 million to settle claims from the MDL, with Judge Rufe giving the deal her preliminary blessing earlier this year. And last summer, Heritage Pharmaceuticals secured its freedom from a set of claims for \$10 million.

The MDL hit some "rocky shoals" in 2020, in the words of Judge Rufe, after the U.S. Department of Justice charged Teva Pharmaceutical Industries Ltd. with flouting federal antitrust laws by conspiring to rig bids, fix prices and allocate customers for certain generic drugs. The criminal indictment made the case's future as the MDL's bellwether uncertain.

Eventually, this set of direct purchaser and end payor purchasers cases were selected as new bellweathers.

The direct-purchaser plaintiffs are represented by NastLaw LLC.

The end-payor plaintiffs are represented by Cotchett Pitre & McCarthy LLP, Hausfeld LLP, Girard Sharp LLP, Loeff Cabraser Heimann & Bernstein LLP, DiCello Levitt, Lockridge Grindal Nauen PLLP, The Dugan Law Firm, Miller Shah LLP, Joseph Saveri Law Firm LLP, Motley Rice LLC, Trump Alioto Trump & Prescott LLP, Grant & Eisenhofer PA and Lite DePalma Greenberg & Afanador LLC.

The drugmakers are represented by Hogan Lovells, Arnold & Porter Kaye Scholer LLP, Dechert LLP, Kasowitz Benson Torres LLP, Morgan Lewis & Bockius LLP, Kelley Drye & Warren LLP, Clark Hill PLC, Baker Botts LLP, Buchanan Ingersoll & Rooney PC, Blank Rome LLP, WilmerHale and Foley & Lardner LLP.

The case is In Re: Generic Pharmaceuticals Pricing Antitrust Litigation, case number 2:16-md-02724, in the U.S. District Court for the Eastern District of Pennsylvania.

--Editing by Kristen Becker.



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Tariffs, Diversity And DOGE Dominate Trump 2.0 'Risk Factors'

By **Tom Zanki**

Law360 (March 7, 2025, 6:18 PM EST) -- Public companies are busily reworking risk disclosures since the arrival of President Donald Trump's second administration, seeking to walk a fine line of being upfront with investors about potential threats to business despite vast legal and policy uncertainties.

Tariffs, several of which just took effect this week, are a top disclosure item — as are spending cuts being urged by the Department of Government Efficiency led by billionaire and Trump confidant Elon Musk. Additionally, sharp shifts in environmental and energy policy are causing whiplash for companies, and so is fallout from Trump's 180-degree reversals of government diversity-related and ESG commitments.

Companies periodically revise their risk disclosures, especially after macroeconomic or geopolitical shifts — including the election of a new president. And with rapid changes happening almost daily since the start of Trump's second term, lawyers note the trend is more pronounced as of late.

"Almost all of our clients are asking about adjusting risk factors and whether they need to make specific mentions about recent developments," said Cleary Gottlieb Steen & Hamilton LLP partner Lillian Tsu, who advises companies and boards of directors on disclosures filed with the U.S. Securities and Exchange Commission.

Some 449 companies referred to Trump 872 times in the "risk factors" section of securities filings from Jan. 1 through Feb. 28, according to a review conducted by Law360 with assistance from analytics provider Intelligize, which is owned by Law360 parent company LexisNexis. The year-to-date total compared with 174 risk-factor mentions by 83 companies during the same period in 2024, when President Joe Biden was still in office and Trump was the prospective GOP nominee,

Law360's review covers annual 10-K and quarterly 10-Q filings for existing public companies, plus first-time registration statements for initial public offerings. Recent weeks saw a surge in filings as most domestic companies had until March 3 to submit 10-K reports for 2024, and more filings are imminent from foreign companies listed in the U.S. that face an April 30 deadline to annual 20-F filings. IPO registration statements are also expected to increase this spring.

Companies are required to disclose risks in order to inform shareholders about plausible threats to their business without being overly generic. Lawyers also say that well-crafted risk disclosures can provide companies a legal defense against fraud allegations in the event of a stock drop, or protect a company from liability for forward-looking statements.

Cleary's Tsu also noted that boards of directors, which are also parties to disclosures and liable for potential faulty statements, are taking an active role in discussions as companies craft fresh risk disclosures for the Trump 2.0 era.

"It is top of mind, not only for our [company] clients, but for the boards," Tsu said.

Here is a look at notable disclosures in recent weeks, offering a glimpse into what risks keep business executives and directors up at night.

Tariffs Top the List

Of all policies in flux in the early days of Trump's second administration, the back-and-forth on tariffs may be most vexing, particularly for companies that trade with Mexico, Canada and China.

The U.S. on Tuesday imposed 25% tariffs on Canadian and Mexican imports — before granting a **month-long exemption** for most Mexican goods on Thursday in addition to **temporary relief** for the automotive industry — plus a new 10% levy on Chinese goods on top of those that were already in place, bringing the total tariff on Chinese imports to 20%. Trump is also threatening additional tariffs on European companies.

Looming tariffs could impose a double whammy for actress Jesscia Alba's consumer goods business The Honest Company Inc., whose baby wipes are imported from China and diapers are imported from Mexico. The company, one of dozens that are cautioning investors about the effects of new tariffs, said it may be forced to look for new manufacturing locations if the U.S.' new trade policies are not scaled back.

"The imposition of tariffs in the past have led costs on products from China to increase, including our wipes products, and other new tariffs imposed by the United States could cause costs to increase further, which could lead to price increases on these products, which may not be absorbed by consumers or may lead to decreased demand," The Honest Company told the SEC in its annual filing Feb. 26.

Backlash Against DEI and ESG Prompts Reevaluation

Trump's executive orders aimed at ending diversity, equity and inclusion programs in the private- and public-sector workforce — along with a broader backlash against environmental, social and governance, or ESG, initiatives — also has companies scrambling to review their filings. The matter is in legal limbo following a federal judge's **injunction last month** blocking most of the anti-DEI orders.

Trump's opposition to DEI marks another whiplash following Biden-era diversity goals, which many companies touted and supported. Lawyers also note SEC staff in recent years encouraged companies to disclose more about their diversity policies. Fast-forward to 2025, and many businesses are now trying to stay out of the Trump administration's crosshairs without appearing inconsistent in their messaging.

"The change in approach on DEI has been very dramatic for some companies, and nearly all companies are struggling with the issue in one form or another," Linklaters LLP partner Jeff Cohen said.

Fintech firm SoFi Technologies Inc. said its stock price could suffer amid increased scrutiny of its diversity and climate policies. The company noted it sought to attract climate-focused investors through annual ESG commitments that now face jeopardy given that Trump, the GOP Congress and many state legislatures oppose such policies.

"Such anti-ESG and anti-DEI-related policies, legislation, initiatives, litigation, legal opinions and scrutiny could result in volatility of our stock price and the company facing additional compliance obligations, becoming the subject of investigations and enforcement actions, or sustaining reputational harm," SoFi told the SEC in its annual report Feb. 24.

DOGE's Budget Ax Unsettles Business

Companies that rely on government spending and contracts are also watching DOGE, a non-cabinet agency led by Musk that is driving the Trump team's **cost-cutting** crusade. Postal Realty Trust Inc., which owns real estate leased to the United States Postal Service, cautioned that potential privatization of postal operations or changes in the federal government's treatment of the USPS as an independent agency could harm its business.

Defense contractors are also on alert. Weapons technology provider Kratos Defense & Security Solutions Inc. is bracing for cuts, noting Trump has ordered DOGE to target Pentagon spending.

"President Trump has also indicated that he may pursue significant reductions to the U.S. defense

budget, if both Russia and China would agree to similar cuts in their respective national security spending," Kratos told the SEC in its annual filing Feb. 26. "The potential impact of DOGE and the president's potential intentions on the defense and national security industry, and the company, if any, is unknown at this time."

Green Energy Takes a Back Seat

Trump's shift toward conventional energy production has **unsettled renewable energy providers**. Electric-vehicle charging and battery technology supplier NXU Inc. told the SEC it fears "waning government support" will hurt the nascent EV market.

Solar software firm Nextracker Inc. cited a litany of concerns that could spell trouble, namely Trump's push to deregulate oil and gas drilling, the administration's withdrawal from the Paris Climate Accords, the halting of additional green energy spending under the Inflation Reduction Act, and the U.S. Department of the Interior's 60-day pause on establishing new public lands or waters, enacted Jan. 20.

"This pause, or a similar pause, on renewable energy project development, particularly if extended, could delay the timing of projects and could have a material adverse impact on our business, financial condition and results of operations," Nextracker told the SEC in its last quarterly filing Jan. 31.

Traditional Banks Wary of Crypto Mania

And Trump policies that are viewed as favorable for certain industries — like cryptocurrency firms — are prompting rivals in the traditional banking sector to refresh their filings. Boston-area bank Eastern Bankshares Inc. said the push for legislation recognizing stablecoins, or cryptocurrencies pegged to fiat currencies, could draw business away from banks.

"President Trump's executive order entitled 'American Leadership in Digital Financial Technology' could result in larger-scale adoption of stablecoins and other digital assets, which could potentially impact the number of customers who choose to engage with the traditional banking system and as a result could have a direct or indirect impact on our performance," Eastern Bankshares told the SEC in its annual report Feb. 27.

AI Policies Are in Flux

Artificial intelligence policies are also fluid. ZipRecruiter Inc., a job-search website that uses AI tools to match jobseekers with employers, noted that Trump rescinded a Biden executive order on AI and signed a new one requiring certain agencies to submit to the president action plans that promote "American's global AI dominance." And more repeals could be imminent, ZipRecruiter said, forcing the company to stay atop developments.

"Any such changes at the federal level could require us to expend significant resources to modify our products, services or operations to ensure compliance with old frameworks," ZipRecruiter told the SEC in its annual filing Feb. 25.

Fears of Obamacare Cuts Linger

And companies in healthcare-related industries remain worried about the future of the Affordable Care Act if Trump or the Republican Congress were to repeal or substantially former President Barack Obama's signature legislation. The ACA's status has been a recurring risk factor, depending on which party is in charge, for more than a decade.

Immunological-drug developer Vera Therapeutics Inc. worries the Trump administration and Congress could pursue budget-cutting health care reforms, noting that pending bills would reduce Medicare payments — potentially reducing demand for its products.

"These laws may result in additional reductions in Medicare and other healthcare funding, which could have an adverse effect on customers for our product candidates," Vera told the SEC in its annual filing Feb. 28.

Associating With Trump Himself Is a Risk

And finally, there is the polarizing personality of Trump himself, who has been a defendant in myriad lawsuits.

Trump Media & Technology Group Corp., the company that bears his name and owns the Truth Social platform where the president frequently posts, noted that its brand's success depends on the popularity of the president. Any setback for Trump, legally or politically, could jeopardize business prospects, the company warned.

The startup further cautioned that its reliance on Trump could harm capital-raising efforts, given that banks may not want to associate with the company.

"Certain financial-industry service providers have expressed ... an unwillingness or reluctance to work on TMTG's products or provide services due to TMTG's connection with President Donald J. Trump," Trump Media told the SEC in its annual filing Feb. 14. "Hostility from financial institutions could adversely affect TMTG's ability to obtain banking services, including additional financing on reasonable terms when required, or at all."

--Editing by Philip Shea and Kelly Duncan.

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