

Class Action

March 17, 2025, 5:20 AM PDT; Updated: March 17, 2025, 10:22 AM PDT

Sea to Pay \$46 Million to Settle Investor Business Claims (3)

- Investor asked court for preliminary approval of settlement
- Suit alleged Sea misled on gaming, e-commerce businesses

Sea Ltd. will pay \$46 million to resolve a proposed class action alleging that the internet company hid negative trends in its digital entertainment and e-commerce platforms as a pandemic boom dissipated after 2021.

Lead plaintiff Laborers District Council Construction Industry Pension Fund asked the US District Court for the District of Arizona on March 14 for its preliminary approval of the settlement. The pension fund sought certification of a proposed class to include those who acquired Sea's American Depository Shares from Nov. 15, 2022, through Aug. 14, 2023.

Judge Douglas Rayes in August allowed much of the allegations of securities law violations against the Singapore-based company and key executives to proceed. The lawsuit, originally filed in 2023, claims that Sea misled investors about the stability of its entertainment platform, Garena, and e-commerce platform, Shopee, as a means to reinforce its struggling share prices while the company was in tumult.

At the time, Garena's revenue and users were slipping and Sea would soon lose publishing rights to "League of Legends," an internationally popular battle arena PC game, according to the most recent consolidated amended complaint. Meanwhile Shopee had been forced away from its expansive growth strategy, it said.

But Sea and executives at the time had said that losing the League of Legends rights wouldn't impact Garena, and Shopee's gross merchandise volume fell in line with "overall seasonality trends," the complaint said.

Rayes said in August that the pension fund adequately alleged that it would be "'absurd' to argue" that Sea didn't know or expect adverse impact from the expiration of League of Legends' license, and that the seasonality claim painted a misleading picture since it concealed an ongoing decline.

The pension fund and the defendants began mediating a settlement agreement toward the end of 2024, according to the lead plaintiff's unopposed motion for preliminary approval of the settlement. It said lead counsel would move for attorneys' fees totaling no more than 25% of the settlement amount, payment of litigation expenses not to exceed \$200,000, interest, and potentially an award for the plaintiff.

"Our client secured an outstanding result for the class," said Marco Janoski Gray, a partner at Robbins Geller Rudman & Dowd LLP, which is lead counsel on the case for the proposed class.

Zimmerman Reed LLP is local counsel for the pension fund.

A&O Shearman and Lewis Roca Rothgerber Christie LLP, which has since merged with and become Womble Bond Dickinson (US) LLP, have been representing Sea and executives Forrest Li, Tony Hou, Yanjun Wang, Gang Ye, and David Chen. None of these firms immediately responded to emails seeking comment.

The case is Laborers Dist. Council Constr. Indus. Pension Fund v. Sea Ltd. , D. Ariz., No. 2:23-cv-01455, 3/14/25 .

(Updates with comment from the lead plaintiff's attorney in the eighth paragraph. Prior updates provided more details about the case and settlement.)

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ADM must face investors' accounting fraud suit, judge rules | Secondary Sources | National

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ADM must face investors' accounting fraud suit, judge rules

2025 SECDBRF 1009

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By Bill Flook

WESTLAW Securities Enforcement & Litigation Daily Briefing

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March 14, 2025

(March 14, 2025) - A Chicago federal judge has declined to dismiss a proposed class action against Archer-Daniels-Midland Co. and four executives alleging the agribusiness giant engaged in accounting fraud tied to its nutrition business.

Chow v. Archer-Daniels-Midland Company et al., No. 24-cv-634, 2025 WL 790854 (N.D. Ill. Mar. 12, 2025).

Shareholders adequately alleged that the executives intended to deceive investors about the nutrition segment's profits and growth, U.S. District Judge Thomas M. Durkin of the Northern District of Illinois ruled in a March 12 opinion and order.

The suit is an outgrowth of an accounting scandal that led ADM to restate its financials for 2018 through 2023 last year. ADM acknowledged in the restatement that it had accounted for internal sales between its nutrition segment and two other businesses at below market rates, inflating the nutrition segment's profits.

The accounting problems sparked investigations by the Securities and Exchange Commission and Justice Department. Those investigations led to the departures of former Chief Financial Officer Vikram Luthar and former President of Nutrition Vincent Macciocchi, both named as individual defendants in the shareholder suit.

ADM CEO Juan Luciano and former Chief Financial Officer Ray Young are also defendants.

Central to the motion to dismiss and the plaintiffs' opposition was whether any individual defendants acted with scienter, or an intent to deceive. The plaintiffs argued that the individual defendants had a motive to conceal the accounting fraud because they had engaged in stock sales and had compensation plans tied to the nutrition segment's profits.

The company changed the executives' performance-based compensation to emphasize the nutrition segment, giving that segment outsized influence over their compensation and "strongly motivating defendants to continue to misstate Nutrition's actual financial results," the plaintiffs stated in their June 2024 complaint.

The executives also had direct roles in monitoring the nutrition segment's profits and accounting, the plaintiffs argued.

ADM and Luciano, in an August brief in support of the motion to dismiss, called the allegations circumstantial and generic and not adequate to meet the exacting standards required for pleading scienter.

An accounting mistake "is not in itself securities fraud," the defendants stated.

Judge Durkin largely sided with the plaintiffs in his March 12 order.

"Here, plaintiffs have made strong allegations of motive, public statements, the core nature of the nutrition segment, and the straightforward nature of the fraud," Judge Durkin wrote. "These allegations combined with the suspicious departures and government investigations create a strong inference of scienter."

Defendants, he wrote, "cite no case with allegations this robust where a court granted a motion to dismiss."

The lead plaintiffs are KBC Asset Management NV, Ethenea Independent Investors SA and the National Elevator Industry Pension Fund. Attorneys at Robbins Geller Rudman & Dowd LLP, Motley Rice LLC and O'Donoghue & O'Donoghue LLP represent the plaintiffs. Attorneys at Skadden, Arps, Slate, Meagher & Flom LLP represent ADM.
By Bill Flook

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Biotech giant Geron Crop accused of false Rytelo hype

DJ [dailyjournal.com/articles/384264-biotech-giant-geron-crop-accused-of-false-rytelo-hype](https://www.dailyjournal.com/articles/384264-biotech-giant-geron-crop-accused-of-false-rytelo-hype)

Adam Apton. Photo courtesy of Levi & Korsinsky LLP

Geron Corp., a multibillion-dollar Foster City biotech company specializing in drugs that fight blood cancer, was accused by shareholders of furnishing "materially false and misleading" statements regarding a "first-in-class" drug. They seek damages after the company's stock price fell 32% in a single day on Feb. 26.

At the center of the dispute is one of Geron's latest medications Rytelo, whose generic name is imetelstat. The company describes the drug as a "telomerase inhibitor" that is designed to treat anaemia, a condition caused by low red blood cell count in certain patients with bone marrow disorders who require regular blood transfusions.

The European Commission recently approved Rytelo to be marketed on March 11 and the U.S. Food and Drug Administration approved the drug to be sold in America in June 2024.

According to the putative class action complaint, filed in San Francisco federal court on March 13, Geron made "overwhelmingly positive" statements about the drug to the shareholder plaintiffs and the general public in the wake of the FDA approval.

However, the plaintiffs claim the company's statements about future growth "fell short of reality" and Geron misled the public about "the impacts of seasonality, existing competition, and the burden of continued monitoring" of patients. After the company's 2024 fourth quarter earnings revealed a "flattening" of profit growth, the stock price fell 32% on Feb. 26.

Geron's media relations office declined to comment on the merits of the lawsuit but wrote in an email Friday, "While Geron does not comment on pending litigation, we intend to vigorously defend against this lawsuit." *Dabestani v. Geron Corp.*, 3:25-cv-02507 (N.D. Cal. filed March 13, 2025).

The plaintiffs' lead attorney, Adam M. Apton, a New York City partner for Levi & Korsinsky LLP, commented in an email Friday, "This lawsuit is of a serious nature and not made without good reason. The timing of recent executive departures further evidences the merit of our case, as discovery will show."

Apton referred to the company's March 11 announcement that Dr. John A. Scarlett, Geron's chairman and chief executive officer, will leave the company at the end of the month.

Scarlett touted the trailblazing nature of Rytelo in a June 2024 news release about the FDA's approval and said the company was "celebrating" the "milestone."

"The approval of RYTELO as the first telomerase inhibitor is a testament to the power of our science and the passion of our people to innovate in the field of blood cancer," Scarlett said. "As we celebrate today's momentous milestone, I would like to thank the patients and families, advocates, clinicians, study coordinators and site personnel, scientists, and Geron employees and collaborators past and present whose participation was integral to this achievement and to supporting our transformation into a commercial company."

Apton described the impact of statements such as Scarlett's on Geron shareholders in the complaint, arguing that the company's roll out of Rytelo. was unable to meet the "unmet need for the drug."

"In truth, Geron's optimistic reports of Rytelo's launch success and potential growth fell short of reality; the impacts of seasonality, existing competition, and the burden of continued monitoring played a much more significant role in patient starts than Defendants had implied," Apton wrote. "Moreover, Rytelo lacked the necessary awareness to penetrate the market, resulting in an inability for Geron to capitalize on the purportedly significant unmet need for the drug, particularly among first-line patients and those outside the academic setting."

Geron has previously battled class action securities lawsuits in San Francisco federal court regarding the drug.

In January 2020, a consolidated class action lawsuit brought by Geron shareholders accused the company of "covering up the material adverse results" and making "misleading representations" of a 2018 study on the efficacy of imetelstat on patients suffering from Myelofibrosis of MF. The disease is a rare blood cancer where excessive scar tissue forms in the bone marrow.

The company settled with the certified class of plaintiffs in September 2022 for \$24 million and denied wrongdoing in the agreement. U.S. District Judge William Alsup granted final approval of the settlement in September 2023. *Junge et al. v. Geron Corp. et al.*, 3:20-cv-00547 (N.D.Cal. filed Jan. 23, 2020).

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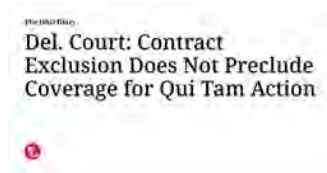
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Del. Court: Contract Exclusion Does Not Preclude Coverage for Qui Tam Action

K dandodiary.com/2025/03/articles/d-o-insurance/del-court-contract-exclusion-does-not-preclude-coverage-for-qui-tam-action

March 16, 2025



By Kevin LaCroix on March 16, 2025

Posted in D & O Insurance



Regular readers know that a recurring topic on this site is the question of the proper scope of the contractual liability exclusion found in many professional liability and management liability insurance policies. In prior posts I have argued that insurers sometimes apply the exclusion overly-broadly so as to exclude matters I believe should otherwise be covered under the policy. A recent Delaware Superior Court decision once again considered these issues in the context of an underlying *qui tam* action alleging violations of federal law. As discussed below, the court concluded that the applicable policy's contractual liability did not preclude coverage for the underlying claim. A copy of the Delaware Superior Court's March 12, 2025, opinion in the case can be found [here](#).

Background

Pangea Properties participated as landlords in the U.S. Department of Housing and Urban Development's (HUD) Section 8 Housing Program. In a *qui tam* action, a relator claimed that under the HUD program, the Pangea entities were required to certify on a form that the rents they charged tenants under the Housing Program were not higher than the rents charged for comparable unassisted units. The relator alleged that the Pangea entities violated the False Claims Act by submitting false certification and information regarding rent comparability.

The Insurance Dispute

At relevant times, Pangea maintained a program of D&O insurance that consisted of a layer of primary insurance and a layer excess D&O insurance. Pangea submitted the *qui tam* action as a claim under the policies. The insurers denied coverage for the actions under the primary policy's contractual liability exclusion. The Pangea entities filed a breach of contract and bad faith action against the insurers. The parties filed cross-motions for judgment on the pleadings.

The Pangea entities argued the contract exclusion is inapplicable, as the complaint in the *qui tam* action hinged on alleged regulatory violations and misrepresentations, not on breaches of contract. The Pangea entities argued further that a broad application of the contractual liability exclusion would render coverage under the policies illusory. The insurers argued that based on the exclusion's broad preamble that it is applicable even to underlying causes that do not allege breach of contract claims, and that the Pangea entities obligation to fill out the forms at the heart of the underlying claim "arose out of" the Pangea entities entry into the contracts as part of the HUD housing assistance program.

Relevant Policy Language

Under the policies, the insurers are not liable to make any payment for Loss "based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged breach by the [Pangea entities] of an express or implied contract or agreement."

The March 12, 2025, Opinion

On March 12, 2025, Delaware Superior Court Judge Meghan A. Adams granted the Pangea entities' motion for judgment on the pleadings, and denied the insurers' cross-motion.

In granting the Pangea entities' motion, Judge Adams rejected the insurers argument that the exclusion precluded coverage because the underlying claim "arose out of" the contractual agreement that Pangea entered in order to participate in the housing assistance program. Judge Adams said that recent Delaware case law "does not support the application of the Breach of Contract Exclusion based on the tenuous connection between the [HUD contract] and the *Qui Tam* Action."

The prior Delaware case on which Judge Adams principally relied was the August 2022 decision in *Guaranteed Rate, Inc. v. ACE American Insurance Co.*, a copy of which can be found [here](#). In September 2023, the Delaware Supreme Court affirmed the Superior Court's opinion in the *Guaranteed Rate* case ([here](#)).

In the *Guaranteed Rate* case, the insurers had also tried to argue that the *qui tam* claims against a policyholder for violation of various certification requirements in connection with a federally insured loan program arose out of the policyholder's contracts with the government. The Superior Court had held in the *Guaranteed Rate* case that as the underlying claim did not involve a claim for breach of contract, the breach of contract exclusion was inapplicable. The court went on to say that were the exclusion applied in the absence of a breach of contract it would "void coverage."

Judge Adams said the *Guaranteed Rate* case was “analogous,” as both involved *qui tam* actions for alleged violations of the Federal Claims Act. In both cases, the underlying claims did not involve an action for breach of contract. Judge Adams rejected the insurers’ efforts to distinguish the *Guaranteed Rate* case, saying that the insurers’ argument in that case based its analysis “on the assumption that the insured had formed a contract with the government, and still concluded that the breach of contract exclusion was inapplicable.” Judge Adams also rejected the insurers’ efforts to distinguish the *Guaranteed Rate* case on the grounds that application of the exclusion in this case would not “void coverage.”

Judge Adams noted that the insurers here sought a broad application of the exclusion to cases in which a breach of contract action is not brought against the insured entities. Such an interpretation, Judge Adams said quoting the *Guaranteed Rate* decision, would “effectively extend coverage of the exclusion to just about anything remotely connected” to the allegedly breached contract, even where the underlying action is not one for breach of contract. While, Judge Adams acknowledged, the exclusion employs broad language, Delaware law mandates that insurance policy exclusions are to be “construed narrowly.”

The underlying *qui tam* action, Judge Adams observed, is not one for breach of contract; rather it alleges violations of federal law. The insurers, Judge Adams also noted, “ask this Court to employ an overbroad application” of the exclusion. To do so, Judge Adams said, “would risk voiding Side C coverage under the Policies.” Just as in the *Guaranteed Rate* case, Judge Adams refused “to apply the Breach of Contract Exclusion in the manner requested by the Insurers.”

Discussion

Regular readers know that one of my hobby-horse issues on this site is the Delaware courts’ predisposition in favor of policyholders — particularly the policyholder predisposition of the Delaware Superior Court. Some readers might be inclined to interpret the outcome of this case as just one more example of the outcome-determinative advantages policyholders enjoy in coverage lawsuits in the Delaware Superior Court.

From my perspective, I think it would be a mistake for this ruling to be discounted as merely another example of the policyholders win/insurers lose logic of the Delaware courts. I would argue that this case is rather an example of a court drawing the line on insurers’ attempts to use an overly broad interpretation of the contractual liability exclusion in order to try to preclude coverage for claims that ought to be covered by the D&O insurance policy.

I have frequently argued on this site that insurers often seek to try to apply the contractual liability exclusion broadly, in order to try to preclude coverage for claims that do not involve (or that do not entirely involve) claims for breach of contract. I have regularly argued that a breach of contract exclusion is entirely appropriate to preclude coverage for *voluntarily*

undertaken liability (that is, assumed by contract) but not for liability *imposed by law* (that is, imposed by a court for a violation of the law). I have argued further that the broad scope that insurers seek to impose based on the typical broad preamble wording of the contractual liability exclusion hazards making coverage under the policy illusory, as almost every private company D&O claim involves a contract at some level.

In this case, I would argue that Judge Adams got it right. She is correct that the connection between the HUD contract and the relator's allegations that the Pangea entities made misrepresentations in their forms to the government is simply too tenuous to trigger the contractual liability exclusion. I would argue further that the relator's misrepresentation claim is the very kind of claim for which private companies buy insurance, and that were the exclusion extended to this kind of claim, the purported coverage under the policy would indeed be rendered illusory. I would go further than that – I would argue that if the exclusion really does apply to the kind of claim the relator asserts, private companies might well wonder why they should even buy D&O insurance in the first place.

The real problem here, one that I have pointed out many times, is the insurers' use of the broad "based upon, arising out of" language. I know that this language arguably is close to industry standard. But while most carriers may use this language, that does not make it right. Indeed, long-time readers may recall that I have long argued that the insurers' use of this language is one thing that D&O insurers "regularly get wrong."

From my perspective, a contractual liability exclusion framed in terms consistent with the overall purposes of the D&O insurance policy would not use the broad "based upon, arising out of" language. Rather, the exclusion – properly framed – would use the "for" preamble, rather than the overly broad "based upon, arising out of" wording. The use of the "for" wording would likely discourage insurers (or at least many of them) from attempting to apply the exclusion overly broadly and ensure that the exclusion does not apply to claims for which the D&O insurance policy should be providing coverage. The "for" wording would also more appropriately align with the purposes for which the exclusion is in the policy in the first place.

In any event, as much fun as I have had pointing out the Delaware courts' predisposition in favor of policyholders, I would argue that in this case the Delaware court got it right, whatever else may be said about the courts.

I know some readers may disagree with my views expressed in this post. I encourage readers to add their arguments to this post using the site's comment feature.

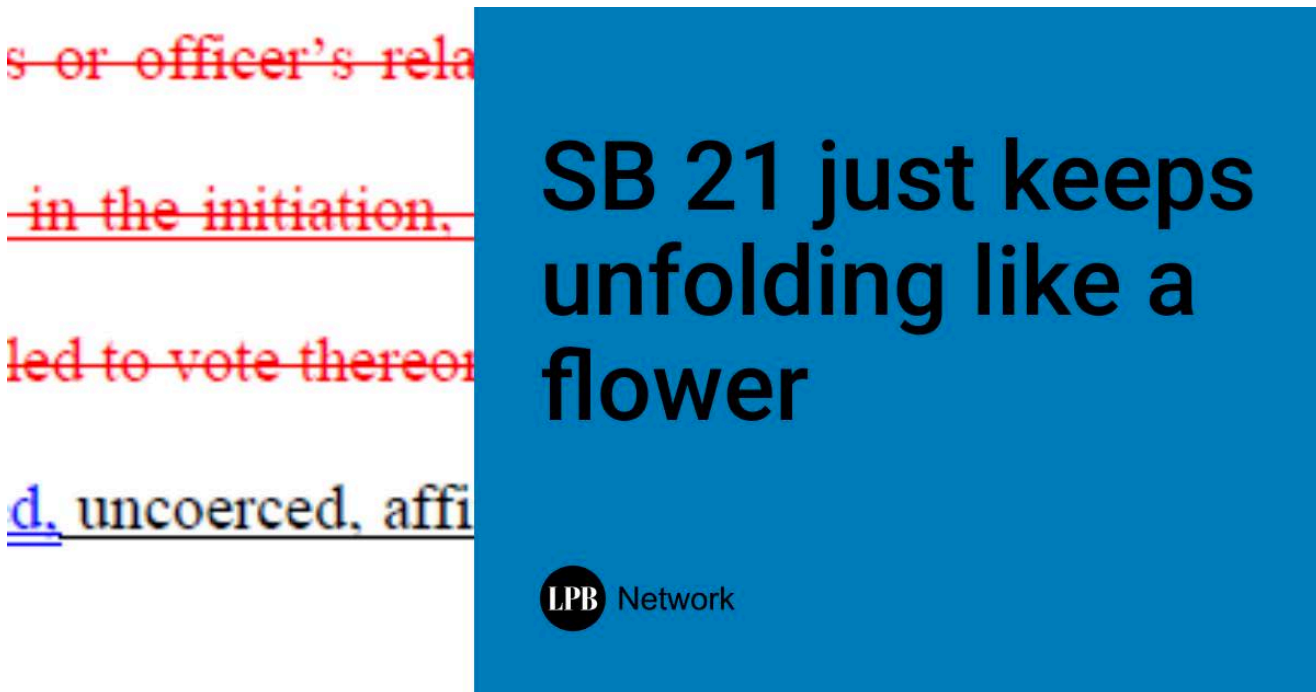
One final note. Geoffrey Fehling of the Hunton Andrews Kurth law firm has an interesting March 15, 2025, *LinkedIn* post about Judge Adams's decision in the Pangea Properties case, here. Among other things about the decision, Fehling notes that the ruling represents

“broader trends showing that False Claims Act litigation” is “often covered by D&O insurance ... despite being subject to recurring disputes about insurability of FCA remedies, various exclusions, and coverage for government investigations.”

SB 21 just keeps unfolding like a flower

 businesslawprofessors.com/2025/03/sb-21-just-keeps-unfolding-like-a-flower

March 15, 2025



By Ann Lipton on March 15, 2025

There is always something new to discover.

For example, I was reviewing the CLC version (as one does), and I noticed that in the sections providing for stockholder approval (either for director-conflict transactions, or controller-conflict transactions), language was *deleted* that would specifically have required stockholders be informed as to the nature of a director's conflict and involvement in the negotiation of the transaction, and the "material facts" of a controller transaction – though this language was retained for approval at the board/committee level. Though stockholder approval must still be "informed," I rather suspect the deletions were intended to assist with future arguments that conflicts, or flawed "negotiations," do not undermine the effect of a stockholder vote, when the stockholders were at least informed as to the material terms of the deal.

Screenshots of the relevant deletions, here:

(2) The ~~material facts as to the director's or officer's relationship or interest and as to the contract act or transaction~~ ~~transaction, including any involvement in the initiation, negotiation, or approval of the act or transaction,~~ ~~are disclosed or are known to the stockholders entitled to vote thereon, and the contract act or transaction is specifically approved or ratified in good faith by the an informed, uncoerced, affirmative vote of a majority of the votes cast by the disinterested~~ stockholders; or

And here:

(b) ~~A controlling stockholder transaction (other than any going-private transaction) will not be the subject of a lawsuit, in any state or in federal court, against a director or officer of the corporation or any controlling stockholder or member of a control group, by reason of a claim based upon a breach of fiduciary duty by a director, officer, controlling stockholder, or member of a control group, if~~

(1) The material facts as to such controlling stockholder transaction (including the controlling stockholder's or control group's interest therein) are disclosed or are known to all members of a committee of the board of directors, in which the board has expressly delegated the authority to negotiate (or oversee the negotiation of) and to reject such controlling stockholder transactions, and such controlling stockholder transaction is approved (or recommended for approval) in good faith and without any conflict of interest by a majority of the disinterested directors then sitting on the committee, provided that the committee does not include members of 1 or more directors, each of whom the board of directors has determined to be a disinterested director with respect to the controlling stockholder, and that a majority of the members of the committee originates such controlling stockholder transactions are disinterested directors, or

(2) The material facts as to such controlling stockholder transaction are disclosed or are known to the stockholders entitled to vote thereon, and such controlling stockholder transaction is confirmed by a vote of the disinterested stockholders or, in private, by its terms, as in effect at the time it is submitted to stockholders for their approval or ratification, by the approval of or ratification by disinterested stockholders, and such controlling stockholder transaction is approved or ratified by the an informed, uncoerced, affirmative vote of a majority of the votes cast by the disinterested stockholders, or

This is, I believe, the language included in the version of the bill that passed the Delaware Senate.

In recent years, of course, the Delaware Supreme Court has rejected many attempts at stockholder ratification on the grounds that various conflicts or negotiating flaws were concealed from stockholders, and these were the grounds on which Chancellor McCormick concluded that the stockholder vote in favor of Elon Musk's pay package at Tesla was not

fully informed. The *Tornetta* defendants argued, unsuccessfully, that stockholders only needed to be informed of the economic terms of the pay package, and they advance a similar argument on appeal.

Which means, I guess, that we can add *City of Dearborn Police & Fire Revised Ret. Sys. v. Brookfield Asset Management*, *City of Sarasota Firefighters' Pension Fund v. Inovalon Holdings*, *Morrison v. Berry* (for a second reason), and, hell, maybe even *Smith v. Van Gorkom* to Eric Talley's running list of Delaware Supreme Court cases that SB 21 will overrule.

Back to the drawing board on the BizOrgs syllabus....

And another thing. New *Shareholder Primacy* podcast is up! Mike Levin interviews Jeff Gramm of Bandera Partners. Here at Apple, here at Spotify, and here at YouTube.

This Week in Chancery Court: Boeing, More Legislative Debate

The Delaware House Judiciary Committee on Wednesday will take up the debate over a legislative overhaul that would shift power from smaller investors toward corporate insiders such as Elon Musk.

Here's a look the Chancery Court calendar this week:

Thursday: *Namdar v. Immutable Holdings Inc.*, Del. Ch., No. 2024-0535, oral arguments 3/20/25.

At issue: A cryptocurrency investor sued the owner of NFT.com in May 2024, alleging the serial entrepreneur duped him into helping launch the venture and then conspired to force him out. The investor, David Namdar, now faces counterclaims filed by by Jordan Fried and Immutable Holdings Inc., which owns the NFT.com web domain. Vice Chancellor J. Travis Laster will convene a hearing to consider motions to dismiss filed by both parties.

Court action: Oral arguments on the motions to dismiss will be heard in Wilmington, Del.

NFT.com Investor Sues 'Blockchain Evangelist' for Fraud, Threats

Thursday: *In re The Boeing Co. Derivative Litig.*, Del. Ch., No. 2024-1210, oral arguments 3/20/25.

At issue: Vice Chancellor Morgan T. Zurn will decide which of two contenders should lead litigation over the fallout of safety problems plaguing Boeing Co.'s 737 Max and 787 aircraft. Three Delaware-based plaintiffs—the Construction and General Building Laborers' Local Union No. 79 General Fund, the Central Laborers' Pension Fund, and an individual investor—say their case against Boeing makes the strongest arguments. Public pension funds in Ohio and Oklahoma argue they bring more heft to the litigation.

Court action: Oral arguments on the motions for leadership will be heard in Wilmington, Del.

Boeing 'Rotten Culture' to Blame for 737 Max Woes, Suit Says (2)

Friday: *In re XL Fleet (Pivotal) S'holder Litig.*, Del. Ch., No. 2021-0808, settlement hearing 3/21/25.

At issue: A 2021 lawsuit challenged the acquisition of XL Hybrids Inc. by Pivotal Investment Corporation II, a special purpose acquisition company. An investor in XL Fleet Corp., which specializes in converting commercial trucking fleets to hybrid power from gas, claims New York Islanders co-owner Jon Ledecky and other financiers who backed the deal ensured insiders got a windfall at the expense of public shareholders. Chancellor Kathaleen St. Jude McCormick will now consider whether a proposed \$4.75 million settlement is sufficient to resolve the litigation. Attorneys for the plaintiffs also seek a fee award of nearly \$824,000.

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

Ledecky, SPAC Ex-Board Facing Investor Suit Over XL Fleet Merger

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[Securities Law News](#)

March 14, 2025, 3:26 PM PDT; Updated: March 15, 2025, 7:31 AM PDT

JPMorgan Sued Over Stable Value Fund in \$44 Billion 401(k) (1)

- **COURT:** D.N.J.
- **TRACK DOCKET:** [No. 2:25-cv-01889](#) (Bloomberg Law subscription)

JPMorgan Chase Bank NA was sued Friday by a former employee who says the bank's \$44 billion 401(k) plan improperly offers an in-house stable value fund that underperforms competitors.

The lawsuit takes aim at the JPMorgan Stable Value Fund, which plaintiff Alexandro Gonzalez says provided significantly lower rates of return than similar options available from other companies while exposing workers to greater risk. The bank's decision to offer this fund improperly benefited the insurance companies that offered the fund's underlying investments, according to the lawsuit.

"By selecting the JPMorgan SVF with underperforming crediting rates, Defendants failed to provide participants with an option that maximized the value of their investments," Gonzalez said in the complaint. "With the massive amount of assets under management in the JPMorgan SVFs, the losses suffered by Plan participants were devastating."

More than \$2.4 billion of the plan's assets were invested in the fund as of 2023, according to the proposed class action, which was filed in the US District Court for the District of New Jersey.

Gonzalez brings claims under the Employee Retirement Income Security Act on behalf of a proposed class of nearly all the plan's participants and beneficiaries since October 2020. Close to 300,000 people had account balances with the plan in 2023, according to the complaint.

The filing comes one day after JPMorgan Chase & Co. was hit with an ERISA lawsuit over its employee health plan.

JPMorgan declined to comment.

Capozzi Adler PC represents Gonzalez.

The case is Gonzalez v. JPMorgan Chase Bank, NA , D.N.J., No. 2:25-cv-01889, complaint 3/14/25 .

(Updates March 14 story with JPMorgan's response in seventh paragraph.)

Class Action

March 17, 2025, 6:47 AM PDT

Vituity Retirement Plan Fee Lawsuit Settles for \$8.75 Million

- Fees paid to third-party provider, sponsoring company at issue
- Settlement represents nearly one-third of estimated damages

Vituity workers negotiated an \$8.75 million class settlement in their lawsuit accusing the California-based health-care company of mismanaging their 401(k) plan through high fees and faulty investments.

The deal is slated to benefit more than 7,000 people covered by the Vituity plan between November 2017 and January 2025. It represents about 32% of the plan participants' maximum potential damages in the case, and nearly 90% of the fees Vituity charged the plan for its administrative services during the relevant time period, according to a motion for settlement approval filed March 14 in the US District Court for the Northern District of California.

The agreement also includes a pledge by Vituity—formally known as CEP America LLC—to refrain from charging the plan for its own services and to replace an investment option that workers challenged as pricey and poorly performing.

The year-old lawsuit said the Vituity 401(k) plan overpaid its third-party service provider and paid excessive amounts to the company itself while parking too much money in a low-yield savings account that provided paltry returns. Judge Richard Seeborg allowed portions of the case to advance last year.

Hundreds of lawsuits challenging retirement plan fees have been filed in federal courts over the past few years, and several health systems have agreed to class-wide settlements, including Henry Ford Health System for \$5 million, Sutter Health for \$4.3 million, Bronson Healthcare Group Inc. for \$3 million, Cape Cod Healthcare Inc. for \$900,000, and Munson Healthcare for \$600,000, among others.

The Vituity plan participants are represented by Bailey & Glasser LLP and Creitz & Serebin LLP, which are authorized to seek up to 25% of the settlement value as attorneys' fees.

Faegre Drinker Biddle & Reath LLP represents Vituity.

The case is *Nagy v. CEP Am., LLC*, N.D. Cal., No. 3:23-cv-05648, settlement motion 3/14/25.

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Class Action

March 17, 2025, 8:59 AM PDT

Depo-Provera Judge Appoints Seeger Weiss to Plaintiffs' Counsel

- **Two other firms also appointed as plaintiffs' co-lead counsel**
- **Judge targeted by conservatives for remarks over female leads**

A federal judge appointed Christopher Seeger of Seeger Weiss LLP lead counsel for the plaintiffs in consolidated litigation over injectable contraceptive Depo-Provera and its connection to brain tumors.

Judge M. Casey Rodgers of the US District Court for the Northern District of Florida on Sunday also appointed attorneys from Aylstock Witkin Kreis & Overholtz PLLC and Weitz & Luxenberg PC as co-lead counsel for the plaintiffs.

"We appreciate Judge Rodgers' appointment and confidence in our firm," Seeger said in an emailed statement. He added that the firm is looking forward to litigating the case "to ensure Pfizer and its subsidiaries are held accountable."

Rodgers appointed Jeremy Branning of Clark Partington as defense liaison counsel.

The multi-district litigation encompasses more than six dozen lawsuits alleging Pfizer Inc. hid a link between Depo-Provera use and a risk of developing brain tumors.

Adequate Representation

Rodgers previously drew scorn from a conservative judicial reform group, the Article III Project, when she issued an order emphasizing the need for female attorneys in the litigation's leadership.

Article III Project describes itself as bringing "brass knuckles to fight leftist lawfare."

In her first case management order of the litigation, Rodgers told attorneys "the Court prefers a balanced leadership team that reflects diversity of all types and, in particular, leadership should reflect the diversity of the individual Plaintiffs that comprise this litigation."

She noted that she didn't mean all positions required female counsel, but that "females should be adequately represented within leadership."

Days after her order, the Article III Project filed an ethics complaint with the US Court of Appeals for the Eleventh Circuit and said "Rodgers made statements that improperly suggested sex would be a relevant factor in selecting leadership counsel for the multidistrict litigation."

The group said Rodgers' statement shows a preference for females that constitutes impermissible bias and judicial misconduct.

The complaint against Rodgers' is part of a growing trend of conservative criticism of the judiciary diversity efforts.

The case is In re Depo-Provera (Depot Medroxyprogesterone Acetate) Prods. Liab. Litig. , N.D. Fla., No. 3:25-md-03140, 3/16/25 .

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Florida Judge Picks 56 Lawyers to Lead Depo-Provera MDL

 [law.com/dailybusinessreview/2025/03/17/florida-judge-picks-56-lawyers-to-lead-depo-provera-mdl](https://www.law.com/dailybusinessreview/2025/03/17/florida-judge-picks-56-lawyers-to-lead-depo-provera-mdl)

Amanda Bronstad

What You Need to Know

- The judge appointed Chris Seeger as lead counsel and co-leads Ellen Relkin and Bryan Aylstock.
- More than 70 lawsuits against Pfizer allege Depo-Provera, an injectable birth control, has been linked to brain tumors.
- Rodgers faces a judicial misconduct complaint filed last month by Article III Project, which accused her of “explicit preference for females” after she encouraged women to apply for leadership in the Depo-Provera MDL.

A federal judge named 56 attorneys to lead the multidistrict litigation over injectable birth control Depo-Provera.

In a March 16 order, U.S. District Judge M. Casey Rodgers, of the Northern District of Florida, appointed Chris Seeger as lead counsel and co-leads Ellen Relkin and Bryan Aylstock. More than 70 lawsuits against Pfizer Inc. allege Depo-Provera has been linked to brain tumors.

“The undersigned is thoroughly impressed with the quality of the applicant pool from which it has selected, with difficulty, the following leadership team,” Rodgers wrote.

Seeger, of Seeger Weiss in Ridgefield Park, New Jersey, said, “We look forward to litigating this case with Mr. Aylstock, Ms. Relkin, and others appointed by the Court to ensure Pfizer and its subsidiaries are held accountable for knowingly selling Depo-Provera birth control despite knowing it could cause meningiomas, a serious and often life-altering brain tumor.”

Ellen Relkin, of Weitz & Luxenberg.
Courtesy photo

Relkin, of Weitz & Luxenberg in New York, who had moved to coordinate the Depo-Provera cases last year, said, “I am delighted to be appointed as co-lead counsel in this litigation I pioneered. The court has appointed a terrific leadership team and we are ready to proceed expeditiously to bring justice to our profoundly injured clients.”

Including Relkin, the leadership team has 28 women. There are 28 men, including Seeger and Aylstock, of Aylstock Witkin Kreis & Overholtz in Pensacola, Florida.

Rodgers, a 2003 appointee of President George W. Bush, faces a judicial misconduct complaint filed last month by a conservative group called Article III Project, which accused her of “explicit preference for females” after she encouraged women to apply for leadership in the Depo-Provera multidistrict litigation. In a Feb. 23 order outlining applications for leadership positions, she wrote that “females should be adequately represented within leadership.”

More judges, however, are encouraging diversity among plaintiffs’ leadership, particularly in multidistrict litigation, which historically has been dominated by white and male attorneys.

On March 13, Rodgers heard five-minute arguments from 75 attorneys seeking leadership positions.

Rodgers followed a similar process and structure in appointing 53 lawyers to the 3M combat earplug cases in 2019. In those cases, which totaled 320,000 in multidistrict litigation, the largest in the nation, Rodgers appointed Seeger co-lead counsel and Aylstock lead counsel.

In addition to lead counsel in the Depo-Provera multidistrict litigation, Rodgers appointed seven lawyers to an executive committee, and 10 lawyers to a plaintiffs’ steering committee headed by Roger Denton, of Ohio’s Wright & Schulte. Dozens more were named to various subcommittees and liaison positions, including two in Birmingham, Alabama, lawyers, Starr Culpepper of Culpepper & Associates, and Shelby Yarbrough of the Law Office of Barrett Yarbrough, who were named as pro se plaintiff liaison counsel.

Seeger also was named to the joint settlement committee.

Here is the leadership order below:

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Legal firms agree on committee to lead Eaton Fire litigation

DJ [dailyjournal.com/articles/384255-legal-firms-agree-on-committee-to-lead-eaton-fire-litigation](https://www.dailyjournal.com/articles/384255-legal-firms-agree-on-committee-to-lead-eaton-fire-litigation)

Los Angeles County Superior Court Judge Laura A. Seigle
Plaintiffs' attorneys in the Eaton Fire litigation have agreed on a steering committee of 45 law firms. They also agreed with attorneys for defendant Southern California Edison on a protective order for discovery that was signed by Los Angeles County Superior Court Judge Laura A. Seigle on Friday.

The steering committee will work with liaison counsel to conduct discovery and prepare individual plaintiffs' cases for trial.

The proposed list of liaison counsel for individual plaintiffs includes Rahul Ravipudi of Panish Shea Ravipudi LLP; Amanda L. Riddle of Corey, Luzaich, de Ghetaldi & Riddle LLP; and Gerald B. Singleton of Singleton Schreiber LLP.

The proposed list of liaison counsel for subrogation plaintiffs includes Jordan B. Everakes of Grotefeld Hoffmann; Amanda R. Stevens of Schroeder Loscotoff Stevens LLP; Howard D. Maycon of Cozen O'Connor and Matthew E. Delinko of Bauman Loewe Witt & Maxwell PLLC.

The proposed list of liaison counsel for public entity plaintiffs includes John P. Fiske and Victoria E. Sherlin of Baron & Budd PC; plus, Edward S. Diab and Kristen K. Barton of Diab Chambers LLP.

The plaintiffs' attorneys, and Southern California Edison's attorneys with Hueston Hennigan LLP, submitted the list jointly to Seigle on Thursday, ahead of a case management conference scheduled for Monday.

The steering committee of 45 law firms will advance funds to prosecute the individual cases, according to a proposed case management order. The funds will be held in a joint account and will be administered by a committee established by the steering committee. Joint costs include liability work-up, deposition costs, a joint evidence repository system and joint liability expert costs.

"No member of the steering committee shall have any right to seek or obtain attorneys' fees from any matter in which they are not counsel of record for that specific client, whether characterized as a 'common benefit fee' or otherwise, and neither liaison counsel nor any other member of the steering committee shall seek or receive any such common benefit attorney fees," states the document.

The Eaton Fire is estimated to have caused \$10 billion in property damage since it broke out on Jan. 7. At least 130 complaints have been filed against Southern California Edison. All of the actions have been related and, except for one, temporarily stayed pending the March 17 case management conference. Just one firm representing individual plaintiffs has filed its case as a class action, so there is no need to appoint liaison counsel for those plaintiffs, the filing states.

The stipulated protective order that Seigle signed on Friday covers the protection of sensitive information that will surface during discovery, such as financial information, medical records and proprietary business information.

Seigle wishes to avoid a discovery battle early on, so she pushed the parties in the one active case to agree on an evidence preservation order that would be in effect until March 17. Early on, attorneys with Edelson PC secured a temporary restraining order prohibiting Edison from reenergizing its lines near the suspected fire origin. Edison was also ordered to produce data associated with the fire.

#384255

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<https://www.wsj.com/us-news/climate-environment/california-eaton-fire-power-line-c6b07831>

EXCLUSIVE CLIMATE & ENVIRONMENT

The Prime Suspect Behind California's Eaton Fire: A 'Zombie' Power Line

An investigation by utility Southern California Edison is increasingly focused on whether a decommissioned line was re-energized, sparking the deadly blaze

By [Katherine Blunt](#) [Follow](#)

March 17, 2025 5:30 am ET



SCE initially said it had no evidence its equipment was involved in the fire. PHOTO: MARIO TAMA/GETTY IMAGES

Key Points

What's This? ⓘ

- SCE is investigating whether an idle power line sparked the deadly Eaton fire in Los Angeles, a rare occurrence that could have major liability implications for the utility.
- SCE is reviewing its safety practices for inspecting and maintaining its 465 miles of idle transmission lines after the Eaton fire.
- California regulators are considering the issue of idle transmission lines after the Eaton fire, which could have implications for other utilities in the state.

In the days after the deadly Eaton fire in Los Angeles, investigators at Southern California Edison were all but convinced that none of the power lines the utility operates in the area had sparked the blaze.

Evidence is emerging that they might have overlooked an unlikely culprit: a dead power line unintentionally brought back to life.

SCE is zeroing in on an idle power line near the [fire-ravaged Altadena neighborhood](#), where 17 people died in January. The line has no connection to the power grid, but the company is concerned that it may have started the fire, company executives say. Investigators are trying to determine whether it became energized through a phenomenon known as induction, or current created by electromagnetic force.

“We certainly have a lot of attention and focus on the induction theory,” [Edison International](#) EIX **4.71%** ▲ Chief Executive Pedro Pizarro said in an interview. “Because it was not connected to anything, then induction ends up being a leading hypothesis.”

SCE initially said in the days after the fire that it had no evidence its equipment was involved because its active power lines in the area showed no sign of damage. Then, photos and videos [showing flames beneath a different power line](#) began circulating, confounding the company as to what might have happened because the line in question had been out of service for years.

The possibility that an unenergized power line ignited a wildfire—a very uncommon occurrence—has jolted SCE into doing more to assess that risk. Pizarro said the company has about 465 miles of transmission lines no longer in use and that it is reviewing its safety practices in inspecting and maintaining them.

The investigation’s conclusion will be enormously consequential for SCE, a unit of Edison International. It faces billions of dollars in potential liability costs if its equipment is found to have ignited the fire. The blaze destroyed about 14,000 acres and more than 6,000 homes, making it the second most destructive fire in California history.

SCE could tap a \$21 billion fund established by the state to help utilities manage liability costs tied to destructive fires. But to do so without reimbursement requirements, it will have to prove to state regulators that its maintenance of the idle line was reasonable, or in line with common industry standards.

Pizarro said the company has compared its practices to those of other utilities and discovered a range of approaches and little common understanding of what is best.

The outcome will also have consequences for California's other large utility companies, whose goodwill on Wall Street largely depends on the health of the fund. If SCE leans heavily on the fund, less money will be available for the other utilities if their lines start other fires.

State fire officials are also investigating, and it may be months before they release a formal report on whether SCE's equipment was involved in the Eaton fire. Already, lawsuits against the company are mounting. Plaintiffs' lawyers are aggressively soliciting fire victims and filing suits on their behalf. Los Angeles County filed suit in early March to recoup what it anticipates will be hundreds of millions of dollars in fire-recovery costs.

Mystery ignition

The fire ignited just west of Altadena in the Eaton Canyon, a hilly, wooded area where SCE operates four active transmission lines. The idle line, which has been out of service since 1971, sits parallel to those lines, with roughly 50 feet of space between it and the nearest active one.

The idle line always experiences some level of induction, Pizarro said. The current flowing through the active lines creates electromagnetic fields capable of inducing current on the inactive one. SCE had worked to reduce the risk of the idle line sparking by outfitting it with equipment to send any induced current directly into the ground.

An aerial view of workers removing hazardous materials from a home destroyed in the Eaton fire.

PHOTO: MARIO TAMA/GETTY IMAGES

The company recently discovered damage to that grounding equipment on part of the line and is working to determine how and when it happened.

SCE is probing a chain of events that occurred just before the fire started on the night of Jan. 7, as strong winds picked up. A transmission line outside the canyon experienced a disruption that caused a momentary surge in current along the lines within the canyon, the company said. That surge strengthened the electromagnetic fields around the lines, creating a more intense means of inducing current on the idle one.

What remains unclear, Pizarro said, is what might have caused the line to spark, and whether the damaged grounding equipment played a role. Videos obtained by plaintiffs' lawyers show what appear to have been flashes of light on one of the towers supporting the line, and, moments later, flames beneath it.

"It's time to be able to do more specific analysis of the equipment itself," Pizarro said. "If we see something that gives us that missing link, we're going to say so right away."

The company said closer inspections will begin Monday.

Idle power lines

In California and elsewhere, idle transmission lines generally haven't been subject to close regulatory scrutiny. Even within utility companies, there may

not be comprehensive records on exactly where such equipment is located and how it has been maintained, utility employees say.

Utilities keep out-of-service lines in place largely because it is less expensive to do that than to remove them. Companies also consider whether the lines might be usable again in the future, particularly given the permitting and cost challenges associated with building new transmission lines.

SCE, for example, used part of the idle line in the Eaton Canyon in building a large transmission project to bring more renewable energy online. But some lines are maintained in place with no clear plan for reuse.

California regulators considered the issue of idle transmission after the Kincadee fire, which burned nearly 78,000 acres in Northern California in 2019. The fire occurred when part of a transmission line owned by [PG&E](#) broke.

The transmission line, which wasn't in use at the time of the ignition, had been partially decommissioned. California regulators determined that PG&E should have removed the line after taking it out of service and fined it \$40 million for failing to do so, among other violations.

The line, however, had been energized at the time. Induction was not a factor.

"We probably didn't see insights there at that point in time that would have led to different steps here with our de-energized idle lines," Pizarro said. "Now that we've gone through this experience, we are taking a look at that."

Write to Katherine Blunt at katherine.blunt@wsj.com

Videos

Fabletics Accused of Misleading Consumers Via VIP Membership Program

 [law.com/therecorder/2025/03/14/fabletics-accused-of-misleading-consumers-via-vip-membership-program](https://www.law.com/therecorder/2025/03/14/fabletics-accused-of-misleading-consumers-via-vip-membership-program)

Riley Brennan

Fabletics was named in a consumer class action in connection with the company's VIP membership program, which accuses the athletic clothing company of misleading consumers into joining the subscription-based program, which automatically renews, by promoting "promotional" credit.

Takeaway: Consumers have taken issue with other membership or subscription-based programs offered through other companies. Safeway and Alliance Aviation Group have also recently been sued in California and Florida, respectively, over purported misrepresentations of their membership programs.

Court: U.S. District Court for the Central District of California

Case Type: Consumer Protection

Industry: Retail & Consumer Goods

Lawyers: Frank S. Hedin of Hedin LLP in San Francisco filed the suit on behalf of a group of plaintiffs. Counsel has not yet appeared for the defendants.

Law.com Radar

Liability Arguments: The complaint, brought on behalf of Dennis Bateman and several other plaintiffs, accuses Fabletics of illegal conduct relating to its VIP Membership Program, claiming the company misleads customers into joining the program but touting the value of its "promotional member credit." The plaintiffs allege that in exchange for \$59.95 a month, program members receive a monthly promotional member credit, which is supposed to allow members to purchase any single item or two-piece outfit from Fabletics for up to \$100. However, the complaint alleges that the majority of the individual items or two-piece outfits don't exceed the cost of the membership fee.

"Fabletics lures customers to join a monthly recurring subscription program with the promise of a promotional member credit that exceeds the \$59.95 monthly membership fee, and that can be used on a variety of items of different styles and types of clothing items when, in fact, based on defendant's pricing model, it would be nearly impossible for a program member to use a promotional member credit to purchase a single item or outfit exceeding \$59.95, much less \$100," the complaint said.

According to the suit, Fabletics fails to fairly apprise program members that their subscription automatically renews each month and charges members without providing notice or obtaining consent. The plaintiffs claim that Fabletics harms members by refusing to honor the promotional membership credits received in exchange for the monthly fee, claiming unused credits are voided within twelve months in violation of the California Gift Certificate Statute.

Damages Arguments: The complaint brings claims for violation of California law, including unfair competition Law, false advertising, and the gift card statute. It also brings a claim for violation of Florida's Deceptive and Unfair Trade Practices Act. The plaintiffs request actual, compensatory, statutory, and punitive damages, as well as prejudgment interest, injunctive relief, an order of restitution, and attorney fees and costs.

What the lawyers are saying: Neither Hedin nor Fabletics immediately responded to requests for comment.

Radar scan: Fabletics has been the target of various suits filed in the Los Angeles County Superior Court over the past few years. In 2024, a nearly identical lawsuit was filed against Fabletics regarding its membership program. Fabletics was sued earlier this year for disability discrimination by a former employee. Another suit filed in the U.S. District Court for the District of Minnesota, targets the company's website, claiming it is not compliant with the Americans with Disabilities Act because it is not fully and equally accessible to people who are blind or who have low vision.

Caption: *Bateman v. Fabletics*.

Date filed: March 12

Judge: A judge has yet to be assigned.

Read the complaint here.

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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Court blocks California law on children's online safety

 [reuters.com/legal/court-blocks-california-law-childrens-online-safety-2025-03-14](https://www.reuters.com/legal/court-blocks-california-law-childrens-online-safety-2025-03-14)

Jonathan Stempel

A 3D printed Facebook's new rebrand logo Meta is seen in front of displayed Google logo in this illustration taken on November 2, 2021. REUTERS/Dado Ruvic/Illustration/File Photo
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March 14 (Reuters) - A federal judge said California cannot enforce a state law meant to shield children from online content that could harm them mentally or physically.

U.S. District Judge Beth Labson Freeman ruled on Thursday that the trade group NetChoice deserved a preliminary injunction because it was likely to show the California Age-Appropriate Design Code Act violated its members' free speech rights under the Constitution's First Amendment.

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NetChoice said the law would turn its 39 members , opens new tab, including Amazon.com (AMZN.O) , opens new tab, Google (GOOGL.O) , opens new tab, Facebook and Instagram parent Meta Platforms (META.O) , opens new tab, Netflix (NFLX.O) , opens new tab and Elon Musk's X, into state-deputized censors and "censor the internet under the guise of privacy."

The office of California Attorney General Rob Bonta expressed disappointment on Friday, and said he "remains committed to tackling this issue and to defending California's common-sense statutes." It plans to respond to the decision in court.

Ambika Kumar, a lawyer for NetChoice, called the law "a breathtaking act of unconstitutionally vague and overbroad, content-based censorship. We are pleased to see it enjoined."

Signed by Governor Gavin Newsom in September 2022, California's law required businesses to create reports addressing whether their online platforms could harm children, and take steps before launch to reduce the risks.

It also required businesses to estimate ages of child users and configure privacy settings for them, or provide high settings for everyone. Civil fines could reach \$2,500 per child for negligence and \$7,500 per child for intentional violations.

In her 56-page decision, Freeman said the law imposed significant burdens and was not narrowly tailored to advance California's alleged compelling interest in protecting children from bullying, harassment, sexual exploitation, sleep loss and other harms.

"A regulation that focuses on the emotive impact of speech on its audience is content-based, and therefore must be drawn as narrowly as possible," the San Jose, California, judge wrote. "The state has not shown that the (law) is narrowly drawn here."

Freeman also enjoined the law in September 2023. A federal appeals court set aside part of her injunction last August and ordered a reassessment. The law was supposed to take effect last July.

The case is NetChoice LLC et al v Bonta, U.S. District Court, Northern District of California, No. 22-08861.

Reporting by Jonathan Stempel in New York; Editing by Hugh Lawson and Richard Chang

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Litigation

March 17, 2025, 8:47 AM PDT; Updated: March 17, 2025, 9:16 AM PDT
Goldstein Shouldn't Compel Grand Jury Testimony, DOJ Says (1)

- Two sides disagree on motive for cryptocurrency offer
- Goldstein hasn't raised concern about accuracy of info

Federal prosecutors and SCOTUSblog founder Tom Goldstein are at odds over why he offered cryptocurrency to a potential witness in his criminal tax evasion case.

Goldstein hasn't shown the "particularized need" to justify his "extraordinary" request that the government disclose grand jury testimony about the offer, prosecutors said.

The government opposed Goldstein's motion to compel the testimony in his ongoing tax evasion case, saying there is "strikingly little need" for disclosure of the testimony. Department of Justice officials told the US District Court for the District of Maryland that it should deny the emergency motion, or alternatively, that the court should review it privately.

"Grand jury testimony is presumptively secret for good reason: disclosing such testimony here would undermine the fair and orderly resolution of this case and, more broadly, have a chilling effect on future grand jury witnesses who could not trust that their testimony would stay secret," the government argued in its brief.

In the course of Goldstein's challenge to a release condition subjecting his electronic devices to monitoring by pre-trial services, he said the allegation amounted to an accusation of witness tampering, something he has not been charged with. The witness, an assistant and office manager at his then-law firm, Goldstein & Russell, was offered the cryptocurrency to stay with the firm, Goldstein said.

The DOJ said in the brief that Goldstein hasn't raised enough concern about the accuracy of the information to make further examination of the testimony necessary – even if he disagrees with the government's contention that there was "no other credible reason" for the offer "other than to influence the witness regarding the ongoing criminal investigations," which combined with Goldstein's flight risk, makes it necessary to monitor his devices.

Goldstein was indicted in January for tax evasion and making false statements on a loan application. The government has made other accusations, including that he concealed gambling-related income and claimed personal expenditures as law firm business expenses.

The case is United States v. Goldstein , D. Md., No. 8:25-cr-00006, opposition to emergency motion to compel 3/14/25 .

(Updates to add new first paragraph, and in second and fifth paragraphs regarding differing positions of Goldstein and prosecutors.)

Paul Weiss Hit By Latest Broad Order

 [law.com/nationallawjournal/2025/03/14/trump-suspends-paul-weiss-security-clearances-wh-spokes-says](https://www.law.com/nationallawjournal/2025/03/14/trump-suspends-paul-weiss-security-clearances-wh-spokes-says)

Abigail Adcox

This article has been updated with more details about the Friday order.

President Donald Trump has targeted Paul, Weiss, Rifkind, Wharton & Garrison in a broad order that seeks to punish the firm for the legal work of one of its former lawyers.

The order, signed Friday, suspends the security clearances of firm personnel, restricts their use in government buildings, and cuts off any government contracts with the firm, while its practices will be reviewed to ensure “compliance with civil rights laws against racial bias,” according to a White House fact sheet on the order.

The Friday order also criticizes “many” large law firms.

“Global law firms have for years played an outsized role in undermining the judicial process and in the destruction of bedrock American principles. Many have engaged in activities that make our communities less safe, increase burdens on local businesses, limit constitutional freedoms, and degrade the quality of American elections,” the order said. “Additionally, they have sometimes done so on behalf of clients, pro bono, or ostensibly ‘for the public good’ — potentially depriving those who cannot otherwise afford the benefit of top legal talent the access to justice deserved by all. My administration will no longer support taxpayer funds sponsoring such harm.”

The Friday order comes just two days after a U.S. federal judge temporarily blocked a similar order against Perkins Coie, with the judge noting it “threatens to significantly undermine our entire legal system and the ability of all people to access justice.”

The White House order on Friday faults Paul Weiss for employing “unethical attorney Mark Pomerantz, who had previously left the firm to join the Manhattan District Attorney’s office solely to manufacture a prosecution against President Trump.”

Pomerantz had sought to build a criminal case against Trump when he was at the Manhattan district attorney’s office.

During a speech at the Justice Department on Friday, Trump called out Pomerantz and Marc Elias, formerly of Perkins Coie. Trump said some people “did everything within their power to prevent me from becoming the president of the United States, with the help of radicals like Marc Elias, Mark Pomerantz.”

A Paul Weiss spokesperson said in a statement on Friday: “We have seen press reports about an executive order, which is focused on the activities of Mark Pomerantz, who retired from the firm in 2012 and went on to work at the District Attorney’s office nearly a decade later. Mr. Pomerantz has not been affiliated with the firm for many years. The terms of a similar order were enjoined as unconstitutional earlier this week by a federal district court judge.”

According to the White House fact sheet about the order, federal agencies will refrain from hiring Paul Weiss employees unless specifically authorized. The order also says the federal government will terminate contracts that involve Paul Weiss. Meanwhile, the federal government “will halt material and services, including sensitive compartmented information facility (SCIF) access provided to Paul Weiss and restrict its employees’ access to government buildings.”

In addition, the practices of Paul Weiss “will be reviewed under Title VII to ensure compliance with civil rights laws against racial bias,” the fact sheet said.

While Trump's order calls out the firm for its ties to Pomerantz, Paul Weiss has long had firm personnel who were adversarial with Trump or his allies.

The firm has a number of Obama and Biden alumni, including Loretta Lynch, former U.S. Attorney General under Obama, and Damian Williams, former Southern District of New York U.S. Attorney who oversaw former New York City Mayor Eric Adams’ indictment.

A number of attorneys at the firm also fundraised for Kamala Harris’ presidential campaign, including firm chair Brad Karp. Karen Dunn, co-chair of Paul Weiss’ litigation department, assisted with Harris debate preparations during the campaign.

Karp also spoke up publicly against Trump’s immigration policies during his first administration, in an op-ed with Gary Wingens, chairman and managing partner of Lowenstein Sandler.

Trump has already targeted Perkins Coie and Covington & Burling, citing the clients and matters the firms have been involved in.

Trump issued an executive order directed at Perkins Coie last week, suspending security clearances for employees at Perkins Coie and called for terminating any existing government contracts with the firm and contractors that use the firm as legal counsel. The order also barred employees of the firm from entering federal government buildings and called for a review of the firm’s DEI policies.

The order further indicated that other law firms would soon be placed under the microscope over their DEI practices. While signing the order, Trump said, "You're looking at about 15 different firms."

Days after the executive order was signed, Perkins Coie filed a lawsuit challenging the executive order, with Williams & Connolly stepping up to represent the firm. This week, a federal judge in Washington, D.C. temporarily blocked enforcement of several key parts of the order.

Meanwhile, in a memo last month, Trump said he was suspending securities clearances for Covington partner Peter Koski and other attorneys at the firm who are representing former special counsel Jack Smith and called for an investigation into whether the firm participated in the "weaponization" of the judicial process.

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Trump targets law firm Paul Weiss in order restricting government access

 [reuters.com/world/us/trump-suspends-security-clearance-people-paul-weiss-law-firm-2025-03-15](https://www.reuters.com/world/us/trump-suspends-security-clearance-people-paul-weiss-law-firm-2025-03-15)

Kanishka Singh, Mike Scarcella, Andrew Goudsward

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

- Order suspends Paul Weiss security clearances, targets government contracting work
- Law firm notes departure of former partner Trump has criticized
- Judge blocked similar order against Perkins Coie

WASHINGTON, March 14 (Reuters) - U.S. President Donald Trump signed an executive order on Friday suspending security clearances for lawyers and other employees at New York law firm Paul, Weiss, Rifkind, Wharton & Garrison, and restricting their access to federal buildings and officials.

"Today, President Donald J. Trump signed an Executive Order to suspend security clearances held by individuals at Paul, Weiss, Rifkind, Wharton & Garrison LLP (Paul Weiss) pending a review of whether such clearances are consistent with the national interest," the White House said.

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The order also directed federal agencies to take steps to cancel U.S. government contracts "for which Paul Weiss has been hired to perform any service."

The law firm has ties to high profile Democrats whom Trump has criticized over probes into him and his conduct. It had no immediate comment on Friday.

Some people associated with a probe by special counsel Robert Mueller into Trump's ties to Russia during his first term are linked to the firm. That probe found no collusion between Trump and Russia during the 2016 election campaign.

Trump's order on Friday marked the third time he has taken action against a major U.S. law firm, alarming lawyers and legal experts.

Trump has been critical of a former partner at the firm, Mark Pomerantz, who was involved in the Manhattan district attorney's investigation into Trump's hush money payments to a porn star. A jury had found Trump guilty. Trump denied wrongdoing.

In a statement late on Friday, the law firm noted that Pomerantz retired from the firm in 2012 and went on to work at the district attorney's office nearly a decade later.

"Mr. Pomerantz has not been affiliated with the firm for many years. The terms of a similar order were enjoined as unconstitutional earlier this week by a federal district court judge," the law firm said on Friday in response to Trump's order.

U.S. District Judge Beryl Howell on March 12 temporarily blocked most of an executive order Trump issued against a separate law firm, Perkins Coie, finding it likely violated the U.S. Constitution.

Trump in another order last month revoked security clearances for two Covington & Burling lawyers who advised Jack Smith, the special counsel appointed during Democratic former President Joe Biden's administration who brought criminal charges against Trump. Covington defended its work for Smith but has not challenged the order in court.

Covington and Perkins Coie are among more than a dozen prominent law firms that have filed cases against the Trump administration over policies on immigration, transgender rights and government mass firings. The Paul Weiss firm had not yet appeared in any litigation.

Paul Weiss is home to former U.S. Attorney General Loretta Lynch from the administration of Democratic former President Barack Obama.

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Trump Takes Aim at 'Crooked Law Firms' in DOJ Speech

 [law.com/nationallawjournal/2025/03/14/trump-takes-aim-at-crooked-law-firms-in-doj-speech](https://www.law.com/nationallawjournal/2025/03/14/trump-takes-aim-at-crooked-law-firms-in-doj-speech)

Abigail Adcox and Amanda O'Brien

What You Need to Know

- President Donald Trump called for the end of the 'weaponization' at the DOJ, in a speech at its headquarters on Friday.
- Trump called out the prosecutors that were part of prosecutions against him, calling them 'deranged.'
- He also took aim at the 'crooked law firms that aided their partisan persecutions.'

President Donald Trump pledged to end the “weaponization” of the Justice Department at its headquarters in Washington, D.C., on Friday, laying out sweeping priorities for the department, including cutting down on crime, drugs and illegal immigration, while taking aim at the “crooked law firms.”

Trump also painted the attorneys who played parts in prosecutions against him and his adversaries as partisans, calling the prosecutors who investigated him “deranged.”

“We revoked the clearances of deranged Jack Smith, Alvin Bragg, Letitia James and the crooked law firms that aided their partisan persecutions,” Trump quipped.

In his speech, Trump vowed to reinstate the department’s integrity and investigate those who played a part in the prosecutions. He also directed several sweeping comments toward lawyers.

“There’s a new phenomena with these violent, vicious lawyers that we have all over,” Trump said.

Trump has already targeted two large law firms directly, Perkins Coie and Covington & Burling, citing the clients and matters the firms have been involved in.

Trump issued an executive order directed at Perkins Coie last week, suspending security clearances for employees at Perkins Coie and called for terminating any existing government contracts with the firm and contractors that use the firm as legal counsel. The order also barred employees of the firm from entering federal government buildings and called for a review of the firm’s DEI policies.

The order further indicated that other law firms would soon be placed under the microscope over their DEI practices. While signing the order, Trump said, "You're looking at about 15 different firms."

Days after the executive order was signed, Perkins Coie filed a lawsuit challenging the executive order, with Williams & Connolly stepping up to represent the firm. This week, a federal judge in Washington, D.C., temporarily blocked enforcement of several key parts of the order.

Meanwhile, in a memo last month, Trump said he was suspending securities clearances for Covington partner Peter Koski and other attorneys at the firm who are representing former special counsel Jack Smith and called for an investigation into whether the firm participated in the "weaponization" of the judicial process.

Litigators Question Trump's Memo Demanding Plaintiffs Pay Burdensome Bonds



law.com/nationallawjournal/2025/03/14/litigators-question-trumps-memo-demanding-plaintiffs-pay-burdensome-bonds

Sulaiman Abdur-Rahman

Federal courts are unlikely to impose hefty security bonds on plaintiffs who win extraordinary relief from Trump administration policies, according to litigators with Big Law backgrounds.

With the Trump administration facing dozens of active lawsuits, "There's an impulse to do something, and they're trying to do something, and this is a lever they thought they could pull," ArentFox Schiff partner J. Michael Showalter said Friday of President Donald Trump's new policy invoking Rule 65(c) of the Federal Rules of Civil Procedure.

U.S. Department of Justice attorneys must ask federal judges to enforce Rule 65(c) and order plaintiffs to pay bonds if they wish to secure an injunction that blocks White House policies, according to a memo Trump issued Tuesday.

Rule 65(c) in federal civil proceedings allows judges to grant temporary restraining orders or preliminary injunctions "only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained."

Courts in their discretion can waive the bond rule when granting a plaintiff's motion for a TRO or preliminary injunction.

"It's always concerning when the government seeks to discourage individuals and public interest groups from safeguarding constitutional rights," said Ronnie London, general counsel at the Foundation for Individual Rights and Expression. "That's especially true here, where it seeks to do so by pinning costs and damages it describes as potentially 'millions or even billions of dollars' on parties who show they're likely enough to succeed on a constitutional claim to earn a preliminary injunction."

London, who previously practiced at Davis Wright Tremaine before joining FIRE, said courts still have the discretion to waive security bonds when granting injunctive relief to injured parties.

"We're hopeful the line will hold, as it should, exempting public-interest constitutional litigation," London said Thursday. "Not long before the White House's Rule 65 memo issued, the federal court in Maryland rejected a bond request in *National Association of Diversity Officers in Higher Education v. Trump*, citing multiple other decisions to the same effect, because the security requirement would effectively deny plaintiffs the right to challenge unconstitutional government action."

“But until we see courts reaffirm that in the wake of the memo,” London added, “plaintiffs and their counsel may be justified feeling just a little uncertain how this all plays out.”

The White House said temporary injunctions can “cost taxpayers millions or even billions of dollars” and suggested enforcement of Rule 65(c) can deter parties from challenging Trump’s executive actions.

Trump may have political motivations for issuing his Rule 65(c) memo, according to Showalter of ArentFox Schiff.

“You can’t underestimate the value of a talking point,” Showalter said, adding the Rule 65(c) memo allows the White House to glorify the cost-cutting initiatives of Elon Musk and the Department of Government Efficiency while blaming plaintiffs for opposing DOGE and Trump’s executive orders.

“He’s a maximalist person, and he has people [in his administration] that have big theoretical issues with how the government was structured—coming from a bunch of different directions,” Showalter said of Trump. “So you’re going to see some pretty hot litigation resolving from that.”

The White House advocating Rule 65(c) could influence how judges write opinions granting preliminary injunctions, according to Showalter.

“If the government didn’t raise the issue, you are going to end with a more cursory analysis,” Showalter said. “Why would you want a more fulsome analysis? One: Maybe you could win. Two: It causes the other side to have to do some more proofs. Three: You get your talking point.”

Whatever Trump’s reasons for embracing Rule 65(c), Showalter said the administration has moved fast in implementing sweeping policies affecting large segments of the population.

“The whole point of the American constitutional system is things are supposed to move pretty slowly because nobody has to trust each other,” Showalter said, adding the Trump administration is “aggressively working to change the established political order.”

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Smartmatic Executives Seek An Extension Of Pre-Trial Deadlines Due To Executive Order

 fcpprofessor.com/smartmatic-executives-seek-an-extension-of-pre-trial-deadlines-due-to-executive-order

March 17, 2025

As highlighted in this prior post, in August 2024 the DOJ announced that a “federal grand jury in the Southern District of Florida returned an indictment ... charging three executives of an election voting machine and service provider company and a former Chairman of the Commission on Elections (COMELEC) of the Republic of the Philippines for their roles in an alleged bribery and money laundering scheme to retain and obtain business related to the 2016 Philippine elections. [...] These bribes were allegedly paid to obtain and retain business related to providing voting machines and election services for the 2016 Philippine elections and to secure payments on the contracts, including the release of value added tax payments.”

Although not mentioned in the indictment, the company at issue is Smartmatic (and related entities).

The individuals charged with Foreign Corrupt Practices Act offenses were:

- Roger Alejandro Pinate Martinez (a citizen of Venezuela and resident of Florida described as a cofounder, Chief Operating Officer and President of Company 1 who was also and employee of Company 2); and
- Jorge Miguel Vasquez (a citizen of the U.S. and executive for Company 2 in Florida who managed hardware development and manufacturing worldwide for Company 1 who reported to Pinate).

In addition, Pinate, Vasquez and Juan Andres Donate Bautista and Elie Moreno were charged with a variety of money laundering offenses.

- Bautista is described as the Chairman of COMELEC (an independent agency mandated to enforce and administer election laws in the Philippines) from on or about April 28, 2015, to in or around October 2017.
- Moreno is described as follows: “a dual citizen of Venezuela and Israel, was a Company 1 executive involved in managing Companies 1 and 3’s contracts with COMELEC in the Philippines. He served as project director for Company 3 and a Company 1 subsidiary in the Philippines, and he signed and implemented the 2016 Philippine elections contracts with COMELEC.”

Recently, Pinate and Vasquez filed a motion to continue deadlines in the case as a result of President Trump’s February 10th Executive Order titled “Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security.”

In summary fashion, the motion states:

“On February 10, 2025, the President issued an Executive Order pausing enforcement of the Foreign Corrupt Practices Act (FCPA), which, in relevant part, ordered the Attorney General to review existing FCPA prosecutions over the course of an 180-day period. In recent days and weeks, judges in other pending FCPA matters have stayed or continued deadlines in those matters, to allow that review to proceed without wasting the resources of courts or litigants.

The Defendants understand that the Department of Justice is presently reviewing this matter, and they are preparing a written submission in connection with that review, although the contours and specifics of that review remain unclear— who within the Department is conducting the review following the removal of the Fraud Section chief last week, based on what criteria and on what timeline. While this matter is not set for trial until October 2025, this Court has set a deadline of March 28, 2025, for dispositive motions. In light of the ongoing review, and the significant resources needed to prepare and file those motions, the Defendants respectfully request that this Court extend this lone deadline (and the deadlines for responses and replies) by 30 days. Mr. Piñate’s counsel has conferred with the government on this request, and the government has advised that it will review the Defendants’ motion and respond accordingly.”

Securities Law

March 17, 2025, 11:04 AM PDT

Matt Levine's Money Stuff: Spies in the Sales Slack

Deel

I wonder how much corporate espionage there is? Like if you work in a high-touch, high-dollar sales business – enterprise software, investment banking, etc. – much of your time will be spent pitching new customers who are choosing between you and your competitors, or pitching customers who currently work with your competitors, or trying to retain customers who are thinking of switching to your competitors. If you knew what your competitors were up to, that would help. If you knew a competitor was coming into your customer's office next week to try to steal them away from you, and if you saw your competitor's pitch deck, you could take some actions. You could get to the customer first and offer a discount. You could see the arguments in the pitch deck and try to counter them. You could see what your competitor says about the features of its own product, and try to build those features into your product. It's not a magic cheat code – you still need a competitive product and pricing and good salespeople and all that – but it surely helps.

So, you know, find a salesperson at your competitor and recruit her. Not to quit your competitor and come work for you, but to *stay* at your competitor and *spy* for you. You give her quarterly bags of cash; she looks at your competitor's pipeline and keeps you up to date on who it is pitching and what it is saying. Obviously this is not legal advice – it seems problematic in all sorts of ways – but surely people try it from time to time?

The downside is apparently that, if you get caught doing this, you will get a hilarious lawsuit :

Workplace software company People Center Inc.–known as Rippling–is suing its chief competitor over alleged corporate espionage.

Both companies were valued in excess of \$10 billion in recent funding rounds.

Rippling, in its complaint, says Deel “cultivated a spy to systematically steal its competitor’s most sensitive business information and trade secrets,” in a deliberate attack that lasted for more than four months.

The alleged spy at Rippling–its Ireland-based Global Payroll Compliance Manager–was identified after he was observed accessing Slack channels and documents with no legitimate reason to do so, the complaint says.

On March 12, Rippling sought and obtained an order from Ireland’s High Court to seize the alleged spy’s phone. When served, the purported spy feigned compliance before “hiding in the bathroom and then fleeing the scene,” the complaint says.

A Deel spokesperson said Rippling was attempting to deflect negative attention from itself.

"Weeks after Rippling is accused of violating sanctions law in Russia and seeding falsehoods about Deel, Rippling is trying to shift the narrative with these sensationalized claims," the spokesperson said. "We deny all legal wrongdoing and look forward to asserting our counterclaims."

Sorry but, yes, that *absolutely* works: If you are ever accused of violating sanctions laws, please do bring a sensational spying lawsuit against your competitor; that will certainly distract *me* anyway. This is not legal or public relations advice; it's just an expression of my own interests. Anyway here is Rippling's complaint, which refers to the alleged spy as "D.S.," for "Deel Spy." The guy allegedly lurked in a bunch of Slack channels devoted to Rippling's sales process, so he could channel information back to Deel:

Guided by "Deel" as his primary search term, D.S. surreptitiously accessed Rippling Slack channels replete with its Sales and Marketing Trade Secrets and proprietary and confidential information. The channels accessed by D.S. contain highly sensitive and confidential information about existing customers and prospective customers, including details such as the customer's name, contact information, revenue at issue, the current issues or problems the customer is facing, and details of sales and relationship conversations between Rippling and its customers or prospective customers. All of these are details that a competitor, such as Deel, could exploit to convince such customers to purchase their products rather than Rippling products.

It's not clear how much this *actually* helped Deel, but there's at least one suggestive case:

D.S. navigated to a mention of Deel in a channel focused on a particular prospective customer who was considering both Rippling and Deel ("Prospect B").

D.S. previewed the channel, which included details for a call scheduled with Prospect B the next day and communications in which Prospect B relayed to Rippling specific concerns with the products and services offered by Deel. The channel also contained the Rippling sales team's internal pitch strategy discussion, including confidential details about how Rippling planned to highlight certain advantages of its products to address the prospect's pain points with Deel's offerings. ...

On February 20, 2025, the day of the scheduled call between Rippling and Prospect B, D.S. previewed the Prospect B-related channel sixty-six (66) times.

Later that day, Prospect B abruptly canceled the scheduled call with Rippling in which Rippling was going to deliver its proposal – and explained that they were doing so because they had decided to select Deel for the product they were interested in, even though Rippling believes that customer would have been better served by Rippling.

If you had your competitor's whole pitch deck for a potential customer you both wanted, that wouldn't *guarantee* you a win, but it might help.

Anyway most of the fun of the lawsuit is the tradecraft. Rippling apparently discovered the alleged spy *not* because he was snooping on their sales information, but because “an investigative reporter at *The Information* contacted Rippling about a forthcoming article concerning Deel’s Russia-related sanctions activity” and asked Rippling about *its* dealings with Russia. The reporter included “internal Rippling Slack messages” in his email, and Rippling investigated who might have accessed those messages and quickly identified the alleged spy. The possible lesson here is that tech companies are *much* more sensitive about leaks to journalists than they are about sharing sales information with competitors, so if you are doing corporate espionage don’t blow up your spot by trying to plant negative stories. (Not any sort of advice!)

Having identified the spy, Rippling then tried to prove that he was working for Deel:

The smoking gun came earlier this month, when Rippling set forth a test, or what is known by security professionals as a “honeypot.” ... To confirm Deel’s involvement, Rippling’s General Counsel sent a legal letter to Deel’s senior leadership identifying a recently established Slack channel called “d-defectors,” in which (the letter implied) Rippling employees were discussing information that Deel would find embarrassing if made public. In reality, the “d-defectors” channel was not used by Rippling employees and contained no discussions at all. It had never been searched for or accessed by the spy, would not have come up in any of the spy’s previous searches, and the spy had no legitimate reason to access the channel. Crucially, this legal letter was only sent to three recipients, all associated with Deel: Deel’s Chairman, Chief Financial Officer, and General Counsel (Philippe Bouaziz), Deel’s Head of U.S. Legal (Spiros Komis), and Deel’s outside counsel. Neither the letter nor the #d-defectors channel was known to anyone outside of Rippling’s investigative team and the Deel recipients. Yet, just hours after Rippling sent the letter to Deel’s executives and counsel, Deel’s spy searched for and accessed the #d-defectors channel—proving beyond any doubt that Deel’s top leadership, or someone acting on their behalf, had fed the information on the #d-defectors channel to Deel’s spy inside Rippling.

Pretty good! Good enough to get an Irish court order to seize the alleged spy’s phone, at which point he ... also did tradecraft:

D.S. initially told the independent solicitor that his cell phone was in a bag on another floor. The solicitor offered to have an associate retrieve the bag, but D.S. insisted that he retrieve it himself. The solicitor informed D.S. that if he was lying, he would be breaching the court order. The solicitor accompanied D.S. downstairs and took possession of the bag, but, in fact, D.S. had lied. The bag only contained a notebook. It held no mobile device. On information and belief, D.S.’s cell phone was on his person the entire time.

After misdirecting the independent solicitor, D.S. then went into a bathroom, locking the door behind him and refusing to come out, despite the independent solicitor’s repeated warnings that these actions were in violation of the court order. Rather than comply, D.S. was heard “doing something” on his phone by the independent solicitor, who also heard D.S. flush the toilet – suggesting that D.S. may have attempted to flush his phone down the toilet rather than provide it for inspection. Later that day, Rippling had the plumbing of its Dublin offices inspected, but did not locate any mobile devices.

While in the bathroom and continuing after leaving the bathroom, D.S. was again told repeatedly that he was required to provide the device or he would be in violation of a court order. After D.S. left the bathroom, he was informed that taking another step forward rather than handing over the phone immediately would be an additional breach of the order. D.S. then replied: "I'm willing to take that risk." D.S. then stormed out of the office and fled the scene.

When they come to raid your office, locking yourself in the bathroom until they go away probably won't *work* (not legal advice!), but it will make you something of a legend. Also imagine dredging the toilets for the possible spy phone.

Merger arb

Here's a little puzzle. In 2023, Chevron Corp. agreed to acquire Hess Corp. in an all-stock merger. The merger price is 1.025 Chevron shares per Hess share. About a year ago, Exxon Mobil Corp. filed for arbitration to try to stop the deal: Hess's most important asset is a minority interest in an oil project in Guyana operated by Exxon, and Exxon claims that it has a right of first refusal to buy that stake. Hess and Chevron disagree, arguing that the right of first refusal applies to a sale by Hess of its interest, but not a merger of Hess itself. We talked about the case last year, and it is "scheduled to be heard in May with a decision by September."

So (1) the closing of the Chevron/Hess deal is still a ways off and (2) it is not certain, because Exxon might still block it. So Hess trades at a discount to the deal price. This past Friday, Chevron closed at \$157.02, implying a price of \$160.95 per Hess share. Hess, however, closed at \$148.13, about an 8% discount to the deal price.

I don't know who will win the arbitration, but let's say you do. Let's say you are an expert in international oil project litigation and you are highly confident that Chevron is right and will win in arbitration. What should you do with that information? An obvious thing to do would be the merger arbitrage trade: Buy a share of Hess for \$148.13, sell short 1.025 shares of Chevron for \$160.95, pocket the \$12.82 difference and close out the trade in September when the deal closes as you expect. Obviously this trade can backfire if you're wrong, but if you're confident in it it's free money.

And in fact I assume a lot of merger arbitrageurs have analyzed the situation and done either this trade (long Hess, short Chevron to bet on the deal closing) or else the opposite (betting on Exxon winning). (The spread being only 8% suggests mostly the former.) And you could imagine them getting new information that would change their minds: Perhaps they might read Exxon's or Chevron's brief in arbitration, or learn something about one of the arbitrators, that caused them to update their beliefs and become more or less confident that the deal will close. For instance, the spread widened last July when the market learned that the arbitration hearing wouldn't happen until this May, a slower schedule than the market expected.

You know who probably has better information about the state of the arbitration than you do? Chevron. So here's a trade :

Chevron Corp. bought nearly 5% of Hess Corp. as a show of confidence that it will win the arbitration battle with Exxon Mobil Corp. that has delayed the Hess takeover for more than a year.

Chevron bought 15,380,000 Hess shares between January and March this year, the Houston-based company said in a statement, and the stake is worth about \$2.3 billion at today's price. The purchases were made at a discount to the price implied by Chevron's \$53 billion all-stock takeover of Hess agreed in 2023.

The purchases "reflect Chevron's continuing confidence in the consummation of the pending acquisition of Hess," the company said.

Here's the announcement, which notes that Chevron bought the shares "at prevailing market prices in open market transactions."

Is that ... allowed? Is it insider trading? Well, not legal advice, but a few points here:

Chevron has, in some sense, told you everything that it knows: It has consistently said it is confident in its position and expects the merger to close. You might not believe it; you might not ascribe as high a probability to the deal closing as Chevron does. You might therefore sell Hess's stock at a discount to the deal price. But that's not Chevron's problem! To the extent insider trading is about fairness, Chevron hasn't done anything unfair: It has told everyone that the deal will close, and then it has acted accordingly.

- But let's say that Chevron *does* have some material nonpublic information that merger arbitrageurs don't know about. Let's say Chevron knows some hard facts that make it very confident in the deal closing, and if it disclosed those facts – rather than its generic statements of confidence – Hess's stock would go up. (Maybe Chevron went to a closed-doors confidential arbitration hearing and the arbitrators winked at Hess's lawyers.) But insider trading law, in the US, is *not* exactly about fairness. The question is not just "do you know something the market doesn't know" but also "do you have some duty to someone to keep that information confidential and not trade on it?" Here it is not clear. Companies aren't supposed to trade their *own* stock while they have material nonpublic information (because they have fiduciary duties to their shareholders), but Chevron didn't trade its stock; it traded Hess stock. Did Chevron have some duty to Hess not to trade? Does it have some obligation to, like, the arbitration process not to use any information it learned? I dunno; this kind of feels like my rule of thumb that you are allowed to trade on nonpublic information about your own intentions, which in this case means Chevron's information about its intention to close the merger.
- On the other hand, if Chevron was *shorting* Hess's stock to bet *against* the deal closing, that would obviously be bad! But it's not.

Private rooms

There are two basic ways for financial assets to trade.

1. There is the *exchange model*: There's a central electronic platform where everyone can send their orders to buy or sell assets, and if you want to buy you send your order to the platform, which matches you with someone who wants to sell.

- 2. There is the *dealer model*: There are some firms that are in the business of buying and selling assets for their customers, and if you want to buy you call up your dealer, who sells you the asset.

Broadly speaking, some markets are pretty exchange-y (most stock trades), and some markets are pretty dealer-y (many types of bonds), and many are mixed. And my anecdotal impression is that in every dealer-driven market, there are a lot of people who want it to become more exchange-based: Bond investors spent a long time dreaming about "all-to-all" electronic trading platforms where they could trade with each other directly rather than calling up dealers, and those platforms have gradually become real.

And then in every market that is very exchange-driven, there is an offsetting desire for a dealer model, where you just call one dealer and trade with it directly. Bloomberg's Katherine Doherty reports :

Wall Street's infamous dark pools are getting even darker.

They're offering what are dubbed private rooms, gated venues that take the core benefit of a dark pool – the ability to hide big equity deals so they won't impact prices – and add exclusivity, specifying exactly who can partake in any trade.

Created within the dark pools themselves, the rooms are independent from one another and each is invisible to anyone not invited, raising questions about both market transparency and fragmentation. But with more than half of all US stock trading now happening away from public exchanges, they're in high demand from firms eager to choose whom they do business with, often to help them carry out individual orders more efficiently.

There are various use cases – she mentions one private room where "the participants are all minority-operated brokerage firms" – but a big one appears to be that smaller dealers want to have a place where they can trade with customers:

Private rooms are not generally needed by big banks or brokers who have the resources to create their own ATS or what are called single-dealer platforms. That's another breed of off-exchange trading venue where the operator is always the counterparty to any trade.

But for smaller players, it's too expensive and cumbersome to build and manage an ATS or SDP, meet the associated regulatory reporting requirements and set up the necessary connections. Arranging a private room at an established ATS is a solution. ...

At IntelligentCross, the majority of rooms currently offered serve institutional brokers that don't have capacity to conduct similar activities internally. Jefferies trades in a private room provided by the firm where it interacts with seven other brokers who don't have their own ATS, but have institutional orders, according to [Jefferies head of quant strategy Jatin] Suryawanshi.

Bloomberg Intelligence's Larry Tabb and Jackson Gutenplan wrote about private rooms last year:

Historically, traditional asset managers have been loath to route orders to a single market maker. This is changing. Though routing orders directly to market makers gives them sensitive information, their performance can also be measured. If the experience is determined to be poor, the fund can terminate the relationship. Using a third-party ATS also provides both the client and provider easier access, there's less maintenance and communications lines don't need to be installed or supported.

If you are a bond investor, and you want to trade with a single dealer, it's easy enough: You call your dealer on the telephone and ask for a price on a bond. If you are a stock investor, and you want to trade with a single dealer, you could do that too – some big blocks of stock still trade on the phone – but things are increasingly electronic and no one is going to answer the phone for 100 shares of stock. If you send your order to the stock exchange, or even to a dark pool, you have no idea who you'll be trading with. If you send your order to the Jefferies room at IntelligentCross, you do. (It's Jefferies.)

Jefferies, meanwhile, will be hesitant to post good prices on the stock exchange, because everyone trading on the stock exchange at this point is a predatory high-frequency trader and Jefferies is properly scared of them. But it can offer good prices in its private room, because the only other people there are "seven other brokers who ... have institutional orders." ("Brokers who take orders to private rooms typically expect to fill the order at the midpoint of the national-best-bid and offer, or NBBO," writes Doherty, so, good prices.) The problem with an all-to-all electronic market is that everyone can trade on it, and sometimes you just want to trade with people you know.

Art margin calls

I wrote last week about luxury watches and their correlation to the stock market. What I said was:

One of my toy theories about alternative investments is that stocks trade every day and you can observe their prices instantly, while less liquid alternatives tend to trade less frequently, particularly during equity-market crashes. (If your hedge fund implodes, you stop buying new watches, but you probably don't go sell your AP that week.) So when some general economic effect causes a broad decline in asset values, stock prices go down instantly, but various illiquid alternative prices go down six months or a year later. Which, depending how you measure it, looks like low correlation.

A famous stylized fact about finance is that "in a crisis all correlations go to one." Part of this is psychological – if you are very worried, you'll be worried about everything, so you'll sell all your risky assets – but a lot of it has to do with leverage: If you are a levered investor and some assets go down, you will get margin calls requiring you to repay some of your loans, and you will sell your *other*, better assets to raise cash to meet the margin calls, and that will drag down the prices of the good assets too.

And one reason to think that a lot of illiquid alternative investments aren't correlated to the stock market is that they are less susceptible to that dynamic. If your stocks go down and you get margin calls, you probably *don't* sell your watch to meet them. (In part because the watch market is less liquid.) Also your watch isn't itself margined: Many public financial assets (stocks, bonds, etc.) are held by highly levered players with short-term loans who will get margin calls if stocks decline, but illiquid alternative assets tend to be either owned outright or at least financed with long-term debt with no margin calls. This is in part *because* there is no liquid public market for the assets: If your lender can't get a daily mark-to-market value on your watch portfolio, it can't know when to send you a margin call.

Naively I would have thought this was all pretty true about the fine art market but, nope, margin calls. The Financial Times reports:

Top art lenders have asked borrowers for more pictures as security for their loans because the value of their collateral has tumbled in an art market slowdown.

Specialist lenders in the \$40bn sector have issued margin calls as the value of paintings pledged against loans has fallen, asking borrowers to make up for the decline by handing over cash or swapping in more expensive artworks. ...

Sotheby's, which has a loan book of \$1.6bn and launched a bond backed by its art loans last year, had made margin calls because "there are very few categories where the value of art has gone up in the last 24 months", said Sotheby's Financial Services global head of lending, Scott Milleisen. ...

Lenders said margin calls in the art finance sector were relatively rare. Banks ideally tried to prevent triggering margin calls on their clients by making them aware of any gap in advance, said Adam Russ, global head of wealth management and business lending at Deutsche Bank.

"Whether it be particular artists not performing or a glut of paintings from any artist coming to market, that might lead to a conversation," he said.

I suppose the way to read this is that there actually *is* a pretty liquid transparent market in certain categories of art ("Lenders generally ... prefer Impressionist and Modern works over those of emerging artists without a proven auction record"), so you really can get a decent mark-to-market on a piece of art ("Even in strong markets you sometimes see some artists going down in value because of the trends and whims of some artists' markets," says a Christie's executive), so you can sensibly do margin calls.

Elsewhere in art and correlation, the Wall Street Journal reports:

When the Swiss banking giant UBS bought its rival Credit Suisse in 2023, it got roughly a half of a trillion dollars in assets as well as customers and offices around the world. It also took on a fleet of model ships, and more than 13,500 artworks, including pieces by Swiss artists Ferdinand Hodler and Félix Vallotton, as well as piles of decorative posters. ...

Still outstanding is the thorny integration of all of that Credit Suisse art. The key questions for UBS's department are whether to store, display, sell or donate it.

There were some fire sales:

Take the hundreds of decorative posters that UBS found within Credit Suisse. Framed depictions of everything from landscapes to the abstract, the posters weren't UBS collection material. The bank decided to sell the posters to employees, who jumped at the chance to buy them. The sale was so popular it ended a day early.

"When a global bank fails that can lead to a massive liquidation of assets" is pretty uncontroversial when you are talking about, like, bonds, but it might also be roughly true – with a lag – about art.

Things happen

UBS Awards CEO Ermotti \$17 Million Amid Political Scrutiny. Investors seek to profit from Russia as Trump pursues rapprochement. Lutnick Puts Cantor's Bankers 'A Few Laps' Ahead in Trump Era. Cerberus Prepares for Life After Feinberg as Founder Heads to DC. US listings often fail to boost European companies' valuations. In Search of a Boring Business. 100 Fans Are Ready to Sue Tool.

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- 1. That is: "D.S. frequently accessed various channels in 'preview' mode – allowing him to see the contents of the channels without 'joining' them. Although it is more common for Slack users to join a channel to review its contents, joining a channel generates an automated message to the members of the channel identifying the new user who has joined. On information and belief, D.S. chose to review the channels in question in preview mode to avoid alerting the channels' members that he had accessed them."
- 2. From the complaint: "On information and belief, D.S. conducted these searches to assist Deel's communications team ... in an effort to reframe an upcoming story about Deel's sanctions issues into one about a Deel-versus-Rippling rivalry."
- 3. Not investing advice, and not actually free money, or that much after considering time value and borrow costs. Still, something.
- 4. Also it bought 4.99% of Hess, a magic number to keep it under the US securities disclosure threshold.
- 5. One way to put it is that the insider trading rule is "disclose or abstain": If you have material nonpublic information, you have to either disclose the information before trading, or not trade. Chevron has disclosed the main point of the information it has, which is that it thinks the deal will close.
- 6. If it was really doing the merger arb, it would have sold its own stock to pay for the Hess stock, but of course it didn't. (It bought back stock instead).

- 7. There are some information-sharing confidentiality provisions in the merger agreement, so maybe, but no standstill.

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Wall Street Goes All In on Great Crypto Comeback Fueled by Trump

It was only three years ago that a dispute between an infamous crypto billionaire and a titan of the financial establishment became the center of attention at an annual event known as the Davos of the derivatives market.

The dust up between FTX founder Sam Bankman-Fried and Terry Duffy, the boss of the US's largest futures and options exchange, was emblematic of Wall Street's skepticism then about a new generation promoting digital assets and the crypto bigwig's plans to change the way derivatives trade.

But that was then. This year, as executives from the world's largest exchanges and trading firms prepared to head to the Futures Industry Conference in the crypto hotbed of Florida, President Donald Trump announced he was creating a strategic Bitcoin reserve — a move that's symbolic, but one that effectively entrenches the legitimacy of digital assets as mainstream financial instruments.



Donald Trump speaking during the White House Digital Assets Summit with crypto czar David Sacks, right, and Treasury Secretary Scott Bessent on March 7.

Photographer: Chris Kleponis/CNP/Bloomberg

For Wall Street firms that had only dipped their toes in the crypto space, the next four years present an opportunity to make inroads in an industry that's swiftly gained momentum amid the Trump administration's embrace. On Thursday, Bloomberg News reported that World Liberty Financial Inc., one of the Trump family's crypto ventures, has discussed doing business with the world's largest digital-asset exchange, Binance Holdings Ltd.

That shift in sentiment was on full display at the conference, held at The Boca Raton hotel, where traditional finance executives this week rubbed shoulders with those in the crypto industry. One noticeable difference: This time, almost everyone was in suits, or at least a collared shirt; gone were the shorts-and-t-shirt uniforms so ubiquitous among the crypto crowd in times past.



The opening reception of FIA Boca50 conference in Boca Raton.

Photographer: Eva Marie Uzcategui/Bloomberg

The entertainment also skewed older. The 1970s hitmakers Cheap Trick blasted their tunes for the likes of New York Stock Exchange President **Lynn Martin** and DRW Holdings founder **Don Wilson**.

"Crypto is back," **Catherine Clay**, head of derivatives at Chicago-based options powerhouse Cboe Global Markets, said in an interview. "We definitely have seen the re-emergence of the crypto theme back at Boca after a few years of it being pretty much absent."



Cheap Trick performing during the Boca event.

Photographer: Katherine Doherty/Bloomberg

Trump pledged to make the US the “crypto capital of the planet” during his campaign, and since taking office has worked to make good on his promises. He issued an executive order on digital assets and his top securities regulator has started a task force on crypto headed by Hester Peirce, a longtime advocate for the industry.

All of that is giving Wall Street confidence. Ken Griffin’s Citadel Securities, previously conservative in its approach to digital assets, is now looking to get more involved as a liquidity provider for cryptocurrencies. CME Group Inc. is expanding by launching Solana futures after overtaking Binance as the world’s largest Bitcoin derivatives exchange. Intercontinental Exchange Inc., which had stayed away, sees opportunities to step in and compete with rival CME, according to people familiar with the matter.



Catherine Clay

Photographer: Eva Marie Uzcategui/Bloomberg

Even exchanges abroad are jumping on the bandwagon. At the conference, the Singapore Exchange Ltd., or SGX, announced plans to list Bitcoin perpetual futures in the second half of the year. The company said its first digital asset contract will strictly target institutional clients.

“By the end of the year, there will be a lot more firms charging into crypto,” said **Jeanine Hightower-Sellitto**, chief commercial and strategy officer at EDX Markets LLC, a digital-asset firm backed by Citadel Securities. “There’s been a substantial shift in the past two and a half month, ever since inauguration day.”

For Wall Street, this year’s event also brought a reckoning: the blockchain that created and electronically-stored cryptocurrencies will be key to the shift to trading US stocks 24 hours a day, seven days a week.



Don Wilson

Photographer: Eva Marie Uzcategui/Bloomberg

"There was a previous year where there was a lot of hype around crypto," said DRW's Wilson, who also co-founded crypto firm Digital Asset. "But this year there is a recognition that using blockchain is actually going to be an important part of how we move to 24-7 trading."

Crypto fell out of favor after Bankman-Fried was convicted of fraud following his firm's collapse in 2022. His FTX exchange had sponsored a late-night cocktail party by the beach in Boca that year, offered branded swag from its mega-booth in the exhibition hall, and hosted a fireside chat with baseball star turned business man **Alex Rodriguez**. Because he was throwing money around, everyone from US regulators to politicians and even **Tom Brady** were willing to listen.

Not Duffy. The long-time head of CME, who started his career in the trading pits of Chicago in the 1980s, wasn't buying Bankman-Fried's ambitious plans. FTX wanted to handle every aspect of customers' crypto derivatives needs on its own, using algorithms rather than brokers to help clear trades.

"I listed crypto at CME in 2017, that's long before I even knew who Sam Bankman-Fried was," Duffy said in an interview this year. SBF's plan "was dangerous from a perspective of risk management," he said.



Terry Duffy

Photographer: Eva Marie Uzcategui/Bloomberg

Duffy has been open about their 2022 encounter at the hotel bar in Boca, calling it “a little dust up.” In an previous interview with Bloomberg, he recalled telling Bankman-Fried that he was a fraud and saying that he had more money in his right pocket than the crypto executive was worth. His view seemed to be vindicated when FTX filed for bankruptcy in late 2022, exposing a yearslong fraud that prosecutors said swindled about \$10 billion from customers, investors and lenders.

What followed the FTX fallout was a huge crypto crackdown by regulators under President Joe Biden. The Commodity Futures Trading Commission, the US’s top derivatives regulator, recovered a record \$17.1 billion in enforcement actions last year, with large sums coming from digital asset cases against FTX and Binance.



Sam Bankman-Fried arriving for a bail hearing at Manhattan Federal Court in August 2023.

Photographer: Michael M. Santiago/Getty Images

As a result, some companies pro-actively scaled back and turned to financial hubs overseas such as Dubai, Singapore and Hong Kong. Trading giants Jump and Jane Street pulled back their crypto market making in the US. Cboe shut down its spot crypto business due to lack of regulatory clarity out of Washington.

Since Trump took office, guardrails have already started to come down. Last month the US Securities and Exchange Commission closed its investigation into Robinhood Markets Inc.'s crypto operations, and won't pursue any enforcement action. It also dropped its lawsuit accusing Coinbase Global Inc., the largest US digital assets trading platform, of operating an illegal exchange.

In the last month alone, the SEC dismissed or paused at least 10 cases against crypto companies.

A quickly evolving regulatory environment is opening doors for institutional investors to get more involved in crypto, said **Elisabeth Kirby**, the head of market structure at Tradeweb, a company that operates an over-the-counter marketplace for rates, credit, money markets and equities, including crypto ETFs.

Banks are also plotting ways to win more crypto business. Morgan Stanley, which hadn't been a major presence in the space, is now courting potential clients for initial public offerings. Bank of America Corp.'s senior executives are discussing a potential push into facilitating deals for digital asset firms, while Royal Bank of Canada is looking to do more business after working on its first crypto deal late last year.



FIA Boca50 conference in Boca Raton.

Photographer: Eva Marie Uzcategui/Bloomberg

At the conference this week, the tone was cooperative. Conversations centered around how traditional finance and the crypto industry can work together.

Even Duffy says he's now rooting for the success of crypto — after all, average daily volume for digital assets at CME surged more than 200% last year, with transactions valued at \$6.8 billion.

"We listed Bitcoin, then we listed Ether, now we just announced we're going to list Solana," Duffy said. "I want to see crypto become more mainstream."

--With assistance from **Bernard Goyder** and **Isis Almeida**.

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Isis Almeida, Brendan Walsh

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Byju's Alpha Official Appeals Ruling on Funds Hidden From Lenders

- Official violated fiduciary duty to lenders, judge said
- Lenders seek to recover \$533 million in 'stolen funds'

An official from Indian tech firm Byju's Alpha Inc. is appealing a US court decision that he helped hide \$533 million from lenders, violating fiduciary duties.

Riju Ravindran and hedge fund Camshaft Capital Fund LP filed an appeal Thursday in the US Bankruptcy Court for the District of Delaware after Judge John T. Dorsey ruled Feb. 27 that they fraudulently transferred funds to the hedge fund, concealing them from lenders.

Ravindran is the brother of Byju Raveendran, the company's founder.

Alpha was created as a "special purpose financing vehicle" by its parent company, Think and Learn Private Limited, to raise funds for BYJU's overseas expansion. Alpha and its affiliates failed to meet certain loan covenants during March and April of 2022, leading to defaults on their term loans, according to Dorsey's opinion.

Shortly after the defaults, Alpha initiated a series of four fund transfers from April to July 2022, totaling \$533 million, to Camshaft through wire transfers. In return, Camshaft provided Alpha with a limited partnership interest, according to the court filing.

Camshaft then used the funds to extend "loans" to OCI Limited, a British commercial process outsourcing supply chain specialist, under promissory notes. The responsibility for any default by OCI rested with Alpha, not Camshaft.

Ravindran was sanctioned last year for refusing to answer questions about the funds that lenders have been trying to track down.

Lenders in a statement last month said Dorsey's ruling was a "significant step forward in the lenders' efforts to recover the stolen funds that are rightfully owed to them."

The bankruptcy case, initiated by GLAS Trust Co. LLC and other firms that lent \$1.2 billion to Alpha, is being used to recover the missing funds.

Klein LLC and Van Tol Law PLLC represent the appellants. Quinn Emmanuel Urquhart & Sullivan LLP and Young Conaway Stargatt & Taylor LLP represent Alpha.

The case is BYJU's Alpha, Inc. v. Camshaft Capital Fund, LP , Bankr. D. Del., No. 24-50013, appeal 3/13/25 .

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Bancor DAO Defaults in Asset Safety Lawsuit, Allowing Appeal

- Investors can proceed with appeal against other defendants
- Decentralized group served with approved alternative process

Cryptocurrency investors obtained an entry of default against Bancor DAO, an organization that runs the Bancor digital asset exchange, on claims that the platform “suspended” its promised protection of their assets.

The order of the US District Court for the Western District of Texas, issued Thursday, clears the way for the investors to appeal the dismissal of claims against Bancor’s founders and related entities.

The investors told the court earlier the same day that they’re entitled to the default because more than 12 months have passed since they served Bancor DAO through court-approved alternative means and the organization has made no appearance or defense. The alternative means included publishing a message on the organization’s online “governance forum,” according to the filing.

The alternative service—and complications surrounding a decentralized organization that won’t make an appearance in court—illustrate new legal issues accompanying blockchain technology and culture.

The investors sued Bancor DAO; related entities BProtocol Foundation and LocalCoin, Ltd.; and the platform’s four co-founders. Bancor touted protection against certain losses from investing crypto assets in an exchange rather than holding the assets, the investors said. But withdrawals analogous to a bank run caused Bancor to “suspend” its protection, leaving investors with millions of dollars in losses, they said.

Judge Robert L. Pitman ruled in September that the individuals and other entities—all based in Israel or Switzerland—lacked sufficient contacts for personal jurisdiction, and also said extraterritoriality concerns made US securities laws inapplicable.

He reopened the case in December, reinstating Bancor DAO, an unincorporated general partnership “not registered in any jurisdiction,” because it wasn’t among the defendants that asked for dismissal. And he denied the investors’ request for a partial final judgment to allow for an immediate appeal. The new entry of default will allow for a final judgment.

Hoppin Grinsell LLP and Silver Golub & Teitell LLP are lead counsel for the investors. Bancor DAO hasn't made an appearance. Counsel for the other defendants includes Jenner & Block LLP and Ewell, Brown, Blanke & Knight LLP.

The case is Basic v. BProtocol Found. , W.D. Tex., No. 1:23-cv-00533, 3/13/25 .

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Manufacturers Fight for Proxy Firm Curbs as Trump SEC Sits Out

- Business group calls SEC's 2020 regulations 'commonsense'
- Agency withdrew from DC Circuit case before Trump took office

A business group rebuffed claims that 2020 SEC rules improperly limited firms counseling investors on how to vote at companies' annual meetings, as it defends the agency in court against proxy advisory firm ISS.

The Securities and Exchange Commission rules from the first Trump administration were "commonsense measures to protect investors," the National Association of Manufacturers said in a brief filed Thursday with the US Court of Appeals for the District of Columbia Circuit.

The manufacturers group is appealing a judge's decision to toss the regulations last year. Institutional Shareholder Services Inc. sued to stop the rules, saying the SEC overstepped its authority.

The business organization is the only challenger of the ruling following the decision by former President Joe Biden's SEC to ditch a separate appeal. The move likely keeps President Donald Trump's new SEC on the litigation's sidelines as the case proceeds.

The 2020 rules included anti-fraud and public filing requirements backed by business interests. Companies long have sought to curb ISS and Glass, Lewis & Co., which control most of the proxy advice industry.

"The SEC was well within its statutory authority over the proxy process to regulate the entities that exert perhaps the greatest influence on that process," the National Association of Manufacturers said in its brief.

An ISS spokesperson declined to comment Friday.

The filing from the manufacturers group came after ISS called on the DC Circuit to reject the business organization's bid to save the 2020 rules. Judge Amit P. Mehta of the US District Court for the District of Columbia in February 2024 ruled the regulations were invalid.

Companies have said ISS and Glass Lewis improperly sway votes on matters such as board director elections and environmental, social, and governance proposals. The proxy firms, which advise pension funds and other large investors, have denied the claims.

The US Chamber of Commerce, former Republican-appointed SEC commissioners, and others have backed the manufacturers group on its appeal. ISS has received support from the California Public Employees' Retirement System and other pension funds.

The DC Circuit has yet to schedule oral arguments in the case.

McDermott Will & Emery LLP represents the National Association of Manufacturers. Consovoy McCarthy PLLC and Pickard Djinis and Pissarri LLP represent ISS.

The case is Institutional Shareholder Services, Inc. v. SEC, D.C. Cir., No. 24-5105, brief filed 3/13/25.

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Wall Street's 'Private Rooms' Are Making Dark Pools Even Darker

Deep Dive

Wall Street's infamous dark pools are getting even darker.

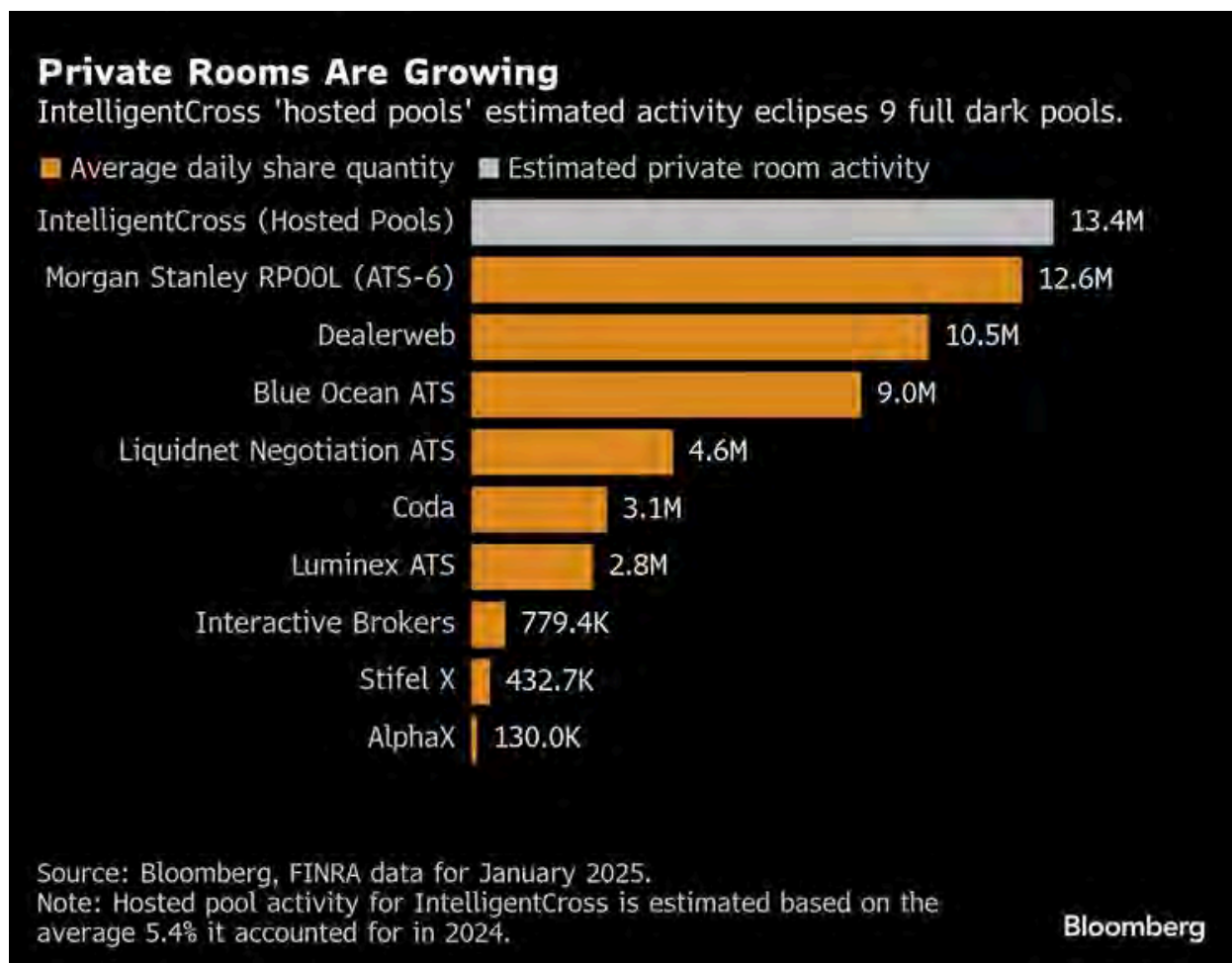
A decade after being engulfed by a controversy that culminated in multiple enforcement actions and a regulator clampdown, these off-exchange trading platforms are touting a way to buy and sell stocks that's even more opaque.

They're offering what are dubbed private rooms, gated venues that take the core benefit of a dark pool — the ability to hide big equity deals so they won't impact prices — and add exclusivity, specifying exactly who can partake in any trade.

Created within the dark pools themselves, the rooms are independent from one another and each is invisible to anyone not invited, raising questions about both market transparency and fragmentation. But with more than half of all US stock trading now happening away from public exchanges, they're in high demand from firms eager to choose whom they do business with, often to help them carry out individual orders more efficiently.

"It's like shopping when you know exactly the item you want, and who and where you are buying or selling it from, instead of going to Walmart on Black Friday," says David Cannizzo, the head of electronic trading at Raymond James and Associates. "You're controlling the terms of engagement."

Right now, it's impossible to say how many private rooms exist, or how much activity is moving through them. Companies operating alternative trading systems, or ATS — the formal term for dark pools — say it's a minority of their volumes at present, since the growth in demand is a relatively new phenomenon.



But they're seeing rapid adoption by everyone from broker-dealers and market makers to hedge funds and asset managers, so much so that private-room volumes at one major ATS — Stamford, Connecticut-based IntelligentCross — now eclipse the total trading activity at nine rival dark-pool operators.

Dark pools are so-called because the trades they handle happen away from the "lit" public exchange. That helps prevent order details leaking to the broader market and triggering adverse price moves before they can be executed. But there's still a downside: a pool is open to anyone, and firms inside never know who their counterparty is in any trade. Private rooms can be even more discreet.

"It's about exercising control, what liquidity a broker wants to interact with to achieve better execution quality," says Roman Ginis, CEO of Imperative Execution, the parent company of IntelligentCross.

There are myriad reasons why users may opt for private rooms. Take the case of CastleOak Securities, a New York-based minority-run brokerage. The firm wants to trade with similarly minded businesses, so it uses a private room provided by the ATS operator OneChronos.

Carlos Cabana, head of equity sales and trading at CastleOak, dubs the room a “diversity pool,” because the participants are all minority-operated brokerage firms. While in this instance CastleOak doesn’t know specifically who is on the other side of every trade, it knows it will be one of about 10 counterparties who meet certain eligibility criteria related to ownership and investment goals.

“Think of it as an apartment that’s hosting a party, and there’s one purpose for the party with only invited guests,” says Cabana.

Thanks to CastleOak’s increasing use of the diversity pool, OneChronos is now its third most-used trading venue, behind only the New York Stock Exchange and Nasdaq, Cabana says.

Execution Excellence

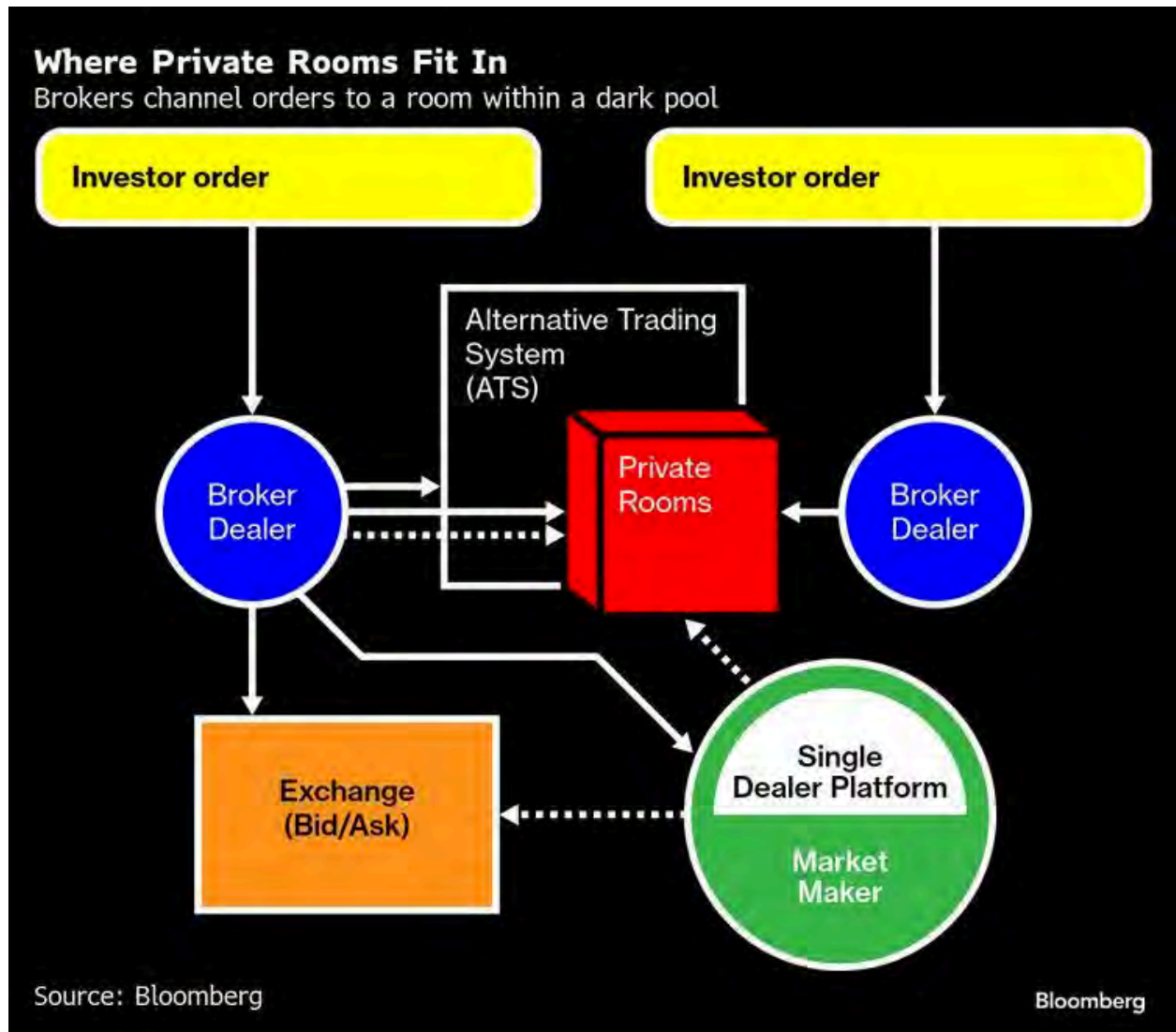
Private rooms are known by a slew of other names including hosted pools, restricted-access rooms, ATS pools, and custom counterparty groups. They’re gaining popularity in the huge, ultra-fast modern market as a way to help firms avoid losing out against players who may be able to move quicker or who have access to superior information.

For instance, many brokers and market makers are keen to take the other side of retail investor orders. Those small, less volatile trades are generally unlikely to impact prices — so a market maker won’t see an adverse move occur the instant it agrees to fill an order, as might happen with another type of counterparty.

High-Frequency Traders Love Business With Robinhood

Brokers who take orders to private rooms typically expect to fill the order at the midpoint of the national-best-bid and offer, or NBBO (assuming the rule of the room is set up that way, which is usually the case). If for some reason the order is not filled in the room at the midpoint, it can move to the broader ATS where multiple other parties can compete to fill it. And if a broker has bad experiences with a private room, they can change to another in the future, avoiding those counterparties.

“The problem we have is, how do we identify good versus bad liquidity?” says Jatin Suryawanshi, global head of quant strategy at Jefferies, who estimates that 15 in every 100 shares executed by the firm’s algorithms currently move via a room. “In using private rooms, you can prioritize who you want to interact with.”



The growth of private rooms has accelerated as their use has become more common and as stock trading has migrated away from public exchanges. Off-exchange activity has been rising for years in the US, and now frequently accounts for more than half of all recorded volume.

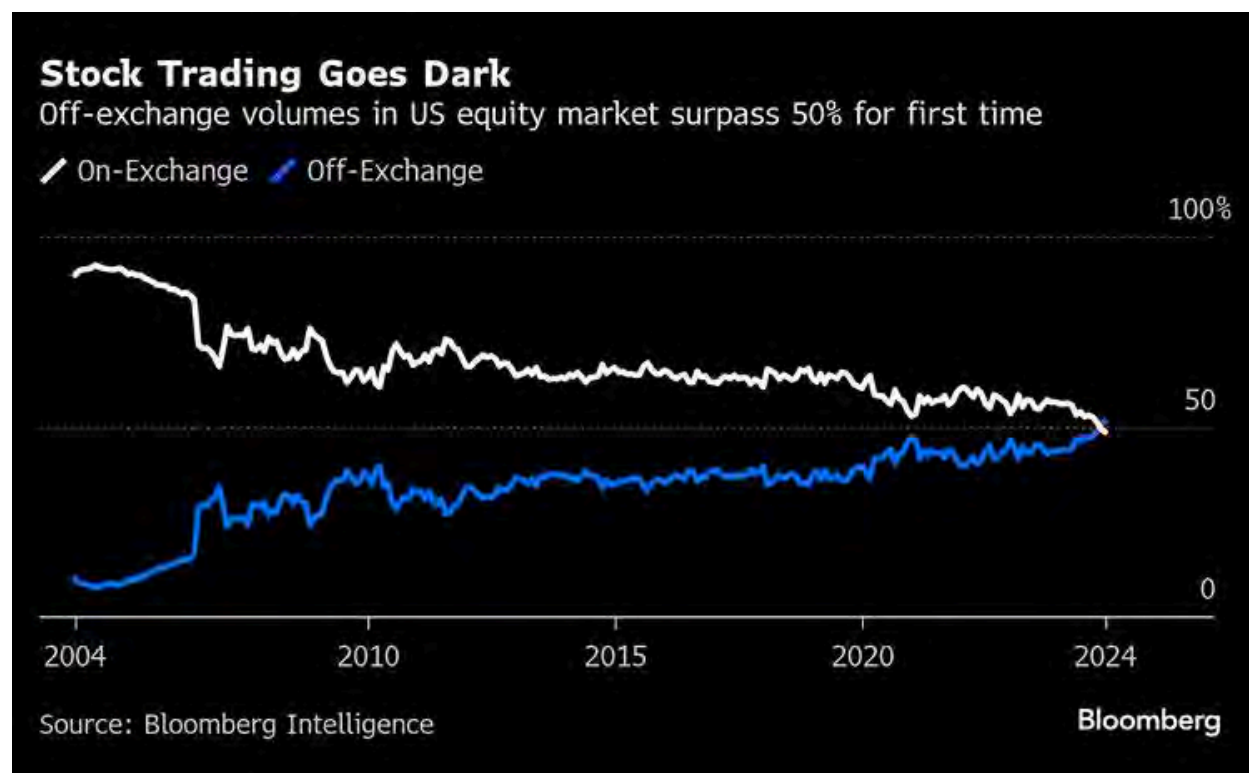
Private rooms emerged at the ATS firm Level as far back as 18 years ago. Level started by allowing firms to match their own orders, in what's known as internalization. That expanded to other forms of segmentation, including bi-lateral and multi-lateral agreements, where one party agrees to trade with another, or multiple parties agree to only interact with each other, within the same ATS.

Following requests from its own clients, IntelligentCross started offering its version of private rooms about a year-and-a-half ago, and OneChronos joined the party last year.

Private rooms are not generally needed by big banks or brokers who have the resources to create their own ATS or what are called single-dealer platforms. That's another breed of off-exchange trading venue where the operator is always the counterparty to any trade.

But for smaller players, it's too expensive and cumbersome to build and manage an ATS or SDP, meet the associated regulatory reporting requirements and set up the necessary connections. Arranging a private room at an established ATS is a solution.

"There are various factors of why a firm would want to outsource this activity than keep it in house," says Steve Miele, CEO of Kezar Markets, the parent of LevelL. "It could be a cost, an overhead they don't necessarily have to take on if we can build it, then scale it" using the existing network, he says. "We lower the barrier to entry."



At IntelligentCross, the majority of rooms currently offered serve institutional brokers that don't have capacity to conduct similar activities internally. Jefferies trades in a private room provided by the firm where it interacts with seven other brokers who don't have their own ATS, but have institutional orders, according to Suryawanshi.

"These are always created at the request of a subscriber, who is the host that invites others to be guests in their book," says Ginis at Imperative Execution.

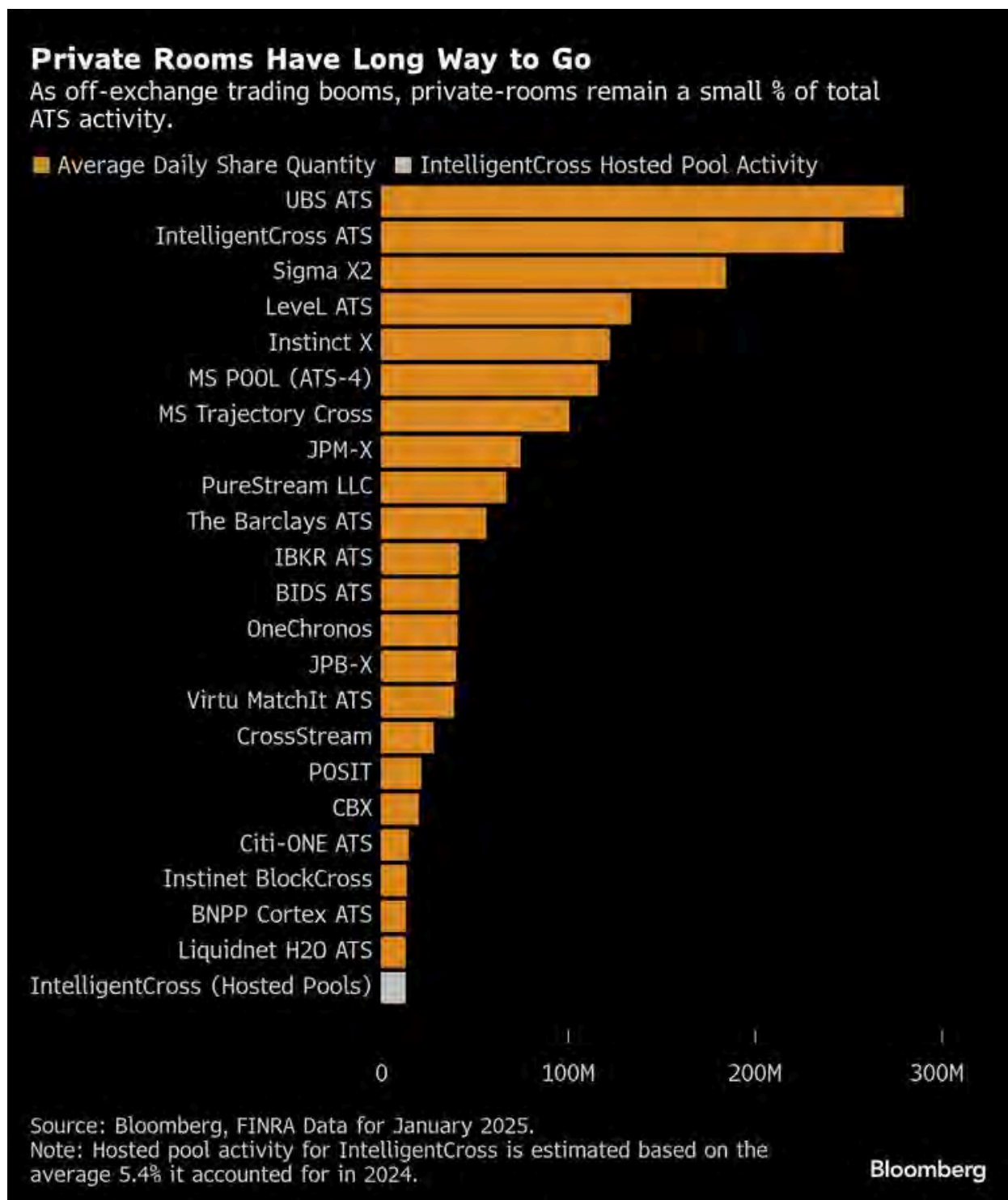
Dark Disclosure

Not every ATS is rushing to embrace private rooms. New York-based PureStream offers "pools" that operate like rooms, but they are disclosed to all subscribers if they are created, and anyone can join. In essence, the room is open to all.

So far no one has asked to set up a pool at PureStream, so there is zero volume in so-called sub-pools, according to CEO Armando Diaz. He says offering a private room that isn't open to all subscribers raises questions about the regulation. "The more the host controls the room, the more they are operating an ATS, and that opens up regulatory risk," he says.

Perhaps the biggest criticism of private rooms is that they create phantom liquidity, because transactions taking place inside a room are simply lumped in with the total activity reported by its dark pool parent. That creates a misleading picture for anyone trying to gauge market depth, since reported trading volumes include activity not available to those outside the room.

ATS are regulated trading venues, overseen by the Securities and Exchange Commission, which in 2018 enhanced its supervision of such venues by imposing new disclosure requirements. Each dark pool must now file a form, ATS-N, which gives an overview about the specific trading mechanisms on its platform.



These publicly available forms go into various details, including whether private rooms are available. But they don't say how many exist or who is in them, and the varying language and levels of disclosure used mean it can sometimes be difficult to determine if an ATS is even hosting any rooms.

Wall Street Dark Pools to Come Out of Shadows Thanks to SEC

"There are no rules to force ATS to break out the identity of single-dealer rooms or their volume," Larry Tabb, head of market structure at Bloomberg Intelligence, wrote in a May note. The Financial Industry Regulatory Authority "does a good job of ATS volume reporting on a post-execution basis. Yet there are no rules to aid analysts or users looking to break down the percentage of ATS volume executed in the open pool vs. the private room, or the volume executed using segmentation strategies," he wrote.

Dark pools are no strangers to transparency worries. Their opacity provoked extensive media coverage and regulatory scrutiny about a decade ago amid speculation they gave high-frequency firms advantages against other investors — attention partly prompted by the bestselling book *Flash Boys*.

Representatives for both Finra and the SEC declined to comment.

'Growth Mode'

For their users, private rooms are a handy tool, but still one of a set. Hosted pools represent a single-digit percentage of IntelligentCross's overall volumes for now — an average of about 5.4% last year — because they're so new, according to Ginis. "It will take brokers some time to optimize for this," he says.

CEO of OneChronos Capital Markets Vlad Khandros says its rooms represent less than 5% of volume at present as "it's newer for us, so it's still in growth mode." But demand is strong. "We've seen increased interest from both retail and institutional brokers," Khandros says. "The focus on execution quality will continue to grow."

LevelL declined to disclose the number of rooms it operates or how much activity takes place in them, with Miele saying the absence of industry-wide criteria for categorizing rooms means it could be "misleading to quantify."

Mark Gurliacci, senior vice president and senior quantitative trader at AllianceBernstein, reckons up to 75% of the firm's activity is now happening off-exchange, including in private rooms. While the latter is a small slice of their trading at present, he thinks it's set to grow.

"Many firms are setting up private rooms these days," says Gurliacci, who used to work for the NYSE. "They are innovative, and here to stay. There is more going on there than most people know."

(Updates with extra detail on the growth in off-exchange trading activity.)

--With assistance from Lydia Beyoud.

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BNY Sued Over \$17.7B Unregistered Barclays-Issued Notes

By **Sarah Jarvis**

Law360 (March 14, 2025, 8:11 PM EDT) -- A trio of investors has filed a proposed class action against The Bank of New York Mellon Corp. for allegedly failing to properly authenticate several exchange-traded note offerings from Barclays, leading to the sale of \$17.7 billion in unregistered securities.

The plaintiffs — Texas investors Aaron Dobbs, Charles Flowers and Barry Williams — brought their Thursday complaint on behalf of a proposed class consisting of anyone who acquired Barclays exchange-traded notes and had BNY Mellon as an indenture trustee from Feb. 21, 2019, through Sept. 12, 2022.

According to the investors, BNY Mellon's role as indenture trustee meant it was the gatekeeper charged with reviewing and authenticating the Barclays note offerings in question. The involvement of reputable trustees such as BNY Mellon "is typically taken as a crucial seal of legality and safety by the financial markets and public investors," per the complaint.

But BNY Mellon was "grossly negligent, acted in bad faith, violated its contractual duties under the indenture, and otherwise failed in its duties as indenture trustee," the investors said.

Those failures allowed Barclays to sell about \$17.7 billion in illegal note securities — "significantly beyond" the limits permitted by offering statements filed with the U.S. Securities and Exchange Commission — alongside billions of lawful, indistinguishable notes, to investors.

"Given that the lawfully issued Barclays notes were indistinguishable from the unlawfully issued ones and all notes were contemporaneously sold to public investors in the U.S. financial markets, those investors could not determine whether the particular notes they had purchased were lawful or illegal, and the entire pool of notes became tainted," the investors alleged.

After the unlawful note sales were eventually reported to the SEC and the SEC took action against Barclays, the value of the notes dropped and left investors with substantial financial losses, according to the suit.

In 2022, Barclays agreed to pay a \$200 million fine plus \$161 million in disgorgement and prejudgment interest to end the SEC's claims over the unregistered securities. The bank was also hit with investor class actions over the matter.

BNY Mellon declined to comment, and the investors didn't immediately respond to a request for comment on Friday.

The investors are represented by Michael Dell'Angelo, Andrew D. Abramowitz and Radha Nagamani Raghavan of Berger Montague PC and Alan L. Rosca, Paul J. Scarlato and Jonathan A. Korte of Rosca Scarlato LLC.

Counsel information for BNY Mellon wasn't available on Friday.

The case is Dobbs et al. v. The Bank of New York Mellon et al., case number 1:25-cv-02114, in the U.S. District Court for the Southern District of New York.



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Coupang Hit With Corporate Fraud, Waste Claims in Chancery

By **MJ Koo**

Law360 (March 14, 2025, 7:10 PM EDT) -- The officers and directors of tech company Coupang Inc., are facing a derivative lawsuit in Delaware Chancery Court — accused of corporate mismanagement, fraud and waste, including labor violations in South Korea.

In a 93-page complaint filed Wednesday, Coupang shareholders Justin Cave and Daniel Ritter allege that company executives enriched themselves while South Korean authorities investigated allegations of a poor work environment and unfair business practices. The shareholders also claim the company spent millions of dollars defending its actions in lawsuits.

"By their wrongful acts, violations of law, and false and misleading statements and omissions of material fact that they made and/or caused to be made, the individual defendants were unjustly enriched at the expense of, and to the detriment of, Coupang," the lawsuit alleges.

The 13 individual defendants named in the suit include Coupang CEO Bom Suk Kim and Chief Financial Officer Gaurav Anand.

Coupang is a Delaware-incorporated company with roots in Seoul, South Korea that went public in the U.S. in 2021 after becoming the biggest e-commerce platform in South Korea, the complaint says.

The complaint claims that the company experienced several scandals leading up to the IPO, including eight workers' deaths from overwork, a fire in one of its largest warehouses caused by a defective safety system and the manipulation of product search results, all while executives concealed and made false statements to the public.

Coupang executives also are facing **a separate lawsuit** in New York federal court for the allegedly false or misleading statements in the IPO public records.

In addition to incurring legal fees, Coupang was fined 140 billion won, equivalent to approximately \$102 million, Cave and Ritter stated in Wednesday's complaint.

In June 2024, the Republic of South Korea's Fair Trade Commission, a regulatory agency, imposed the fine for consumer deception as a result of an investigation initiated three months after the IPO, according to the complaint. The regulatory branch found out that Coupang's product search engine was designed to improperly favor its own products over third-party merchants' items, it says.

Aware of the KFTC's investigation, the executives directed Coupang workers to leave bogus positive reviews about Coupang products, the complaint added.

"Furthermore, the individual defendants caused themselves to receive excessive compensation from the company given their misconduct, thereby wasting the company's assets," the lawsuit stated.

A representative of Coupang told Law360 in an emailed statement, "We will continue to vigorously defend against all claims in this matter."

Counsel for the investors declined to comment Friday.

Cave and Ritter are represented by Timothy Brown of the Brown Law Firm PC. and Brian E. Farnan and Michael J. Farnan of Farnan LLP.

Counsel information for Coupang was not available Friday.

The case is Justin Cave and Daniel Ritter, derivatively, v. Bom Suk Kim et al., case number 2025-0277, in the Court of Chancery of the State of Delaware.

--Editing by Amy French.

Correction: A previous version of this story misstated where Coupang is based.

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Biotech Wins Dismissal Of Investor Fraud Claims

By **Brian Dowling**

Law360 (March 14, 2025, 6:02 PM EDT) -- A Boston federal judge on Friday dismissed a proposed investor class action against biotech Aldeyra Therapeutics Inc., ruling that the lawsuit's facts tend to support innocent explanations for executives' statements about its two drug prospects.

U.S. District Judge Denise L. Casper said **the lawsuit** brought by investors Joseph Lombard and John Levon failed to support allegations that the company tried to defraud investors by making misleading statements about its drug reproxalap, which treats dry eye disease, and its eye cancer drug known as ADX-2191.

The lawsuit also named as defendants Aldeyra's Chief Executive Todd Brady, its former finance chief Joshua Reed and its interim Chief Financial Officer Bruce Greenberg.

The investors said a drumbeat of positive news about reproxalap was silenced by an October 2023 update from the U.S. Food and Drug Administration that requested an additional clinical trial to prove that the drug worked.

The news tanked the Lexington, Massachusetts, company's stock by 66%, the complaint said.

Aldeyra had publicly said it believed it could advance its cancer drug with the FDA without performing clinical trials because ADX-2191 was a modification of an already approved drug. But regulators in June 2023 said they required more efficacy studies, allegedly triggering a 24% drop in Aldeyra's stock price.

The investors said Aldeyra had actual knowledge that the drug trials and studies bolstering the applications with the FDA would fall short of the agency's guidance.

But Judge Casper said the allegations tend to support nonfraudulent inferences. The complaint also doesn't point to a piece of evidence — such as an admission, record, witness discussion or other communications — that shows the company knew its applications would fall short, according to the ruling.

"Without facts to support their theory, plaintiffs' scienter allegations amount to their own scientific opinion," the judge said. "But a scientific disagreement cannot support a claim of securities fraud."

The judge also denied a request by the investors to amend the lawsuit if the court dismissed the complaint. The court said the investors didn't formally ask for the ability to amend and instead only added the request at the end of their opposition to the company's dismissal motion.

The lawsuit was initially filed by Juliana Paice, an investor in Aldeyra, but the court later named Lombard the lead plaintiff in the proposed class action because he said he had lost \$303,447 on his investments in Aldeyra during the class period, more than any other person seeking to lead the class.

Representatives for the parties were not immediately available to comment Friday.

The investors are represented by Casey E. Sadler and Natalie S. Pang of Glancy Prongay & Murray LLP and Stephanie R. Parker of O'Connor Carnathan & Mack LLC.

Aldeyra and its executives are represented by Deborah S. Birnbach, Laura Noerdlinger, Justin Ward

and Adam Slutsky of Goodwin Procter LLP.

The case is Paice v. Aldeyra Therapeutics Inc. et al., case number 1:23-cv-11737, in the U.S. District Court for the District of Massachusetts.

--Editing by Stephen Berg.

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Fannie, Freddie Can't Avoid \$612M Investor Win, Judge Rules

By **Hailey Konnath**

Law360 (March 14, 2025, 11:22 PM EDT) -- A D.C. federal judge on Friday upheld a \$612.4 million jury verdict against the Federal Housing Finance Agency, Fannie Mae and Freddie Mac, ruling that the jury was provided with "ample evidence" that reasonably led to its conclusion that FHFA improperly amended stock purchase agreements related to the companies.

U.S. District Judge Royce C. Lamberth denied a motion for judgment as a matter of law from FHFA, Fannie Mae and Freddie Mac, in particular rejecting their argument that the investors didn't prove harm or damages at trial. The judge said he agreed with investors that the defendants are "once again confusing the evidence that proves the existence of harm ... with the evidence that proves a reasonable estimate of that harm."

"The court is satisfied that a reasonable jury could conclude, based on the evidence presented at trial, that current shareholders are harmed," the judge said.

Judge Lamberth said FHFA and the companies have now "exhausted all procedural vehicles at their disposal before this court."

"The court stands by its prior rulings, and to the extent defendants questioned the sufficiency of the evidence at trial, the court is satisfied that a reasonable jury could come to the verdict that was rendered here," he said.

An eight-person jury returned the verdict in **August 2023**, finding that FHFA breached the implied covenant of good faith and fair dealing in connection with its 2008 financial crisis-related takeover of the two mortgage financing companies. The jury also found FHFA's actions harmed shareholders.

In 2012, the agency amended the terms of the takeover to increase the U.S. Department of the Treasury's annual dividend from 10% of its total investment in Fannie Mae and Freddie Mac to the pair's entire net profits. That move is called a "net worth sweep."

Three classes of Fannie Mae and Freddie Mac shareholders **had argued** during the two-week trial that they were entitled to \$1.6 billion in damages for FHFA's allegedly improper actions, which effectively eliminated the prospect of the shareholders receiving dividends of their own again. FHFA defended its decision, claiming it was necessary to enable the two companies to keep functioning.

However, the jury awarded shareholders less than a third of their requested damages. Specifically, it determined that the Fannie Mae junior preferred shareholders should receive \$299.4 million in damages, the Freddie Mac junior preferred shareholders should receive \$281.8 million in damages and the Freddie Mac common stock shareholders should receive \$31.2 million.

Judge Lamberth on Friday noted the litigation's long history, saying, "Naturally, this elongated posture has resulted in significant case law."

"And now, at the final stage in this protracted litigation, nearly every argument raised in defendants' motion can be disposed of by the law of the case doctrine," he said.

Judge Lamberth said that Fannie Mae, Freddie Mac and FHFA cited several cases from other circuits in making their arguments, and the D.C. federal court is not bound by those decisions. Even if it were,

the defendants have misinterpreted them, he said. And a number of their arguments were already rejected at the summary judgment phase, the judge said.

For example, part of their argument was that U.S. Supreme Court precedent establishes that FHFA acted reasonably when it agreed to one of the amendments, and the business decision to enter it for the public's benefit wasn't "subject to judicial review."

"This is ... the exact argument that defendants raised at summary judgment and that the court rejected," Judge Lamberth said.

The Supreme Court case cited by the defendants pertained to whether FHFA could have reasonably determined that adopting an amendment was in the best interests of the regulated entity or agency, but that's not what's at play here, according to the opinion. In this case, the issue is whether FHFA violated the reasonable expectations of the parties when it adopted the amendment, Judge Lamberth said.

"A Rule 50(b) motion is not a vehicle to re-litigate legal issues decided pretrial," the judge added. "If defendants wish to re-open this purely legal challenge, they must do so with the D.C. Circuit. Here, the court abides by the law of the case."

As for the defendants' contention that there wasn't enough evidence backing the jury's findings, Judge Lamberth said they were "wrong to assert that the only evidence of harm from the net worth sweep was the one-day drop in stock price on the date it was announced."

The jury was free to find that increases in share prices that happened in the weeks following the price drop "were irrelevant" to the ultimate conclusion that current shareholders are harmed, the judge said.

They also argued that there was no evidence that excludes another cause for the share-price drop, but Judge Lamberth shot down that argument too.

"The jury was presented with evidence to resolve this question," the judge said, adding that the jury's conclusion "was not unreasonable."

Finally, Judge Lamberth rejected what he called a "Hail Mary challenge" that certain investors lacked standing because they purchased shares after one of the amendments. According to the defendants, that's because they weren't affected by the share price drop.

"The court agrees with plaintiffs," the judge said Friday. "Having heard this argument several times before from defendants via various procedural vehicles, the court will abide by the law of the case."

The dispute goes back more than 15 years to the housing market crash of 2008 and Congress' passage of the Housing and Economic Recovery Act that year. The law created FHFA and empowered it to act as a conservator for Fannie Mae and Freddie Mac, if necessary. In September 2008, FHFA placed the companies under a nominally temporary conservatorship.

As part of that conservatorship, the Treasury Department entered into a stock purchase agreement with Fannie Mae and Freddie Mac. The agreement entitled it to first dibs in the event of liquidation as well as an annual dividend.

Fannie Mae and Freddie Mac had largely recovered from the crisis by mid-2012 and returned to profitability, the investors alleged. The companies projected that they would make profits way above the 10% dividend they owed the Treasury, the shareholders said. But then FHFA amended the Treasury's stock purchase agreements in 2012, a move that increased the department's dividend to the companies' entire net profits.

According to shareholders, the amendments were motivated by the desire of certain Treasury and FHFA officials to never have Fannie Mae and Freddie Mac fully recover from the financial crisis. They argued the net worth sweep was meant to force Congress' hand in winding down the two companies and eliminating the government's involvement in the secondary housing market.

The shareholders filed suit in 2013.

Counsel for the parties didn't immediately respond to requests for comment late Friday.

The class plaintiffs are represented by Eric L. Zagar of Kessler Topaz Meltzer & Check LLP, Hamish P.M. Hume and Samuel C. Kaplan of Boies Schiller Flexner LLP, Michael J. Barry of Grant & Eisenhofer PA and Adam Wierzbowski of Bernstein Litowitz Berger & Grossmann LLP.

The individual plaintiffs are represented by Charles J. Cooper, David H. Thompson, Vincent J. Colatriano, Peter A. Patterson and Brian W. Barnes of Cooper & Kirk PLLC.

The Federal Housing Finance Agency is represented by Asim Varma, Jonathan L. Stern, David B. Bergman, Ian S. Hoffman and R. Stanton Jones of Arnold & Porter Kaye Scholer LLP.

Fannie Mae is represented by Meaghan VerGow of O'Melveny & Myers LLP.

Freddie Mac is represented by Michael J. Ciatti of King & Spalding LLP.

The cases are Fairholme Funds Inc. et al. v. Federal Housing Finance Agency et al., case number 1:13-cv-01053, and In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations, case number 1:13-mc-01288, in the U.S. District Court for the District of Columbia.

--Additional reporting by Katie Buehler. Editing by Jay Jackson Jr.

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Kraken Beats Suit Over Crypto Scam Losses, For Good

By **Rachel Scharf**

Law360, Los Angeles (March 14, 2025, 4:20 PM EDT) -- A California state judge permanently tossed a lawsuit Friday alleging lax security measures on the cryptocurrency exchange Kraken are to blame for a Los Angeles County man's loss of nearly \$50,000 in a digital asset investment scam.

LA Superior Court Judge Kevin C. Brazile dismissed with prejudice Yuyuan Gao's **June 2024 suit** over his transfer of \$49,000 worth of cryptocurrency to Kraken digital wallets that turned out to be owned by scammers. Gao alleged Kraken should have flagged this transaction as suspicious and stopped the fraud.

Judge Brazile axed an initial version of Gao's complaint in September after determining that Gao "utterly failed" to plead negligence against Kraken. A reworked version of the lawsuit has not cured these defects, the judge said in a tentative order he adopted as final following a Friday hearing.

"It appears that the economic loss rule would preclude recovery for what would be negligent performance of the contract at issue," wrote Judge Brazile. "Plaintiff contends that there is a special relationship between the exchange and its customers, but, again, that relationship seems to be entirely a product of contract."

Gao cannot plead breach of contract either, the judge said, since the "stated obligations in the [amended complaint] do not actually arise from the provisions of the terms of service" on Kraken. And the complaint's claims for unjust enrichment and unfair competition fail for the same reason, according to Friday's ruling.

Judge Brazile did not grant Gao leave to amend this time, meaning the dismissal is final.

When reached for comment on the decision Friday, Gao's attorney, T. Khan of Foglight Law Inc., told Law360 that the dismissal was purely "procedural" and "certainly not an endorsement of what this cryptocurrency exchange did to plaintiff."

Spokespeople for Kraken, also known as Payward Inc., did not immediately return a request for comment.

In addition to the suit against Kraken, Gao also brought simultaneous claims in June 2024 against fellow crypto exchange Coinbase Inc. Gao said he lost \$149,000 to investment scammers on Coinbase, and that the exchange acts as a "haven" for criminals and "parasitically" profits off of fraud.

Gao's claims against Coinbase remain pending before Los Angeles Superior Court Judge Bradley S. Phillips.

Kraken and Coinbase have both had a successful past few weeks in the legal arena, as the U.S. Securities and Exchange Commission opted to drop **enforcement actions** accusing the crypto exchanges of acting as unregistered brokers.

The SEC's abrupt dismissal of these cases is part of a larger shift by the agency's new leadership, under President Donald Trump, towards a more **crypto-friendly** regulatory approach.

Gao is represented by T. Khan of Foglight Law Inc.

Kraken is represented in-house by Robert S. Sandoval.

The case is Yuyuan Gao v. Payward Inc., case number 24STCV14159, in the Superior Court of the State of California, County of Los Angeles.

--Editing by Vaqas Asghar.

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'Pig Butchering' Crypto Site Must Pay \$2.5M, Judge Says

By **Emilie Ruscoe**

Law360 (March 14, 2025, 8:47 PM EDT) -- A purported crypto trading platform has been ordered to pay nearly \$2.5 million after failing to respond to U.S. Commodity Futures Trading Commission claims that it was at the heart of a so-called pig-butchering scheme — or a scam that sees victims fleeced by fictitious, chatty social media users.

In a **Thursday order** in Arizona federal court, U.S. District Judge Douglas L. Rayes granted the CFTC's motion for default judgment against Debiex, the purported platform, ordering the entity defendant to pay restitution of nearly \$2.3 million to its appointed monitor, the National Futures Association, and a civil monetary penalty of over \$221,000 to the CFTC.

In the order, the judge found that the CFTC's uncontested 2024 complaint against Debiex had shown that Debiex's unknown officers or managers had directed so-called solicitors to lure targets to the scheme via social media; created websites that mimicked trading platforms, supported by "customer service" representatives who furthered the website illusion; misappropriated digital assets worth roughly \$2.3 million; and sent fabricated trading records to victims.

"There is no evidence that Debiex's failure to respond to the complaint is the result of 'excusable neglect,'" Judge Rayes said Thursday.

The CFTC's January 2024 complaint pointed to Debiex's websites, which told investors that it offered a "Blockchain network decentralized perpetual contract trading platform" for popular digital assets like bitcoin.

The Debiex websites stated that its users could perform "futures trading [and] mining transactions" on the site.

According to the CFTC, the scheme's early stages took place on social media, where its solicitors contacted individuals via messaging applications.

"Solicitors established a rapport with the customers by way of continuous and repeated messaging and sharing purported pictures of themselves," holding themselves out as women and stating they had certain things in common with their targets such as an alma mater or a Chinese province of origin, the CFTC claimed in its suit, adding that the solicitors described themselves as successful digital commodities traders and sometimes touted "insider" knowledge of trading.

After the solicitors established trust, they'd tell their targets to open Debiex digital asset commodity trading accounts, saying they could show their victims how to make extraordinary returns themselves.

The CFTC described the experiences of five would-be Debiex customers, who'd transferred funds to digital wallet addresses purportedly associated to the platform.

"Customers all believed they had opened actual trading accounts on Debiex's platforms," the CFTC said.

But the regulator claimed the Debiex accounts were imaginary, and the Debiex website was manipulated to mislead would-be customers with "fictitious information concerning, among other

things: profits and losses, account balances, digital asset commodity trading transactions, and deposits and withdrawals of funds into and out of their trading accounts."

"There is no evidence that the customers' digital assets were 'traded' for another digital asset, as portrayed in the customers' trading platform records," the regulator said.

Alongside the company, the CFTC's complaint named a single individual, Zhāng Chéng Yáng, as a relief defendant, describing Zhāng as a "money mule" whose digital asset wallets were used by the entity to accept, and misappropriate, customer funds.

Judge Rayes on Wednesday entered a separate order granting default judgment against Zhāng, stating that the contents of a digital asset account in Zhāng's name should be transferred to an account held by one of the allegedly harmed customers.

On Friday, representatives for the CFTC did not immediately respond to a request for comment. Contact information for the defendants wasn't immediately available.

The CFTC is represented by its own Jennifer J. Chapin.

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

The case is Commodity Futures Trading Commission v. Debiex et al, case number 2:24-cv-00117, in the U.S. District Court for the District of Arizona.

--Editing by Michael Watanabe.



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Ex-Mich. Players Defend \$50M NIL Suit Against NCAA, Big Ten

By Carolyn Muyskens

Law360 (March 14, 2025, 7:46 PM EDT) -- Former University of Michigan football players are fighting to keep a proposed class action seeking \$50 million in compensation for their names, images and likenesses in Michigan federal court and fend off what they called "premature" dismissal bids from the NCAA and Big Ten Network.

The four former Michigan football stars — Denard Robinson, Braylon Edwards, Michael Martin and Shawn Crable — said Thursday the National Collegiate Athletic Association and Big Ten have monetized their NIL through the broadcasting rights to archival footage from their playing days and the sale of merchandise featuring their NIL, without compensating the players.

"The NCAA and Big Ten want the case dismissed now so they don't have to engage in discovery and produce financial records and records related to TV rights, jersey sales, conference member payouts, etc. They don't want this class of former Michigan football players to be able to demonstrate publicly just how much they were damaged financially," the players said in a Thursday **response** to the NCAA's motion to dismiss.

The former student-athletes' September complaint follows the NCAA's **\$2.87 billion settlement** of antitrust claims brought by college athletes, which is still **awaiting judicial approval**. While the In Re College NIL Litigation settlement class includes student-athletes from 2016 onward, the Michigan plaintiffs seek to represent football players who were student-athletes before 2016.

The complaint alleges the NCAA and Big Ten enforce "anti-competitive rules, procedures, bylaws and agreements" that prevent the college players from profiting from their NIL.

In a January motion to dismiss, the NCAA **said** the football players' antitrust claims are too late because the alleged conduct took place between 12 and 24 years ago, when the proposed class representatives signed a contract ceding their NIL rights in order to participate in college sports.

The NCAA also said the proposed class representatives were class members in other settlements with the NCAA in cases involving the use of archival footage and other NIL-related issues: **In re NCAA Grant-in-Aid Cap Antitrust Litigation** , **Keller v. NCAA**  and **O'Bannon v. NCAA** . The settlements bar the plaintiffs' claims, the NCAA said.

The plaintiffs responded Thursday that their complaint isn't late because each "unauthorized use, or invasion, of plaintiffs' NIL constitutes a fresh and independent violation, restarting the limitations period." Meanwhile, the settlements in other NIL class actions involved different legal theories and issues, they asserted.

For example, the O'Bannon case involved the use of student-athletes' NIL in video games, but the football players' "liability theory is much broader" than video games, the plaintiffs said, encompassing the monetization of NIL through "evolving technologies, media platforms and various advertising and licensing agreements between defendants and third parties."

And the student-athletes are not bringing claims related to educational benefits, such as financial aid, which sets their case apart from the Grant-in-Aid Cap antitrust case, the former players said.

Separately, the players **argued** Thursday the Big Ten Network can't escape the suit simply because it

played no role in setting or enforcing the NCAA's NIL rules, because the plaintiffs allege an ongoing conspiracy between the Big Ten and the NCAA to "control and monopolize" players' NIL.

The players also **opposed** the defendants' request to transfer the lawsuit to the Southern District of New York or stay the case while a similar lawsuit filed in that district plays out.

Michigan federal court is the most appropriate venue for litigating the student-athletes' claims since three of the four proposed class representatives live in Detroit, the student-athletes had their college careers in the state and key witnesses such as university officials are located in the state, the former football players said.

"Let's be very honest here: Defendant's rationale in hoping for a transfer of venue is they are fearful that if this case ever did go to trial one day, that a jury pulled from this district would see the unlawful nature of what is at issue and compensate the plaintiffs accordingly," the players said.

The players said the defendants want the case moved to New York so they can attempt to consolidate it with **a lawsuit** filed against the NCAA by former college basketball players, led by University of Kansas alum Mario Chalmers.

The Michigan alums said their case involves football players rather than basketball players and presents additional antitrust issues because of the inclusion of the Big Ten as a defendant in the Michigan case, a "critical" difference because the network "plays a central role in the commercialization of Michigan football players' NIL" as part of an alleged vertical antitrust conspiracy.

James R. Acho of Cummings McClorey Davis & Acho PLC, who represents the plaintiffs, told Law360 the NCAA and Big Ten want to avoid having to disclose records that would show how much they have profited from the use of players' NIL.

"They don't want people to know exactly how much money they have made specifically off Michigan players," Acho said.

Since the University of Michigan football players' complaint, former Ohio State University quarterback Terrelle Pryor **has launched** his own proposed antitrust class action accusing the NCAA, the Big Ten Conference and media rights licensing company Learfield Communications of profiting from his name, image and likeness without compensating him, and former University of Southern California running back Reggie Bush has lodged **similar allegations** against USC, the NCAA and the Pac-12 Conference

The Big Ten Network and NCAA did not immediately respond to requests for comment Friday.

The football players are represented by James R. Acho, Ethan Vinson and Kevin J. Campbell of Cummings McClorey Davis & Acho PLC.

The NCAA is represented by Rakesh Kilaru, Tamarra Matthews Johnson, Calanthe Arat and Matthew Skanchy of Wilkinson Stekloff LLP and Jacob K. Danziger of ArentFox Schiff LLP.

The Big Ten Network is represented by Bradley R. Hutter of Fafinski Mark & Johnson PA and Louis F. Ronayne and Justin M. Wolber of Varnum LLP.

The case is Denard Robinson et al. v. NCAA et al., case number 2:24-cv-12355, in the U.S. District Court for the Eastern District of Michigan.

--Additional reporting by Elaine Briseño, David Steele and Hailey Konnath. Editing by Linda Voorhis.



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Judge Vacates Baby Formula Trial Win For Abbott, Mead

By Celeste Bott

Law360 (March 14, 2025, 5:09 PM EDT) -- A Missouri judge on Thursday threw out a jury verdict that cleared Abbott Laboratories and Mead Johnson of liability in a joint trial over claims their baby formula causes a serious condition in preterm infants, saying a new trial is necessary because the defense "intentionally violated the court's orders and rulings by improperly introducing the inadmissible evidence to the jury, time after time."

A St. Louis jury **found in favor** of the Illinois-based formula makers and St. Louis Children's Hospital in October after a five-week trial over the necrotizing enterocolitis, or NEC, that Kaine Whitfield developed in the weeks after he was born in August 2017. But Missouri Circuit Court Judge Michael Noble said Whitfield's family is entitled to a do-over, as errors and attorney misconduct at trial "were so prejudicial that [they] affected the credibility of evidence with an extreme passion and bias."

Noting only one of Abbott's counsel was sanctioned for his misconduct, Judge Noble said Mead's defense was "so closely intertwined with and reliant on Abbott's defense that Mead conceded their defense was indivisible with Abbott's defense," adding that Mead mirrored the same language throughout its handling of evidence and arguments.

The defendants have also already conceded they intentionally elicited highly prejudicial testimony from an expert about the timing of genetic testing and the filing of Whitfield's lawsuit, in violation of court orders excluding that evidence, Judge Noble said.

He found the companies also prejudiced jurors in asking them to consider that the plaintiff wanted all formula or preterm infant formula banned from the market, which would cause infants to "starve to death."

"This court finds it was error to allow such arguments, questions or evidence — as it confused and misled the jury to the point of nullification of plaintiff's claims for his damages," the judge said.

Despite a ruling he made barring a defense expert from offering a subjective opinion related to the U.S. Food and Drug Administration's state of mind, the defense introduced evidence that the FDA approved each ingredient of the preterm infant formula at issue, which "confused or misled the jury to believe that the FDA gave its de facto approval of the preterm infant formula and that the FDA did not require an NEC warning, which is improper," Judge Noble said.

And the defendants also "intentionally and flagrantly" disregarded his repeated orders by referencing a consensus statement multiple times at trial that was not allowed to be introduced as evidence, he said.

"This court does not base any ruling solely on the alleged attorney misconduct. Instead, the court examines the widespread misconduct of the parties, including repeated and flagrant violations of the court's orders by inappropriately introducing impermissible arguments and inadmissible evidence to influence the jury by undermining the Rules of Civil Procedure and the fairness of the trial process to distract the jury from the presentation of admissible evidence," Judge Noble said.

The judge also admitted that with the "benefit of hindsight," he made an erroneous ruling allowing the companies to reference Ms. Whitfield's marijuana usage. The testimony elicited from defense experts failed to make a causal link between the plaintiff's injuries from NEC and his mother's

marijuana usage, he said.

"The profuse and rampant references to marijuana far exceeded the limited scope permitted by the court based on a good faith assertion by the defense," Judge Noble said. "During the course of the trial, plaintiff moved the court on several occasions to ban further references to marijuana due to its extremely prejudicial effect against plaintiff. It was error for the court to not stop the deluging prejudice, which was intentionally elicited time and time again, when the marijuana evidence had little probative value and was exceedingly outweighed by this extremely prejudicial effect on the trial and verdict."

Lawyers for the Whitfield family had asked for \$277 million in compensatory damages and \$6 billion in punitive damages for the now 7-year-old, born in August 2017 at 27 weeks and 5 days' gestation and weighing 1,140 grams. Kaine now has extreme and permanent challenges from short-bowel syndrome, which prevents him from absorbing nutrients easily.

"The jurors in the Whitfield case showed up in the same good faith as those in each of the two previous trials," Amelia Frenkel, a Keller Postman attorney who was on the plaintiff's trial team, said in a statement. "Counsel for the formula companies spent weeks at trial using prejudicial tactics. Judge Noble now joins the two previous juries who found the evidence supports plaintiffs' claims. How many more will it take before the formula companies do the right thing and put a warning on their products?"

The companies face thousands of baby formula injury suits and had lost initial trials. A Missouri jury awarded \$95 million in compensatory damages and \$400 million in punitive damages in a bellwether trial against Abbott last year. Mead lost its first trial with a \$60 million verdict. The two also face multidistrict litigation in federal court.

Scott Stoffel, a spokesperson for Abbott, told Law360 the company plans to file an immediate appeal and expects that the jury's verdict will be reinstated.

"Twelve citizens of the City of St. Louis served on a jury for five weeks; heard all the evidence, including from leading experts; and unanimously found that Abbott's formula does not cause NEC. Their verdict was correct," he said in a statement. "It was consistent with the consensus of scientists, governmental regulators and the neonatologists who treat these vulnerable patients in intensive care units every day. We are disappointed by the court's extraordinary decision to set aside the jury's work."

A statement released on Friday by Reckitt, Mead Johnson's parent company, indicated that Mead Johnson will also appeal, saying Judge Noble's ruling is "at complete odds with the law and the facts" and that "nothing the court has now cited justifies disregarding the jury's determination."

"The unanimous jury verdict in October supports our view that we have the science, the law and the facts on our side. Moving forward, plaintiffs continue to face significant challenges due to the heavy burden they must meet in proving each element of the claims in every single case. Mead Johnson will continue to vigorously defend itself against all other cases in the interest of safeguarding the health of premature babies," the statement said.

The Whitfields are represented by Timothy M. Cronin and Kevin M. Carnie Jr. of The Simon Law Firm PC, as well as by Keller Postman LLC and Cates Law.

Abbott is represented by James F. Hurst, Rebecca Fitzpatrick and Sierra Elizabeth of Kirkland & Ellis LLP.

Mead Johnson is represented by Phyllis A. Jones of Covington & Burling LLP and Sherry Knutson and Charissa Walker of Tucker Ellis LLP.

The case is Whitfield v. Abbott et al., case number 2222-CC06214, in the 22nd Judicial Circuit of Missouri.

--Additional reporting by Cara Salvatore. Editing by Philip Shea.



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Newsmax Says It Shelled Out \$40M To End Smartmatic Suit

By **Hailey Konnath**

Law360 (March 14, 2025, 8:47 PM EDT) -- Newsmax Media Inc. paid \$40 million in last year's settlement with Smartmatic USA Corp. to put to rest the election technology company defamation suit ahead of trial, according to a disclosure recently filed with the U.S. Securities and Exchange Commission.

Florida-based Newsmax detailed the settlement in an offering circular dated March 7. The conservative media company said earlier this month that it plans to raise up to \$75 million in a scaled-down alternative to a traditional public offering.

According to the filing, the September deal with Smartmatic involved \$40 million "payable over time and the issuance of a five-year cash exercise warrant to purchase 2,000 shares of Series B preferred stock at an exercise price of \$5,000 per share."

So far, Newsmax has paid \$20 million of that amount, and the rest will be paid in \$10 million installments by June 30, it said.

"Management believes the settlement with Smartmatic will, subject to the payment of all consideration in a timely manner, eliminate future legal expenses the company would have expected to bear related to this suit, which could have included costly appellate legal actions and other matters," Newsmax said in the filing.

Smartmatic said it was defamed by Newsmax's unsubstantiated reporting tying the company to alleged conspiracies to steal the 2020 presidential election. Specifically, Smartmatic and two affiliates said they lost billions of dollars in revenue thanks to Newsmax disseminating the false reports to take market share from far larger Fox News.

Lost in Newsmax's accounts, Smartmatic said, was the fact that its systems were operating in November 2020 only in Los Angeles County, one of 6,000 voting districts in the U.S., reflecting only about 0.015% of voting districts and 0.058% of votes cast.

The Delaware case was set for trial Sept. 30, but the parties reached a resolution **Sept. 26**.

Newsmax unveiled its latest public offering plans **March 11**. It said the SEC has "qualified" its filing, enabling it to market its offering to investors. The company plans to sell up to 7.5 million shares at \$10 each by March 31 and list on the New York Stock Exchange under the symbol "NMAX," subject to the big board's approval.

J. Erik Connolly, a Benesch Friedlander Coplan & Aronoff LLP lawyer representing Smartmatic, said Friday that the Newsmax settlement is confidential and he can't share more details.

"We are now focused on our litigation against Fox News for defaming Smartmatic and knowingly lying to their viewers about Smartmatic's role in the 2020 election," Connolly said. "We look forward to presenting our evidence to a jury and finally having the opportunity to hold Fox accountable for its harmful actions."

A representative for Newsmax didn't immediately respond to a request for comment Friday.

The case is Smartmatic USA Corp. et al. v. Newsmax Media Inc., case number N21C-11-028, in the Superior Court of the State of Delaware.

--Additional reporting by Jeff Montgomery and Tom Zanki. Editing by Stephen Berg.

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Startup Investor Says Cooley Knew About Fraud Probe

By **Carla Baranauckas**

Law360 (March 14, 2025, 4:38 PM EDT) -- Attorneys for a dry cleaning delivery startup knew that the founder and sole director of the company had fabricated company documents and was the subject of an active securities fraud investigation in Texas as he solicited money from investors, an ex-board member said Friday in response to the law firm's bid to toss a securities fraud lawsuit.

Jason Gould and his company Gould Ventures LLC argued in its response that California-based law firm Cooley LLP was aware between June 2022 and September 2022 that Ben Cantey, founder of the startup Carbon IQ, was being probed by the Texas State Securities Board even as the law firm was urging him to invest more money in the company and accept a board seat.

"What is apparent from the complaint, and from defendants' motion to dismiss as well, is that defendants precisely understand the who, what, when, where, how and why regarding their wrongdoing and they clearly have enough information to engage in discovery and prepare their defense," Gould's attorney, Kathleen M. DalCortivo of DalCortivo Law Offices LLC, wrote in the brief.

A day earlier, Cooley asked a judge to toss the lawsuit, arguing that the law firm withdrew from representing Cantey and Carbon IQ in October 2022 after he confessed to the firm that his company's financials were fraudulent.

"As the former law firm and attorneys for the company, defendants appreciate that plaintiffs want redress for the founder's fraud," Cooley's memo said. "But suing the company's former outside counsel is not the answer, regardless of who has 'deeper pockets.'"

Calling Gould's lawsuit "misdirected," Cooley said that the former board member was alleging that the law firm and Cantey "acted in concert" but that the complaint attached a confession by Cantey said he "acted solely alone" in creating fraudulent financials.

Other claims in the **lawsuit**, including negligent misrepresentation, breach of fiduciary duty and legal malpractice, are based "on the same misrepresentations and omissions underlying their fraud claims," Cooley's court filing said.

Gould Ventures was an early investor in Carbon IQ, better known as Rumby, and increased its investment by \$140,000 in July 2022 because Cooley withheld knowledge of the fraud allegations against Cantey, Gould alleged.

Cooley knew that Gould's acceptance of a board position was contingent on the existence of adequate directors and officers insurance, the complaint said, but the law firm "never actually received any evidence confirming the existence of such insurance."

After joining Carbon IQ's board, Gould was named a defendant in a suit brought by another Carbon IQ investor, Gould noted.

Carbon IQ and Cantey have faced fraud allegations dating back years. In 2022, a Cincinnati-based investment firm, Refinery Management LLC, said in the securities fraud suit that the leaders of the startup — including Cantey, who later admitted to paying himself large commissions and using investor money to buy himself a house — did not disclose important information, like the company's pending insolvency, before Refinery put down \$3 million.

That **case was stayed** after Carbon IQ filed for Chapter 11 bankruptcy.

Gould accused Cooley, which ultimately withdrew from representing Carbon IQ, of securities fraud, common law fraud, legal malpractice, aiding and abetting fraud, negligent misrepresentation, and breach of fiduciary duty.

He is seeking compensatory, consequential and punitive damages; pre- and postjudgment interest; fees and costs; and full indemnification for any expenses and liability associated with the litigation against Gould.

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

Gould and his investment firm are represented by Kathleen M. DalCortivo of DalCortivo Law Offices LLC.

Cooley is represented by Sarah A. Sullivan and Alexander L. Callo of Saul Ewing LLP and Aric H. Wu and Brian M. French of Cooley LLP.

The case is Gould Ventures LLC et al. v. Cooley LLP et al., case number 3:24-cv-09485, in the U.S. District Court for the District of New Jersey.

--Editing by Jay Jackson Jr.

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