

Tuya Beats Investor Suit Over Amazon Review Crackdown Post-IPO

- Judge granted Tuya, others' motion for judgment on pleadings
- Letting investors file second amended complaint on IPO claims

Cloud platform service provider Tuya Inc. skirted allegations it should've disclosed before its IPO that customers were making fake product reviews in violation of Amazon.com Inc. policies, risking the company's business and share prices.

Investors failed to allege any false or misleading statements in Tuya's registration statement connected to its 2021 initial public offering, said Judge John P. Cronan. The US District Court for the Southern District of New York judge granted Tuya's motion for judgment on the pleadings March 7.

Cronan is allowing plaintiffs to file a second amended complaint through March 28. But he said, "at minimum," they'll need to add "concrete factual allegations plausibly demonstrating that reasonable investors could have viewed the challenged statements" in the IPO paper as suggesting the scandal didn't exist or being inconsistent with its existence.

The investors alleged in their most recent complaint that the China-headquartered company's registration statement—which touted the importance of customer relationships—was misleading because it didn't disclose the risks of many of its clients who sell smart devices employing fake Amazon review tactics.

After its IPO, a cybersecurity organization reported a widespread fraudulent review scheme by Chinese merchants based on a data leak, and Amazon banned a lot of Tuya's major customers, Cronan said. The bans hurt the cloud servicer's financial results, and its American depository share prices slipped, the judge said. ADSs allow US investors to buy stock that's traded on foreign exchanges.

Investors sued in 2022, seeking to impose liability under sections of the Securities Act of 1933.

The defendants, including Tuya, its leadership, and bank underwriters, sought judgment on the pleadings, claiming the plaintiffs failed to allege any misleading statements in the registration statement and that the false-review scheme wasn't knowable before its IPO. Cronan said he didn't need to consider the latter as he agreed with their first point.

The investors had argued that Cronan shouldn't grant this motion because of his ruling last year that allowed claims on its IPO papers to proceed. But, Cronan said, just because he denied in part defendants' motion to dismiss then didn't mean he found those claims were actionable.

Third parties were responsible for the alleged misconduct, Cronan said. Tuya couldn't have uncovered the scandal without investigating thousands of its customers or "exploiting information leaked through a data breach of dubious propriety," he said. Nor did the plaintiffs suggest in anyway Tuya could've avoided liability here "other than to completely refrain from speaking on the topics of its customer relationships and marketing practices, despite the obvious importance of both subjects to Tuya's investors," Cronan said.

Robbins Geller Rudman & Dowd LLP and Glancy Prongay & Murray LLP represent lead plaintiffs Kyle Nelson and Jiyi Qiu. Davis Polk & Wardwell LLP represents Tuya and current and former executives and board members. Ropes & Gray LLP represents underwriters.

None of the firms immediately responded to emails seeking comment.

The case is Lian v. Tuya Inc. , S.D.N.Y., No. 1:22-cv-06792, 3/7/25 .

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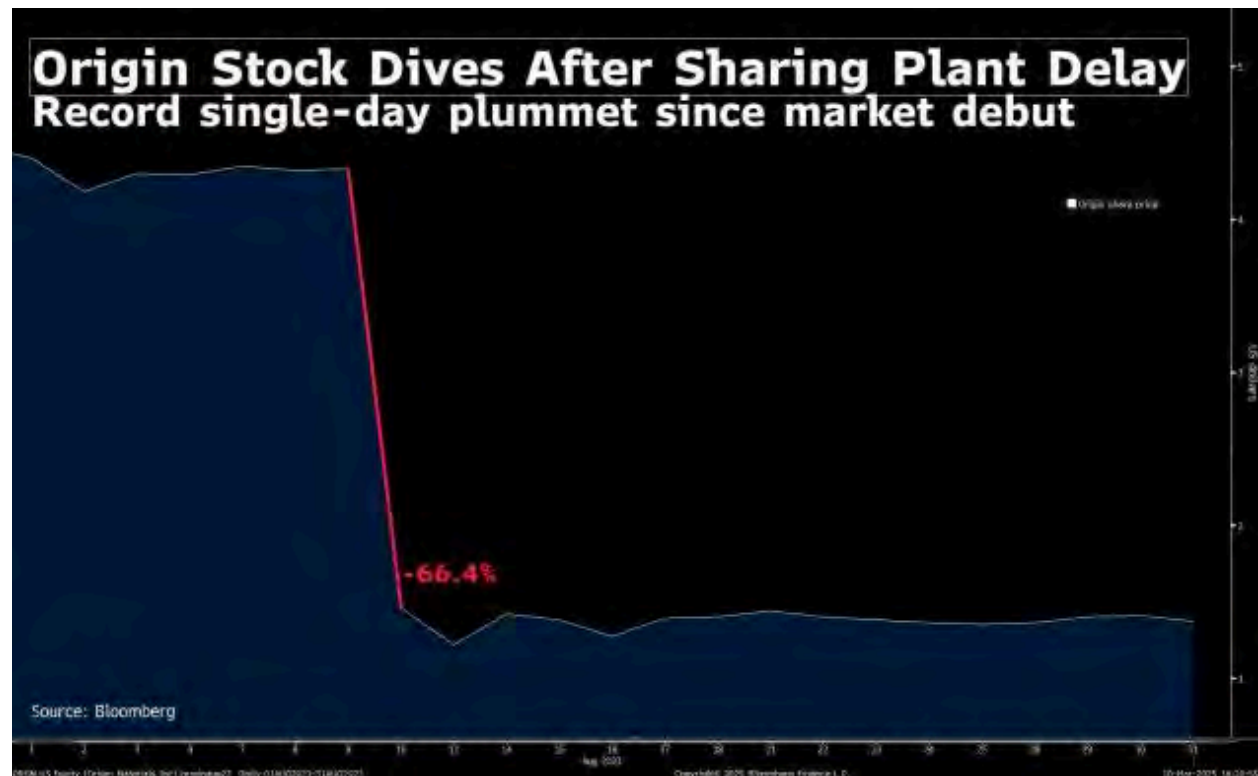
March 10, 2025, 1:36 PM PDT

Origin Materials Leadership Sued by Shareholder Over Facility

- COURT: E.D. Cal.

Origin Materials Inc. leadership misled investors about shifting plans and delayed construction for its new sustainable materials manufacturing plant, a shareholder derivative lawsuit said.

Current and former executives and board members harmed the company's finances and reputation by causing it to issue misleading statements about the facility's purpose and construction timeline, said Thomas Kaspar's complaint filed in the US District Court for the Eastern District of California. The day after new plans for the plant were announced in August 2023, the stock price fell over 66%, the March 7 complaint said—its worst day since it opened on the market, according to data compiled by Bloomberg.



Origin makes chemicals that can be used to produce the plastics polyethylene terephthalate (PET) and polyethylene furanoate (PEF), Kaspar said. In February 2021, the company announced plans to build a manufacturing plant called Origin 2 that primarily focused on the PET's chemical production and was expected to be operational by mid-2025, according to a copy of the complaint obtained from the court's Pacer docket.

But throughout the first half of 2023, leadership concealed that Origin encountered PET chemical engineering issues, entered into an agreement about the PEF chemical, and was shifting Origin 2 plans toward the PEF chemical's production, Kaspar said. This also delayed construction so that its first phase wouldn't be ready until 2026 or 2027 and its second phase in 2028, he said.

A proposed class action alleging similar issues is ongoing in the same court. Judge William B. Shubb granted and denied in part Origin's motion to dismiss claims about the facility last month.

Wolf Haldenstein Adler Freeman & Herz LLP, Rigradsky Law PA, and Grabar Law Office represent Kaspar, who seeks damages against the leadership for alleged securities law violations, breaches of fiduciary duties, unjust enrichment, and other claims. He alleged wrongdoing from at least Feb. 23, 2023, through Aug. 9, 2023.

Origin Materials didn't immediately respond to an email seeking comment. An attorney from Freshfields US LLP, which represents Origin in the proposed class action, declined to comment in an email.

The case is Kaspar v. Bissell, E.D. Cal., No. 2:25-at-00326, complaint filed 3/7/25 .

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Concord Energy's Minority Unit Holders Can Sue Over Redemption

- Minority investors accused majority of undervaluing shares
- Plaintiffs have standing to sue, 10th Cir. says in reversal

Investors who owned membership units in Concord Energy Holdings LLC have standing to sue the voting majority for allegedly forcing them to sell their interests at a below-market price, the Tenth Circuit ruled Monday.

The minority investors, who owned Class B units before the company's sale, showed a substantial likelihood that a 2022 amendment to the operating agreement "caused the forced redemption and undervaluation of their units," the US Court of Appeals for the Tenth Circuit said in an unpublished reversal.

The appeal concerns the requirement that a plaintiff have an injury traceable to the defendant's conduct to have standing to sue.

The Class B investors alleged that the 2011 version of the operating agreement required their approval for an amendment that would adversely affect them, and entitled them to the fair market price for redeemed units. But Class A unit holders allegedly changed the agreement in 2022 to give the board authority, upon approval by 60% of unit holders, to force redemption on terms—including book value—the board determined to be fair and reasonable.

The US District Court for the District of Colorado dismissed the suit, saying that because the 2011 agreement didn't specify a redemption price, the minority investors couldn't show an injury traceable to the later agreement. And the definition of "fair market value" in the 2011 agreement was to be set by the same majority required to approve the redemption, the lower court said.

"But to the extent that the district court was suggesting that plaintiffs have a traceability problem because the majority unit holders have always had the power to set a redemption price below fair market value, we disagree," Judge Nancy L. Moritz said for the Tenth Circuit. The term "fair market value" has independent legal significance and doesn't give the majority holders "free rein to set fair market value at any price they see fit," she said.

Judges Scott M. Matheson Jr. and Richard E.N. Federico joined the opinion.

Chamberlain, Hrdlicka, White, Williams & Aughtry; Holland & Hart LLP; and Marcy Glenn, who practices in Vineyard Haven, Mass., represented the minority investors, Whale Family Investments LP and Ranslem Capital LP. Eversheds Sutherland (US) LLP and Malik Semmens LLC represented the defendants.

The case is Whale Family Invs., LP v. Concord01, LLP , 10th Cir., No. 24-01011, unpublished 3/10/25 .

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Class Action

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Nikola Investors Reach Settlement in Fraud Suit Post Bankruptcy

Nikola Corp. and investors reached a settlement in their class action alleging the bankrupt electric-truck maker misled them about its technology and business prospects—but the case continues against its founder.

Other Nikola defendants and the investors anticipate formalizing an agreement and moving for the US District Court for the District of Arizona's preliminary approval, they said in a joint notice filed Monday. The notice comes a month after Nikola filed for Chapter 11 bankruptcy, seeking to sell off assets, and causing the investors' case against the company to be stayed.

- There's been no settlement with former chief executive officer Trevor Milton, who was sentenced to four years imprisonment and fined \$1 million in 2023 for deceiving shareholders; he's appealing and moved for a new district court trial
- In January, two former executives and the company petitioned to appeal to the Ninth Circuit the class certification order; those proceedings too were stayed
- Nikola as of last month still owed the Securities and Exchange Commission about \$80 million from a 2021 resolution of fraud allegations, tops among unsecured creditors according to bankruptcy court filings

No attorneys immediately responded to email requests for comment. Paul, Weiss, Rifkind, Wharton & Garrison LLP and local counsel Wilenchik & Bartness, PC represent Nikola, Kim Brady, and Mark Russell. Akin Gump Strauss Hauer & Feld LLP and local counsel Snell & Wilmer LLP represent ex-board member Jeffrey Ubben. Co-lead counsel Pomerantz LLP, Block & Leviton LLP, and local counsel Keller Rohrback LLP represent class representatives.

The case is *Borteanu v. Nikola Corp.*, D. Ariz., No. 2:20-cv-01797, 3/10/25 .

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Securities Class Actions and the Prevalence of AI-Related Allegations in 2024 and 2025

 [law.com/corpocounsel/2025/03/11/securities-class-actions-and-the-prevalence-of-ai-related-allegations-in-2024-and-2025](https://www.law.com/corpocounsel/2025/03/11/securities-class-actions-and-the-prevalence-of-ai-related-allegations-in-2024-and-2025)

Courtney Quirós and Sierra Shear and Carissa Lavin

It feels like almost overnight, artificial intelligence (AI) has shifted the way companies run their businesses and serve their customers. As AI becomes increasingly mainstream, governments, industry organizations, and individual companies across the globe are grappling with how to address AI-specific risks without stymying research or innovation.

In the United States, the new administration has signaled it will not “helicopter-parent” AI development. In January, President Donald Trump announced a \$500 billion private-sector investment into U.S.-based AI infrastructure and issued an Executive Order foreshadowing his administration’s intent to “remov[e] barriers” to AI development. Vice President JD Vance fleshed out the White House’s view, stating that “[e]xcessive regulation of the AI sector could kill a transformative sector just as it’s taking off.”

In the private sector, investment in AI has also increased at an exponential rate, with technology companies projected to spend over \$320 billion on AI-related capital expenditures in 2025 alone. This immense capital contribution has been paired with a sharp increase in AI-specific public disclosures as companies strive to meet their obligations to keep stakeholders informed.

The Securities and Exchange Commission (SEC) and private shareholders have both displayed a keen interest in these disclosures. The SEC demonstrated a new focus on AI-specific enforcement actions in 2024 and brought enforcement actions against eight companies that purportedly oversold the capabilities of their AI technology or could not provide any support for their claims that they were using AI. Late last month, the SEC announced a task force focused in part on AI.

But looking back at the past year, the real headline may be in the civil litigation space. According to the Stanford Securities Class Action Filings tracker, approximately 7% of the federal securities class actions filed last year included AI-specific allegations, which is more than double the rate of AI filings in 2023.

Shareholders bring these claims under the antifraud provisions of the Securities Exchange Act, which prohibit companies and their directors and officers from making misstatements or omitting material information about the purchase or sale of securities. These regulations stand independent of any regulatory framework pertaining to the development and use of AI, a reality that is underscored by the filing of 3 new AI-related securities class actions so far this year.

AI Allegations in Private Litigation

For in-house counsel, understanding the types of challenges shareholders are bringing against AI-affiliated companies is critical to effectively evaluating proposed disclosures and addressing potential areas of exposure.

The specific allegations featured in these lawsuits generally correspond to the type of company sued, roughly divided into companies: (1) developing and supporting AI technology; (2) integrating AI into their products and services; and (3) incorporating AI into their internal models and business systems.

Companies Developing and Supporting AI Technology

Allegations against companies focused on developing and supporting AI technology—which were the most frequent target of AI-related shareholder actions in 2024 and so far in 2025—most often concern the company’s financial statements and description of its financial prospects—bread-and-butter securities allegations. For example, in an action against a company that builds servers and systems used to power AI platforms, shareholder plaintiffs argued that a company’s financial statements were misleading because they allegedly failed to report certain related party transactions.

But these companies also saw allegations that they oversold their AI capabilities. For instance, in an action against a global data engineering company, shareholder plaintiffs challenged the accuracy of statements that algorithms performed well and that its AI platform was state-of-the-art.

Companies Incorporating AI Into Products and Services

Companies that incorporated AI into their existing consumer services and products most often faced allegations that they misrepresented the quality of their AI or substantially exaggerated the level of customer demand for AI services in their products.

A global software company, for example, faced challenges to statements that sophisticated customers increasingly wanted more AI features and its AI strategy was resonating. Shareholder plaintiffs alleged these sorts of statements were misleading, given the weak market demand and increasing expenses associated with AI development.

Companies Incorporating AI Into Internal Models and Business Systems

Finally, in a smaller number of new AI-related securities lawsuits, plaintiffs alleged non-AI companies that advertised their efforts to incorporate AI technology into their internal models and business systems failed to disclose problems with their AI programs and implementation.

In one such case, shareholder plaintiffs challenged statements by a company focused on digital advertising that its investments in AI would boost the effectiveness of its platform and its financial growth but missed revenue due to lower-than-expected demand, among other things.

Key Takeaways

As public companies ramp up their investments in AI, corporate counsel and leadership should work to understand how and why their organizations are utilizing AI to best position themselves to provide guidance and counsel on AI-related public statements, especially now as these statements appear to be of increasing interest to the plaintiffs' securities bar.

Companies can take various steps to minimize the risks of AI-related disclosures, including:

- Providing training or demonstrations of important AI tools used by the company to corporate counsel to assist counsel in reviewing and drafting well-tailored disclosures. A knowledge gap among the teams utilizing AI, the legal team, and C-suite individuals can hinder in-house counsel's ability to thoroughly examine these statements and provide feedback.
- Crafting appropriately specific disclosures concerning the company's use of AI. AI-based companies may choose to provide more detailed disclosures concerning their AI offerings, while companies that merely utilize AI may opt to provide less detail.
- Ensuring that knowledgeable subject matter experts outside the legal team review disclosures about AI to confirm their accuracy and that such disclosures accurately capture the company's current and, if appropriate, future plans related to AI. Companies that choose to address customer sentiment toward their AI should ensure descriptions of customer response and that their disclosures accurately capture that information.
- Weighing the potential impact of AI on the company's financial prospects. AI-based companies may more frequently include disclosures describing the importance of AI to their bottom line. Companies not focused on AI may need to do a detailed analysis to determine whether such disclosures are appropriate.
- Considering whether to establish a board-level committee focused on the oversight of the company's use of AI and to evaluate disclosures related to the company's use of AI.

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What Matters to Judges on Delaware's Chancery Court

 [law.com/litigationdaily/2025/03/11/what-matters-to-judges-on-delawares-chancery-court](https://www.law.com/litigationdaily/2025/03/11/what-matters-to-judges-on-delawares-chancery-court)

Ross Todd

Before Delaware Vice Chancellor Bonnie David was a judge, when she was just a law firm associate applying for a clerkship position with Vice Chancellor Sam Glasscock III, one line on her resume caught Glasscock's eye: she mentioned she enjoyed fishing on the Delaware Bay.

Glasscock, who lives in the small town of Lewes on the shores of the bay, brought up that line and his clerkship interview with David during a conversation Monday featuring the two judges. Glasscock recently retired, and David, his former clerk, succeeded him to the seat on the Chancery bench in the court's Georgetown courthouse.

"I said, 'I see you like fishing in Delaware Bay,'" Glasscock said of the interview. "And she said, 'Well, my father loves fishing in Delaware Bay. I like to be with my father.'"

Glasscock, who has a daughter around David's age, said he had no choice but to hire her. "Turned out to be one of the best decisions I've ever made as a judge," he said.

Let that be a vote in favor of keeping that quirky line on your resume.

Glasscock and David doled out a passel of tips on professional development, writing and advocacy during a web presentation Monday that was sponsored by the Berkeley Center for Law and Business and moderated by UC Berkeley Law Professor **Frank Partnoy**.

David, who was still an associate at **Skadden, Arps, Slate, Meagher & Flom** when she interviewed with Glasscock, said, for her part, the answer she gave wasn't "strategic." She didn't know that Glasscock was a fisherman or that he had a daughter around the same age. To her, the interview was a blur given how nervous and over-prepared she was. But she said she can remember her first day of the clerkship, where Glasscock invited her to go fishing at the end of the day. She brought her beagle puppy to the judge's house, his wife fed the dog treats and she and the judge caught "dozens and dozens" of fish.

"I just thought, 'This is going to be a good clerkship. This is going to work out nicely,'" David said.

Both Glasscock and David shed some light on their respective approaches to mentoring clerks and teaching writing. Glasscock said that once he got confident in a clerk's writing style, he asked them to produce drafts, not memos. For one, he said that approach is more efficient. But on top of that, as a former Chancery clerk himself, he said he could remember

the thrill of seeing some of his wording make it into final opinions. "It was the judge's work product, but remnants of my drafting remained," Glasscock said. "I found it kind of thrilling, and I wanted my clerks to have that experience."

Glasscock said he and his clerks would go through "iteration after iteration after iteration" to put together an opinion. He said he always made a point to write the introductions himself. "I wanted them to be a roadmap for readers," he said. "I think it helped the clerks and it helped me crystallize my thinking."

David said that Glasscock encouraged her to think of a clerkship as "a year-long intensive research and writing seminar." She said that one thing she likes to do with her clerks when there's not a time crunch is to offer general feedback on the first draft. "Before we get into redlining work product, I think it's generally helpful for developing those skills, instead of me jumping in right away and reworking things."

Glasscock said that it was common for him and his clerks to go through six to eight drafts on a given opinion. But he said he was very clear from the get-go with his clerks to be "absolutely scrupulous on the facts." He said that getting reversed on the law was something he could live with, but getting reversed because of a factual mistake was not.

In Briefing, Clarity is Key

Glasscock advised attorneys that the whole purpose of a brief is to get a judge to correctly rule in favor of your client, and that means presenting things in a balanced way. "You don't want to lure a judge into making a mistake, because judges remember that," Glasscock said. "Try to write it in a way that it's easy for the court to see your point and rule in favor of your client to the extent that's consistent with the law."

"There's no mystery to it," he said. "If the judge can read your brief and think, 'Oh, I get that. That makes sense,' that's exactly what you're aiming for."

David said that she tells her clerks all the time to make sure the documents or cases say what the lawyers say they say. "I think that's exactly right to be scrupulous about the facts and about your citation to case law from just a purely practical standpoint," she said.

She also said that in her opinion the fact section of a brief is "useless" unless it's presented chronologically. She appreciates strong headings and a good table of contents. "From my perspective, the table of contents really should tell me everything I need to know about your argument," she said. "I should be able to look at it in 30 seconds and know what you think the issues are and how you think the issues should come out."

Glasscock stressed that clarity is the key. "You want your judge to say, 'Oh, I understand now. I get it,'" he said. "The judge may not ultimately agree with the argument, but you want the judge to quickly grasp, 'Here's what this party is driving at. I understand it because the brief has explained it to me.' There's no room for obscurity in briefing."

Glasscock reiterated that there's no room for misciting or overstating a case.

"A judge will almost certainly not be fooled by a missed citation, because we read the cases," he said. "But let's say you got one by and then on appeal the Supreme Court notes that you miscited a case for a proposition of law. That's not something a judge is ever going to forget."

"At least here in Delaware, where we see the same cast of attorneys over and over, that is really hard to overcome."

Class Action

March 11, 2025, 8:15 AM PDT

Gerdau Ameristeel Gets Judge's Nod for \$1.5 Million 401(k) Pact

Gerdau Ameristeel US Inc. and workers who say the steel maker's 401(k) plan charges excessive fees received initial court approval for their \$1.5 million class settlement.

The deal is expected to benefit as many as 6,000 Gerdau plan participants since September 2016, and it includes the company's pledge to search for a new 401(k) recordkeeper and to request information on its current recordkeeper's income. It represents about 43% of the workers' potential monetary recovery, according to court filings.

- Judge Virginia M. Hernandez Covington on Monday signed the preliminary approval order and scheduled a July 8 fairness hearing in the US District Court for the Middle District of Florida
- The lawsuit says Gerdau mismanages the plan by overpaying for administrative services and failing to monitor its recordkeeper
- Much of the litigation has focused on the Employee Retirement Income Security Act's administrative exhaustion requirement—which requires plan participants to use internal procedures before going to court—and the unique way it's applied by the US Court of Appeals for the Eleventh Circuit and courts under its purview

Hill Ward Henderson represents Gerdau. Wenzel Fenton Cabassa PA and Morgan & Morgan PA represents the workers.

The case is *Molla v. Gerdau Ameristeel US, Inc.*, M.D. Fla., No. 8:22-cv-02094, 3/10/25 .

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Class Action

March 10, 2025, 9:18 AM PDT

Morton Buildings Employee Stock Plan Suit Settles for \$4 Million

- Deal would end pending appeal over ERISA representation
- Case previously failed to secure class action status

Morton Buildings Inc. agreed to pay \$4 million to settle a lawsuit a group of workers filed against the company's prior owners and Argent Trust Co. over their employee stock ownership plan.

The proposed settlement would be funded by Morton and would resolve the workers' claims against both Argent, which served as the plan's trustee, and certain former shareholders who sold their Morton stock to the ESOP in 2017. It would provide more than 1,000 plan participants with gross payments of about \$2,191 each, according to a motion for preliminary settlement approval filed March 7 in the US District Court for the Central District of Illinois.

The lawsuit challenged a 2017 transaction in which Morton—a builder of farm, commercial, and residential structures—became 100% employee-owned through an ESOP. Plaintiff Jackie Lysengen said Argent, an investment management company that was charged with representing plan participants' interests during the deal, allowed Morton's selling shareholders to unload their interests at an inflated price and saddle the plan with tens of millions in debt.

Judge Michael M. Mihm previously allowed the case to advance against Argent, but he denied Lysengen's motion to have the case certified as a class action, reasoning that some plan participants held Morton stock before the transaction and therefore benefited in some ways from the valuation Lysengen challenged as inflated.

In a later ruling, Mihm said Lysengen's failure to obtain class certification didn't prevent her from seeking plan-wide relief from Argent. Argent criticized that decision as an "unprecedented" end-run around the federal rules governing class actions, saying it marked the first time a court has allowed a "conflicted plaintiff" to bring representative claims on behalf of an entire benefits plan.

Mihm granted Argent's request to appeal that decision directly to the US Court of Appeals for the Seventh Circuit, which hasn't yet ruled on the matter.

Bailey & Glasser LLP represents Lysengen. McDermott Will & Emery LLP represents Morton, which wasn't named as a defendant in the lawsuit. Bryan Cave Leighton Paisner LLP represents Argent. Other defendants are variously represented by Holland & Knight LLP and Husch Blackwell LLP.

The case is Lysengen v. Argent Tr. Co., C.D. Ill., No. 1:20-cv-01177, settlement motion 3/7/25.

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Class Action

March 10, 2025, 1:30 PM PDT

Judge Certifies Bellwether Classes in Generic Drug Litigation

- **Generic drugmakers accused of price-fixing schemes**
- **Judge says direct buyers met class certification requirements**

A federal judge certified several classes of direct and end-payer purchasers for test trials in drug price-fixing litigation against makers of two generic drugs, clomipramine and clobetasol.

Judge Cynthia M. Rufe of the US District Court for the Eastern District of Pennsylvania in a March 7 opinion certified the direct purchasers' bellwether classes as part of multidistrict litigation dating back to 2016. In a separate order, Rufe granted the end-payers' motion for class status in its bellwether suits except for the certification of an unjust enrichment class.

Bellwether cases are fast-tracked to trial with the goal of testing out claims as part of the larger overall litigation.

The court selected initial bellwether cases from the proposed class actions brought by end-payers and direct purchasers who allege that defendant manufacturers inflated the price of clomipramine, which is used to treat obsessive-compulsive disorder, and clobetasol, which is used to treat inflammatory skin conditions.

Defendants in the clobetasol case include Akorn Inc., Fougera Pharmaceuticals Inc., and Hi-Tech Pharmacal Co. Inc. Defendants in the clomipramine case are Mylan Inc., Sandoz Inc., and Taro Pharmaceutical USA Inc.

In her opinion regarding the direct purchaser plaintiffs, Rufe said the common question that predominates is whether defendants participated in a conspiracy to raise the prices of clomipramine and clobetasol.

"DPPs have demonstrated that they will use common evidence as the basis for their argument, including testimony from witnesses, records of conversations between Defendants, depositions, and Defendants' documents," Rufe said.

The plaintiffs are represented by firms including Fine, Kaplan & Black RPC and Kirkland & Ellis LLP. The defendants are represented by Morgan Lewis & Bockius LLP.

The case is *In re Generic Pharms. Pricing Antitrust Litig.*, E.D. Pa., No. 2:16-md-02724, 3/7/25.

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6 Antitrust Lawsuits Hit as Providers Opt-Out of Blue Cross \$2.8B Settlement

 [law.com/2025/03/11/6-antitrust-lawsuits-hit-as-providers-opt-out-of-blue-cross-28b-settlement](https://www.law.com/2025/03/11/6-antitrust-lawsuits-hit-as-providers-opt-out-of-blue-cross-28b-settlement)

Emily Cousins

Blue Cross Blue Shield was hit with at least six federal antitrust suits in one day for alleged concerted efforts to fix prices and stifle competition.

These cases were filed on March 4, the deadline for health care providers and hospitals to opt out of a \$2.8 billion antitrust settlement with Blue Cross Blue Shield in October 2024, which resolved similar claims brought by a class of health care providers.

Blue Cross declined to comment.

The Blue Cross Blue Shield Association and independent Blue Cross Blue Shield licenses located across the United States, such as local insurance companies Elevance Health, Inc., Anthem HealthChoice Assurance, Inc., etc., were accused of working together to assign specific geographic markets to the various independent licenses to avoid competition.

The complaints were filed in the Northern District of Illinois, the Eastern District of Pennsylvania and the Northern District of California. This litigation surge surfaced on Law.com Radar.

The plaintiffs include health care provider groups, health care systems, physician staffing companies and hospitals. The firm Pearson Warshaw is representing plaintiffs in three cases in Illinois; Duane Morris and McKool Smith are representing the Pennsylvania plaintiffs; and K & L Gates is representing the California plaintiffs. The attorneys did not respond to a request for comment.

The Illinois suits claim the Blue Cross independent licenses should be competing with each other, but their operation in "exclusive" areas is a "horizontal restraint" that violated the Sherman Act.

This allegedly lowered reimbursement rates for the plaintiffs.

In addition, the defendants participate in national programs like the Blue Card Program, which aids in the alleged price fixing scheme.

"The Blue Card Program comes into effect when a subscriber of one of the defendants receives healthcare services within another defendant's designated service area," the Illinois complaints said. "Through this system, the discounted reimbursement rates imposed within each defendant's designated service area are applied universally to all [the defendants] without the need for separate negotiation or contracting."

The plaintiffs alleged this tactic reduced health care choices available to consumers, and less health care professionals can practice because the market lacks competition.

"Numerous hospitals and healthcare facilities have been forced to shut down, cut back on services, or refrain from expanding to meet patient demand, all because of the Blues' suppressed payment rates," the Illinois plaintiffs claimed. "The only parties benefiting from Defendants' anticompetitive conduct are the Defendants themselves."

The Pennsylvania complaints claimed this is because health care providers could choose a different insurer that wasn't paying below the market price.

"A provider considering leaving the local defendant insurance company's network knows that decision would cause it to lose the ability to treat local enrollees on an in-network basis and the ability to treat all defendant insurance companies' enrollees on an in-network basis," the Pennsylvania complaints claimed. "The defendant insurance Companies use this leverage against providers."

The \$2.8 billion settlement brought the 12-year litigation against Blue Cross to a close in the Northern District of Alabama. The settlement remains pending the approval of Chief U.S. District Judge R. David Proctor, with a final fairness hearing scheduled to begin on July 29.

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

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Class Action

March 10, 2025, 11:19 AM PDT

Uber Fails to Break Up Mass of Passenger Sexual Assault Lawsuits

- **Terms of use agreement can't override court's authority**
- **Coordinated cases increases efficiency, appeals court says**

Uber Technologies Inc. lost its bid before a San Francisco federal appeals court to split up over a thousand lawsuits from riders who allege they were sexually assaulted by drivers for the rideshare app.

The US Court of Appeals for the Ninth Circuit rejected Uber's argument that the terms of use agreement for its app prohibit passengers from engaging in "coordinated" or "consolidated" lawsuits against the company.

The lawsuits were consolidated in the US District Court for the Northern District of California in 2023 by a federal judicial body that determines whether nationwide lawsuits with similar facts and allegations should be grouped together in a multidistrict litigation for efficiency purposes.

The suits allege Uber is liable for failing to properly vet drivers who assaulted passengers. The company owed a duty to mitigate the assaults while deceptively advertising that its service was safe for riders. Some of the claims have since been dismissed.

The Judicial Panel for Multidistrict Litigation "acted well within its discretion" in concluding that a single judge overseeing all the pretrial litigation "would generate substantial efficiencies," Judge Lucy Koh wrote for the three-judge Ninth Circuit panel.

"In the absence of centralization Uber would have been required to produce the same documents and corporate witnesses in potentially hundreds of individual actions across numerous judicial districts," Koh said.

She also said that Uber can't use private agreements through its terms of use to overcome the JPML's authority to manage federal case dockets through centralization.

Congress created the JPML in 1968, giving it broad powers to coordinate cases "notwithstanding any private agreement to the contrary," Koh said.

Judge Charles R. Breyer, who is overseeing the MDL, also ruled last year that Uber's terms of service can't block consolidation. The Ninth Circuit upheld that ruling in a separate order.

Judges M. Margaret McKeown and Anthony D. Johnstone joined Koh's opinion.

Paul Weiss Rifkind Wharton & Garrison LLP represent Uber. Peiffer Wolf Carr Kane Conway & Wise LLP, Lieff Cabraser Heimann & Bernstein LLP, and Chaffin Luhana LLP are co-lead counsel for the plaintiffs.

The case is Uber Tech. Inc. v. United States Judicial Panel on Multidistrict Litig. , 9th Cir., No. 23-3445, 3/10/25 .

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Climate Change Litigation in New York

 [law.com/newyorklawjournal/2025/03/11/climate-change-litigation-in-new-york](https://www.law.com/newyorklawjournal/2025/03/11/climate-change-litigation-in-new-york)

Michael B. Gerrard

Numerous lawsuits have been brought in the federal and state courts in New York concerning climate change. Some were under two important state statutes on the subject – the Climate Leadership and Community Protection Act of 2019 (CLCPA) and New York Climate Superfund Act of 2024. Others are brought under various common law, consumer protection, securities, and other theories. This column describes the most important of these cases.

CLCPA

The [database](#) of climate change litigation maintained by the Sabin Center for Climate Change Law has 17 cases addressing the CLCPA. (Several other cases mention the CLCPA in passing.) None of these cases has yet reached the Court of Appeals, though as shown below, one is about to. The cases span a spectrum of judicial views on the force of the CLCPA. I will briefly run through that spectrum.

At the most forceful end of the spectrum is *Danskammer Energy, LLC v. New York State Department of Environmental Conservation* (DEC), which held in 2022 that the CLCPA gave DEC the *authority* to deny an air permit for the repowering and expansion of a natural gas-fired power plant. 76 Misc. 3d 196, 173 N.Y.S.3d 134 (Sup. Ct. Orange Co. 2022). The company subsequently withdrew the application.

In 2024, in a case involving renewal of a permit for a natural gas-fired power plant used for cryptocurrency operations, a court found that DEC had misused that authority when it denied the permit without considering the justification for the project. *Greenidge Gen. LLC v. N.Y. Dep't of Env't Conservation*, 223 N.Y.S.3d 846 (Sup. Ct. Yates Co. 2024).

DEC also used the CLCPA to deny a permit for a natural gas power plant in Astoria, Queens, and cited it in support of its denial of a water quality certification for a natural gas pipeline that Transco, a subsidiary of the Williams Corporation, wanted to build under New York Bay. Those decisions were not challenged in court.

Two other decisions found that the CLCPA supports certain governmental actions. *Town of Copake v. Office of Renewable Energy Siting* upheld the state's regulations on renewable energy siting, finding that the CLCPA calls for expediting review of wind and solar projects. 216 A.D.3d 93, 191 N.Y.S.3d 181 (3d Dep't 2023).

The other decision allowed the Federal Energy Regulatory Commission (FERC) to use a short amortization period for a natural gas plant in view of the CLCPA's objective of moving away from natural gas. *N.Y. State Pub. Serv. Comm'n v. FERC*, 104 F.4th 886 (D.C. Cir. 2024). The selection of amortization periods by FERC as affected by the CLCPA was also the subject of *Independent Power Producers of New York v. FERC*, No. 21-1166, 2022 U.S. App. LEXIS 22081 (D.C. Cir. Aug. 9, 2022).

In *Freepoint Solar LLC v. Town of Athens Zoning Board of Appeals*, the court rejected a zoning board's finding of no public necessity for a solar generating facility. 224 N.Y.S.3d 219 (3d Dep't 2024). The court found, among other things, that the board's finding focused on the CLCPA's minimum requirements for solar procurement and "side-steps the consideration of the overarching goals of the CLCPA and future, long-term goals and targets."

These were substantive outcomes. Then we have two decisions finding that the CLCPA requires *consideration* of greenhouse gas emissions. One of these is the most recent CLCPA decision to come down – *East Side Parkways Coalition v. New York State Department of Transportation*, 2025 NY Slip Op 25030 (Sup. Ct. Erie Co. Feb. 7, 2025). That concerned a \$1 billion project to cover over the Kensington Expressway in Buffalo.

The court enjoined the project and said that a full environmental impact statement (EIS) is required. It said that the CLCPA will require the EIS to look at the impact of the project on greenhouse gas emissions, among other subjects.

The court has not yet issued a ruling in a separate case filed last June that also claims that the state Department of Transportation violated the CLCPA when it approved the Kensington Expressway project. *Harris v. Dominguez*, Index No. 808703/2024 (Sup. Ct. Erie Co., filed June 14, 2024).

The other case concerning consideration of climate change was *Clean Air Coalition of Western New York v. Public Service Commission* (PSC), 226 A.D.3d 108, 207 N.Y.S.3d 221 (3d Dep't 2024). It held that the CLCPA requires the PSC to consider whether a change in the ownership of an upstate power plant to a cryptocurrency company would impair achievement of the CLCPA's emission reduction goals.

We also have four decisions that turned down claims that the CLCPA compelled rejection of certain construction projects. *Friends of the Great Swamp v. Town of Dover*, Index No. 2023-50796 (Sup. Ct. Dutchess Co. Aug. 24, 2023) (an electrical substation); *Renew 81 for All v. New York State Department of Transportation*, Index No. 007925/2022 (Sup. Ct. Onondaga Co. Feb. 14, 2023) (highway project); *Sierra Club v. FERC*, 97 F.4th 16 (D.C. Cir. 2024) (natural gas pipeline); *Food & Water Watch v. FERC*, 104 F.4th 336 (D.C. Cir. 2024) (natural gas pipeline).

A fifth case found that plaintiffs lacked standing to bring a case under the CLCPA against a bitcoin mining facility. *Sierra Club v. City of North Tonawanda*, Index No. E176242/2021 (Sup. Ct. Niagara Co. Mar. 17, 2022).

There have been no judicial decisions holding that the CLCPA required (as opposed to authorized) denial of project approvals. A case was recently filed claiming that DEC violated the CLCPA by refusing to review the operating permits for a large natural gas-fired power plant in Yaphank, Long Island. *Sierra Club v. DEC*, Index No. 601635/2025 (Sup. Ct. Nassau Co., filed Jan. 22, 2025).

At the far end of the spectrum, in terms of requiring governmental action, is *Glen Oaks Village Owners v. City of New York*, where the Appellate Division, Third Department, found that the CLCPA might preempt Local Law 97, the city's law requiring that buildings reduce their greenhouse gas emissions. 227 A.D.3d 523, 211 N.Y.S.3d 329 (1st Dep't 2024). The Court of Appeals agreed to review the decision and will hear arguments on April 8.

The CLCPA required the designation of certain communities as disadvantaged, meaning that they would receive a preference in receiving certain state funding. In *Town of Palm Tree v. Climate Justice Working Group*, the town, which is located in Orange County and is coterminous with the Village of Kiryas Joel, the home of a Satmar Hasidic community, contested the fact that it did not receive this designation. The court found that the town had standing to sue. The merits of the claim have not yet been decided. Index No. 907000-23 (Sup. Ct. Albany Co. 2023).

Finally, one core element of the implementation of the CLCPA is the cap and invest program – a program that would impose an emissions fee and reinvest the money in the New York economy. DEC and the New York State Energy Research and Development Authority had been working on this plan for several years and seemed to be on the verge of issuing the proposed regulations, but in January Governor Hochul halted that and said there would be an indefinite pause in implementing the plan.

The CLCPA required DEC to issue the regulations necessary to achieve the state's climate goals by January 2024. DEC issued some regulations, but they are very late with the cap and invest regulations. It is anticipated that a lawsuit will be filed under the CLCPA against the Governor and DEC for not issuing these draft regulations.

Climate Superfund Law

The State Legislature passed the New York Climate Superfund Law in June 2024. Governor Hochul had some hesitation about signing it. Her office negotiated with the Legislature and they came to an agreement right around Christmas on a chapter amendment. She signed

the bill, S2129-B, on December 26. The agreed-upon amendment, S824, passed the Senate on January 22 and the Assembly on February 24, and was signed by Governor Hochul on February 28.

The new law assesses the major fossil fuel companies for a portion of the costs that New York will incur in preparing for and adapting to climate change. It is inspired by the original Superfund law, the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, which concerns the cleanup of hazardous waste sites. Vermont adopted a climate Superfund law to go after the fossil fuel companies for climate change last May, and the New York legislature followed soon after.

The New York Climate Superfund Law imposes liability on fossil fuel companies that did business in New York between 2000 and 2024 and that are responsible for more than one billion tons of greenhouse gas emissions, wherever they occurred. That covers just about all of the major non-state-owned oil, gas and coal companies.

Together these companies will be required to pay \$75 billion over the next 25 years, or \$3 billion a year. The share of these sums that each company pays will be the portion of its emissions over one billion tons/year of the total emissions attributable to these companies.

The law gives DEC the job of issuing regulations for calculating the amount of money that each company owes and all the other details. DEC has until June 2027 to do this. The money collected is to go to “climate change adaptive infrastructure projects,” as fairly broadly defined by the statute. DEC is required to hold extensive public hearings and to issue a plan for using the money. At least 35% of this money is required to go to projects that benefit disadvantaged communities.

On December 30 the Chamber of Commerce of the United States and the American Petroleum Institute brought a suit challenging the Vermont law in federal district court in Vermont. *Chamber of Commerce of the United States of America v. Moore*, No. 2:24-cv-01513 (D. Vt.).

On Feb. 6, 22 states led by West Virginia, joined by several coal, gas and oil associations and a coal company, filed a suit in the U.S. District Court for the Northern District of New York, Albany Division, challenging the New York law. *West Virginia v. James* (N.D.N.Y., 25-cv-168).

The New York lawsuit has these claims, among others:

- Federal preemption under the U.S. Constitution
- Federal preemption under the Clean Air Act
- Violation of the Commerce Clause
- Violation of the Due Process clauses of the U.S. and New York Constitutions

- Violation of the Equal Protection, Excessive Fines and Takings clauses of the U.S. Constitution.

On February 28, the Chamber of Commerce of the United States, American Petroleum Institute, National Mining Association, and the Business Council of New York State filed a lawsuit in the U.S. District Court for the Southern District of New York asserting similar claims. *Chamber of Commerce of the United States v. James*, No. 1:25-cv-01738 (S.D.N.Y.). Climate superfund laws are under consideration in several other states – Colorado, Maryland, Massachusetts and, especially in view of the recent fires in Los Angeles, California.

Common Law and Consumer Protection Claims

In 2021 the Second Circuit Court of Appeals rejected a suit that the City of New York had brought against several oil companies in the U.S. District Court for the Southern District of New York. *City of New York v. Chevron Corp.*, 993 F.3d 81 (2d Cir. 2021).

The court held that the federal common law displaced the City's state-law public nuisance, private nuisance, and trespass claims because the lawsuit would have the effect of regulating cross-border greenhouse gas emissions; and that the Clean Air Act, in turn, displaced federal common law claims related to domestic emissions.

This decision cited to *American Electric Power Co. v. Connecticut*, 564 U.S. 501 (2011), which had dismissed an earlier lawsuit brought under the federal common law of nuisance by the states of Connecticut and New York, the City of New York, and others.

In 2021 the City of New York brought another lawsuit against fossil fuel companies, this time in state court alleging that the defendants violated the City's Consumer Protection Law by misleading consumers about their products' role in causing climate change. On January 14, 2025,

the New York Supreme Court dismissed the case. The court concluded the city failed to plausibly allege that the defendants' statements regarding the environmental benefits of specific products were likely to mislead.

The court was not persuaded by New York City's theory that the companies' statements were deceptive because they failed to disclose their products' substantial greenhouse gas emissions. 2025 NY Slip Op 25011 (Sup. Ct. N.Y. Co. Jan. 14, 2025). The city filed a notice of appeal on February 13.

Securities and pension plans

In 2018, after a lengthy investigation, the New York Attorney General sued ExxonMobil under New York's blue sky law, the Martin Act, claiming a "longstanding fraudulent scheme ... to deceive investors and the investment community ... concerning the company's management of the risks posed to its business by climate change."

In 2019, after a twelve-day bench trial, the New York Supreme Court dismissed the lawsuit, finding that the state had failed to establish that ExxonMobil had made any material misrepresentation that reasonable investors would have viewed as significant. *People of the State of New York v. ExxonMobil Corp.*, 65 Misc. 3d 1233(A), 119 N.Y.S.3d 829 (Sup. Ct. N.Y. Co. 2019).

The court stated, "Nothing in this opinion is intended to absolve ExxonMobil from responsibility for contributing to climate change through the emission of greenhouse gases in the production of its fossil fuel products. ExxonMobil does not dispute either that its operations produce greenhouse gases or that greenhouse gases contribute to climate change. But ExxonMobil is in the business of producing energy, and this is a securities fraud case, not a climate change case."

Another case brought by the New York Attorney General alleged that JBS USA, a major beef producer, had made misleading and unsubstantiated claims regarding its commitment to climate goals.

On Jan. 10, 2025, the court dismissed the case without prejudice, allowing the Attorney General to file an amended complaint that would, among other things, articulate more clearly the basis for subjecting JBS USA to jurisdiction in New York. *People of the State of New York v. JBS USA Food Co.*, No. 450682/2024 (Sup. Ct. N.Y. Co. Jan. 10, 2025).

Three New York City pension plans that had divested from fossil fuel stocks were sued by four participants in the plans. The plaintiffs claimed that the plans had breached their fiduciary duties by making investment decisions on other than purely financial grounds.

On July 2, 2024, the New York Supreme Court dismissed the lawsuit, finding that plaintiffs lacked standing because they were holders of defined benefit plans, and therefore their income from the plans would not be affected by the returns from the plans' investments. *Wong v. New York City Employees' Retirement System*, 2024 NY Slip Op 32288(U) (Sup. Ct. N.Y. Co. 2024). The Appellate Division, First Department, heard oral argument in the case on Feb. 13, 2025.

Other cases

A lawsuit is pending in federal court challenging a New York City ordinance that restricts gas and oil appliances on the grounds that it is preempted by the federal Energy Policy and Conservation Act. *Association of Contracting Plumbers v. City of New York*, No. 1:23-cv-

11292 (S.D.N.Y.).

Another suit was brought, also on preemption grounds, challenging a New York State ban on natural gas appliances and infrastructure in certain new construction. The case is still pending, though some defendants have been dismissed. See *Mulhern Gas Co. v. Rodriguez*, 2024 U.S. Dist. LEXIS 155871 (N.D.N.Y. Aug. 29, 2024).

Two lawsuits have failed to halt New York City projects to build flood walls or other protections against sea level rise. *Battery Park City Neighborhood Ass'n v. Battery Park City Auth.*, 2023 NY Slip Op 30433(U) (Sup. Ct. N.Y. Co. Feb. 8, 2023); *East River Park Action v. City of New York*, 201 A.D.3d 73, 160 N.Y.S.3d 195 (1st Dep't 2021).

One decision rejected challenges to New York's participation in the Regional Greenhouse Gas Initiative (RGGI). *Thrun v. Cuomo*, 112 A.D.3d 1038, 976 N.Y.S.2d 320 (3d Dep't 2013). Another challenge to RGGI was settled. *Indeck Corinth, L.P. v. Paterson*, Index No. 5280-2009 (Sup. Ct. Albany Co.).

On March 3, 2025, a judge of the New York Supreme Court in Albany invalidated the state's property tax assessment calculation for renewable energy, finding that "the Legislature has abdicated its constitutional responsibility and has delegated its taxing power to an administrative agency in violation of the New York State Constitution. *Airey v. State*, Index No. 903991-24, 2025 BL 72878 (Sup.Ct. Albany Co.). This decision may complicate the construction of new renewable facilities, a central part of the State's climate plans.

Climate change was raised in several other cases, but the courts only mentioned this issue in passing or not at all. There have also been several commercial disputes about carbon credits, and several cases under the federal and state freedom of information laws concerning the release of documents by government agencies.

All known climate cases, whether in the U.S. or other countries, are posted on the Sabin Center's climate litigation database, climatecasechart.com.

As the physical impacts of climate change intensify, and as efforts to control it and to impose liability for it remain controversial, it is certain that the courts in New York will continue to see a steady stream of climate cases.

Michael B. Gerrard is a professor at Columbia Law School with a joint appointment to the Columbia Climate School, and founder and faculty director of the Sabin Center for Climate Change Law. Among his books is *Global Climate Change and U.S. Law* (co-edited with Jody Freeman and Michael Burger, 3d ed.).

Supreme Court rejects GOP states' challenge to California climate lawsuit

DJ [dailyjournal.com/articles/384164-supreme-court-rejects-gop-states-challenge-to-california-climate-lawsuit](https://www.dailyjournal.com/articles/384164-supreme-court-rejects-gop-states-challenge-to-california-climate-lawsuit)

U.S. Supreme Court,
Environmental & Energy

Mar. 11, 2025

A request from 19 Republican-led states sought to block climate-related complaints brought by California and four other states against major oil companies. The decision allows California's case to move forward in state court, where it seeks to hold oil firms accountable for misleading the public about climate change.



The U.S. Supreme Court on Monday rejected a request to file an unusual "original action" by 19 Republican states arguing California and four other states should be blocked from pursuing complaints against oil and gas companies alleging they misled the public about the cause of climate change and the risks of fossil fuels.

The decision allows California's lawsuit against five major oil companies and the American Petroleum Institute, holding them responsible for deceiving the public about the damages caused by climate change, to move forward.

California's public nuisance lawsuit, which also alleges untrue and misleading advertising, misleading environmental marketing and other claims, is pending in San Francisco County Superior Court. *In re: Fuel Industry Climate Cases*, CJC-24-005310 (San Francisco Co. Sup. Ct., filed March 19, 2024).

The Republican states claimed California and the other states "exceed state authority, flout the horizontal separation of powers, usurp federal authority over a federal issue, and violate the prohibition on extraterritorial regulation embodied in the Commerce Clause."

They argued the Supreme Court should exercise original jurisdiction because there was no alternative forum in which the plaintiff states could protect their interests.

The justices voted against the complaint by a 7-2 margin, and according to Justice Clarence Thomas, it's the not the first time the court has rejected original jurisdiction. *State of Alabama et al. v. State of California et al.*, 22O158 (S. Ct., filed May 22, 2024).

Thomas, who wrote a dissent joined by Justice Samuel A. Alito Jr., argued the court was making a mistake and would have granted the Republican-controlled states leave to proceed with their case.

"The plaintiff States allege that the defendant States are attempting to 'dictate interstate energy policy' through the aggressive use of state-law tort suits," adding that they "contend that this practice violates the horizontal separation of powers, the Federal Government's exclusive authority over interstate emissions, and the Commerce Clause."

"Our exclusive original jurisdiction over suits between States reflects a determination by the Framers and by Congress about the need 'to open and keep open the highest court of the nation' for such suits, in recognition of the 'rank and dignity' of the States," he added. "Yet, this Court has - essentially for policy reasons - assumed a power to summarily turn away suits between States."

Attorney General Rob Bonta - who filed the complaint against Exxon Mobil Corp., Shell PLC, Chevron Corp., ConocoPhillips Co. and BP PLC, along with API - hailed the court's decision to deny Alabama's original action in a statement.

"California is suing oil and gas companies for engaging in a decades-long campaign to deceive Californians about the climate harms of their products in our state," Bonta wrote. "We will continue to do our part to ensure that those who break our laws and harm our residents are held accountable under state law and are looking forward to continuing to litigate this case in state court."

Four other states - Connecticut, Minnesota, New Jersey and Rhode Island - have filed similar lawsuits against the oil companies accusing them of deceiving the public about the dangers of fossil fuels.

Alabama Attorney General Steve Marshall expressed disappointment that the court did not take their case in a statement.

"States like California have benefited tremendously from traditional energy, yet they are now trying to impose crippling liability on companies for actions they took in Alabama and the rest of the world," he wrote. "The Constitution does not grant California such powers."

But the California attorney general's office, in a brief opposing the lawsuit, said Alabama and the other plaintiff states "cannot satisfy the demanding standard governing this Court's exercise of original jurisdiction."

Lawsuit against Edison focuses on power remaining on after fire risk warnings

DJ [dailyjournal.com/articles/384167-lawsuit-against-edison-focuses-on-power-remaining-on-after-fire-risk-warnings](https://www.dailyjournal.com/articles/384167-lawsuit-against-edison-focuses-on-power-remaining-on-after-fire-risk-warnings)

Civil Litigation

Mar. 11, 2025

McNulty and Wood law firms sue Southern California Edison, alleging negligence in not shutting off power before the Eaton fire broke out, despite warnings of extreme fire risk.



McNulty Law Firm and Wood Law Firm have accused Southern California Edison of failing to maintain and shut off equipment they claim caused the Eaton fire that destroyed large tracts of Altadena, displaced thousands and led to 17 deaths.

Edison maintains that the cause of the fire is under investigation.

The complaint in Los Angeles County Superior Court claims eight causes of action, including negligence per se; inverse condemnation; and negligence and respondent superior as to various Edison employees that have not yet been identified. The filing is similar to scores of lawsuits that have been related and stayed in Judge Laura A. Seigle's court pending a case management conference on March 17.

The filing states that Edison had ample warning about dangerous winds and fire conditions in the days leading up to Jan. 7, when the fires ignited. The National Weather Service issued an "extreme fire conditions" warning on Jan. 6.

The complaint says the agency warned that Altadena was at extreme risk due to winds of 50-100 miles per hour.

The filing says that Edison's equipment was linked to other fires during red flag warnings, including the 2018 Woolsey Fire, in which a cable that anchored an Edison pole contacted an energized wire causing an arc and flash. Hot metal debris fell to the ground and ignited the brush.

The complaint cites eyewitness accounts from Pasadena residents who witnessed and photographed what plaintiffs say was the start of the Eaton fire at the base of an Edison transmission tower in Eaton Canyon.

"Even with advance warnings, institutional knowledge, and previous experience with utility fires, SCE and Edison did not take appropriate action in the days, hours, and minutes leading up to the Eaton Fire," Peter McNulty of the McNulty Law Firm said in a press statement. *Mario Carrasco, et al. v. Southern California Edison*, 25STCV06362 (L.A. Super. Ct., filed March 5, 2025).

#384167

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Girl Scouts sued over alleged heavy metals, pesticides in cookies

 [reuters.com/legal/girl-scouts-sued-over-alleged-heavy-metals-pesticides-cookies-2025-03-11](https://www.reuters.com/legal/girl-scouts-sued-over-alleged-heavy-metals-pesticides-cookies-2025-03-11)

Jonathan Stempel

A person rides an electric unicycle while pulling a wagon loaded with packages, in front of the Eastern District of New York Court Federal Court House in New York City, U.S., February 5, 2025. REUTERS/David 'Dee' Delgado/File Photo Purchase Licensing Rights , opens new tab

NEW YORK, March 11 (Reuters) - The Girl Scouts have been sued by consumers over the alleged presence of "heavy metals" and pesticides in its popular Thin Mints and other cookies.

A proposed class action was filed on Monday night in the Brooklyn, New York federal court against the 113-year-old nonprofit and the cookies' licensed producers, ABC Bakers and Ferrero USA's Little Brownie Bakers.

It cited a December 2024 study , opens new tab commissioned by GMO Science and Moms Across America, which tested samples of 25 cookies from three U.S. states. The study said Girl Scout cookies contained at least four of five heavy metals - aluminum, arsenic, cadmium, lead and mercury - that can harm people's health or the environment, often at levels exceeding regulators' recommended limits.

It also said all samples contained glyphosate , opens new tab, a pesticide used in some weed killers, with Thin Mints containing the highest levels.

"While the entire sales practice system for Girl Scout Cookies is built on a foundation of ethics and teaching young girls sustainable business practices, defendants failed to uphold this standard themselves," the lawsuit said.

The defendants did not immediately respond to requests for comment.

Girl Scouts, short for Girl Scouts of the United States of America, addressed the study in a February 6 blog post , opens new tab.

It said heavy metals occur naturally in soil, with trace amounts not a safety issue, while glyphosate is found "nearly everywhere" in the food chain. Girl Scouts also said its bakers are committed to complying with all food safety standards.

"The health and safety of Girl Scouts and cookie customers is our top priority," the New York-based nonprofit said. "Rest assured: Girl Scout Cookies are safe to consume."

Cookies are sold by registered Girl Scouts from January to April, with net proceeds supporting [\[link\]](#), opens new tab councils and local troops.

The lawsuit is led by Amy Mayo, a resident of Bayside, New York.

Mayo said she bought numerous Girl Scout products such as Adventurefuls, Peanut Butter Patties and Caramel deLites, believing they were "quality and safe cookies."

She said she would not have bought the cookies or "would have paid substantially less" had Girl Scouts disclosed the presence of "dangerous toxins."

The lawsuit seeks at least \$5 million in damages for U.S. cookie purchasers, for alleged violations of New York consumer protection laws.

Several chocolate makers including Hershey (HSY.N) [\[link\]](#), opens new tab faced lawsuits after Consumer Reports in December 2022 found elevated levels of cadmium, lead or both in their products.

The case is Mayo v Girl Scouts of the United States of America et al, U.S. District Court, Eastern District of New York, No. 25-01367.

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Reporting by Jonathan Stempel in New York Editing by Marguerita Choy

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

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- Legal

Why gaming company Valve would rather face a consumer class action than arbitration

 [reuters.com/legal/litigation/why-gaming-company-valve-would-rather-face-consumer-class-action-than-2025-03-10](https://www.reuters.com/legal/litigation/why-gaming-company-valve-would-rather-face-consumer-class-action-than-2025-03-10)

Jenna Greene

An empty courtroom is seen at the New York State Supreme Court in Manhattan, New York City, U.S., August 21, 2020. REUTERS/Andrew Kelly Purchase Licensing Rights , opens new tab

March 9 (Reuters) - Arbitration, the conventional wisdom goes, is supposed to be quicker and more cost-effective than court proceedings.

The opposite is proving true in antitrust litigation by thousands of consumers against gaming company Valve in what strikes me as a cautionary tale for plaintiffs and defendants alike of scorched-earth mass arbitration.

Four years after the litigation began, consumers have wound up back where they started — suing Bellevue, Washington-based Valve in Seattle federal court in a proposed class action. The court cases come as the privately-held company, which owns the game distribution platform Steam, nixed its arbitration requirement when threatened with an avalanche of individual dispute resolution demands.

Valve isn't the first company to drop its arbitration requirement when threatened with thousands of claims — Amazon did it , opens new tab in 2021, for example.

What's less clear is whether Valve can shut down hundreds of claims actively being arbitrated, and if Will Bucher, the plaintiffs' lawyer behind many of the cases, will succeed in helming the litigation in both forums or be left empty-handed.

Valve did not respond to a request for comment, and outside counsel from Skadden, Arps, Slate, Meagher & Flom declined comment.

Bucher, the founder of Albany, New York-based Bucher Law, did not respond to requests for comment.

The case began in 2021, when Valve, described as “the uncontroverted market leader in digital PC game distribution” by the judge overseeing the litigation, was hit with multiple antitrust complaints alleging violations of the Sherman Act.

Plaintiffs' lawyers claim Valve uses its market dominance to impose a “bloated” 30% commission on nearly every game sold via Steam, yielding billions of dollars in annual profits and driving up prices for consumers. Key to thwarting effective competition, the plaintiffs say,

is Valve's so-called most-favored-nations clause, which allegedly bars game publishers from selling their wares at a lower price on other platforms.

Valve in court papers denies wrongdoing, arguing the evidence "does not come close to establishing the existence of an unlawful policy," and that the company's success is based on "hard work, creativity, and competitive gumption."

In November, U.S. District Judge Jamal Whitehead in Seattle certified [a class](#), opens new tab a class of about 30,000 game developers represented by firms including Quinn Emanuel Urquhart & Sullivan; Constantine Cannon; and Wilson, Sonsini, Goodrich & Rosati. The case is slated for trial later this year.

Huge as that showdown is likely to be, to me, it's the less interesting piece of Valve's fight.

Consumers who bought games using Steam also tried to sue Valve as a class but were rebuffed. Per the terms of Steam's subscriber agreement, they were ordered to arbitration.

Valve might have hoped that would shut most of the claims down – and not so long ago, it probably would have, with plaintiffs' lawyers dissuaded by the prospect of individually arbitrating each case.

But that's before some firms started developing a new playbook, leveraging the threat of hefty arbitration fees, which can quickly escalate when thousands of people file demands, to force corporations into settlements that may or may not reflect the merits of the claims. Valve's arbitration terms made it a prime target. The company agreed it would pay all filing fees – about \$3,000 per case — in order to "make sure arbitration is available to all Steam users regardless of their financial situation."

If Valve were hit with a large number of claims, Bucher noted in a June 6, 2022, slideshow presentation [a litigation funder](#), opens new tab to a litigation funder made public in a lawsuit with his former law firm, it would make the "entrance fee just to defend prohibitively expensive."

As my former colleague Alison Frankel reported in 2023, Bucher launched a social media advertising campaign to recruit more than 50,000 Steam customers to bring antitrust claims against Valve.

According to Valve [a settlement offer](#), opens new tab, Bucher in July, 2023, offered to settle nearly 45,000 cases for a flat rate of \$2,400 a piece, plus another \$1,600 to cover legal fees — a demand that the company in court papers rejected as "outrageous."

With no settlement in sight, Bucher started filing thousands of claims with the American Arbitration Association. But he gave himself — and Valve — an out.

In four cases, Bucher argued that Steam's arbitration agreement was unenforceable for lack of notice and because it impermissibly sought to bar public injunctive relief. An arbitrator in July 2024 agreed and dismissed those four cases — a move that Valve in court papers said it did not challenge.

Soon after, Bucher teamed up with Hagens Berman Sobol Shapiro, which did not respond to a request for comment, and filed a nationwide class action on behalf of the four plaintiffs newly released from arbitration.

Faced with the worst of both worlds – mass arbitration and a class action – Valve on September 26, 2024, canceled its arbitration agreement.

It now mandates all disputes, including those “that arose before the existence of this or any prior agreement,” be litigated exclusively in state or federal court in King County, Washington.

Bucher cried foul.

“When federal court was inconvenient, Valve insisted upon arbitration,” he wrote in a letter to AAA [↗](#), opens new tab. “Now that thousands of its customers have taken up Valve’s invitation to arbitrate these claims, Valve has decided that arbitration is inconvenient. Valve does not have the right to simply declare that this tribunal — Valve’s chosen tribunal — has no jurisdiction.”

Bucher also allegedly attempted to file 42,000 new arbitration demands, a move that Valve said AAA, which declined comment, refused.

Valve has petitioned the court to enjoin all pending arbitrations — about 600 were assigned to arbitrators, with another 4,400 or so waiting in the wings — arguing that an agreement to arbitrate no longer exists between the parties.

The petition remains pending, but some arbitrations have continued apace.

In late February, Valve filed court papers to confirm the first batch of decisions on the merits, all rendered by the same arbitrator.

Valve won all 23 cases. There “is no antitrust violation under either Section 1 or Section 2 of the Sherman Antitrust Act,” the arbitrator found.

As for Bucher, he’s now in a fierce battle with several rival plaintiffs’ firms to be appointed interim lead co-counsel, of the class, even as he’s continued to prosecute the arbitrations.

With “one foot in the class litigation, and the other in individual arbitrations,” the other firms argue, he’ll be hard pressed to convince a judge that a class action is the superior way to adjudicate the claims.

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Litigation

March 11, 2025, 9:35 AM PDT

Fort Worth Sues DuPont, 3M, Defense Department for PFAS Cleanup

- **COURT:** N.D. Tex.
- **TRACK DOCKET:** [No. 4:25-cv-00235](#) (Bloomberg Law subscription)

3M Co., DuPont entities, a host of other chemical companies, and the Defense Department are liable for over \$420 million in damages from “forever chemicals” in Fort Worth’s drinking water supply, the municipality said in a new suit.

The city is looking to recoup the cost of remediation of per- and polyfluoroalkyl chemicals that continue to spill from military facilities and have done so for decades, according to complaint filed Monday in the US District Court for the Northern District of Texas.

Chemical manufacturers continued to sell hazardous fire suppressants to the operators at the Naval Air Station Joint Reserve Base Fort Worth and Air Force Plant 4 despite knowing the environmental and health risks, the suit alleges.

PFAS are known as forever chemicals because they are resistant to breaking down both in the environment and once ingested by people. They have been linked to cancer and other health problems such as decreased fertility and developmental delays.

The military customers, including the Navy and Air Force, purposefully discharge the aqueous film-forming foam in ground and stormwater drains during firefighting training and emergency responses, according to the complaint.

The government’s discharge of PFAs “was frequently the result of carelessness, inattention or recklessness, not policy judgment,” the suit alleged. Therefore the military defendants can’t apply exemptions to the Federal Torts Claims Act or the Comprehensive Environmental Response, Compensation and Liability Act, Fort Worth said.

Fort Worth divided the defendants between the military entities and chemical manufacturers. It brought claims including negligence, defective products, and unjust enrichment against the companies, and FTCA and CERCLA claims against the military.

The city also brought Uniform Fraudulent Transfer Act claims against entities formed from the DuPont spin-off: E.I. du Pont de Nemours and Co., the Chemours Co., the Chemours Co. FC., Corteva, Inc., and DuPont de Nemours, Inc. These entities “engaged in acts in furtherance of a scheme to transfer DuPont’s assets out of the reach of parties, including the City, that have suffered injury” from PFAs contamination, the suit said.

Fort Worth is asking the court to award the city’s requested damages; disgorgement of the manufacturers’ unjust enrichment; and to void the Chemours transfers and DuPont transfers for the suit’s claims and block DuPont de Nemours, Inc. from capitalizing on the old company’s assets.

The city is represented by Marten Law LLP, Lloyd Gosselink Rochelle & Townsend PC, and the city attorney's office.

The Defense Department, Air Force, and Navy didn't immediately respond to request for comment.

The former DuPont entities and 3M Co. didn't immediately respond to request for comment.

The case is City of Fort Worth v. United States , N.D. Tex., No. 4:25-cv-00235, complaint filed 3/10/25 .

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Media Matters accuses Musk's X of 'abusive' tactics in new lawsuit

 [reuters.com/legal/government/media-matters-accuses-musks-x-abusive-tactics-new-lawsuit-2025-03-10](https://www.reuters.com/legal/government/media-matters-accuses-musks-x-abusive-tactics-new-lawsuit-2025-03-10)

Mike Scarcella

By Mike Scarcella

March 10, 2025 1:11 PM PDT Updated 18 hours ago

A 3D-printed miniature model of Elon Musk and the X logo are seen in this illustration taken January 23, 2025. REUTERS/Dado Ruvic/Illustration Purchase Licensing Rights , opens new tab

March 10 (Reuters) - U.S. media watchdog group Media Matters sued Elon Musk's X on Monday, accusing it of bringing "abusive," costly and meritless lawsuits to punish Media Matters for its reporting on advertising on X after Musk bought the social media platform.

Media Matters' lawsuit , opens new tab in federal court in San Francisco asked a judge to block two cases that X filed in Ireland and Singapore against the watchdog.

The lawsuit also asked the court to declare that California is the appropriate venue for disputes involving X and its terms of service. X is currently also suing Media Matters in a federal court in Texas.

"X initiated a vendetta-driven campaign of libel tourism, spanning three jurisdictions in three countries, all arising from the same conduct: Media Matters' use of X's platform in accordance with X's Terms of Service and its truthful reporting on the results," the complaint said.

Spokespeople for X and Media Matters did not immediately respond to requests for comment.

X in its lawsuits accused Media Matters of fabricating images and defaming the social media platform in a report that said ads for major brands had appeared next to far-right extremist content, driving some companies to stop or pause their spending on the site.

Media Matters has denied the allegations and defended its reporting. It said it has spent millions of dollars defending itself from X's claims.

A judge in August declined to dismiss the case X brought against Media Matters in Texas. Media Matters had argued the case should be dismissed because the organization is not based in Texas and its reporting and publishing activity did not take place there.

Last year, X updated its terms of service to steer any disputes by users of the social media platform to the federal court in the Northern District of Texas, where conservative litigants in political cases have often won favorable rulings.

Musk bought X, then known as Twitter, in 2022 for \$44 billion. The company has moved its headquarters from San Francisco to Bastrop, Texas, near Austin, whose federal court is in Texas' Western District.

The case is Media Matters for America et al v. X Corp et al, U.S. District Court, Northern District of California, No. 3:25-cv-02397.

For plaintiff: Katherine Peaslee, Amanda Bonn and Justin Nelson of Susman Godfrey; and Amer Ahmed of Gibson, Dunn & Crutcher

For defendant: No appearance yet

Read more:

Musk's X seeks to steer lawsuits to conservative court in Texas

Musk's X likely to lose records appeal in Media Matters case, court says

Media Matters must face X's lawsuit over report about ads next to extremist posts

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Reporting by Mike Scarcella

Litigation

March 11, 2025, 7:25 AM PDT

Goldstein Seeks Grand Jury Material Related to Obstruction Claim

- **Government says Goldstein had 'no credible reason' for offer**
- **Goldstein says crypto offer was employee retention effort**

SCOTUSblog founder Tom Goldstein is asking the government to turn over grand jury testimony related to its claim that he "offered to pay a potential witness cryptocurrency."

Usually, the government can rely on evidence without actually producing it in proceedings related to release conditions. But Goldstein's lawyers say they've cast enough doubt on that claim to warrant compelling the government to produce its evidence.

The government made the claim in the course of opposing Goldstein's challenge to a release condition subjecting his electronic devices to monitoring by pre-trial services. Although the government hasn't charged Goldstein with witness tampering, it effectively accused him of as much, he said in a motion filed Monday in the US District Court for the District of Maryland.

The government doesn't claim that Goldstein suggested, "even in the most oblique fashion," that the witness not fully cooperate with the investigation, his lawyers said. Rather, they've alleged he had "no credible reason" for offering the witness cryptocurrency.

But Goldstein said there's an obvious alternative explanation: he offered the cryptocurrency to induce the witness—his former assistant and office manager—to stay with his firm.

Goldstein had just received grand jury subpoenas "requesting virtually every financial document" in the possession of SCOTUSblog and his firm at the time, Goldstein & Russell.

The witness was departing G&R, and the incoming replacement lacked the necessary institutional knowledge about the firm's or the blog's records, he said.

"Keeping the individual with the firm and engaged in the effort to provide materials to the government for the investigation bears no relationship to an effort to discourage them from cooperating," the motion said. "If anything, it suggests the exact opposite."

Goldstein—known for his prolific appearances before the US Supreme Court—was indicted in January for tax evasion and making false statements on a loan application. He's accused of concealing gambling-related income and disguising personal expenditures as law firm business expenses, among other things.

The case is United States v. Goldstein , D. Md., No. 8:25-cr-00006, emergency motion 3/10/25 .

To contact the reporter on this story: Holly Barker in Washington at hbarker@bloombergindustry.com

[Litigation](#)

March 11, 2025, 4:34 AM PDT

Epstein Often Knew More About JPMorgan Than Me, Claims Staley

- Staley was told about his JPMorgan exit by Epstein, he says
- Former Barclays CEO is challenging his ban from UK finance

Jeffrey Epstein often knew more about what was going on at the top levels of JPMorgan Chase & Co. than **Jes Staley**, one of the Wall Street bank's most senior executives for more than a decade.

Staley said Epstein had a "remarkable ability" to gather information from the finance industry and was able to tell him things about his own career, according to his witness statement filed at a London court.

"Mr. Epstein was also well connected within the upper levels of JPMorgan itself," Staley said. "He seemed to be aware of things relating to the bank, that I was not aware of."



Jes Staley arrives at The Rolls Building in London, on March 11.

Photographer: Chris J. Ratcliffe/Bloomberg

Staley, the former Barclays Plc chief executive officer who is [attempting to overturn](#) a lifetime ban imposed on him by the UK financial regulator, said Epstein had told him about his own departure from JPMorgan before even he knew about it.

"The bank was more important to him than the other way around," Staley said testifying in court on Tuesday.

Documents filed as part of now settled proceedings in the US have previously highlighted Epstein's high-level knowledge of JPMorgan. In an email in early September 2009, Epstein wrote to Staley telling him "you are on track," weeks before Staley was promoted to run JPMorgan's investment banking arm.

Staley has said he was told to get to know Epstein around 2000 by JPMorgan's then-CEO. "**Sandy Warner** recommended that I should become acquainted with Mr. Epstein because he was an exceptionally well connected man who could help me, in my capacity at JPM, to form business relationships with influential and other well connected individuals whom I might not otherwise have met or with whom it would have taken me longer to establish a relationship," he said in the witness statement.

He believes he was not the only JPMorgan employee to be in contact with Epstein. "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. However, Staley said he now deeply regretted his association with Epstein, who died in a New York jail cell in 2019.

Staley said he had not known of Epstein's "abhorrent" behavior. "If I was aware of his monstrous activities, I would not have maintained a relationship, and I was not aware," he said in court.

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News from Bloomberg Terminal
March 11, 2025, 10:32 AM PDT
Hedge Funds Need to Know the Weather

By Matt Levine

(Bloomberg Opinion) --

Weather traders

The nicest thing you can say about the financial industry is that it lavishly rewards correct understanding of the world. If you know a thing, and other people do not know it, financial markets provide an efficient and fairly general way to turn your knowledge into large amounts of money. You don't have to go out and make some product with your knowledge, building a factory and hiring marketers and getting it into stores. You can push some buttons on a computer and turn your knowledge pretty directly into money.

It seems to me that this creates nice incentive structures? I mean, not entirely, probably.¹ But it is probably net good for the world that young people who are interested in rigorously understanding some specific domain know that they might get paid really well for that understanding. Perhaps it is a tragedy that so many bright young physicists go into finance instead of, you know, building spaceships or whatever, but perhaps the lure of finance is what creates so many bright young physicists in the first place. I half-seriously argued recently that the attraction of quantitative finance might have "created conditions in which it is incredibly lucrative to get very good at statistical inference," and thus paved the way for modern artificial intelligence models.

Or here's meteorology:

When Alex Goldstein was just 7 years old, he says, he was drawn to extreme weather. Within 10 years, he convinced his father to take him storm chasing and hasn't stopped since.

Now, at 35, he leads a small group of data scientists and meteorologists who help teams of traders at one of the world's largest hedge funds position themselves in commodities markets.

Millennium Management's Goldstein and other specialists like him who can help model weather patterns in an increasingly volatile climate have become one of the most sought-after groups for hedge funds and trading firms. ...

Hedge funds on average hired 23% more weather experts, including data scientists and meteorologists, in 2024 compared to a year earlier, according to executive search firm Proco Group. The average pay package has also increased by 18%, with the top talent getting as much as between \$750,000 and \$1 million.

That compares to a median salary in 2023 of about \$93,000 for atmospheric scientists, including meteorologists, according to the US Bureau of Labor Statistics.

"Academic meteorologists, with strong data science skills, who can translate their skills into the commodity trading environment, are one of – if not the most – sought-after skill set," Proco Group senior partner Ross Gregory said.

It is interesting to think about what domains of knowledge do and don't translate into working at a hedge fund. Meteorology, sure. Machine learning. Math. Macroeconomics. Biochemistry, petroleum engineering, cryptography. Psychology? I have never read an article about hedge-fund *epidemiologists*, but I bet that will change.² There are limits. This morning I read a London Review of Books article about the guy who deciphered Linear Elamite, "a writing system used on the Iranian plateau around four thousand years ago," and I cannot think of any reason that Millennium might pay *him* a million dollars a year, but perhaps I am just lacking imagination.³

People are worried about private credit liquidity

I feel like I have been saying forever – on the Money Stuff podcast? – that I am looking forward to reading stories about the dangers of liquidity mismatches in private credit, and here we go!

Private credit's rush to attract money from retail investors is making the sector more vulnerable to the kind of liquidity mismatches found in traditional lenders, the Bank for International Settlements warned in a report on Tuesday.

Direct lenders usually provide long-term loans that match the duration of their funds, a setup that allows many in the industry to argue that private credit doesn't pose systemic risk. But money managers have increasingly turned to structures that allow mom and pop investors to regularly redeem a portion of their investment, creating a potential problem if investors were to demand money back during market turmoil.

"The growing role of insurance companies and retail investors, as well as funds' leverage and degree of portfolio concentration warrant monitoring," according to the report. "This is especially relevant in light of growing interlinkages between banks and private credit."

Yesssssss there it is. The idea is:

1. Private credit, unlike traditional banking, has a very *nice* match between assets and liabilities: Private credit funds make long-term loans, and they fund those loans with locked-up equity capital from patient long-term investors like, classically, insurance companies.
2. But as private credit rapidly eats the financial system, it is expanding into funding models that are less nice. It's fairly straightforward to get an insurance company to lock up its money in a fund for years, particularly if you own the insurance company. It's harder to get a retail investor to do that. A retail investor might want an exchange-traded fund that she can sell anytime she wants. If you want to capture every last dollar of investor money, you will launch a private credit ETF, as Apollo Global Management did. Apollo will provide "intra-day, firm, executable bids" to the ETF, to comply with ETF liquidity rules, which means that a (small) portion of Apollo's private credit funds are now *runnable*: If ETF investors all want their money back at once, Apollo is on the hook to give it to them.
3. Also private credit funds *borrow* a fair amount of money, often from banks, to juice their returns. So if you worry about banks, private credit funds are sort of a derivative worry: If they are taking bad risks, then so are the banks that lend to them.

Here's the BIS report, which is interesting throughout. It ends with the liquidity worries:

As the leverage of BDCs [*business development companies, i.e. closed-end publicly traded private credit funds*] – and private credit funds more generally – increases, their advantage in holding risk may diminish. If private credit succeeds in attracting more retail investors, eg by migrating to more open-ended structures, liquidity mismatches between assets and liabilities would ultimately rise. Private credit would then be increasingly subject to similar vulnerabilities to banks. Relatedly, with the era of persistently low interest rates coming to an end, the fall in BDCs' cost of capital may reverse. In addition, as retail investors may have a limited understanding of funds' portfolio concentration, striking the right balance between specialisation and diversification within funds is bound to become more challenging. Indeed, funds may dilute their competitive advantage of local expertise if they diversify.

But the report is *mostly* an effort to explain the rise of private credit, and features this stylized history:

To better understand how private credit funds compete with banks, we examine their cost of capital. A lower cost of capital allows lenders to offer loans at lower rates, thereby attracting more borrowers and expanding their market share.

The cost of capital comprises two primary components, the cost of equity (CoE) and the cost of debt (CoD). The CoE is the return shareholders expect for their investment in a company. ... Banks' CoE was broadly similar to that of BDCs up until 2009 but has been higher since then. ... It increased by substantially more than that of BDCs (blue line) during the GFC [*global financial crisis*], likely reflecting the higher stock market variability of banks due to concerns about their health. Following the GFC, except for a brief period during the Covid-19 pandemic, a sizeable gap persisted, in part reflecting the generally much higher leverage of banks. ...

BDCs' CoD has been slightly higher than that of banks, and more so during periods of monetary tightening. ... Combining both series, we find that BDCs' cost of capital was relatively higher than that of banks in the pre-GFC period but that the series have converged since then. ... Further analysis indicates that the narrowing of the spread between the cost of capital of banks and BDCs is largely explained by a fall in BDCs' cost of equity and a material increase in their leverage.

Crudely speaking, in the olden days, banks (1) made loans mostly with borrowed money and (2) had a low cost of equity because investors thought they were pretty safe. Since the financial crisis, banks (1) have higher capital requirements, meaning that they use relatively less borrowed money to make loans and (2) have a higher cost of equity because everyone knows they are risky. Meanwhile private credit funds are using more borrowed money to make loans, can borrow that money more cheaply, and have a lower cost of equity because everyone understands that they are just loan funds, not weird risky banks.

Lumber futures

I write a lot around here about what I call “abstract commodity space.” The idea is that if you want to bet on the price of a commodity – gold or aluminum or soybeans or coffee or whatever – you do not need to concern yourself with the details of buying a particular amount of a particular grade of the commodity to be delivered to a particular place at a particular time. You don’t need a big bucket to put your soybean oil in. Soybean oil trades in standardized contracts that entitle you to delivery of the oil in the form of receipts for oil at specialized warehouses. You could break the abstraction and take the oil out of the warehouses, and that possibility is what makes the abstraction work: If the abstract soybean oil lived *only* in the warehouses, there’d be no reason for its price to track the price of real soybean oil. But you don’t *have* to take it out, and it is somewhat unusual to do so. You trade abstract soybean oil for financial reasons, and you buy regular soybean oil for cooking reasons, and crossover is rare.

This sort of thing works for *commodities*, products where every example is pretty much the same as every other example. It’s not quite right that a soybean is a soybean is a soybean, but it’s close enough for most economic purposes. Selling abstract soybeans somewhere in abstract soybean space is broadly speaking a pretty good hedge to the risks of your actual soybean farm in Iowa.

One thing that has happened in the last, um, two months is that the world has fractured and there is no longer really such a thing as global abstract commodity space. This is largely, though not entirely, a result of tariff risk. A soybean or gold bar or coffee bean or whatever *outside* of the US is not equivalent to the same commodity inside the US, because you might have to pay a big tariff to move it across the border. (Nor is it equivalent to, like, “the same commodity plus 25%,” because the tariffs are uncertain.) So we talked last month about how New York gold futures traded at a premium to London gold futures: An ounce of gold in a London warehouse is *not* equivalent to an ounce of gold in a London vault, and their prices diverged.

This is, for a variety of people and situations, probably annoying, but on the other hand if you’re a commodities trader it makes life more interesting. The Wall Street Journal reports:

The exchange operator CME Group said it would launch trading in Southern yellow pine futures on March 31, a response to rising export taxes on Canadian lumber that have pushed benchmark wood prices well above those paid in the South. ...

The lumber futures that trade now are tied to deliveries of boards made from Northern conifers, namely Canadian spruce, pine and fir. Builders like those species for the wood's light weight and easy nailing. Existing futures exclude Southern yellow pine, which is a lot heavier and preferred for fences and decks because it works well with waterproofing and stain.

Traders and the exchange have for years discussed Southern yellow pine futures as the region's production grew to be more than 36% of North American softwood lumber output.

Now that Northern lumber is a lot more expensive, they are saying the time is right.

"There was a breakdown in the correlation between Southern yellow pine prices and the spruce-pine-fir prices, especially since a lot of it came from Canada," said David Becker, risk-solutions director at Fastmarkets, which owns the lumber-trade publication and pricing service Random Lengths. It reports the Southern pine price benchmark that the new futures will be settled against.

Part of the issue here is that abstract Canadian spruce is not exactly the same substance as actual southern yellow pine, and you wouldn't want to build a deck with abstract Canadian spruce. But part of the issue is that abstract Canadian spruce is mostly in Canada and southern yellow pine is mostly in the southern US, and moving between those places has become harder.

Polymarket

There are roughly three possible approaches to regulation for crypto firms:

1. Try to be nice to regulators, try to be an upstanding citizen, and try to shape regulation to your advantage. I think of this as the Coinbase approach. It has had some hiccups for Coinbase, though I suppose it looks promising again now.
2. Position yourself as an outlaw anarchist, do your business in an undisclosed location, and rely on the anonymity and censorship-resistance of crypto to keep you in business. This is, like, the Silk Road approach? Many more hiccups.
3. Be coy about regulation, stay out of the regulators' grasp, and try to get so big so fast that, by the time regulators catch up to you, you're too big and important for them to shut down. This is an approach that is often identified with Uber Technologies Inc., which tried it for car services with great success. In crypto, I think it would be reasonable to say that Tether and Binance have taken an approach something like this. (Binance famously has no headquarters, so no police could ever raid its headquarters.) In each case, there were some serious growing pains, but as of right now it seems to me that both of them are winning their races with regulators.

At New York Magazine, Jen Wiczner has a profile of Shayne Coplan, the founder of crypto prediction market Polymarket, who quite self-consciously went with Option 3:

Coplan may have correctly wagered that the law would change in his favor before he got in real trouble. "I mean, the plan is to build something that didn't exist yet that needed to exist, that I cared more about than anyone else," he said, acknowledging that he started Polymarket without consulting lawyers on the regulatory prohibitions. He sounds a lot like [Travis] Kalanick, who launched Uber as a basically illegal taxi service, then fought bans around the world to win the right to operate. As Trump and Musk have shown in their ongoing campaign against the bureaucracy and the separation of powers, the rules don't necessarily apply to those bold enough to disregard them, which might make the 26-year-old Coplan the emblematic entrepreneur of this new era. ...

That Coplan didn't ask permission before starting his website may speak as much to the way the world has changed as it does to his personal mind-set. In a country where legal gambling is ubiquitous and day-trading has spread to anyone with a smartphone, and where the old divisions are crumbling and rules are created as much as they are destroyed, the idea that betting on an election is inherently bad might strike a Gen-Z up-and-comer as pretty odd. Coplan's cavalier approach is kind of like a bet on his site: Either he is right about the way the world works or he isn't.

And:

He also gave the impression of being fast and loose to investors, several of whom described him as immature. He'd be seen at parties "partaking in whatever people were partaking in," according to one venture capitalist who passed on Polymarket. "There's a vibe in which he sort of seemed like he was playing a game." Combined with his dismissive answers to questions about regulatory restrictions, Coplan's swagger struck some as a red flag. "We're used to dealing in gray area, right, where the laws aren't clear yet," said the investor, "but I think for Polymarket it was more 'Who cares about that?' – like the whole point is to kind of be averse to the law."

Polymarket is technically not allowed to accept money from US users but hahahahahahaha everyone knows it does; Wieczner set up an account in Manhattan in a few minutes. The FBI raided Coplan's apartment last November, presumably to investigate Polymarket's US users; it took his phone as evidence, but "Coplan popped up on X later that day to write, 'new phone, who dis?'" It's hard to imagine the case going anywhere now. Polymarket is too big and too useful.

Everything is seating charts

My basic theory is that everyone who works at the high levels of high finance has plenty of money and is not going to the office every day to make ends meet. They go to the office to maintain and enhance their *status*, which at a certain point becomes more valuable than money but which is harder to measure. Conveniently, the main way to measure it is with money: You want a \$30 million bonus not because you need the money but because your archrival got \$25 million and you are better than her aren't you?

There are other ways to measure status, though. Probably the second-most important is where you sit. There are high-status seats and low-status seats, and if you think you are high-status but are put in a low-status location, everyone will walk by and see you sitting in the bad seat, and you will be visibly demeaned and very angry. Exactly what seats are high-status will depend on the firm and the context; law firm partners might want corner offices, but there are good seats on open trading floors too. Seating in meetings is also important; it is approximately true that Bill Gross was pushed out of Pimco because he seated his powerful rivals in the audience at a meeting rather than at the front table. Those guys were making tens of millions of dollars a year, but they were sitting in the *bad* seats, and that is a mortal insult.

Anyway this is now the law in England:

Allocating a senior employee a desk that they believe to be associated with a junior position amounts to a breach of workplace laws, an employment tribunal has ruled.

The panel said being made to sit somewhere in the office where junior staff work could “logically” lead a senior employee to conclude they have been demoted.

As a result, such a seating arrangement could “destroy or seriously damage” the worker’s relationship with bosses and lead to a successful legal claim, they found.

The ruling came in the case of a senior estate agent who resigned because he wanted to sit at a “symbolically significant” desk.

Nicholas Walker had been asked to move branch but was “upset” when he was told he would sit at a “middle” desk rather than the “back” desk, typically where the manager sat.

When his boss heard about the 53-year-old’s resistance to the desk allocation, he said he could not believe “a man of his age” was “making a fuss” about a desk.

Walker – who was also a director of the firm – immediately submitted his resignation and is now set for a payout after successfully suing the firm for unfair constructive dismissal.

Right yes giving you a middle desk when you deserve a back desk is *obviously* equivalent to firing you.

Things happen

Private Credit Pioneer Dragged Down by Insults and Indecision. Nasdaq halts high-speed trading service after regulatory pressure. ‘Buy Canada’ Pressure Builds on \$1.6 Trillion in Pension Cash. ECB to Simplify Method for Setting Banks’ Capital Requirements. UniCredit Poised to Get ECB Nod for Commerzbank Stake in Days. SocGen chief says ‘nothing is sacred’ as French bank seeks cost cuts. Rocket to Buy Redfin in \$1.75 Billion All-Stock Deal. The British fintechs hoping to crack America. Nissan Replaces CEO After Failed Honda Merger. McLaren to Add Luxury SUVs to Lineup in Reboot Under New Owner. “At a time when a banana taped to a wall can fetch \$6.2 million, a Pokémon-themed Cheeto selling for a mere five figures might be considered a bargain.”

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1. It's possible that intense competition to precisely understand, you know, loopholes in credit agreements is not socially productive. And I once wrote about John Paulson's big short bet on the 2008 financial crisis: "The thing he did is a normal and mostly praiseworthy, or at least okay, financial thing. He identified an irrationality in the market and got on the other side of it. He saw prices that were wrong and moved them toward right. By betting against other people's mistakes, he gave them incentives to correct them. He made the markets more efficient, he improved the allocation of capital, he did his small part to speed humanity's progress out of ignorance and into enlightenment. I mean, it's fine, I don't want to overstate the moral case here or anything, but it's fine." And: "In most businesses you can notice a competitor doing a dumb thing and create value by doing a better thing, but the financial markets are special because you can notice a competitor doing a dumb thing and get rich by taking the other side, without creating value or doing a better thing."

2. Sorry!

3. The guy who deciphered some Herculaneum papyri got a job at SpaceX and now DOGE, though that project was about deploying artificial intelligence, not ancient language connoisseurship.

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Exclusive: Bayer share drop draws market regulator's scrutiny, source says

 [reuters.com/business/healthcare-pharmaceuticals/bayer-share-drop-draws-market-regulators-scrutiny-source-says-2025-03-11](https://www.reuters.com/business/healthcare-pharmaceuticals/bayer-share-drop-draws-market-regulators-scrutiny-source-says-2025-03-11)

Ludwig Burger

FILE PHOTO: Logo and flags of Bayer AG are pictured outside a plant of the German pharmaceutical and chemical maker in Wuppertal, Germany August 9, 2019.

REUTERS/Wolfgang Rattay/File Photo Purchase Licensing Rights , opens new tab

FRANKFURT, March 11 (Reuters) - Germany's financial markets watchdog has started an initial probe to examine whether Bayer (BAYGn.DE) , opens new tab fairly disclosed plans to get shareholder approval for a potential capital increase, a regulatory source told Reuters on Tuesday.

Under the "routine" investigation that was triggered by the strong decline in Bayer's share price last Friday, watchdog BaFin is checking whether there are grounds for a wider investigation, the person familiar with the matter told Reuters.

The healthcare and agriculture group said in a statement on Friday it would seek shareholder approval to potentially increase shares outstanding by close to 35% over the next three years to cover possible costs of U.S. litigation.

The potential capital increase is worth up to 8.4 billion euros (\$9.1 billion) based on the company's market value on Friday.

The stock plunged by as much as 10% in intraday trading on Friday with investors balking at the size of a cash call as dividends would spread across more shares. Reuters has reported that Bayer told several analysts in detail about the plans one day earlier.

The source said BaFin was looking both into any market-moving potential of the proposal for the annual investor meeting on April 25 and whether it was disclosed widely enough to reach all market participants.

When asked to comment, Bafin said it "regularly acts on unusual share price movements to establish whether there are indications of market manipulation, insider trading and/or violations of ad-hoc-disclosure rules". It would not comment specifically on Bayer.

A Bayer spokesperson pointed to previous comment saying that the proposal aligns with past shareholder authorization for a 35% capital increase that was in place until 2019. Bayer also had conditional capital of 10% at its disposal at the time, he added.

The spokesperson also pointed to a presentation that Chairman Norbert Winkeljohann gave in January, showing Bayer was considering a vote on raising new shares, without specifying the size.

Analysts had told Reuters last year that Bayer may have to ask shareholders for capital to shore up its finances even after the German group cut its dividends.

NOT FOR M&A

CEO Bill Anderson has scrambled to revive a share price burdened by costly U.S. litigation, a 2023 drug development setback, weak agriculture markets and over 32 billion euros in debt.

Bafin rules [\[link\]](#), opens new tab require listed companies to disseminate information with potential to move a share price "to as wide a public as possible on a non-discriminatory basis".

Bayer shares closed 6.4% lower on Friday and have since gained about 2%.

Analysts at some brokerages had expressed surprise at Friday's slump as they had cited Bayer executives as saying on Thursday that the size of the cash call was not out of the ordinary.

In its official statement on Friday, part of an invitation to shareholders to the annual meeting, Bayer said it would only resort to a rights issue "if it is absolutely necessary," and not use it for mergers or acquisitions.

(\$1 = 0.9158 euros)

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Additional reporting by Tom Sims Editing by Sabine Wollrab and Susan Fenton

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

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Opinion **Lex**

Tesla stock is falling because Elon Musk's stock is falling

The company is valued more as a moonshot rather than a carmaker



The more that Tesla chief Elon Musk promises, the less plausible he sounds — especially as tech valuations slide © AP

Published 6 HOURS AGO



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The post-election Trump bump has come and gone. Along the way, no US stock was more powerfully buffeted than Tesla. Elon Musk's carmaker had, at one point in December, gained \$733bn in market capitalisation since the US election, more than any other company in the S&P 500. Its 54 per cent drop since then is also the greatest fall among index members. Musk is the reason, in both directions.

Even before Donald Trump won the presidential vote and hired the world's richest man as his efficiency tsar, Tesla — then worth about \$800bn — was valued more like a moonshot than a carmaker. The company was trading at around 80 times expected earnings for 2025, putting it in the top 3 per cent of US-listed companies worth more than \$1bn, according to Capital IQ data. The median price-to-earnings multiple at the time was 15 times.

Not even the most far-fetched automotive estimates justified that. Before the election, Lex calculated that [Tesla's car business was worth around \\$240bn](#), based on a generous estimate of 6mn vehicles by 2030. The remaining \$560bn or so looked like a heady cocktail of hope about future projects, from self-driving taxis to humanoid robots.

Tesla's rally runs out of gas

Market capitalisation, \$bn



Source: LSEG

Notwithstanding Trump's [pledge to buy a brand new Tesla](#), some things look worse for the carmaker now than in November. Sales have plunged in Europe; Tesla has faced protests and vandalism. Production in China, a huge market, has slumped. And while Musk claims the death of EV credits in the US benefits Tesla by harming his competitors, that remains an untested theory.

But remember: Tesla isn't valued like a car company, which means the fall in its valuation — including a vicious 15 per cent drop on Monday — is only vaguely about automotives. Instead, the company's massive gain since the election and subsequent fall reflects investors' shifting views on the plausibility of his various moonshots.

On that front, Musk's value to Tesla has probably gone from overvalued to oversold. After all, the likelihood of Tesla eventually reshaping the world of autonomous mobility probably hasn't shifted much. True, Musk has less time for Tesla these days, but his plate was piled high with other ventures long before he pitched up at the White House.

As for humanoid robots, those too remain as likely — or not — as ever. Musk has said the descendants of his prototype droid Optimus could be “the biggest product ever of any kind”. Hubris perhaps, but the future is undeniably going to be robotic. Bank of America analysts just doubled their estimate of global humanoid shipments, to 10mn by 2035.

The trouble is, the more the Tesla chief promises, the less plausible he sounds — especially as tech valuations slide. For example, Musk told analysts as recently as January that his carmaker could be worth more than Apple, Microsoft, Nvidia, Amazon and Alphabet combined, currently equivalent to \$13tn. As of Monday, it was just 5 per cent of the way there. Hype took Tesla briefly to \$1.5tn; only credibility will get it back there.

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Lex

Tesla Inc

Donald Trump promises to buy a Tesla after electric-car maker's shares tumble

US president's late-night social media post follows company's 15% share price drop



Demonstrators have targeted Tesla showrooms in protest against Elon Musk's government cuts and support for far-right political parties © Laure Andrillon/Reuters

Jonathan Wheatley and **Kana Inagaki** in London

Published 8 HOURS AGO | Updated 05:18



Donald Trump has promised to buy a Tesla in a show of support for Elon Musk after shares in the electric-car maker tumbled 15 per cent in a Wall Street sell-off sparked by fears over the US president's economic policies.

Monday's slump wiped out the gains for the shares since Trump's election victory and leaves them more than 50 per cent below a record high hit in December.

Following the sell-off, Trump said on his Truth Social platform that he would buy a "brand new" [Tesla](#) on Tuesday "as a show of confidence and support for Elon Musk, a truly great American".

He added: "Radical Left Lunatics, as they often do, are trying to illegally and collusively boycott Tesla."

Tesla shares surged in the weeks following the election in November after [Trump](#) picked Musk, who donated more than \$100mn to the Republican's campaign, to lead a cost-cutting drive across government.

But Tesla has since been hit by a consumer backlash in Europe, where the billionaire has intervened in politics, including backing Germany's far-right Alternative for Germany party in elections last month. Its US showrooms have also been [targeted by protesters](#).

The company is also confronting a broad slowdown in the electric vehicle market and concerns over an ageing product portfolio.

Tesla shares have fallen from December highs

Share price, \$



Source: LSEG via markets.ft.com

Monday's drop wiped \$131bn from Tesla's market capitalisation, leaving it at \$714bn and less than half its December peak of \$1.54tn.

Shares in Tesla were the hardest hit of the group of seven tech stocks that have powered the stock market higher over the past two years.

The Nasdaq Composite index fell 4 per cent, its biggest fall in two and a half years. The S&P 500 index lost 2.7 per cent, after falling 3.1 per cent last week in its worst weekly performance in six months.

Analysts said Monday's declines came on the back of companies' very high growth expectations, which investors were rapidly re-evaluating in the face of Trump's aggressive trade policies and falling consumer confidence.

Tesla shares were up 3 per cent in early trading on Tuesday.

Trump has been a vocal critic of electric vehicles, saying that former president Joe Biden's effort to boost sales risked the "[complete obliteration](#)" of the US car industry.

Since returning to the White House in January, Trump has ditched a Biden administration target that by 2030 half of new US vehicles sold should be battery-powered. The administration has also indicated that a federal EV tax credit worth \$7,500 to consumers could be axed.

Tesla investors are waiting to see whether the release of the group's upgraded Model Y, scheduled for the first half of 2025, will help to reboot Tesla sales, which fell in Germany, France, Norway and China in February.

"The stark declines seen in year-on-year sales growth could be an indication of an ongoing sentiment issue impacting the company in addition to production cuts related to the Model Y," said Tom Narayan, an analyst at RBC Capital Markets.

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Trump Says He'll Buy a Tesla to Help Musk After Share Plunge

 **Peter Vercoe**
Bloomberg Editorial **Derek Wallbank**
Bloomberg Editorial

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By Peter Vercoe and Derek Wallbank

(Bloomberg) --

US President Donald Trump said he'll buy a new Tesla to support Elon Musk, after shares of the electric-car maker had their worst day in four years amid a growing backlash over Musk's political allegiances.

In a post just after midnight in Washington, Trump said he'll buy a new Tesla Tuesday morning as a "show of confidence and support for Elon Musk, a truly great American. Why should he be punished for putting his tremendous skills to work in order to help MAKE AMERICA GREAT AGAIN???" Trump didn't specify which Tesla model he would buy.

Musk, who spent more than \$250 million to help elect Trump and other Republicans and is now the face of the president's efforts to cut the size of the US government, responded with a simple "Thank you."

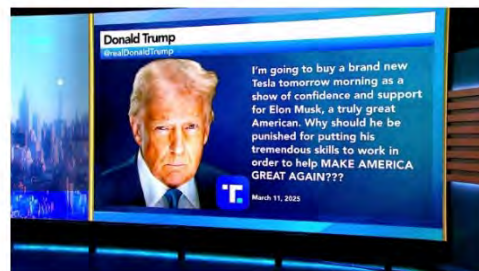


Tesla shares had tumbled 15% on Monday after analysts including UBS Group AG's Joseph Spak cut delivery projections. Wall Street had already begun downgrading their price targets on the stock and lowering earnings estimates.

The stock reversed course in premarket trading in New York, with shares up around 3%.

Read More: Tesla's Post-Election Surge Vanishes as Musk Focuses on DOGE

In addition to disruptions related to changing over its most important model to a new design, blowback against Musk, who is Tesla's chief executive officer, is hurting the automaker's standing in some of the world's biggest EV markets. In Germany, for instance, registrations plummeted 70% during the first two months of the year as Musk endorsed the far-right Alternative for Germany in the months leading up to the Feb. 23 election.



WATCH: Trump said he'll buy a new Tesla to support Elon Musk.

Source: Bloomberg

In China – the world's biggest EV market – Tesla is among the manufacturers struggling to keep up with domestic champion BYD Co. Vehicle shipments from the Musk-led company's plant in Shanghai plunged 49% in February to just 30,688 vehicles, the lowest monthly figure since July 2022.

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[Read More: Elon Musk's Many Detractors Are Taking Their Anger Out on Tesla](#)

Monday's drop in Tesla shares was the biggest single-day decline since September 2020. The stock is down 45% in 2025 and has lost all of its gains since Trump won the US presidential election in November and investors pumped more than \$700 billion into Tesla shares.

Meanwhile, Musk's net worth has dropped by more than \$130 billion since January, according to the Bloomberg Billionaires Index.

Musk was asked earlier Monday how he was running his other businesses while focusing on DOGE, in an interview with former Trump adviser Larry Kudlow on Fox Business. The world's richest man responded: "with great difficulty."

(Updates with stock reaction in fourth paragraph.)

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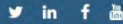
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Here's What Came Crashing Down Yesterday for Trump's "Genius" Guy, Elon Musk: Tesla Stock, Access to Twitter (X), His Years of Secret Calls with Putin

 wallstreetonparade.com/2025/03/heres-what-came-crashing-down-yesterday-for-trumps-genius-guy-elon-musk-tesla-stock-access-to-twitter-x-his-years-of-secret-calls-with-putin

By Pam Martens and Russ Martens: March 11, 2024 ~

Billionaires Donald Trump and Elon Musk share a common credo: It's legal if you can get away with it. (Key evidence to support that claim is the jury conviction of Donald Trump on 34 felony counts and his ability to secure a second term as President and the fact that Musk and his companies were under investigation by five federal Inspectors General – right before Donald Trump fired them and made Musk the investigator. There is also the not insignificant detail reported by the Wall Street Journal that Musk uses illegal drugs.)



Elon Musk and Donald Trump in the Oval Office

This credo came crashing down on the heads of both men yesterday.

The U.S. stock market, a barometer of presidential leadership, plunged. The Dow Jones Industrial Average fell 890 points while the tech heavy Nasdaq dived 727.89 points or 4 percent. Tesla, the electric vehicle company where Musk serves as the missing-in-action CEO, whose stock represents the largest portion of Musk's wealth, lost a stunning 15.43 percent – in one day. That brings the decline in Tesla's share price from the Friday before Trump took office on Monday, January 20, to yesterday's closing bell, to 47.9 percent. Musk can now expect more shareholder lawsuits alleging breach of fiduciary duty — to the pile that already exist.

Trump will now attempt to do damage control by meeting with the CEOs at some of the largest U.S. corporations today.

Musk, for his part, on a day when his hubris was unraveling all around him, thought it appropriate to post a Tweet calling Senator Mark Kelly of Arizona, a decorated former Navy Captain and combat pilot and a former astronaut, a "traitor." Musk was responding to Kelly's visit to Ukraine and his Tweets about why the U.S. must stand firm in support of Ukraine.

It should be noted that supporting Ukraine over the illegal invasion of the country by Russia was the official policy of the U.S. until Trump unilaterally decided recently that it wasn't.

Now, one has to question what role Elon Musk, Trump's largest campaign donor to the tune of more than a quarter billion dollars, has played in that decision.

In October of last year, the Wall Street Journal reported the following in an article titled (paywall) Elon Musk's Secret Conversations With Vladimir Putin.

"Elon Musk, the world's richest man and a linchpin of U.S. space efforts, has been in regular contact with Russian President Vladimir Putin since late 2022."

"At one point, Putin asked the billionaire to avoid activating his Starlink satellite internet service over Taiwan as a favor to Chinese leader Xi Jinping, said two people briefed on the request."

"Musk has forged deep business ties with U.S. military and intelligence agencies, giving him unique visibility into some of America's most sensitive space programs. SpaceX, which operates the Starlink service, won a \$1.8 billion classified contract in 2021 and is the primary rocket launcher for the Pentagon and NASA. Musk has a security clearance that allows him access to certain classified information."

At the same time that Musk was chatting it up with Putin, the Russian dictator was on a U.S. sanctions list over his illegal invasion of Ukraine and bombing of its cities and towns.

Immediately upon learning about the Wall Street Journal article, NASA administrator Bill Nelson called for a government investigation, citing national security concerns.

Musk owns the Twitter social media platform, which he renamed "X." According to DownDetector data and comments posted on its website, Twitter (X) was inaccessible for much of yesterday to users in the U.S. and countries around the globe. According to Musk, it was under "a massive cyberattack." That Musk cannot put up adequate firewalls to protect Twitter (X) from many hours of global outages is not a comforting thought for a man being allowed by Trump to send teams of his software engineers to tap into federal government computer systems.

The dangerous threats to U.S. national security, trust by our allies, market stability, consumer and business confidence, which directly impacts the U.S. economy, of this Musk/Trump/Russia realignment will no doubt come up when Trump meets with corporate CEOs today. Will any have the courage to break their silence on the subject?

The fact that the Dow is down another 361 points as of 10:03 a.m. EDT this morning suggests that the worst is yet to come.

Elon Musk

Elon Musk claims cyber attack on social network X came from 'Ukraine area'

Outage is latest trouble for world's richest man's business interests since he joined the Trump administration



'Either a large, co-ordinated group and/or a country' was responsible for the attack on X, Elon Musk posted on his social media platform © Alain Jocard/AFP/Getty Images

Joe Miller in Washington

Published YESTERDAY



Elon Musk has claimed a cyber attack on his social media platform X on Monday was orchestrated by “IP addresses originating in the Ukraine area”, the latest in a series of recent troubles for his business interests after he joined US President Donald Trump’s administration.

The billionaire, who has morphed into a fierce critic of the [Ukrainian government](#), provided no evidence for the allegation, made in an interview with Fox Business on Monday, nor did he claim that state actors were necessarily involved.

Earlier in the day, [Musk](#) posted that “either a large, co-ordinated group and/or a country” was responsible for the attack on X, which led to broad outages across the US and elsewhere.

The platform previously known as Twitter has experienced several disruptions since Musk bought it in 2022 and fired 80 per cent of its staff. X did not immediately respond to a request for comment.

The apparent attack on X, which disrupted service repeatedly throughout the day, capped a bruising few days for Musk's businesses. Shares in his electric vehicle company Tesla fell 15 per cent on Monday amid a broader market rout. The stock is one of the worst performing in the S&P 500 index so far this year.

Last week, Musk's SpaceX lost another of its next-gen Starship rockets, which exploded nine minutes after launch, while a handful of large Starlink contracts have been cancelled over his political interventions.

Tesla has also suffered from loud protests outside its dealerships over Musk's role as the head of the so-called Department of Government Efficiency (Doge), which is slashing hundreds of government contracts and firing tens of thousands of federal employees.

Talking to former Trump adviser Larry Kudlow on Fox Business, Musk said his work in government meant he was running his other businesses with "great difficulty".

"I just don't want America to go bankrupt," Musk said, apparently committing to stay in his government role for the time being. He reiterated his goal to achieve \$1tn in savings from government spending, which would be about half the annual US budget deficit.

Alongside his role at Doge, Musk — who helped Ukraine's early war effort by rolling out Starlink internet service in the country — has become increasingly critical of US aid to Ukraine, claiming that the war effort against Russia is a "never-ending graft meat grinder".

Earlier on Monday, Musk called Senator Mark Kelly a "traitor", after Kelly posted that he had spent time with troops in Ukraine. Musk also repeated his call for the US to leave Nato.

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Musk says juggling DOGE and CEO jobs is difficult, as Tesla shares slump

 [reuters.com/business/autos-transportation/musk-says-juggling-doge-ceo-jobs-is-difficult-tesla-shares-slump-2025-03-10](https://www.reuters.com/business/autos-transportation/musk-says-juggling-doge-ceo-jobs-is-difficult-tesla-shares-slump-2025-03-10)

Noel Randewich, Abhirup Roy

Residents protest against Elon Musk's role at U.S. President Donald Trump's administration, outside of a Tesla dealership in Palo Alto, California, U.S. March 5, 2025. REUTERS/Carlos Barria/File Photo Purchase Licensing Rights , opens new tab

- Tesla shares drop 15% amid Wall Street selloff and recession fears
- Elon Musk's political activities worry Tesla investors
- Tesla's rally post-Trump election wiped out by recent losses

March 10 (Reuters) - Elon Musk is running his businesses "with great difficulty" while working with the Trump administration, the Tesla (TSLA.O) , opens new tab CEO said on Monday in an interview with Fox Business.

His remarks followed Tesla losing \$130 billion in stock market value in a broad selloff on Wall Street that left the electric car maker's shares at their lowest since October.

Tesla's (TSLA.O) , opens new tab shares slumped 15% to \$222.15, weighing heavily on the Nasdaq (.IXIC) , opens new tab, which tumbled 4% on fears that the Trump administration's tariffs against major U.S. trading partners could throw the country into a recession.

The decline in Tesla's market capitalization on Monday eclipsed the \$86 billion combined stock market value of Ford Motor (F.N) , opens new tab and General Motors (GM.N) , opens new tab.

Monday's losses evaporated the last of a Tesla rally late last year that nearly doubled its stock following the November 5 election of U.S. President Donald Trump. That surge was fueled by optimism that Tesla would benefit from Musk's close relationship with Trump.

Shows loss of Tesla value

Investors in Tesla have been concerned that Musk's work leading the Department of Government Efficiency to slash government expenditure was distracting him from running his companies, which include Tesla, SpaceX, X and xAI.

Fox Business's Larry Kudlow asked him in an interview on Monday about the pressure. "I mean, how are you running your other businesses?" Kudlow asked. "With great difficulty," Musk replied, with a sigh.

After the recent slump in Tesla's shares, the stock has continued to trade at multiples far higher than other automakers, with supporters betting on Musk's promises to deliver self-driving taxis and humanoid robots.

More recently, Musk's role in sweeping cuts to the federal workforce at the behest of Trump has led to "Tesla Takedown" protests in the U.S. against the automaker, while Tesla's sales in Europe have slumped. On Sunday, dozens of demonstrators gathered at the Tesla showroom in Lisbon to protest against Musk, with some holding signs reading "Boycott Tesla".

"The public eye seems to be coalescing around what he's doing for the federal government. So if you're a shareholder, you can't help but wonder if that's not detracting from what he should be doing for the publicly traded company that he's running," said Art Hogan, chief market strategist at B. Riley Wealth.

Musk's support for far-right parties in Europe appears to be coming at a price for Tesla sales there. Tesla's car sales in Europe tumbled 45% in January from a year earlier, while overall EV sales jumped over 37%, according to the European Automobile Manufacturers Association.

It is difficult to determine how much Musk's political activities are factoring into Tesla's vehicle sales, which last year declined on an annual basis for the first time.

Analysts point to other factors in the global EV market, including increased competition from Chinese brands and legacy automakers such as GM.

Reporting by Noel Randewich and Abhirup Roy; Editing by Lisa Shumaker

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Elon Musk Admits 'Great Difficulty' Running Other Businesses

M mediaite.com/tv/musk-admits-hes-having-great-difficulty-running-his-businesses-while-overseeing-doge-with-tesla-stock-in-freefall

March 10, 2025



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Tesla billionaire **Elon Musk** sat down with **Larry Kudlow**, the former Trump economic advisor, on Fox Business Monday to discuss his work at the so-called Department of Government Efficiency.

Kudlow asked Musk some procedural questions to kick things off, like how big is his team at DOGE and where is recruiting from.

“Basically it’s software people. And, you know, information security software people and finance. Yeah. It’s basically yeah. Finance and technology. And I mean, frankly, I can’t believe I’m here doing this,” Musk replied, adding:

It's kind of bizarre, but, I kind of think that the, you know, we've got this enormous federal budget deficit and it's a \$2 trillion deficit. It keeps growing. Our interest payments are higher than our Defense Department budget.

That's I think the real wakeup call for me was looking at that, seeing that the interest payments to the national debt, exceeded the Defense Department budget. And that was only growing over time. Which meant if we didn't do something about this, then there won't be any money for anything. We'll just be servicing debt.

"And you know how to read an income statement and you know how to read a balance sheet. You've had some business experience. I'm kidding. But yeah, you know that on this stuff," Kudlow added.

"Yeah. I mean, really, I just don't want America to go bankrupt," Musk said.

"So it's a call to action. You're hearing a call to action," Kudlow replied.

"Yeah," said Musk.

"You have given up your other stuff. I mean, what do you— how are you running your other businesses?" Kudlow followed up.

"With great difficulty," Musk said before a long pause.

"Yeah. I mean," Musk said again pausing. Tesla stock dropped some 15 percent on Monday as worries about Musk's leadership roiled investors.

"But there's no turning back, you're saying," Kudlow offered.

"I'm just here trying to make government more efficient. Eliminate waste and fraud and— So far we're making good progress actually. So our savings at this point exceed \$4 billion a day. So it's pretty significant," Musk said.

"You think you wind up getting to \$1 trillion?" Kudlow asked.

"Yeah," Musk replied, adding, "I mean, unless someone unless we're unless we're stopped, will we will get to \$1 trillion of savings."

Watch the clip above via Fox Business.

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Alex Griffing - Senior Editor

Donald Trump Jr.'s Big Plans to Monetize MAGA Take Shape at 1789

The names lining up behind Elon Musk read like a who's who of big money: BlackRock, Fidelity, venture-capital giant Sequoia.

And then there's 1789 Capital.

The upstart investment firm scored a hot ticket recently with Musk, Donald Trump's wealthiest backer: a rare chance to invest directly in his AI venture, xAI, and his roughly \$350 billion startup, SpaceX.

Turns out, 1789 has a big attraction: Donald Trump Jr. — son of the US president, crown prince of MAGA and now frontman for what fans hail as a “parallel” US economy aimed at the Trump faithful.

Trump Jr. is clear: At 1789, his role is not to crunch the numbers or kick the tires the way most investors do. Instead, he's looking to make the firm money by tapping into the MAGA ecosystem and its network of profit-minded believers like Musk.

Few have arrived at this moment with a better sense for President Trump — and where his second administration might take the nation and the world — than his eldest son. Only now, Trump Jr. is trading Washington to focus on a new mission: monetizing his father's vision for America.

At a time when businesses big and small are trying to navigate all things Trump, Trump Jr.'s stamp of approval can mean the difference between access to lucrative opportunities — such as an in at Musk's xAI and SpaceX — or a cold shoulder. Like his father and brother Eric, who runs the Trump real estate business, Trump Jr. has brushed aside concerns about the seemingly unprecedented number of conflicts the first family is facing.

The so-called parallel economy — essentially, right-wing ventures that position themselves as alternatives to mainstream businesses, from social media platforms to e-commerce to investment funds — hasn't always paid off for the public. In fact, shareholders have occasionally lost big after prominent early backers have cashed out.

But barely two months into the second Trump administration, 1789 Capital is in a position like few others. Based in Palm Beach, two miles from Mar-a-Lago, the firm today sits near the epicenter of Trumpworld with ties both broad and deep.

It was co-founded three years ago by Omeed Malik, an outspoken Trump donor and former Bank of America Corp. executive; Chris Buskirk, who established the Rockbridge Network, a powerful conservative advocacy group, with now-Vice President JD Vance; and Republican mega-donor Rebekah “Bekah” Mercer, the force behind Steve Bannon’s conservative Breitbart network and daughter of hedge-fund magnate Robert Mercer.



Malik and Lisa McGeough, chief executive officer of HSBC US, during the Future Investment Initiative (FII) Institute Priority conference in Miami in February.
Photographer: Zak Bennett/Bloomberg

The idea for 1789 was hatched over coffee at a 2022 Palm Beach gathering of the Rockbridge Network, the secretive group of wealthy technology executives and allies that’s become a major force within the Republican Party’s donor class.

In Malik’s telling, the three co-founders and Blake Masters, a Peter Thiel protégé and Trump-backing Republican who was then running for Senate, were discussing government overreach and how to use the financial industry to “preserve freedom.”

“We knew that we represented the silent majority,” Malik says. So they founded their own investment firm and named it after the year the Bill of Rights was introduced (Masters is on the board).

Trump Jr., 47, formally signed on in November, less than a week after his father won the White House again. The move took many in Washington by surprise: Beltway insiders had expected him to stay close to the administration given his role in championing Vance for vice president. He says he hasn't been to the White House since the inauguration.

Trump Jr. says he can sniff out posers and opportunists and separate in-name-only supporters from the true MAGA faithful. He says America First bona fides — or, conversely, any sign of doubt — can make or break a deal.



Donald Trump Jr. at the Republican National Convention in 2024.

Photographer: Al Drago/Bloomberg

"I've turned down major deals where the ethos doesn't align," Trump Jr. says. "There are people who have become MAGA more recently — and I don't know they actually believe."

1789 declined an invite to invest in OpenAI, for one; partly because of Musk's ongoing feud with founder Sam Altman, partly because he donated to Joe Biden's 2024 campaign, according to people familiar with the matter. Recent overtures by Altman toward the administration haven't swayed the firm's view.

As Trump Jr. puts it: "Authenticity is needed to thrive."

Money Magnet

Trump Jr.'s role at 1789 will be a sort of MAGA magnet, sourcing deals as well as investors into the firm. Before his father returned to the White House, 1789 had raised roughly \$200 million, a pittance by Wall Street standards. Early backers include Charlie Kirk, founder of the nation's pre-eminent conservative youth organization; Marc Andreessen, a prominent venture capitalist who's helped nudge Silicon Valley to the right; and Clay Travis, figurative heir to right-wing talk radio star Rush Limbaugh.

Since Inauguration Day, 1789 has pulled in \$500 million more and its investors now number about 30. It's aiming to collect \$1 billion for its first fund by mid-2025 and then \$3 billion to \$5 billion for a second fund next year, according to a person familiar with the efforts. (1789 declined to comment on any of its fundraising plans.) Among the clients it hopes to woo: endowments and public pensions in Republican-controlled states.

"We're building a large, multi-strategy asset manager," Malik, 45, says. "It's an open lane." While focused on growth equity now, he's thinking about launching a private credit vehicle and a hedge fund, too.

1789 recently added Citigroup Inc. veteran Paul Abrahamzadeh and, Malik says, is in the market for talent — but only if ideologies align. Malik, who says he voted for Hillary Clinton in 2016 but flipped Republican in 2019, has become closer to the GOP's inner circle of influence, helping broker a pre-election alliance between Trump and Robert F. Kennedy Jr. and more recently fundraising for Vivek Ramaswamy's bid for Ohio governor.

Malik likens the potential of MAGA-style investing to the late boom in the environmental, social and governance space, which conservatives deride as part of a "woke" liberal agenda that threatens American capitalism. And unlike those investors, he's happy to invest in weapons or fossil fuel-related companies.

Still, the track record is largely unproven. 1789 has poured more than \$50 million directly across Musk's xAI and SpaceX, opportunities typically reserved for deep-pocketed investors who've struck up a relationship with Musk. Representatives for the two companies didn't respond to a request for comment.



Malik and Pam Bondi at the Republican Party of Florida Freedom Summit in November 2023.
Photographer: Phelan M. Ebenhack/AP Images

Other recent investments include a stake in Happy Dad hard seltzer, founded by right-wing YouTubers the Nelk Boys (they packaged their drink to look like a beer because “we are tired of the skinny can bullsh*t”) and the Enhanced Games, a startup looking to host an Olympics-style competition where athletes are allowed to take performance-enhancing drugs; and Polymarket, the crypto-based prediction site that gained widespread attention during the 2024 presidential campaign.

Trump Jr. is particularly good at drawing and directing attention himself. With some 14.6 million X followers and another 8.9 million on Instagram, plus a podcast, he says he can bring customers and potential investors to those companies.

Another possible play for 1789: banking. As the Trump administration looks to ease rules in the financial industry, the firm is hunting for acquisition targets, according to a person with knowledge of the matter. Republicans from the president down have complained that major US financial institutions turn away individuals and businesses for political reasons.

Read More: Trump Company Sues ‘Woke’ Capital One for Canceling Accounts

One Trump-centric business 1789 is steering clear of is Trump Media & Technology Group Corp., parent of Truth Social. Trump Jr. sits on the board and oversees his father’s \$2.6 billion stake.

Malik says 1789 has no plans to invest alongside Trump Media and that Trump Jr. will recuse himself from situations that involve dealing directly with the federal government.

Rumble, PublicSquare

Malik, Buskirk and Trump Jr. have been involved in startups before. Buskirk, who made his name as editor and publisher of the journal *American Greatness*, says he's invested in about 25 of them over the last decade. Among those is Rumble, a right-wing YouTube that went public with the backing of Cantor Fitzgerald, the Wall Street firm long run by Howard Lutnick, now Trump's commerce secretary.

While Buskirk says he made a profit on Rumble (though declined to provide specifics), it has been a loser for its shareholders. The stock has fallen about 50% since the deal took effect in September 2022, even as the broader US stock market has soared.

Malik used a similar structure — a special purpose acquisition company, or SPAC — to usher onto the stock market PSQ Holdings Inc., parent of “anti-woke” online marketplace PublicSquare. After the November election, PSQ promptly added Trump Jr., who was already an investor, to its board. The move led to a short-term stock surge, but those gains swiftly evaporated. PSQ has lost about 91% of its value since the company went public.

Malik is in the process of using another SPAC to take public GrabAGun, an online firearms retailer. Trump Jr. is an adviser.



Howard Lutnick and Trump during an investment announcement in the Roosevelt Room of the White House in March.

Photographer: Samuel Corum/Sipa/Bloomberg

Others have been looking to get into the business of MAGA too. Andreessen Horowitz started a fund called American Dynamism to back companies “that support the national interest.” Joe Lonsdale, the Silicon Valley investor, Trump supporter and friend of Musk, has taken a similar turn. His firm 8VC says on its website that American ideals “are worth striving for.”

These firms have already found themselves in some of the same deals with 1789 (newsletter platform Substack and BlinkRx, a digital pharmacy, are two examples).

Trump Jr., for his part, has plenty of balls in the air. In addition to his role at 1789, he’s an adviser to Kalshi, another prediction market, and to Unusual Machines, a manufacturer of drones and related components. He and his brother Eric are also personal investors in biotech-startup-turned fintech Dominari Holdings Inc. (news in February that the Trumps were joining the company’s advisory board sent the stock soaring). On top of that, he maintains his title of executive vice president at the Trump Organization.

But, in typical Trump style, he said he isn’t about to slow down.

“We genuinely believe in the parallel economy,” Trump Jr. says.

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Tech Co. Beats Shareholder Suit Over Phony Amazon Reviews

By **Sydney Price**

Law360 (March 10, 2025, 9:46 PM EDT) -- A New York federal judge dismissed a securities class action against Chinese software company Tuya Inc., ruling that the registration statement for Tuya's initial public offering was not misleading for failing to disclose that some of its merchant customers procured fake reviews on Amazon.

The investors claim in their suit that Tuya and several of its executives, directors and underwriters of its March 2021 IPO concealed that a large percentage of Tuya's e-commerce customers violated policies of e-commerce sites like Amazon by posting fake reviews of their products. The practice eventually slowed sales for Tuya as Amazon and others cracked down on fake review schemes, plaintiffs say.

U.S. District Judge John P. Cronan said Friday that none of the several categories of statements contained in the registration statement identified by the investors were false or misleading, but he again gave investors a chance to amend their complaint.

According to the plaintiffs, Tuya's stock price fell 18% following the company's announcement on June 14, 2022, that it had experienced "a slowdown in the U.S. and Europe" — which the plaintiffs say was connected to an emergence of news about fake reviews.

Reasonable investors are likely to understand that an issuer cannot determine whether third-parties are concealing corporate misconduct, Judge Cronan said Friday.

"Tuya is an IoT software company, not a consumer-protection watchdog or an enforcement arm of Amazon's seller relations department that is dedicated to investigating thousands of e-commerce vendors for evidence of abusive marketing practices," Judge Cronan said, using the shorthand for so-called Internet of Things technology.

Additionally, Judge Cronan determined Tuya did not suggest that its customers' marketing practices complied with Amazon's seller policies or that Tuya's involvement should have made it aware of any misconduct.

"Tuya's statements that it took steps to assist its customers in marketing their products and becoming established on e-commerce and offline retail platforms did not in any way vouch for its customers' compliance with those platforms' policies in independently marketing their products or procuring customer reviews," Judge Cronan said.

The registration statement's references to Tuya's plans to increase brand awareness and demand for its products "came nowhere close" to making an issue of its customers' compliance with Amazon's seller policies, he said.

"Only an investor with the most fanciful of imaginations and the most unrealistic of expectations could have understood these statements as implying anything about whether Tuya's customers were complying with Amazon's seller policies in independently seeking to procure positive reviews for their products," he said.

In March 2024, the judge rejected claims that Tuya's disclosures violated securities regulations known as Item 303 and Item 105. Item 303 requires that Tuya disclose "known trends or

uncertainties" that are likely to negatively impact the company financially, and Item 105 requires it to address material risk factors in detail in its registration statement, according to the order.

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

The plaintiffs are represented by Casey E. Sadler and Natalie S. Pang of Glancy Prongay & Murray LLP, and Samuel H. Rudman, Alan I. Ellman and Natalie C. Bono of Robbins Geller Rudman & Dowd LLP.

Tuya and the individual defendants are represented by Edmund Polubinski III, Mari Grace, Marie Killmond and Jonathan K. Chang of Davis Polk & Wardwell LLP.

The underwriter defendants are represented by Gregg L. Weiner, Andrew S. Todres and Elana Stern of Ropes & Gray LLP.

The case is Lian v. Tuya Inc. et al., case number 1:22-cv-06792, in the U.S. District Court for the Southern District of New York.

--Editing by Kristen Becker.

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Binance, Ex-CEO Urge Arbitration Of Crypto Investor Suit

By **Katryna Perera**

Law360 (March 10, 2025, 10:53 PM EDT) -- Binance and its former CEO Changpeng Zhao asked a Florida federal judge to send a suit launched by a proposed class of investors to arbitration, arguing the suit's amended claims fall under the parties' arbitration agreement, and the investors cannot try to avoid arbitration by dropping one of the defendants.

Binance and Zhao filed a **motion** to compel arbitration Friday, saying the claims in the investors' second amended complaint, filed in January, should be sent to arbitration, and the case should be stayed pending arbitration.

According to the motion, the investors voluntarily dismissed U.S.-based Binance entities — BAM Trading Services Inc. and BAM Management US Holdings Inc. — from the suit and then filed the second amended complaint, but the defendants argue the operative complaint remains "substantially similar" to the previous one and even though BAM is no longer named as a defendant, it is "involved" in all the operative claims.

"Despite plaintiffs' attempts to scrub references to BAM and the Binance.US exchange in order to avoid the arbitration provision, the SAC is still replete with allegations concerning both, as plaintiffs define 'Binance' to include BAM and use the phrase 'Binance platform' to refer to both Binance.US and Binance.com," the motion states. "Because plaintiffs cannot credibly argue that their claims here do not 'relat[e]' to the Binance.US platform, their claims belong in arbitration."

According to the motion, the investors entered into valid arbitration agreements with BAM when they created their Binance.US accounts, and dropping BAM as a defendant is a "cynical attempt" to avoid arbitration.

"It is 'black letter' law in the Eleventh Circuit 'that when you allege that [defendants] engaged in either a conspiracy or concerted action ... then an arbitration as to one is enforceable under the estoppel argument as to all,'" the motion contends. "The SAC continues to allege concerted action amongst defendants and [BAM], despite dropping BAM as a defendant, and plaintiffs therefore must still arbitrate their claims."

The motion says the operative complaint remains dependent on BAM's role in the alleged wrongdoing in at least four ways. First, the suit's claims continue to rely on BAM's creation and its alleged role in the defendants' alleged scheme to sell unregistered securities to U.S. customers, according to the defendants.

"The SAC restates the allegations that 'U.S.-based Binance.US' was created as a sham on [Binance Holdings Limited] behalf," the motion asserts. "Plaintiffs further allege that 'Binance.US' was created as a 'compliant subsidiary' with the 'ulterior motive' to try and avoid U.S. regulations and that, 'Binance.US [was used] as a laboratory to identify important U.S. customers that could be prioritized for expedited on-boarding to the Binance.com platform.'"

Second, the motion states that the operative complaint refers to Binance as a "group of entities" that includes BAM and describes Zhao and Binance as "practically synonymous."

"When plaintiffs allege 'Binance' has engaged in conduct giving rise to their claims, they are roping BAM into those allegations, despite dismissing them — again, trying to have it both ways," the

motion says.

Third, the operative complaint repeatedly uses the term "Binance platform," the defendants say, which refers to both BAM and Binance Holdings.

Finally, the investors seek to represent a class of individuals who purchased BNB digital assets on the Binance.US exchange, according to the motion.

"Specifically, the global class includes '[a]ll persons and entities who, within the applicable limitations period ... purchased, held, and/or sold the cryptocurrency token BNB on any platform,'" the motion asserts. "'[A]ny platform' includes 'all' platforms that offer BNB, including Binance.US. These putative class allegations, which directly concern the Binance.US platform, along with plaintiffs' use of 'Binance' and 'Binance platform' throughout the SAC, demonstrates the SAC's reliance upon defendants' U.S.-based affiliate, BAM, and the Binance.US exchange."

In a statement to Law360 on Monday, Adam Moskowitz of Moskowitz Law Firm PLLC, who represents the investors, said: "It was not surprising Binance would again try to force arbitration, but it was that they would fail to cite the latest 11th Circuit, and Southern District of Florida caselaw, specifically involving non-signatories that unsuccessfully tried to enforce similar arbitration clauses."

"These consumers purchased unregistered BNB tokens issued by Binance International, who made them available through other crypto platforms. One main reason we amended was defendants' recent admissions to the U.S. Justice Department that they, in fact, violated the Bank Secrecy Act, failed to implement [anti-money laundering] programs and know your customer protocols, and disregarded U.S. securities laws and were required to pay billions in fines, but still never provided any relief to these Binance consumers who already purchased their unregistered securities," he said.

Counsel for the defendants did not immediately respond to requests for comment Monday.

The investors alleged in their original complaint that Binance knowingly and willfully ignored U.S. regulatory requirements by failing to implement an effective anti-money laundering program, which is required of financial institutions, and by offering and selling unregistered securities.

In November 2023, Zhao and Binance pled guilty to charges brought by the Justice Department, resulting in a \$4.3 billion fine. Zhao was separately sentenced last April to four months in prison and has served his sentence. Zhao and Binance also made \$150 million and \$2.7 billion **settlements with the** Commodity Futures Trading Commission.

The investors are represented by Adam M. Moskowitz, Joseph M. Kaye and Barbara C. Lewis of the Moskowitz Law Firm PLLC, and Brooke Alexander, Stephen N. Zack and Tyler Ulrich of Boies Schiller Flexner LLP.

Zhao is represented by Samuel G. Williamson, Avi Perry and Peter H. Fountain of Quinn Emanuel Urquhart & Sullivan LLP.

Binance is represented by Aaron S. Weiss and Benjamin M. Stoll of Carlton Fields, and Christopher N. LaVigne and Joseph Gallo of Withers.

The case is Sizemore et al. v. Zhao et al., case number 1:23-cv-21261, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by Sydney Price. Editing by Kristen Becker.



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Del. Bar Panel OKs Corp. Law Bill To Curb Class Suits, Fees

By **Jeff Montgomery**

Law360 (March 10, 2025, 8:15 PM EDT) -- A key panel of the Delaware's State Bar Association overwhelmingly approved on Monday a pending bill to put new constraints on corporate stockholder lawsuits, over objections that the measure will snuff out shareholder protections from conflicted boards and corporation controllers.

By a reported 160-57 vote, DSBA's Corporation Law Section approved the bill after taking the unusual step of voting by paper ballot to accommodate the large number of attorneys attending in the association's Wilmington offices, according to a person familiar with the vote.

Cleared with amendments was **Senate Bill 21**, drawn up by mostly corporate-side attorneys at the request, in part, of recently elected Delaware Gov. Matt Meyer. Meyer, a Democrat, and others had expressed concern about a corporate charter relocations after recent, purportedly stockholder-tilted decisions and multimillion-dollar stockholder class settlements in Delaware's Court of Chancery. The measure still must clear committees and full chambers in both the state Senate and House.

Some decisions came at the expense of a deeply annoyed Elon Musk, who after the reversal of a Tesla board decision in favor of his \$56 billion, 10-year compensation plan last year orchestrated the reincorporation of both Tesla and SpaceX in Texas, while publicly suggesting that other corporations to do likewise. That case, which is under state Supreme Court appeal, produced a \$345 million cash award for stockholder attorneys who won the case.

Lawrence A. Hamermesh, a retired Widener University Delaware Law School professor and former executive director of the University of Pennsylvania Carey Law School Institute for Law & Economics, described the paper balloting as "very unusual."

Comments during the session included what Hamermesh described as "heartfelt, forcefully expressed dissents, which I disagreed with," from plaintiffs lawyers.

Amendments to the measure sought by the council included what Hamermesh said in some instances "fixed things that were not intended and in other instances they were viewed as principled concessions toward those who felt the bill was too strict in its original form."

The bill also would place limits on some stockholder books and records demands "whether made before, on or after" passage, although it would not be retroactive if under litigation completed or pending before Feb. 17. That lack of retroactivity to pending actions and proceedings, the legislation said, "shall not in any way affect the ability of a court, by reference to existing case law, to reach an outcome consistent with one that would be dictated by this act."

The vote on Monday set the stage for a hearing in Delaware's Senate on Wednesday, in a process that few expect to be derailed.

Senate Bill 21, drawn up in recent months, includes new "safe harbor" protections for one or more directors, officers or controlling stockholders or control groups, shielding them from liability if they have interests or relationships that render them "not independent" with regard to deals or actions.

The bill also amends stockholder inspection rights involving corporate records and, among other provisions, establishes terms for deeming directors and stockholders independent. It also provides

that controlling stockholders and control groups cannot be held liable for monetary damages for breaches of the duty of care.

Backers of the legislation include some of the nation's top corporate and commercial law firms, many based in Delaware and some wary over recent decisions that went against corporations and large class fee awards.

On Monday, Ann Lipton, the Michael M. Fleishman Professor in Business Law and Entrepreneurship at Tulane University Law School and associate dean for faculty research, said she had read the revisions proposed for the vote in Delaware on Monday.

"I think they soften some things, and the biggest change is they allow shareholders to receive materials beyond formal board materials in a 220 [books and records] action upon a high showing of need," Lipton wrote in an email.

"That said, a lot of the original bill remains intact, and I think could insulate a wide variety of conflicted transactions from legal scrutiny," Lipton said.

Gregory V. Varallo, a Bernstein Litowitz Berger & Grossman LLP partner who firm has litigated some of the largest and most hotly contested class suits recently, said: "This is the wrong legislation from the wrong group with the wrong timing. It puts the pensions of Delaware retirees at risk, it invites misconduct by controllers" and is "an outright affront to the court."

Francis G.X. Pileggi, managing partner of the Wilmington office of Lewis Brisbois Bisgaard & Smith LLP, chair of the firm's directors and officers litigation practice and member of its complex business and commercial litigation practice, referred questions to his recent blog posts on the issue.

Pileggi said the legislation includes a "concrete list of documents or data that a shareholder is entitled to" in books and records demands under Section 220 of the DGCL. The result, Pileggi wrote, would be a welcome reduction in "indeterminacy" or "guesswork" about documents available to stockholders, including a three-year window for document requests and provision for confidentiality agreements.

"The net result of S.B. 21 would be to give the court less discretion, though as a court of equity, the Court of Chancery will still be entitled to exercise its equitable powers," Pileggi wrote. He added that the measure would "impose additional hurdles on top of the existing formidable roadblocks to the quest of a shareholder to obtain corporate books and records," including substantial costs for document demands.

--Editing by Rich Mills.



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3 Ways Civil Plaintiffs Could Fill An FCPA Enforcement Gap

By **Eric Nitz** (March 10, 2025, 4:21 PM EDT)

The Trump administration has moved quickly to reshape the landscape of enforcement under the Foreign Corrupt Practices Act and its much younger sibling, the Foreign Extortion Prevention Act.

On Feb. 6, her first day in office, Attorney General Pam Bondi **directed** the U.S. Department of Justice's FCPA unit to prioritize investigation and prosecution "related to foreign bribery that facilitates the criminal operations of" cartels and transnational criminal organizations.

A few days later, President Trump **signed** an executive order instituting a 180-day pause of all FCPA enforcement activity. The Feb. 10 order directs that, during this time, the attorney general must review the DOJ's policies and guidelines governing FCPA enforcement — and, presumably, modify and amend those guidelines to reshape FCPA enforcement going forward.



Eric Nitz

The executive order erects other barriers to FCPA enforcement, too. Any FCPA investigation initiated or continued under the new guidelines must be "specifically authorized by the Attorney General."

Even with this shift, companies would be wise to maintain their anticorruption policies and compliance programs. Indeed, as other commentators have noted, the executive order does not apply to the U.S. Securities and Exchange Commission, which may continue its enforcement of the FCPA — although a less aggressive application by the SEC would not be surprising. And foreign countries can continue to enforce their own anticorruption laws.

But one other risk looms large: private enforcement of the FCPA through civil suits seeking damages. Although the FCPA itself contains no private right of action, an aggrieved plaintiff might seek to hold a company accountable for foreign corruption using at least three different legal tools: the Racketeering Influenced and Corrupt Organizations Act, shareholder derivative enforcement of securities laws and the False Claims Act.

1. Civil RICO Claims

RICO generally prohibits "any person" — which includes companies — from conducting the affairs of an "enterprise ... through a pattern of racketeering activity," among other prohibited activities.[1]

A "'pattern of racketeering activity' requires at least two acts of racketeering activity" within a 10-year span.[2] "Racketeering activity" is broadly defined to include a number of different predicate offenses, several of which encompass the sort of activity punishable under FEPA and the FCPA.[3]

For example, wire and mail fraud as codified in Title 18 of the U.S. Code, Sections 1341 and 1343; money laundering as codified in Sections 1956 and 1957; and violations of the Travel Act as codified in Section 1952 are all predicate offenses under RICO.[4] All statutes are commonly used to bring charges in foreign bribery cases, and fact patterns that support FCPA violations will frequently support violations of those RICO predicate offenses as well.

The RICO statute also independently prohibits racketeering conspiracy.[5] Because any person "injured in his business or property by reason of" a RICO violation can sue for treble damages and

attorney fees and costs,[6] foreign corruption that might violate the FCPA can therefore likely also support a civil RICO claim.

A civil RICO claim, however, does pose extra hurdles that the government need not surmount when charging a pure FCPA violation. For example a plaintiff must also establish the existence of the enterprise, the pattern of activity, the commission of each predicate and an impact on interstate or foreign commerce. The plaintiff must also have standing to sue which, in many cases, could limit the universe of potential plaintiffs to industry competitors squeezed out of potential deals because of the corrupt activity.

But if the DOJ's FCPA enforcement efforts wane, companies struggling to compete may turn to civil RICO claims in an effort to level the playing field when they believe competitors have secured business through corrupt activity.

2. Shareholder Derivative Suits and Securities Fraud

Shareholder litigation presents another potential avenue for private enforcement of corporate conduct violating the FCPA. Securities fraud occurs when a company knowingly makes an untrue or misleading statement of material fact in connection with the sale or purchase of securities, and plaintiffs rely on that statement to their detriment.[7]

Under that standard, according to the U.S. District Court for the Southern District of New York's 2016 order in *Menaldi v. Och-Ziff Capital Management Group LLC*, a company can be "compelled to disclose uncharged wrongdoing if its statements are or become materially misleading in the absence of disclosure." [8] In the 2017 decision in that case, the court said this occurs primarily in three circumstances:

(1) when a corporation puts the reasons for its success at issue but fails to disclose that a material source of its success is the use of improper or illegal business practices; (2) when a defendant makes a statement that can be understood, by a reasonable investor, to deny that the illegal conduct is occurring; or (3) when a defendant states an opinion that, absent disclosure, misleads investors about material facts underlying that belief.[9]

Under those circumstances, a company's failure to disclose the existence of a foreign bribery scheme can subject it to liability for securities fraud. Directors and officers might further face liability for breach of fiduciary duty based on a failure to provide adequate oversight.

The DOJ's less aggressive approach to FCPA enforcement, however, may result in lower damages for such securities fraud. In securities litigation, the damages often derive from a sharp decrease in the company's stock price — usually precipitated by the announcement of a DOJ investigation, an anticorruption settlement or even the ultimate disclosure of the company's wrongdoing.

With the DOJ's shift in FCPA enforcement priorities, these events will likely occur with less frequency and, to the extent they occur at all, may elicit a more muted response from the financial markets. But the risks are not completely eliminated.

Enforcement actions by foreign governments, the cancellation of contracts and potential business opportunities, as well as costs associated with addressing and responding to the allegations can all lead to damages sufficient to support a shareholder claim.

3. Qui Tam Claims Under the False Claims Act

While both civil RICO and shareholder claims require standing — that the plaintiff have actually suffered an injury as a result of the foreign corruption — the FCA's relator provisions allow nearly any individual to pursue allegations of foreign corruption, in certain circumstances.[10] The FCA generally prohibits individuals and companies from submitting false or fraudulent claims for payment to the federal government.[11] In some cases, foreign corruption can cause government claims to be false or fraudulent.

For example, some government contracts require the contractor to establish and maintain a code of business ethics and conduct, as well as to exercise due diligence to prevent and detect criminal

conduct.[12]

Some contracts may also require government contractors to disclose any credible evidence that an employee or agent has committed bribery, fraud or gratuity violations, among other offenses.[13] Allegations of foreign bribery could trigger these disclosure requirements.

A government contractor might also be required to certify its compliance with anticorruption laws. Violation of these contractual requirements and certification could render any claims submitted under those contracts false or fraudulent, triggering potential FCA liability and creating the risk of a relator claim.

Of course, even when a relator sues under the FCA, the government may dismiss the case over the relator's objection.[14] In FCA cases involving foreign corruption allegations, the DOJ may be quick to exercise that authority, consistent with its revised guidance on FCPA cases. But even in that situation, risks associated with a qui tam complaint remain, including putting another potential plaintiff on notice of the company's corrupt practices.

Conclusion

Ultimately, maintaining strong anticorruption policies and compliance programs will remain essential for companies doing business overseas.

Strong policies can help demonstrate a lack of bad intent. They can shield officers and directors from allegations that they negligently or recklessly failed to provide effective oversight. And — if it comes to it — compliance measures can appeal to civil juries that are assessing a company's good faith efforts to avoid corrupt practices.

Finally, corporations that respond effectively and quickly to allegations of foreign corruption will help mitigate the risk that civil plaintiffs could step in to fill any void left by the DOJ's revised enforcement regime.

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[1] 18 U.S.C. §§1961(3), 1962.

[2] 18 U.S.C. §1961(5).

[3] 18 U.S.C. §1961(1).

[4] *Id.*

[5] 18 U.S.C. §1962(d).

[6] 18 U.S.C. §1964.

[7] See generally *Menaldi v. Och-Ziff Capital Mgmt. Group LLC* , 277 F. Supp. 3d 500 (S.D.N.Y. 2017).

[8] *Menaldi v. Och-Ziff Capital Mgmt. Group LLC* , 164 F. Supp. 3d 568 (S.D.N.Y. 2016).

[9] *Id.* at 357.

[10] See 31 U.S.C. §§3729-3730.

[11] 31 U.S.C. §3729.

[12] See FAR §52.203-13(b).

[13] Id. §52.203-13(b)(3).

[14] See 31 U.S.C. §3730(c)(2); **United States ex rel. Polansky v. Executive Health Resources Inc.**, 599 U.S. 419 (2023). 

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Examining Trump Meme Coin And SEC's Crypto Changes

By **Eileen Robinett and Jennifer Post** (March 10, 2025, 3:14 PM EDT)

Within the world of crypto-assets, meme coins are generally considered one of the more volatile and risky, subject to social media hype and in some cases "pump and dump" or "rug pull" schemes.[1]

Meme coins are generally focused on a particular internet theme, often humorous or satirical, that has captivated a social media audience and are viewed by many as collectibles to provide entertainment. Unlike other crypto-assets, meme coins do not represent fractional ownership of a business and have no underlying economic purpose or value.

As with all crypto-assets, neither Congress nor regulators have yet adopted a clear rules-based framework that specifically addresses how meme coins should be treated under federal securities laws. Instead, until recently, the U.S. Securities and Exchange Commission has relied on a regulation-by-enforcement approach, applying traditional securities law definitions to new forms of crypto-assets.

The legal approach to these assets, however, has already begun to change significantly under the Trump administration — foreshadowed in part by President Donald Trump's release of a meme coin of his own, \$Trump, just three days before Inauguration Day.

New Administration — and the SEC — Embrace Crypto

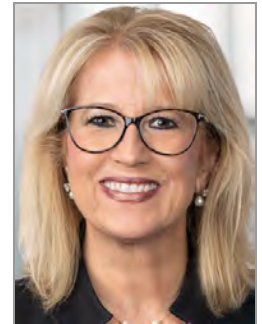
In his first weeks in office, Trump established a working group that includes the leaders of key federal agencies and regulators to focus on establishing a legal framework to govern the issuance and operation of crypto-assets. He appointed crypto-friendly Mark Uyeda as the acting chair of the SEC, and Uyeda promptly established the SEC's Crypto Task Force.

Under Uyeda's leadership, the SEC recently dismissed several high-profile pending enforcement actions against leaders in the crypto industry, and the staff of the SEC issued a statement that it believes most meme coins are not securities.[2]

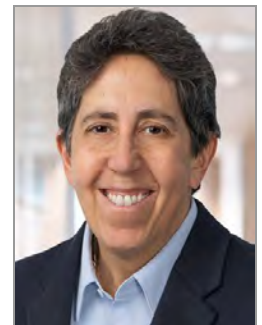
The crypto industry has welcomed the prospect of the Trump administration's promises to effect a well-reasoned regulatory framework for crypto-assets that recognizes crypto's role as a legitimate business tool. However, given that meme coins lack any identifiable business utility, are extremely speculative and have been exploited by bad actors to defraud investors, some in the crypto industry were disappointed by Trump's issuance of his own \$Trump meme coin shortly before his inauguration.

The \$Trump Meme Coin

The \$Trump meme coin, focused according to its website on support for the ideals embodied by the "\$Trump" symbol and related artwork, was issued on Jan. 17. Its trading activity exemplifies the speculative nature of these crypto-assets. The \$Trump meme coin reached a market value of \$15 billion within hours of its launch, soon followed by a steep decline, settling to a market capitalization of approximately \$2.5 billion in early March.



Eileen Robinett



Jennifer Post

Many holders of the \$Trump coins are small individual investors, and hundreds of thousands lost money on their purchases. According to the \$Trump website, two entities identified as possible affiliates of the Trump Organization own 80% of the total supply of \$Trump meme coins to be issued over a three-year period, and these entities or their owners will receive revenue derived from trading activities in the coin. The \$Trump meme coin website specifies that the meme coins are not intended to be securities, may be extremely volatile and may not maintain their value.

The Howey Test and Meme Coins

As with most crypto-assets, the SEC has generally approached its ability to regulate and police meme coins based on whether the facts and circumstances demonstrate that they meet the traditional definition of a "security," including the "investment contract" analysis set forth in the 1946 U.S. Supreme Court case SEC v. W.J. Howey Co.[3]

Under the Howey analysis, a crypto-asset may be considered a security if it is (1) an investment of money by a person, (2) in a common enterprise, (3) with an expectation of profits, (4) to come solely from the efforts of others.

On Feb. 27, rather than maintaining the existing Howey "facts and circumstances" analysis for each and every crypto-asset, the SEC's Division of Corporation Finance **concluded** that the transactions described in its staff statement on meme coins do not meet all of the Howey requirements.

Meme coins with the following characteristics do not, in the staff's view, involve the offer and sale of securities: (1) "purchased for entertainment, social interaction, and cultural purposes," (2) whose "value is driven primarily by market demand and speculation," (3) with "limited or no use or functionality," (4) subject to "significant market price volatility," and (5) "accompanied by statements regarding their risks and lack of utility, other than for entertainment or other non-functional purposes."

This staff statement reflects a significant shift, for meme coins, from the position taken in 2019 by the SEC staff in its published list of factors to consider for crypto-assets under Howey's facts and circumstances analysis.[4] These factors focus, among others, on the manner in which the offering is undertaken (including broad marketing efforts and secondary market availability), the purpose and function of the crypto-assets (including use for consumer or commercial purposes), and expected future efforts of the issuers or promoters in the market for the crypto-assets (including whether the issuer or promoter retains portions of the crypto-assets or related intellectual property rights, thereby creating an incentive to increase their value).

In its meme coin statement, the SEC staff expressed its expansive view that "the offer and sale of meme coins does not involve an investment in an enterprise nor is it undertaken with a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others." The staff's explanation for this conclusion is because it does not perceive that meme coin purchasers are pooling their funds for use by the meme coin promoters to develop the meme coin or a related enterprise.

Further, the staff states that expectations of profits from meme coins are not derived from the efforts of others, but rather are based on speculative trading and the "collective sentiment of the market," and that meme coin promoters are not undertaking or promising to undertake managerial or entrepreneurial efforts that purchasers are relying on for profit generation.

Commissioner Caroline Crenshaw strongly disagreed with the SEC staff's approach to providing meme coin guidance through the statement. Instead, she argues that "[i]t advances an incomplete, unsupported view of the law to suggest that an entire product category is outside the bounds of SEC jurisdiction" and that "the individualized inquiry Howey requires simply cannot be reconciled with the staff's conclusion that offers and sales of a vaguely defined category, consisting of hundreds of unique crypto assets, are generally not securities." [5]

While the meme coin statement signals the SEC's intentions with respect to its future treatment of meme coins generally, this statement is not a rule, regulation or law. True long-term clarity regarding the treatment of meme coins will only come with congressional approval of a revised crypto framework.

Further, notwithstanding a present inclination not to treat most meme coins as securities, the SEC staff noted that its statement does not extend to meme coins that fall outside of the parameters outlined above and that it will continue to evaluate the economic realities of particular transactions. Additionally, even if the offer or sale of a meme coin is not considered a transaction in a security subject to SEC regulation, these assets may be subject to regulation by other federal or state agencies, especially if fraud is involved.

Howey and \$Trump

The organization issuing the \$Trump meme coins has been careful not to make promises about the type or amount of returns to be expected, and it has included cautionary statements warning prospective purchasers of the potential extreme volatility of the \$Trump meme coins.

However, the issuers and promoters of the coin have retained the vast percentage of total coins to be issued, providing them with an opportunity to profit from an increase in the value of the coins. Also, Trump and his affiliates have made social media statements regarding the existence, and their favorable view, of these coins, thereby increasing public awareness and interest.

As a result, it is possible that the plaintiffs bar could attempt to argue that a purchaser was relying on Trump, the issuer or related parties to drive profits in the meme coins by tying the success of the meme coins to Trump's continued popularity and the efforts of the president and his affiliates to pursue his leadership accomplishments, including his stated intent to reform the crypto regulatory framework. But given the SEC staff's meme coin statement, this does not seem a likely occurrence.

Treatment of Meme Coins as Something Other Than Securities

While the SEC under former Chair Gary Gensler tended to view most crypto-assets as securities, as discussed above, the tide is rapidly changing under the Trump administration.

The SEC staff's meme coin statement was preceded on Feb. 11 by statements from SEC Commissioner Hester Peirce, the so-called crypto mom and chair of the SEC's Crypto Task Force, regarding her similar views about meme coins on "Bloomberg Crypto":

We always have to look at the facts and circumstances, but many of the meme coins that are out there probably do not have a home in the SEC under our current set of regulations. If that's something that Congress wants to address, they can do that. Maybe that's something the CFTC wants to address.

Similarly, Trump's crypto czar, David Sacks, recently stated that he believes meme coins and non-fungible tokens are collectibles and not securities.

All of these statements reflect the general trend of the Trump administration to favor a narrower interpretation of the definition of "security" when evaluating crypto-assets and to limit the scope of the SEC's regulation of certain of these assets.

In support of this position, the SEC is reviewing its outstanding crypto litigation and is taking action to resolve some of its pending cases and investigations that relate to its application of the Howey test to crypto-assets, including **dismissal** of its enforcement action against Coinbase Global Inc. and **abandonment** of its investigation of NFT marketplace OpenSea.

These dismissals allow the SEC more time and latitude to develop, through its Cryptocurrency Task Force and in conjunction with the Crypto Working Group, a new set of regulations generally focused on how to treat various crypto-assets under the federal securities and other federal laws.

However, some crypto enforcement actions, including the case against Ripple Labs Inc., remain outstanding, as do a number of class actions brought by meme coin purchasers, including in connection with **the \$Hawk token** and **against Pump.fun** in connection with meme coins launched on its system, including the \$PNUT token.^[6] It remains to be seen what impact the meme coin statement will have on these class actions.

As the SEC's Crypto Task Force and the president's Crypto Working Group continue to make progress toward a workable framework for crypto-asset regulation generally, it appears likely that most meme coins will be excluded from the SEC's domain, although the broader structure for crypto regulation remains unclear, including possible consolidation, or reallocation of the regulatory reach, of agencies such as the SEC and the U.S. Commodity Futures Trading Commission.

Given the defined time frames for evaluating the current regulatory landscape and proposing new solutions, as outlined in the executive order issued by Trump when the Crypto Working Group was established, we are likely to learn more details regarding the intended legal framework for crypto-assets under the Trump administration in the coming months.

Next Steps and Conflicts of Interest

While the development of a more reasoned and workable framework for crypto-assets under the federal securities law is desired by most who do business or provide legal advice in this industry, the changes expected to be made under Trump's administration may be tarnished to some extent by an arguable conflict of interest due to his affiliation with the \$Trump meme coin.

On the one hand, Trump is affiliated with and in a position to profit from his \$Trump meme coin and its success, including whether it is considered by regulators and others as a "security" under the federal securities law. On the other hand, he dictates to some extent the policies of the SEC and the CFTC by appointing Senate-confirmed SEC and CFTC commissioners, and on Feb. 18, his administration issued an executive order titled "Ensuring Accountability for All Agencies"[7] to increase his oversight over various independent regulatory agencies such as the SEC and CFTC.

This executive order requires, among other things, that these agencies submit all draft regulations to the White House for review and consult with the White House on their priorities and strategic plans. This potential conflict of interest will unfortunately distract from, and possibly taint, any progress that is made to legitimize, and appropriately establish a workable framework for, the issuance and trading of a variety of crypto-assets.

Notwithstanding this potential conflict of interest, the crypto industry and those who advise it have struggled to apply traditional securities law concepts to the new and evolving crypto-asset market. The industry, its innovators, its advisers and its investors will benefit from more clearly defined, and specifically crafted, rules that tailor regulation to the nature of these assets and the risks to the public that should be addressed by federal regulators.

Hopefully, the potential conflict of interest associated with the issuance of the \$Trump meme coin, coincident to a long-needed reevaluation of the regulatory framework for crypto-assets, will not detract from the benefits achieved by implementing an improved regulatory environment.

Creation of a structured environment tailored to evolving crypto-assets that addresses their legitimate uses and prospects for innovation, balanced with appropriate protections to be afforded to investors in all such crypto-assets, will be an important next step for businesses, investors and regulators.

Eileen Duffy Robinett is counsel and Jennifer A. Post is a partner at Thompson Coburn LLP.

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[1] "Pump and dump" schemes occur when an issuer or promoter artificially inflates the price of the meme coin through positive social media statements, and then dumps a large number of coins on the market, selling at inflated prices to unsuspecting buyers, and thereafter the price falls significantly. "Rug pulls" occur when issuers or promoters market a meme coin to attract public interest and then abandon it, leaving participants with worthless tokens.

[2] Staff Statement on Meme Coins, SEC, <https://www.sec.gov/newroom/speeches-statements/staff->

statement-meme-coins (Feb. 27, 2025).

[3] 328 U.S. 293 (1946).

[4] Framework for "Investment Contract" Analysis of Digital Assets, SEC, <https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets> [<https://perma.cc/6MA9-BKPX>] (Apr. 3, 2019).

[5] Response to Staff Statement on Meme Coins: What Does it Meme?, Commissioner Caroline A. Crenshaw, <https://www.sec.gov/newsroom/speeches-statements/crenshaw-response-staff-statement-meme-coins-022725> (Feb. 27, 2025).

[6] See Albouni et al. v. Schultz et al., EDNY, No. 1:24-cv-08650, Carnahan v. Baton Corp. Ltd., SDNY, No. 1:25-cv-00490 and Aguilar v. Baton Corp. Ltd, SDNY, No. 1:25-cv-00880.

[7] Executive Order "Ensuring Accountability for All Agencies," Feb. 18, 2025, <https://www.whitehouse.gov/presidential-actions/2025/02/ensuring-accountability-for-all-agencies/>.

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III. Judge Floats Sanctions In Akorn Mootness Fee Fight

By **Lauraann Wood**

Law360 (March 10, 2025, 11:18 PM EDT) -- An Illinois federal judge signaled Tuesday he is open to sanctions including a mandatory violation disclosure against plaintiffs' counsel as he continues navigating a challenge to so-called mootness fees paid to settle and dismiss allegedly baseless Akorn Inc. merger disclosure suits.

Three of the six separate plaintiffs challenging Akorn's since-failed merger with Fresenius Kabi AG had previously disclaimed their share of \$322,500 in attorney fees after intervenor Theodore Frank initially lodged his 2017 mootness fee challenge. But their initial suits still violated private securities litigation law because they did not seek any additional "plainly material" merger disclosures, U.S. District Judge Thomas Durkin said in his **order**, performing an analysis the Seventh Circuit found he'd previously missed.

Judge Durkin said he's open to certain sanctions Frank suggested against the plaintiffs' attorneys, such as ordering them to disclose and cite their violation and related case law in future lawsuits or demand letters, or to disclose all purported mootness fees they'd extract from similar disclosure suits and demand letters. However, Judge Durkin said he's not inclined to impose a monetary sanction, and he won't decide anything until he hears more from the parties on that front.

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

Judge Durkin's order comes nearly a year after the Seventh Circuit found that he'd **improperly rejected** Frank's bid to intervene as an objector so he could challenge the mootness fees at issue in the various proposed class shareholder suits.

Mootness fees have generated controversy in recent years. Law professors, defense attorneys and even other plaintiffs attorneys contend that everyone but the lawyers filing the complaint lose, because courts become more skeptical of legitimate allegations and defendants have to address frivolous lawsuits. The significance of the disclosures is up for debate and, unlike in past resolutions, defendants aren't protected against the possibility of future claims, **experts have told Law360**.

The Akorn investors launched **their complaints** seeking accounting information to reconcile the company's projections for the Fresenius merger in its proxy statement. As with many similar cases, the defendants' made disclosures that "mooted" the investors' allegations, prompting the plaintiffs to then voluntarily dismiss their claims and negotiate fees with the defendants without the need for a judge's approval.

Judge Durkin had previously considered Frank's 2017 intervention bid moot in Berg, Alcaez and Harris' cases since their attorneys had disclaimed their fees, and he was planning to reject Frank's request for relief.

Reversing that reasoning, however, the Seventh Circuit said last year that "you are going to lose, so your claim is moot" was an improper legal standard for the objector. Mootness arises only if a claim for relief is impossible, not just unlikely, it held.

Counsel for Akorn shareholders Shaun House, Demetrios Pullos and Robert Carlyle had asserted their respective interests in the alleged mootness fees, but Judge Durkin ordered them repaid in 2019, saying their attorneys had secured a "worthless" settlement that caused a company in which their

clients held an interest to lose money.

Theodore Frank is represented by Frank Bednarz of the Hamilton Lincoln Law Institute.

Berg is represented by Brian Long of Long Law LLC and Richard Maniskas of RM Law PC.

Alcaez is represented by Elizabeth Tripodi and Donald Enright of Levi & Skorinsky LLP.

Harris is represented by James Wilson Jr. of Faruqi & Faruqi LLP.

House is represented by David Bower of Monteverde & Associates PC.

Pullos and Carlyle are represented by Paul Malmfeldt of Blau & Malmfeldt and Lewis Kahn of Kahn Swick Foti LLC.

Carlyle is also represented by Daniel Kuznicki of Brower Piven.

The cases are Berg v. Akorn Inc. et al., case number 1:17-cv-05016, Alcaez v. Akorn Inc. et al., case number 1:17-cv-05017, Harris v. Akorn Inc. et al., case number 1:17-cv-05021, House v. Akorn Inc. et al., case number 1:17-cv-05018, Pullos v. Akorn Inc. et al., case number 1:17-cv-05026, and Carlyle v. Akorn Inc. et al., case number 1:17-cv-05022, all in the U.S. District Court for the Northern District of Illinois.

--Editing by Andrew Cohen.

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Calif. Pharma Exec Pleads Guilty To Insider Trading

By **Katryna Perera**

Law360 (March 10, 2025, 9:21 PM EDT) -- A California medical doctor has pled guilty to insider trading in the securities of biopharmaceutical company Acadia Pharmaceuticals Inc. while serving on Acadia's drug safety team, admitting to trading on confidential information that helped him avoid \$1.3 million in losses.

George Demos **pled guilty Friday** to one count of insider trading in California federal court and consented to a proposed judgment in a parallel civil suit brought by the U.S. Securities and Exchange Commission.

The charges center on Demos' trading in Acadia securities before negative regulatory news about one of Acadia's drugs that sent the company's stock price plunging. Specifically, prosecutors say Demos learned through his position with Acadia that the U.S. Food and Drug Administration had identified deficiencies with an application for one of Acadia's drugs and that the regulator would not be "discussing" the drug's labeling with the company.

According to a Friday filing, prosecutors charged Demos with one count of insider trading. Now that he has pled guilty, sentencing is scheduled for May, according to the U.S. Attorney's Office for the Southern District of California, and Demos faces a maximum prison sentence of up to 20 years.

According to the filed proposed judgment in the SEC suit, Demos has agreed to a five-year officer and director bar and to pay disgorgement and a civil penalty, the amounts of which have yet to be determined.

Demos' lawyer, Elliott Kanter of the Law Office of Elliott N. Kanter, told Law360 in a phone call Monday that his client has also agreed to pay a \$1.3 million criminal forfeiture and that the goal is to pay the same amount in the civil suit.

"We're not agreeing to anything more at this point in time," Kanter said. "[Demos is] well respected within the community. He had some medical issues that were coming up, and he was trying to provide for his family because he didn't know what was going to happen, but he's honorable and admitted what he did was wrong. He is going to pay a lot of money and will lose his job."

The SEC declined to comment Monday and the U.S. Attorney's Office for the Southern District of California did not immediately respond to requests for comment.

According to court filings, at the time of his trades, Demos was Acadia's vice president of drug safety and pharmacovigilance, through which he had access to material nonpublic information.

One of Acadia's drugs, called Nuplazid, was approved in 2016 for the treatment of hallucinations and delusions associated with Parkinson's disease psychosis, according to the SEC's **complaint**.

In June 2020, Acadia submitted a supplemental new drug application for Nuplazid to the U.S. Food and Drug Administration for the treatment of hallucinations and delusions associated with dementia-related psychosis, and a month later, the company announced that the FDA had accepted the application and would respond by April 2021, the complaint states.

However, the company did not announce that the FDA had also informed Acadia that it would communicate its own proposed labeling for Nuplazid for dementia-related psychosis by March 3, 2021, if no major deficiencies were identified during the drug's review.

Prosecutors and the SEC say that as a "core member" of the Nuplazid labeling team, Demos knew of the March 3 date, and the labeling team planned to meet the day after to discuss any FDA labeling requests.

"But March 3 came and went, and Demos learned that the March 4 meeting was rescheduled to March 5 because, Demos was told, Acadia management was 'not quite ready yet to discuss FDA feedback,'" the SEC's complaint states.

"The meeting was again rescheduled to Monday, March 8, 2021, and finally to Tuesday, March 9, 2021. As a result of his access to this non-public information, Demos concluded that the FDA had made an adverse decision about the proposed labeling," the complaint further states.

Prosecutors and the SEC say that Demos knew, or was reckless in not knowing, that he could not trade based on the material, nonpublic information he had access to.

The complaint states that on March 8, based on indications that there would be no label coming from the FDA for Nuplazid for dementia-related psychosis, Demos exercised nearly all his vested Acadia stock options and immediately sold his shares.

That same day, just a few hours after Demos sold his shares, the complaint states that Acadia issued a statement announcing that the FDA had told the company March 3, 2021, that it had identified deficiencies in the Nuplazid applications that "precluded discussion of labeling and other issues."

The following day, the SEC says Acadia's share price plummeted by about 45% to close at \$25.02 per share, and by trading on the insider information, Demos avoided about \$1.3 million in losses.

Demos is represented by Elliott N. Kanter of the Law Office of Elliott N. Kanter.

The government is represented by Andrew R. Haden and Janaki G. Chopra of the U.S. Attorney's Office of the Southern District of California.

The SEC is represented by its own Charles E. Canter.

The cases are USA v. Demo, case number 3:25-cr-00682, and Securities and Exchange Commission v. Demos, case number 3:25-cv-00539, in the U.S. District Court for the Southern District of California.

--Editing by Kelly Duncan.