

Securities Law News

March 17, 2025, 3:44 PM PDT

PG&E Underwriters' Effort to Avoid Subpoena Lands in Wrong Court

- Investors in one court seek papers from defendants in another
- Case against board, execs, and underwriters has resumed

PG&E Corp. underwriters lost their bid to quash a bankruptcy court documents subpoena from investors with wildfire-related claims against the California utility because they lodged their request with the wrong court.

The US District Court for the Northern District of California can't quash a bankruptcy court subpoena, Judge Edward J. Davila said in a March 14 decision. But the underwriters can ask the bankruptcy court to stop the flow of documents, Davila said.

PG&E Corp.—a holding company—is the corporate parent of public utility Pacific Gas & Electric Co., also known as PG&E. The utility filed for Chapter 11 bankruptcy in January 2019 and emerged in July 2020. PG&E Corp. also filed under Chapter 11.

The claims against PG&E, the holding company, are proceeding in the US Bankruptcy Court for the Northern District of California, where discovery, or the exchange of documents, has already begun, Davila said.

The investors, suing in the district court allege PG&E officers, directors and various underwriters—including Morgan Stanley & Co., Citigroup Global Markets Inc., and J.P. Morgan Securities LLC—misrepresented its regulatory compliance, vegetation-trimming practices, and equipment maintenance in advance of Northern California wildfires in 2017 and 2018.

Those defendants haven't started the discovery process in Davila's court. "Understandably, this mismatch in discovery status has created some friction," the judge said. As a result, the investors don't yet have the underwriting documents they're seeking for their bankruptcy case.

The district court case against those underwriters and individual defendants had been stayed, for some time while the bankruptcy case proceeded. But in May 2024, the US Court of Appeals for the Ninth Circuit asked Davila to reassess halting the case before him. After Davila held a conference in July, the parties resumed litigating whether the suit should be dismissed.

The Private Securities Litigation Reform Act allows a federal district court to enforce its discovery stay with respect to state courts, but not in other federal courts, including bankruptcy courts, Davila said.

The case is In re PG&E Corp. Sec. Litig. , N.D. Cal., No. 5:18-cv-03509, 3/14/25 .

To contact the editor responsible for this story: Andrew Harris at aharris@bloomberglaw.com

<https://news.bloomberglaw.com/product/blaw/bloomberglawnews/exp/eyJpZCI6IjAwMDAwMTk1LWE1YjAtZDY1YS1hOWZkLUU3ZjhkMzVjMDAwMSI...> 2/2

Meta Sued by Pension Funds Over EU's \$1.3 Billion Privacy Fine

- **COURT:** Del. Ch.
- **TRACK DOCKET:** [No. 2025-0291](#)

Meta Platforms Inc.'s leaders appear to have steered it into a record \$1.3 billion EU fine by failing to clean up the data practices behind years worth of privacy scandals, two pension funds said in court papers Monday.

A union fund and Rhode Island's employee retirement system sued the tech giant for internal company documents, claiming they have credible suspicions that Meta's senior leaders are to blame for the "historic" penalty. The fine in May 2023 stemmed from a broader crackdown on the company for transferring the data of European users to US-based servers that provide backdoor access to American intelligence agencies.

Andy Stone, a spokesperson for Meta, didn't immediately respond to an email seeking comment Monday. Facebook founder Mark Zuckerberg and other company leaders aren't named as defendants.

The complaint, filed under seal in Delaware's Chancery Court, will likely be made public within five days under confidentiality rules providing five days to redact sensitive information. But the pension funds—in related public filings describing the case—called the violations part of a larger pattern of improper or illegal data harvesting.

They cited the Cambridge Analytica data-mining controversy that came to light after President Donald Trump's 2016 election, which led to a record \$5 billion fine by the Federal Trade Commission.

A separate shareholder lawsuit over the FTC fine is set for an April 2 trial in the same elite business court. That case involves an array of overlapping claims, including the allegation that Zuckerberg agreed to a larger-than-necessary fine to escape the prospect of personal liability, effectively using investor money to get himself off the hook.

The new suit seeks documents under a law giving investors broad access to company files if they have tentative suspicions about self-dealing or other wrongdoing. A proposed overhaul of Delaware corporate law could significantly curtail records cases, which often seek to drum up fiduciary breach claims for future litigation.

The pension funds are represented by Grant & Eisenhofer PA. Meta hasn't yet made a court appearance.

The case is N. Calif. Pipe Trades Trust Funds v. Meta Platforms Inc. , Del. Ch., No. 2025-0291, complaint filed under seal 3/17/25 .

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Nuclear Energy Firm Sued Over Faulty Internal Financial Controls

- **COURT:** S.D. Tex.
- **TRACK DOCKET:** No. [4:25-cv-01234](#) (Bloomberg Law subscription)

Nuclear fuel company enCore Energy Corp. kept investors in the dark about its lack of effective internal financial guardrails, a proposed class action lawsuit alleged.

While the uranium extractor assured investors in March 2024 its internal controls over financial reporting were adequate, it revealed in its annual 10-K filing March 3 that it had identified material weakness last year, according to a complaint filed Friday in the US District Court for the Southern District of Texas.

The lead plaintiff, Sun Zhongjian, brought the suit on behalf of himself and other investors who purchased or acquired publicly traded securities between March 28, 2024 and March 2, 2025.

The company said in a March 3 press release that it reported a net loss of \$61.3 million in fiscal 2024. Its 10-K annual report also noted the company lacked an effective risk assessment process with clear financial reporting objectives, as well as a system in place to ensure the reliability of information.

While these deficiencies haven't resulted in misstatements in financial statements, "a reasonable probability exists" that material misstatements won't be prevented or detected on a timely basis, enCore's 10-K read.

The company also failed to tell investors it couldn't capitalize certain exploratory and development costs under US accounting rules, leading to an increase in net losses, the complaint alleged.

The suit also names enCore Chief Financial Officer Shona Wilson and former CEO Paul Goranson as defendants.

Wilson, Goranson, and enCore didn't immediately respond to requests for comment.

Ahmad, Zavitsanos & Mensing PLLC; Glancy Prongay & Murray LLP; and the Law Offices of Frank R. Cruz represent Zhongjian.

The case is Zhongjian v. enCore Energy Corp. , S.D. Tex., No. 4:25-cv-01234, complaint filed 3/14/25 .

BNY Mellon Is Drawn Into Court Battle Over Barclays' \$17.7 Billion Securities Error

 [law.com/newyorklawjournal/2025/03/17/bny-mellon-is-drawn-into-court-battle-over-barclays-177-billion-securities-error](https://www.law.com/newyorklawjournal/2025/03/17/bny-mellon-is-drawn-into-court-battle-over-barclays-177-billion-securities-error)

Alyssa Aquino

BNY Mellon has been pulled into the sprawling legal fight over Barclays' sale of \$17.7 billion worth of unregistered securities, when three investors accused BNY Mellon, the trustee for the offering, of negligently allowing the offering to be made.

A trio represented by Berger Montague and Rosca Scarlato said that as trustee to the "tainted" senior debt securities, the Bank of New York Mellon should have ensured that the debt offering was valid. Instead, BNY Mellon authenticated the debt and allowed the offering to proceed, even though the debt exceeded the amount of securities that Barclays was allowed by federal regulators to offer, the investors said.

"The New York Uniform Commercial code specifically provides that by signing a security certificate as an authenticating trustee, as Defendant BNY Mellon was here, that trustee warrants to purchasers of the security that, among other things, the trustee 'has reasonable grounds to believe that the certified security is in the form and within the mount the issuer is authorized to issue,'" the investors said in a complaint filed March 13 in the Manhattan federal court.

Representatives for BNY Mellon and the investors didn't immediately respond to Monday requests for comment.

The investors had all purchased VXX exchange traded notes from Barclays, notes that the bank offered based on 2018 and 2019 forms registering billions of dollars worth of securities with the U.S. Securities and Exchange Commission.

But the value of those notes—and other debt offered under those 2018 and 2019 registrations—tanked in 2022, when Barclays announced that it had sold \$17.7 billion more securities than what was registered. After an investigation, the SEC charged Barclays with violating federal securities law, finding that the offering occurred based on Barclays' failure to implement "any internal control" to properly track the transactions.

Barclays paid a \$200 million penalty and executives later also admitted that the overissuance was avoidable and that preventing it would not have been "rocket science." In their lawsuit, the BNY Mellon investors pointed to those admissions as purported proof of BNY Mellon's negligence.

“The defendants, who also bore responsibility for reviewing the offering materials... were grossly negligent and/or severely or deliberately reckless in not discharging their duties as indenture trustees to stop the over-issuance,” the investors said.

The case against BNY Mellon marks the latest front in Barclays' years-long effort to close the books on the overissuance. Barclays has already paid \$200 million to the SEC to resolve its investigation, and is hoping to finalize a \$19.5 million settlement with a group of investors—represented by Labaton Keller Sucharow—who sued in the Manhattan federal court.

Barclays had also announced a rescission offer to buy back the unregistered securities. The trio who filed their case against BNY Mellon alleged that they had each attempted to take advantage of the offer, only for their claims to be rejected for a failure to prove that their debt was part of the unregistered batch. But they argued that “nearly all submitted claims” had been rejected, as the unregistered debt was “indistinguishable” from the registered notes.

“Once the unlawful note sales were reported to the SEC and the Commission took action against Barclays, the market for the notes collapsed, the value of the notes dropped, and the Barclays Noteholders, including Plaintiffs, suffered substantial financial losses,” they said. “For instance, VXX investors, including plaintiffs, sustained markets losses of more than \$1.5 billion.”

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Aldeyra Therapeutics Beats Investor Suit Over Eye Drug Misses

- Plaintiffs failed to allege knowledge of FDA noncompliance
- Judge won't let investors amend claims on drug approval odds

Aldeyra Therapeutics Inc. defeated allegations it misrepresented Food and Drug Administration approval prospects for its treatments for ocular cancer and dry-eye disease, a federal judge ruled.

Investors didn't sufficiently plead Aldeyra executives knew about their new drug applications' noncompliance with FDA guidance, or that their statements about the process were misleading, Judge Denise J. Casper said for the US District Court for the District of Massachusetts. The biopharmaceutical company "repeatedly disclosed the risks" surrounding the approval process during the proposed class period, she said.

Casper denied the investors' "informal" ask for the opportunity to amend their complaint, ordering the case closed March 14.

The investors centered claims around Aldeyra concealing its nonalignment with FDA guidance which said the dry-eye disease treatment's application required at least two clinical trials demonstrating efficacy for targeting primary symptoms and that the cancer therapy's required support from investigations into its effectiveness, per the most recent amended complaint. Allegations of the level of intent required to bring securities fraud claims paled in comparison to the innocent explanation, Casper said. Aldeyra more likely thought it was complying with publicly-available guidelines, even exerting energy on more studies it thought would help, she said.

Lead plaintiff Joseph Lombard and named plaintiff John Levon didn't point to "any admission, internal record, witnessed discussion or communication" that Aldeyra was warned about deficiencies with trial outcomes in their applications, meaning allegations were "their own scientific opinion," Casper said. "But a scientific disagreement cannot support a claim of securities fraud," she said.

The day after Aldeyra said it delayed submitting its application for its dry-eye disease treatment, reproxalap, share prices fell almost 51%, investors said. Aldeyra submitted reproxalap's application in November 2022, they said.

In October 2023, Aldeyra said the FDA needed another clinical trial to satisfy efficacy standards and wanted more details on its chemistry, manufacturing, and control requirements, according to the complaint. Share prices plummeted more than 66% that day, plaintiffs said.

In January 2021, Aldeyra started saying it could submit a new drug application for eye-cancer treatment ADX-2191 without performing clinical trials as it relied on documentation of an approved drug, filing the application in December 2022, they said.

In June 2023, Aldeyra said the FDA denied ADX-2191's application, citing inadequate investigations provided to demonstrate effectiveness, the complaint said. The stock price slid over 27% that day, investors said.

Aldeyra said the FDA denied the reproxalap's application in November 2023 and it needed another well-controlled study showing positive effects, the investors said. In October 2024, the company resubmitted reproxalap's application, per the company's website.

Glancy Prongay & Murray LLP was lead counsel and O'Connor, Carnathan & Mack LLC was liaison counsel for the proposed class, which would have included those who got stock from Jan. 7, 2021, through Oct. 16, 2023. Goodwin Procter LLP represented Aldeyra, as well as two current executives and a former one. None of the firms immediately responded to emails seeking comment.

The case is Paice v. Aldeyra Therapeutics, Inc. , D. Mass., No. 23-cv-11737, dismissed 3/14/25 .

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Class Action

March 18, 2025, 5:36 AM PDT; Updated: March 18, 2025, 7:01 AM PDT

Amazon Beats Investor Suit Alleging Anticompetitive Actions (1)

- **Investors fell short of alleging leaders knew of undercuts**
- **Judge dismissed complaint without letting plaintiffs replead**

Amazon.com stamped out a proposed class action accusing leaders of misleading investors about using vendor data to bolster its own retail activities and about its expansion efforts, a federal judge ruled.

Even after adding new allegations, stockholders failed to plead the level of intent or reckless disregard for securities fraud claims, Judge John H. Chun said Monday. The US District Court for the Western District of Washington judge tossed this second consolidated class action complaint with prejudice, meaning the investors can't replead their claims.

Allegations of executive's knowledge about anticompetitive or capacity efforts were too generic, misaligned timing-wise, or otherwise didn't suffice, Chun said.

Investors had alleged that Amazon undercut merchants on its website, but didn't provide facts linking that defendants knew about it, or "what information was communicated to them, when that information was communicated, or by whom," Chun said. And they didn't adequately allege deliberate recklessness or consciousness of deceiving shareholders about continuing its warehouse capacity growth strategy ahead of demand, he said. "It is more plausible that Amazon simply got its capacity expansion plans wrong in the rapidly changing business environment after the pandemic," he said.

Shareholders had alleged that Amazon punished vendors for selling products more cheaply on other forums, coerced them into using the marketplace's fulfillment service, and wrongly used their data, among other issues. Plaintiffs said after issues came to light, share prices suffered, hurting investors.

Investors sued Amazon and current and former executives for alleged securities law violations, originally filing and having cases consolidated in 2022. Lead plaintiffs Universal-Investment-Gesellschaft mbH, Universal-Investment-Luxembourg S.A., Menora Mivtachim Insurance Ltd., Menora Mivtachim Pensions and Gemel Ltd., The Phoenix Insurance Co. Ltd., and The Phoenix Provident Pension Fund Ltd., plus named plaintiffs Asbestos Workers Philadelphia Welfare and Pension Fund and Detectives Endowment Association Annuity Fund, proposed a class of those who got Amazon shares from Feb. 1, 2019, through April 28, 2022.

Chun had said investors adequately pleaded in a prior complaint Amazon statements misrepresented its fulfillment capacity growth and vendor treatment, but fell short of alleging fraudulent intent. The latest complaint added allegations concerning "motives to commit securities fraud, pending antitrust litigation against Amazon, and Amazon's plans to add more fulfillment sites in the United States and Canada," Chun said.

But their purported motives—that executives wanted increased pay under its compensation plan and to benefit off stock sales during the class period—didn’t sufficiently back up an inference of scienter, Chun said.

The lawsuit highlighted governmental accusations that tech giants have faced over anticompetitive practices. Amazon has drawn heavy antitrust scrutiny from lawmakers, which the shareholders’ complaint pointed to.

Motley Rice LLC and Pomerantz LLP are lead counsel for the investors. Paul, Weiss, Rifkind, Wharton & Garrison LLP and Fenwick & West LLP represent Amazon and the corporate officers. None of these firms immediately responded to emails seeking comment.

The case is *Joyce v. Amazon.com, Inc.*, W.D. Wash., No. 2:22-cv-00617, 3/17/25 .

(Updates with more information about the case throughout.)

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Delaware's Corporate Law Reform Would Fortify Stable Governance

UNH School of Law's Seth Oranburg says critics of Delaware's SB21 discount the impact of predictable corporate governance rules on enhancing value and attracting investment.

Corporate law isn't about fairness—it's about creating value. Rational investors prefer owning a slightly smaller share of a substantially larger pie, especially when clear rules guarantee predictable returns.

Delaware is reaffirming this principle by considering Senate Bill 21, which would reshape how the state determines when shareholders exert "effective control." The legislation, which passed the state Senate on March 13, is now with the state House of Representatives.

Effective control matters because Delaware courts apply a rigorous judicial standard known as the entire fairness doctrine to transactions involving controlling shareholders. If a shareholder is deemed controlling, courts scrutinize two elements of any related deal: fair dealing (procedural fairness) and fair price (economic fairness).

This type of litigation is fact-intensive, drawn-out, and costly. But historically, determining when a shareholder had effective control has been uncertain and subjective—often hinging on vague factors such as boardroom influence, historical deference, or social relationships.

For instance, the Court of Chancery of Delaware in 2018 ruled Elon Musk was a controlling shareholder of Tesla Motors Inc. due to his board influence and personal relationships, even though he owned only 22% of the company's stock. This subjected a board-approved deal to entire fairness review, creating litigation risk that SB21 would help avoid.

Cases like this demonstrate how subjective factors, rather than clear ownership thresholds, can trigger expensive legal battles—injecting uncertainty into a system meant to provide stability. SB21 would replace this ambiguity with a clear rule: Shareholders owning less than 33% of corporate stock are presumed not to have effective control.

Courts may still apply the entire fairness doctrine if plaintiffs offer particular evidence proving actual control. Nevertheless, the bill would minimize legal uncertainty by providing a measurable standard, shifting Delaware corporate law toward greater predictability.

This statutory change seems at first glance to benefit controlling shareholders while putting minority shareholders at a disadvantage. But that perspective assumes a zero-sum game. In reality, SB21's bright-line rule would benefit corporations and all shareholders by reducing costly and unpredictable litigation.

Critics claim that SB21 would weaken minority protections, but they overlook that predictable corporate governance rules enhance corporate value, attract investment, and benefit even minority shareholders more than uncertain protections ever could.

Uncertainty raises the cost of capital, making it harder for companies to invest, grow, and return value to all shareholders. While minority investors may lose some litigation leverage, they would gain from more stable corporate governance, higher investor confidence, and improved stock price performance. On top of reducing lawsuits, SB21 would make Delaware companies a safer bet for all investors.

This bill isn't the state's first attempt to replace vague judicial standards with legislative clarity. The state faced a similar crisis in 1985 when the Delaware Supreme Court's decision in *Smith v. Van Gorkom* dramatically increased director liability, triggering panic in boardrooms nationwide.

Delaware responded swiftly by enacting DGCL Section 102(b)(7), allowing corporations to limit director liability for breaches of the duty of care. Critics at the time called it a giveaway to corporate insiders, but its real impact was greater stability and predictability.

SB21 follows the same logic: It would reduce ambiguity-driven litigation costs, reinforcing Delaware's reputation for responsive, business-friendly corporate governance.

Yet controversy persists because SB21 would disrupt powerful vested interests—particularly the plaintiffs' bar. Shareholder litigation thrives on uncertainty. When no one can confidently predict a lawsuit's outcome, parties settle, often at great cost. The bill would remove that leverage, undermining a business model built on legal ambiguity.

Critics who accuse Delaware of engaging in a race to the bottom mistake litigation opportunities for shareholder protection. Genuine shareholder interests align with clear, reliable governance rules that increase overall corporate value.

Some opponents to SB21, such as Delaware State Rep. Sean Lynn (D), claim the bill is unnecessary because Delaware was never at real risk of losing businesses to states such as Texas or Nevada, despite recent relocations by high-profile companies at argument misses the point. Delaware's dominance in corporate law isn't just about current market conditions—it's about legislative agility and judicial expertise.

Texas markets itself as pro-business but lacks Delaware's depth of corporate jurisprudence and legislative responsiveness. Nevada can't match Delaware's track record of consistent, reliable corporate governance. Even North Dakota, which tried attracting firms with shareholder-friendly corporate laws, failed to gain traction because corporate leaders value stability over novel governance experiments.

Delaware's ongoing legislative clarity solidifies its own preeminence and sets a national benchmark. Other states seeking corporate investment will increasingly follow Delaware's example, replacing unpredictable judicial standards with clear legislative frameworks.

SB21 thus would reshape corporate governance beyond Delaware's borders, proving that predictability is the foundation of modern corporate law.

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Do Sharpened Definitions in Delaware's Corporate Law Amendments Afford a 'Clear Playbook' or Place Chancery in 'Straitjacket'?

 [law.com/delbizcourt/2025/03/17/do-sharpened-definitions-in-delawares-corporate-law-amendments-afford-a-clear-playbook-or-place-chancery-in-straitjacket](https://www.law.com/delbizcourt/2025/03/17/do-sharpened-definitions-in-delawares-corporate-law-amendments-afford-a-clear-playbook-or-place-chancery-in-straitjacket)

Ellen Bardash

What You Need to Know

- SB 21 proposes expanding "safe harbor" procedures.
- Proponents say the bright line rules in the bill streamline the deal process.
- Critics say it's may be a way to cut the Delaware courts out of their role as interpreters of the statute.

First in a series.

Much of the debate about Delaware Senate Bill 21 stems from proposed amendments to Section 144 of the DGCL, including more concrete parameters for who qualifies as a controlling shareholder, what makes a director independent and how a deal can be shielded from the entire fairness standard.

Supporters of SB 21, which has been passed by the Senate and is scheduled to go before the House Judiciary Committee this week, say the so-called safe harbor procedures outlined in the legislation would give corporations clarity on how to properly proceed with a transaction and ultimately cut down on the number of transactions challenged in the Court of Chancery.

"For good or for bad, the statute, in my view, from a defense standpoint, does clarify many points of law that previously were the subject of litigation," Alston & Bird partner Andy Sumner said. "It does lend itself to the predictability and the certainty of what standard of review might apply to certain transactions."

Andy Garelick, a partner at Munger, Tolles & Olson whose practice focuses on corporate governance, said he hopes the amendments proposed in SB 21 would make it easier to advise clients on how to keep deals within the guardrails of the business judgment standard.

"In this case, what the legislature seeks to do is to provide boards of Delaware corporations with a much more clear playbook on how to approach transactions with insiders and with controlling stockholders," Garelick said. "They do that, of course, by creating a series of safe

harbors, including, for example, around what it means to be a controlling stockholder under Delaware law, which historically was facts and circumstances with no default or safe harbor." Those who oppose SB 21 argue the lines it draws would go too far in shielding corporate boards and controllers who might not be acting with minority shareholders' best interests in mind.

"This law really allows for a lot of self dealing transactions, a lot of opportunities for people to dip into their corporate coffers in their own self interest and then take all those transactions and say, 'Well, court, you don't get to say anything about this. The other directors have already looked at it and they're fine with it. There's no role for you,'" said Justin Reliford, co-leader of Scott + Scott's Delaware office.

Grant & Eisenhofer principal Christine Mackintosh said part of what has historically made Delaware a preferred place of incorporation are its courts and their ability to interpret the state's corporate law based on the specifics of a dispute, while other states develop their own law in broader strokes through legislation.

"If everything is codified and they have this straitjacket, then what is the point of all of the sophistication and thoughtfulness that they have brought to the bench all these years?" said Mackintosh in reference to Delaware judges. "The stated purpose of this is to prevent companies from leaving, but what is the incentive for them to stay here if we don't have our special sauce anymore? If we don't have the very thing that makes us attractive?"

Larry Cunningham, director of the Weinberg Center for Corporate Governance at the University of Delaware, said while it might be out of character for Delaware jurisprudence, the bright line rules of SB 21 could still be shaped into a desirable standard through the Court of Chancery's application .

"A lot of the critics at a high level, I think fairly, say, 'Look, the thing about SB 21 overall is it's very code-like, it's very prescriptive, it's very delineating. It's got black lines all around. It looks like code.' And even the drafters will say, 'Yeah, we took quite a bit of this from the Model Business Corporation Act,' and that's fine," Cunningham said. "It's a good jurisprudential observation that this code is a little different from Delaware's traditional statutes. But that said, there will still be a imperative for judicial interpretation and application. So that's a little different."

Reliford said while the bill has been described as a way to curb the filing of unsubstantiated shareholder litigation, filtering out those lawsuits is a function the Court of Chancery has long performed without needing legislative intervention.

"There have always been ways to weed out non-meritorious suits without the legislature stripping power from a court that's really good at weeding out non-meritorious suits. So this is a definite break with those traditions," he said.

"Whether you agree or disagree with where the line gets drawn, knowing where it is is important to everybody on all sides, and I think SB 21 is helpful for that," said Gibson, Dunn & Crutcher partner Jason Mendro.

Next up in this series: a look at the process SB 21 has gone through so far and why opponents say it's been flawed.

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Ann M. Lipton

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This was a quote from my lecture notes. It's been there for years. Today, I deleted it from my upcoming class:

"[Tbh I'm not a fan of Delaware controlling all corporate law but at least I know for sure if it changes its law, it's not doing so to accommodate a single company]"

March 17, 2025 at 2:54 PM Everybody can reply

45 reposts 1 quote 334 likes



10



46



334



Write your reply



ex factis (asserts jester's privilege) @ex-factis.bsky.social · 19h

Soft power is dead. I have full respect and trust for the chancellors and none for legislature.



1



14



ex factis (asserts jester's privilege) @ex-factis.bsky.social · 19h

Frankly if I'm ever near the levers of power and we still have a functioning govt, I think it's time to bring back threats of federalization, for **all** these states racing to the bottom.

We need to revive the "eye of Sauron".



1



11



Ann M. Lipton @annmlipton.bsky.social · 19h

i'm convinced now. there's no defending the internal affairs doctrine. even if you want pure flexibility/private ordering, no reason to do that by moving between states and having them compete with each other.



2



13



ex factis (asserts jester's privilege) @ex-factis.bsky.social · 19h

The "laboratories of democracy" have produced poor results, on this front.



2



7





ex factis (asserts jester's privilege) @ex-factis.bsky.social · 19h

I have an exam later today. "Control and Its Implications." Taught by CM and VCL.

Read the Optimizing article.

Reread MFW.

MFW was, is, and continues to be superior.



Ann M. Lipton @annmlipton.bsky.social · 19h

Ahem

[papers.ssrn.com/sol3/papers.....](https://papers.ssrn.com/sol3/papers.cfm)

(sorry can't help it)

The Three Faces of Control

Controlling shareholders are subject to distinct legal obligations under Delaware law, and thus Delaware courts are routinely called upon to distinguish "contro

@papers.ssrn.com



ex factis (asserts jester's privilege) @ex-factis.bsky.social · 15h

You'll be happy to know this was part of the reading for the class.



adambirnbaum.bsky.social @adambirnbaum.bsky.social · 18h

It never made sense that a tiny state with a tiny population was in charge of default corporate governance laws for the entire country.



Ann M. Lipton @annmlipton.bsky.social · 18h

It kinda did, in the sense that the theory was it would be able to focus on this one thing - not every state can devote weeks to updating its corporate law, every year - and wouldn't be captured by local interests because there were no local interests. That was what the idea was, anyway.





adambirnbaum.bsky.social @adambirnbaum.bsky.social · 18h

Right, but that's a weird theory. It assumes that incorporators make decisions for reasons similar to state legislatures, when the reality is very far from this.

Delaware isn't chosen by minority shareholders or members. It's chosen by majorities / managing members to keep themselves in power.

2



1



Ann M. Lipton @annmlipton.bsky.social · 18h

Yeah, but the theory was the managers would be constrained by the demands of capital. I.e., SHs wouldn't want to invest in companies that had no protections. And it worked, a little: for a while, Nevada was a red flag.

2



6



Ann M. Lipton @annmlipton.bsky.social · 18h

And there was more, of course. As Delaware developed an expert reputation, it keeps the feds at bay - so Delaware could credibly get carveouts from federal preemption, so long as it controlled corporate law and appeared to do so responsibly. And-

1



5



Ann M. Lipton @annmlipton.bsky.social · 18h

An ecosystem of legal advisors told everyone to incorporate in Delaware for credibility.

1



6



adambirnbaum.bsky.social @adambirnbaum.bsky.social · 18h

The same kind of advisors also advocate for the Caymans or Seychelles. The reasons aren't completely dissimilar, nor the attendant circumstances.

1



2



Dael Norwood @dael.bsky.social · 17h

Co-rrect. Delaware may continue to see some preferential business in the market for biz entity registrations, insofar as our lawmakers have demonstrated - repeatedly, now - that it is willing to race to whatever new bottom is dug into the sea floor. But the courts are done as a venue of choice.

1



3





Silly B Man @lawnerd.bsky.social · 17h

What's darkly comic to me is that, because this is statutory DGCL change, an LLC or LP that retains default fiduciary duties will all of a sudden be better protection for its investors than a Delaware corporation if SB 21 passes

2

1

2

...



Dael Norwood @dael.bsky.social · 17h

Truly the stupidest timeline

1

2

...

More >



Andrew Rothstein @asrothstein.bsky.social · 19h



5

...



Michael @mike4mus6.bsky.social · 19h

"WOW" 🤔

2

...



alan-grant.bsky.social @alan-grant.bsky.social · 17h

Corporate privilege is one of the roots of our problems. Not the only, but one.

1

5

...



moodytwin.bsky.social @moodytwin.bsky.social · 17h

Did it pass the house?

1

2

...



Ann M. Lipton @annmlipton.bsky.social · 15h

Not yet



JoeKnows @joe-knows.bsky.social · 19h

It **was** a good democracy while we had it. We are in Matrix world now. People will either chose to awaken or enjoy their bliss. Until they understand people are coming for their short lived bliss



June @junebugwinter.bsky.social · 15h

Please - what is the context for this?



Ann M. Lipton @annmlipton.bsky.social · 15h

www.cnbc.com/2025/03/15/a...



After Elon Musk's Delaware exit, state lawmakers weigh bill to overhaul corporate law

Delaware lawmakers are considering a bill that aims to make the state attractive to investors and executives.

© www.cnbc.com



June @junebugwinter.bsky.social · 15h

sigh Why can't DE ever use the power it has over controlling corporate america for good?



Opinion **Markets Insight**

Why companies are opting for 'Dexit' and moving to Nevada

Delaware's rival now seen as an attractive state to incorporate in, particularly by groups controlled by a founder

BENJAMIN EDWARDS



The Las Vegas Strip. Nevada's legislature is considering a constitutional amendment this session to authorise appointed business courts © AP

Benjamin Edwards

Published YESTERDAY



The writer is a professor of law at the University of Nevada

Delaware's new governor Matt Meyer has recognised that things will need to change in his state after a number of companies decided to shift domicile from it. At the same time, he [warns](#) against "going to Vegas and rolling the dice". He's wrong.

For many corporations, Nevada offers a much safer bet than Delaware. And this bet just became easier to place. Delaware's Supreme Court recently cleared companies to leave the First State. A stockholder had tried to stop Tripadvisor from shifting to Nevada without paying shareholders for the loss of their special "Delaware" rights.

The Delaware Supreme Court rightly [reversed](#) the Chancery court judgment in that case, finding that the decision to leave Delaware for Nevada shouldn't trigger special scrutiny. It also agreed with Nevada's argument that companies, not courts, should conduct the cost-benefit analysis of what state offers a better deal.

Hedge fund manager Bill Ackman recently pushed his chips towards Nevada when he announced that he was reincorporating the management company of his firm Pershing Square to the state. Pershing will join other recent movers including Dropbox and The Trade Desk. These all share a crucial characteristic — a founder still owns or controls much of the corporation's voting shares. Corporate law often classifies these companies as "controlled" because "controllers" may have enough votes to decide much of the corporation's affairs.

Delaware law treats controlled companies differently from other corporations, making them easier to sue and take to trial. Stephen Bainbridge, a leading corporate law expert at UCLA School of Law, recently [wrote](#) that Delaware treats controlled companies with a "reflexive suspicion" whenever they do business with a controlling shareholder. Delaware courts have also been willing to classify persons owning less than 50 per cent of a company's voting shares as controlling shareholders — including Elon Musk in the case of Tesla despite him holding a minority stake. For founder-led companies, getting their pay package approved under Delaware law comes with headaches and uncertainty.

Such companies must also hire lawyers and implement special processes to "cleanse" deals with a controlling shareholder. Even when they disclose and sanitise these transactions under Delaware law, they may still end up litigating for years. Controlled businesses must consider whether Delaware is worth the drama. The state's benefits appear weak. A study by Steven Davidoff Solomon, professor at UC Berkeley Law, found the last five large controlled companies leaving Delaware did not attract a "negative premium" on the stock market. Another [study found](#) that "controlled Delaware firms are on average worth 4.9 per cent less" than similar ones incorporated elsewhere.

To be sure, controlled companies differ from other corporations. Controllers might use their power to enrich themselves at the expense of other shareholders. Yet controllers also have more skin in the game than more diversified shareholders. Controllers have an intense, personal interest in ensuring that their stock price remains high — something that will not happen if the company gets a reputation for abusing its shareholders. In the future, Delaware might leave more of these issues to the market. Its legislature will consider [legislation](#) to ease the burden for controlled companies at its next session.

Still, despite the flaws in Delaware's system, governor Meyer should be proud of its advantages. It has a deeply competent judiciary capable of swiftly resolving shareholder disputes and a well-funded secretary of state office providing first-class service in creating corporations.

Nevada must upgrade its legal infrastructure to continue to compete. For decades, lawyers have told clients that Delaware's courts make it unique and a preferred jurisdiction. Texas recently created its own appointed business court. Nevada's legislature [is now considering](#) a constitutional amendment this session to authorise appointed business courts. Nevada already has a dedicated "business docket" for listing and assigning cases. Yet maintaining its advantage will require a specialised forum.

Offering a competitive package matters to Nevada. Delaware state collects about a third of its general revenue from incorporation fees — well over \$2bn annually. As Nevada rises and offers an alternative, it stands to benefit by thoughtfully competing and offering a fair forum.

Joe Dalia, assembly member of the Nevada legislature, contributed to this article

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Follow the topics in this article

Benjamin Edwards

Markets Insight

US & Canadian companies

Corporate governance

Heritage Playbook Sets Up Antitrust Pressure on Proxy Advisers

- ISS, Glass Lewis targeted in Heritage report combating ESG
- Trump has adopted several anti-ESG recommendations from guide

Republicans and companies have looked to securities regulators to curb firms that advise shareholders on environmental, social, and governance issues, with limited success.

But with the Trump administration implementing a Heritage Foundation anti-ESG playbook, antitrust enforcement could be the next front in the campaign against proxy advisory firms Institutional Shareholder Services Inc. and Glass, Lewis & Co. The firms, which control most of the proxy advice industry, form a “duopoly” that the Department of Justice or Federal Trade Commission should investigate, Heritage argued in a recent report.

Trump already has implemented several of the guide’s recommendations, including rescinding Biden-era diversity, equity, and inclusion initiatives and directing agencies to take legal action against DEI practices. The December report, “ESG, DEI, and What to Do About Them,” followed Heritage’s Project 2025, another blueprint for Trump administration action.

“You have two firms that are totally dominant in that industry,” said David Burton, a Heritage senior fellow, who authored the anti-ESG report. “It seems to warrant an investigation, and you really won’t know if there are violations unless there’s an investigation.”

The guide came the same month the Republican-led House Judiciary Committee issued its own report raising antitrust concerns over the proxy firms’ dominance in their sector.

ISS and Glass Lewis have faced attacks for years, driven by Republican and corporate concerns that the firms improperly shape votes on ESG issues and other matters at companies’ annual meetings. Rep. Bill Huizenga (R-Mich.) once said at a House Financial Services Committee hearing that they “hijack the shareholder process.”

The firms have disputed the claims and are fighting restrictions from Trump’s first Securities and Exchange Commission. Anti-fraud and public filing requirements from the 2020 rules remain in limbo amid litigation.

ISS, Glass Lewis, and the Federal Trade Commission declined to comment. A spokesperson for the Department of Justice's Antitrust Division didn't respond to a request for comment.



- **Launch** an antitrust investigation of the proxy advisory firm duopoly by either the Federal Trade Commission or the Antitrust Division of the Department of Justice. Given the governance structure of the FTC, it may be advisable to assign the investigation to the Antitrust Division.

Source: The Heritage Foundation (Special Report)

Bloomberg Law

ESG Backlash

The target on proxy advisers' back is part of a broader ESG backlash that took off inside the GOP a few years ago. The House Judiciary Committee, led by Rep. Jim Jordan (R-Ohio), in 2023 launched an investigation into what it's dubbed a "climate cartel" of money managers colluding to target US companies.

The ongoing probe has corresponded with at least 70 firms withdrawing from the Climate Action 100+, an investor-led group formed to fight climate change, according to a House report published in December.

States have also brought lawsuits in the investigation's wake. The Texas attorney general in November sued BlackRock Inc. and other money managers that were once members of the Climate Action group for allegedly conspiring to pressure companies into reducing coal output.

House Democrats have dismissed the Judiciary probe for using a "bogus" theory to protect Big Oil. But there's no doubt it's created serious legal risks for some companies, with Trump's election adding to them.

When "we're talking with clients about Trump. 2.0, we're telling them this is an area of focus," said Michael Keeley, the head of Axinn's antitrust practice.

Proxy Firm Defense

ISS and Glass Lewis have pushed back for years on claims they use their grip on the proxy advice industry to push an ESG agenda at companies.

Both firms have said that pension funds and other large shareholders hire them to provide recommendations on how to vote shares at company annual meetings. But the firms' clients don't have to take the advice they get, ISS and Glass Lewis officials have maintained.

Any antitrust concerns about ISS and Glass Lewis are unwarranted, said Nell Minow, a former ISS president. The firms aren't blocking competitors, engaging in price fixing, forcing investors to use their services, or involved in any other anticompetitive activity, said Minow, who also worked in the DOJ Antitrust Division.

The DOJ told ISS during the Reagan administration that its business model didn't raise antitrust concerns, either, after the firm asked the agency to review it. The agency had "no current intention" to bring an antitrust case against ISS, according to a 1987 DOJ letter obtained by Bloomberg Law.

The letter could provide ISS a defense during a possible antitrust investigation and litigation, even decades after it was written, said Minow, now vice chair of ValueEdge Advisors, which works with institutional investors on corporate governance.

"If I were at ISS today, I would hire the best lawyers in town and fight it as aggressively as possible," Minow said. "There's not one element of antitrust law that these companies are violating."

Trump Interest?

How seriously the Trump administration is considering an antitrust investigation of ISS and Glass Lewis is unclear.

Gail Slater, who was confirmed as the DOJ Antitrust Division's leader March 11, didn't discuss the proxy firms or ESG during her nomination hearing in February. FTC Chairman Andrew Ferguson also hasn't discussed the firms in recent public remarks. But in November he raised concern on X about "ESG and DEI coordination."

The DOJ Antitrust Division during Trump's first term backed SEC efforts to restrict ISS and Glass Lewis. The DOJ was aware of concerns of a proxy firm duopoly that "disproportionately" influences shareholder voting, then-Assistant Attorney General Makan Delrahim wrote in a letter to the SEC. The agency issued the rules in 2020, and ISS sued it in litigation that's still pending.

Charles "Rick" Rule, who signed the 1987 business review letter to ISS, told Bloomberg Law he wasn't certain the proxy firms have engaged in anticompetitive practices.

The Trump administration may have difficulty pursuing a traditional antitrust case, the Reagan-era antitrust enforcer said. But ISS shouldn't give too much weight to a nearly 40-year-old document that leaves open the possibility of a future enforcement action, he said.

"I wouldn't advise a client to really spend a lot of time trying to get" a business review letter, said Rule, chair of Rule Garza Howley LLP. "They're not really worth the paper they're written on."

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Cape Cod Healthcare's \$900,000 Retirement Plan Deal Secures Nod

Cape Cod Healthcare Inc. received initial court approval for a \$900,000 class settlement with workers challenging the fees and investment options in the Massachusetts medical provider's retirement plan.

The agreement is expected to benefit thousands of participants and beneficiaries covered by Cape Cod's retirement plan between December 2017 and September 2024. It represents about 25% of their "best-case scenario" for recovery, and it requires Cape Cod to retain an outside consultant to advise on plan fees and services for at least five years, according to the workers' settlement motion.

- Judge Myong J. Joun of the US District Court for the District of Massachusetts on March 14 granted preliminary approval to the deal and scheduled an Aug. 21 fairness hearing
- The lawsuit, which Joun previously allowed to advance, says Cape Cod's plan pays excessive administrative fees and keeps nearly one-fourth of its assets in a poorly performing stable value fund
- Half of the net settlement proceeds will be earmarked for addressing administrative fees, with the other half directed to workers based on their investments in the stable value fund

Goodwin Procter LLP represents Cape Cod. Fair Work PC represents the workers.

The case is Somers v. Cape Cod Healthcare, Inc. , D. Mass., No. 1:23-cv-12946, 3/14/25 .

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Roundup Judge Orders Distribution of \$24M Common Benefit Fees

 [law.com/therecorder/2025/03/17/roundup-judge-orders-distribution-of-24m-common-benefit-fees-](https://www.law.com/therecorder/2025/03/17/roundup-judge-orders-distribution-of-24m-common-benefit-fees-/)

Amanda Bronstad

What You Need to Know

- Chhabria's order rejected a special master's recommendation to grant \$0 in common benefit fees to Roundup lead counsel.
- Chhabria acknowledged that his order had a "degree of unfairness" to lawyers who didn't rely that much on lead counsel's work.
- R. Brent Wisner said he planned to object to Chhabria's decision to reduce his firm's allocation to 7%.

A federal judge who once decried the Roundup multidistrict litigation lead counsel's request for common benefit fees as an "example of MDLs gone wild" has ordered the distribution of \$24.2 million to those firms and four others that worked on the cases.

In a March 13 order, U.S. District Judge Vince Chhabria of the Northern District of California found that "the work performed by these firms conferred a significant benefit on all the plaintiffs in this MDL." Although the distribution amount is far below lead counsel's original 2021 request, estimated at \$800 million, Chhabria's order rejected a special master's recommendation to grant \$0 in common benefit fees.

"Given the difficulty of that work, the amount of time spent doing it on a compressed schedule, the high quality of the work, and the risk that the seven firms undertook, those firms are entitled to compensation beyond what they received through their own clients' recoveries," Chhabria wrote.

Co-lead counsel of the Roundup multidistrict litigation—Robin Greenwald of New York's Weitz & Luxenberg and David Dickens of the Miller Firm in Orange, Virginia—did not respond to a request for comment. They earlier called the special master's report "insulting" and full of "inaccuracies and flaws."

Aimee Wagstaff of Wagstaff Law Firm in Denver, who was co-lead counsel until her Jan. 29 resignation, also did not respond. She had objected to the special master's report as "filled with misunderstandings, factual inaccuracies, and a general misapplication of the common benefit doctrine."

'Far From an Exact Science'

Common-benefit fees in MDLs compensate lead counsel while preventing “free riders,” or lawyers who collect fees on cases they generate but do not necessarily litigate. But there are increasing fights over who should be forced to pay assessments on their settlements or jury awards that go toward the common benefit fund.

Bayer, which owns Monsanto, announced plans in 2020 to resolve an estimated 120,000 Roundup claims for nearly \$10.9 billion. But many cases remain unsettled, prompting trials throughout the country, almost all in state courts.

One year later, Chhabria threatened not to award the fees to lead counsel at all, criticizing the application of the common benefit doctrine in multidistrict litigation, but he ended up severely reducing the scope of the assessments. In 2024, the three attorneys on the fee committee—Wagstaff, Greenwald and Dickens—allocated 82% of the common benefit fund to themselves.

In a Jan. 15 report, special master William Foster concluded that the 8% common benefit assessment on other lawyers with Roundup cases was arbitrary and unfair. He recommended that the common benefit fees be returned to those law firms.

In parting with that recommendation, Chhabria acknowledged that his order had a “degree of unfairness” to lawyers who did not rely that much on lead counsel’s work, many of whom pursued their own Roundup cases in state courts but still had to pay assessments into the common benefit fund.

R. Brent Wisner, with Baum, Hedlund,
Aristei & Goldman.

“But redistributing attorneys’ fees—particularly in the context of a federal MDL—is far from an exact science,” Chhabria wrote. “But the fact that there’s no ideal solution does not mean that courts shouldn’t make their best effort to find the ‘least worst’ solution—one that strives to provide fair compensation for those who do common benefit work without taxing the recoveries of the remaining plaintiffs too harshly (while at the same time not unduly rewarding the remaining plaintiffs for sitting on the sidelines).”

He also differed with both the special master and the fee committee as to three other firms that contributed to the Roundup multidistrict litigation, concluding that: San Francisco’s Andrus Anderson, whose partner Lori Andrus was liaison counsel, should get 2%, not 1%; Louisville, Kentucky’s Moore Law Group, whose partner Jennifer Moore was co-lead with Wagstaff in the only federal Roundup trial, should receive 8% rather than 6% due to its work with Kenneth Feinberg’s settlement program; and Los Angeles-based Wisner Baum’s billing problems warranted a 3% reduction.

R. Brent Wisner of Wisner Baum, who helped win the first Roundup verdict of \$289 million in 2018 and a \$2 billion jury award in 2019, said he planned to object to Chhabria's decision.

Wisner told Law.com, "It is simply incorrect to suggest that Wisner Baum contributed only 7% to the common benefit of this MDL."

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Judge orders Edison to expedite release of fire investigation footage

DJ [dailyjournal.com/articles/384380-judge-orders-edison-to-expedite-release-of-fire-investigation-footage](https://www.dailyjournal.com/articles/384380-judge-orders-edison-to-expedite-release-of-fire-investigation-footage)

LA Fires,
Civil Litigation

Mar. 18, 2025

Attorneys for plaintiffs in the Eaton Fire litigation accused Southern California Edison of delaying the release of crucial inspection footage of a transmission tower near the fire's suspected origin. A Los Angeles judge sided with plaintiffs, ordering Edison to provide the data on a rolling basis.



Douglas Dixon PHOTO: Hueston Hennigan LLP

Plaintiffs' attorneys in the Eaton Fire litigation said on Monday that Southern California Edison wishes to delay the production of photographs and video footage that its technicians will record when they inspect an energy transmission tower near the suspected fire origin.

"We have met and conferred with Edison, and we are at an impasse with respect to what you just referred to, the production of evidence to us," Howard D. Maycon began. Maycon is the office managing partner with Cozen O'Connor and a proposed liaison counsel for the subrogation plaintiffs.

"Today, at 8 a.m., the parties started droning. Edison started droning the lines," Maycon said.

"We need to see what's on the towers and the lines in order to know what we need to preserve, because we don't have an ability to climb those towers. On Thursday and Friday, Edison is going to climb the towers and document towers with photographs as well as with video," he continued.

Maycon went on to say that he and his colleagues asked to get the photographs and video footage 24 hours after it is created, but utility officials wish to produce the material four days later.

"We can't do that if on Friday they're climbing the tower and not turning over evidence to us until Monday afternoon or Tuesday morning, and they're already performing current injection testing. Mr. Dixon may stand up and tell you the current injection testing is not going to damage the condition of the evidence in the field," Maycon said.

Douglas J. Dixon is the Hueston Hennigan partner leading Edison's defense. Dixon told Judge Laura J. Seigle that the volume of data that would be produced was unwieldy.

"There is an issue, your honor, and we had met and conferred with plaintiffs' counsel, they said they weren't intending to bring it up at this hearing, but here it is and let me address it. We're talking about hundreds of gigabytes of data. That takes a very long time to download from the devices from which they..." Dixon began.

"Wait, I understood that this video and photographs. People are going to climb the towers. They're going to have cameras. They're going to photograph and video. That doesn't sound like a huge amount of data," Seigle said.

"It is, your honor," Dixon responded. "It's high-definition video and photographs that are captured on multiple devices."

Dixon went on to say that it takes a long time to download the "hundreds of gigabytes" from the photo and video devices. That data then needs to the production service company, and the footage needs to be timestamped.

Seigle's suggestion that Edison produce the material on a rolling basis without timestamps was met with nods from plaintiffs' attorneys in the gallery.

"Subject simply to confirm that is technologically feasible, I think that would work, Dixon said.

"OK, make it happen," Seigle said.

"But if it's not technologically feasible, your honor, then we're going to have to object to the current injection testing going forward," Maycon said.

Injection testing entails injecting a controlled, high current into electrical equipment to assess its performance in a fault situation.

Edison informed the California Public Utilities Commission on Jan. 27 that a fault had been detected at approximately 611 p.m. on a high voltage transmission line that connects the Gould substation in La Cañada Flintridge to the Eagle Rock substation in Eagle Rock. The letter goes on to say that the line "does not traverse the Eaton Canyon corridor."

Edison wishes to reenergize its idle lines before summer, when temperature goes up and energy demand rises with it.

The discussion over the footage occurred towards the end of a case management conference. The hearing was intended to bring together all of the parties that have sued Southern California Edison over the Eaton Fire. Insurance companies estimate that the fire caused at least \$10 billion in property damage. At least 130 cases have been filed against utility and more are expected. Edison says the cause of the fire is under investigation. *Jeremy Gurse v. Southern California Edison*, 25STCV00731 (L.A. Super. Ct., filed Jan. 13, 2025).

#384380

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Beasley Allen fights new votes to approve J&J's \$9B talc bankruptcy

 setexasrecord.com/stories/670523783-beasley-allen-fights-new-votes-to-approve-j-j-s-9b-talc-bankruptcy

March 18, 2025

Asbestos

Jere Beasley | beasleyallen.com

HOUSTON - Lawyers opposing a \$9 billion plan that keeps ovarian cancer lawsuits against Johnson & Johnson out of the hands of juries and judges are upset other firms have clients now voting to approve it.

The drama continues to unfold in Houston federal bankruptcy court, where J&J hopes to use a spinoff company to pay claims its Baby Powder contained asbestos. Judge Christopher Lopez has already conducted a two-week trial on whether it is appropriate for a massive company to pin its liability on a just-created subsidiary, Red River Talc.

Supporters of the bankruptcy say it will pay claimants quicker, easier and possibly more, but law firms opposed say their clients won't get their day in court and lose the potential for a blockbuster, multimillion-dollar verdict from a jury.

The plaintiffs firm Beasley Allen has been one of the biggest objectors and created the Coalition of Counsel for Justice for Talc Claimants. It has waged a battle over how rival firms collected votes from their clients.

Supporters say client-voting already exceeds a 75% threshold for approval, and last month Ashcraft & Gerel said 1,500 of its clients had changed their minds and now support the plan, after the firm had recommended they do so, thanks to changes in the proposal.

"That a law firm hopes or believes certain changes will be made to a plan is not any basis to change the votes of its clients especially after the request is made at the conclusion of a confirmation hearing with evidence suggesting that the hoped-for changes likely will never come," the Coalition wrote in response on March 10.

"Apart from this hearsay assertion of counsel and copies of the Original Ballot and Amended Ballot - no evidence accompanies the motion (to change votes). There is no further amended plan. There is no new (memorandum of understanding) on record."

Tens of thousands of claims are at issue. On Feb. 28, Ashcraft & Gerel asked Lopez to allow it to change the votes of its clients who had voted no before the Smith Law Firm last year engineered an extra \$1.1 billion for the plan.

In July last year, all but two of Ashcraft & Gerel's 1,507 clients voted no. But then came the extra money, plus J&J's agreement to accelerate the effective date of the trust.

Ashcraft & Gerel's new client ballot has 1,493 clients voting to accept the plan, after prodding from the firm. It notified clients it was in their best interest to change their votes, and 839 did.

The rest were told if they didn't cast a vote, the firm would use its power of attorney to vote for them, which it is doing for 654 clients.

The Coalition on March 10 also objected to OnderLaw's request to add a supplemental master ballot of its clients' votes. It says OnderLaw made the choice not to submit a ballot before the July 26 deadline and can't decide to do so now.

"The firm's apparent change of heart, however well-intentioned it may be, cannot suffice to permit a late ballot - particularly when it comes, without any timing justification, on the literal eve of a two-week trial," the Coalition wrote.

"The motion makes no mention of ever having contacted these claimants about how to cast their votes. It does not state whether they were made aware that OnderLaw... was attempting to have their votes cast after the deadline."

Like Beasley Allen, which maintained its opposition throughout the trial, Ashcraft & Gerel serves as co-lead counsel in a multidistrict litigation proceeding in New Jersey. Should cases be resolved there, those firms are entitled to shares of a common fund for attorneys fees.

To alleviate those concerns, J&J is paying \$650 million in Houston for a similar fund.

Judge Lopez is also weighing objections from insurers who say the claims have no value and would rather prove that point in court.

It's the third attempt for J&J after two others failed in New Jersey. Lopez refused to transfer the case back there, leading the Coalition to appeal to district court in January.

The Coalition calls its effort the "last practical opportunity for review of a scheme that turns" the bankruptcy system upside down.

Beasley Allen has been a vocal critic of J&J's repeated attempts to use the bankruptcy system to stay out of civil court, considering how much money the company has. The move to Texas bankruptcy court has been dubbed the "Texas Two-Step."

But opposition waned during the Texas bankruptcy. J&J says claimants will receive on average twice what they would in a court case.

Beasley Allen and the Smith Law Firm are fighting each other in Alabama federal court. Beasley Allen is accusing Smith of pushing approval of the settlement on its clients because it owes as much as \$240 million to a lender that funded its litigation.

Supporters of the plan say it's the only realistic way to settle some 40,000 claims by women who say their cancer was caused by asbestos-tainted talc. Johnson & Johnson has won most of the cases that have gone to trial so far and maintains there was never asbestos in its products.

But a few devastating losses, including a \$2.1 billion verdict in Missouri, forced the company to enter settlement negotiations. Defending the cases has cost J&J \$10-20 million a month and trying each one in court would take decades, with wildly different results for individual plaintiffs.

ORGANIZATIONS IN THIS STORY

U.S. Bankruptcy Court for the Southern District of Texas

Class Action

March 18, 2025, 6:58 AM PDT

PowerSchool Student Data Proposed Privacy Class Suit Narrowed

- **'Kitchen sink' complaint can advance some privacy claims**
- **California statutory larceny, unfair competition claims severed**

PowerSchool Holdings Inc. convinced a federal judge to narrow a proposed class action alleging it commercially uses data gathered from students

The parents and students plausibly alleged that the educational software maker was misappropriating sensitive student data, according to the order from the US District Court for the Northern District of California that declined to dismiss an intrusion upon seclusion and some California privacy law claims.

But claims for deceit, statutory larceny and unfair competition can't go forward as pled, the court said. Among other things, the non-consensual use of personal information wasn't sufficient here to constitute a money injury or loss.

"The complaint took a kitchen sink approach that unduly complicates plaintiffs' core privacy claims, but the remaining claims are plausibly alleged and will go forward," Judge James Donato said Monday.

The complaint said PowerSchool collects scholastic information from students and sells it to third parties without the consent of their parents or guardians. The allegation was sufficient for an intrusion upon seclusion and invasion of privacy claim under California law, the court said.

Allowing other companies to intercept that data through "'automatic-syncing and data-transmission technologies like plug-ins, software development kits (SDKs), and application programming interfaces (APIs)'" was sufficient for a California Invasion of Privacy Act claim, it said.

The Comprehensive Data Access and Fraud Act's loss requirement isn't restricted to economic injury, the court also said, allowing the claim under that law to survive.

It was premature to address whether a non-California resident could benefit from state law, the court said, adding the argument could be raised when the plaintiffs move for class certification.

Meanwhile, because the plaintiffs failed to state they read PowerSchool's privacy representation, their deceit claim was deficient.

A "benefit of the bargain" theory of injury failed to support a Unfair Competition Law claim because the plaintiffs couldn't say they read the company's privacy representations. And there's "no non-speculative basis in the complaint for thinking plaintiffs can or would transact with the personal information at issue."

And it isn't reasonable to conclude that information at issue, "whether it be student grades or coursework or students' mouse clicks," can be exclusively possessed—so the larceny claim was doomed as well.

The plaintiffs have until Apr. 4 to file an amended complaint.

EdTech Law Center PLLC and Hagens Berman Sobol Shapiro LLP represent the proposed class.

Kirkland & Ellis LLP represent PowerSchool.

The case is Cherkin v. PowerSchool Holdings Inc , N.D. Cal., No. 3:24-cv-02706, 3/17/25 .

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Fourth Circuit: Carefully worded PFAS cases still go to federal court

 legalnewsline.com/stories/670520716-fourth-circuit-carefully-worded-pfas-cases-still-go-to-federal-court

March 17, 2025

State AG

Attorney General Alan Wilson | Alan Wilson Official Photo

RICHMOND, Va. (Legal Newsline) - States that crafted lawsuits against 3M over chemicals called PFAS in a way they hoped would keep them out of federal court have lost a key ruling.

A 2-1 ruling on March 7 in the U.S. Court of Appeals for the Fourth Circuit possibly paves the way for defendants to move cases from Maryland and South Carolina state courts to a federal multidistrict litigation proceeding.

That MDL has seen about 10,000 cases consolidated for pretrial purposes, given they all contain similar accusations against similar defendants. Public water systems have scored huge settlements to address PFAS. BASF paid \$316.5 million, Tyco \$750 million, DuPont \$1.2 billion and 3M 10.5 billion.

Private lawyers are earning 8% from these agreements. PFAS are a group dubbed "forever chemicals" because they persist in groundwater and human tissue for years. They are found in firefighting foam and consumer products.

3M has argued its PFAS-containing firefighting foam was designed in accordance with federal contracts to be used on military bases. When sued, 3M argues cases belong in federal court thanks to the federal officer removal statute.

So when Maryland Attorney General Anthony Brown and South Carolina AG Alan Wilson each brought litigation, they filed two cases. One alleged contamination from PFAS at military bases, but the other said it was not demanding damages from PFAS used in the firefighting foam - only in other products.

District courts said this was OK, but the Fourth Circuit agreed with 3M that PFAS from bases attributed to the alleged contamination.

"Though it may not be an 'airtight case on the merits,' it does not have to be, and we conclude that 3M's theory of connection holds sufficient water to establish this element under the federal officer removal statute's broad scope," Judge G. Steven Agee wrote.

"Both States plead general PFAS contamination near military bases where 3M alleges it sold Military (Aqueous Film-Forming Foam). On this record, we have no trouble considering as plausible 3M's allegations that some of the PFAS contamination at issue even in the non-AFFF complaints may come from their Military AFFF production."

Judge Henry Floyd disagreed and authored a dissenting opinion, with concerns the ruling will sweep lawsuits properly in state courts into the federal system.

"As I see it, the court reads the nexus requirement so broadly as to move toward foreclosing state courtrooms to plaintiffs bringing state-law claims against defendants, when those defendants in turn identify even the slightest connection between the claims at issue at work they have performed as government contractors," Floyd wrote.

PFAS are prevalent in consumer products such as food packaging, cookware, clothing, carpets, shoes, fabrics, polishes, waxes, paints, cleaning products, and firefighting foams. They persist in the environment without breaking down easily and can leach into groundwater.

The federal government has set a maximum contaminant level for PFAS, even as groups call the move premature. Much of the research regarding their effect on the human body is disputed.

The MDL handling claims from water districts and personal injury plaintiffs is overseen by South Carolina federal judge Richard Gergel. Consumer class actions have sprung up around the country too, against various defendants - including restaurants.

Many government plaintiffs are represented by private lawyers working on contingency fees.

ORGANIZATIONS IN THIS STORY

South Carolina Attorney General

Reversing EPA's Endangerment Finding Would Be Steep Legal Battle, Experts Say

 [law.com/nationallawjournal/2025/03/17/reversing-epas-endangerment-finding-would-be-steep-legal-battle-experts-say](https://www.law.com/nationallawjournal/2025/03/17/reversing-epas-endangerment-finding-would-be-steep-legal-battle-experts-say)

Dan Novak

The U.S. Environmental Protection Agency would face a very tough legal battle if it were to try to reverse its "Endangerment Finding," which underpins greenhouse gas regulations, environmental attorneys said.

Last week, the EPA announced it would formally "reconsider" the 2009 EPA finding that greenhouse gases threaten public health and the environment, arguing it was based on questionable science and has led to regulations that harm American industry.

"The Trump administration will not sacrifice national prosperity, energy security, and the freedom of our people for an agenda that throttles our industries, our mobility, and our consumer choice," EPA Administrator Lee Zeldin said in a statement Wednesday. "We will follow the science, the law, and common sense wherever it leads, and we will do so while advancing our commitment towards helping to deliver cleaner, healthier, and safer air, land, and water."

The Endangerment Finding itself is not a regulation, but a scientific determination that triggers regulations under the Clean Air Act, said American University environmental law professor Bill Snape. Regulations such as vehicle and methane emissions standards, power plant carbon rules and greenhouse gas reporting requirements all rely on the finding.

If the EPA were to reverse its own finding that greenhouse gases are harmful, it would need to cite a scientific basis for doing so. But the science behind the Endangerment Finding has only gotten stronger in the past 16 years, Snape said.

He added the Supreme Court has upheld the EPA's authority to regulate greenhouse gases through the Endangerment Finding in the justices' 2014 decision *Utility Air Regulatory Group v. EPA*.

"Not only are the odds small that they succeed, but it would take an immense amount of effort to even lose well," Snape said.

EPA has cast doubt on the Endangerment Finding, saying in a statement there is "significant uncertainties" in the science behind it—which Sierra Club attorney Andres Restrepo called bunk.

"It's preposterous to assert there's uncertainties as to whether greenhouse gases caused by humans trap heat in the atmosphere and that trapping heat in the atmosphere causes danger and harm to human health and welfare," he said. "That is not true. And they know that's not true."

But Daren Bakst, director of the Competitive Enterprise Institute's Center for Energy and Environment, applauded the EPA's decision to revisit the Endangerment Finding and said the regulations that rely on the finding come at a steep economic cost.

"To properly reform the EPA, in addition to the incredible work of the Trump administration, it will also require Congress to do its part because many of the problems are caused by flaws in the environmental statutes, such as the Clean Air Act and Clean Water Act," Bakst said in a statement.

If the Endangerment Finding were eliminated, it would make it much easier for the EPA to justify undoing regulations to address climate change, said Natural Resources Defense Council attorney David Doniger.

"Legally, if it can follow through and repeal this finding—a big if—it will make it easier to repeal crucial standards on vehicles, power plants and oil drillers," Doniger stated via email. "To be sure, separately EPA said last week that it is reconsidering those standards on their own—so it is attacking these standards from both sides."

University of Maryland environmental law professor Bob Percival compared a legal fight over the Endangerment Finding to the Scopes Monkey Trial that dealt with teaching evolution in schools.

There are basic scientific questions at the heart of both issues, he said: Did humans evolve from primates? and Do greenhouse gases endanger public health and welfare?

In Scopes, "the religious fundamentalists were saying, 'We should not teach evolution in schools, it's against our religion.' And it's sort of similar in the sense that it's trying to deny basic science now," Percival said.

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Lawmaker wants climate cost study, while Big Oil preps for big hearing in Bucks County case



pennrecord.com/stories/670523819-lawmaker-wants-climate-cost-study-while-big-oil-preps-for-big-hearing-in-bucks-county-case

March 18, 2025

Legislation

Corr | Instagram

HARRISBURG - As the oil industry urges a Pennsylvania judge to toss a climate change lawsuit that Bucks County hopes will provide money for updates, one Pennsylvania lawmaker wants to commission a study on the costs associated with global warming.

Cases blaming companies like Exxon, Chevron and BP are failing in states around Pennsylvania as judges refuse to use the power of state courts to essentially regulate the global energy market. Should a court actually rule against Big Oil, it would be forced to determine the amount of damages required to update infrastructure in places ranging from Rhode Island to Hawaii - and provide a jackpot for private lawyers who scored government, contingency-fee contracts.

Rep. Joe Webster, D-Montgomery County, earlier this year introduced H.R. 90 to study the costs of heavy precipitation, flooding and extreme temperatures. On Feb. 25, it was referred to the House Environmental & Natural Resource Protection Committee.

The bill would order the Joint State Government Commission to study adaptation and resilience measures in Pennsylvania.

"This study would also include analyses of the impact of climate change on the natural, built and social environments of Pennsylvania, and on the public health and well-being of Pennsylvanians," he wrote in a memo.

"Through the use of climate modeling tools and cooperation with stakeholders, this study will provide the General Assembly with the information needed to combat the climate crisis through to the end of the century."

The anti-climate litigation group Energy in Depth pointed out that a similar study was conducted in Boulder, Colo., and the figures were used when that city filed its climate change case years ago.

The Center for Climate Integrity was one of the groups organizing that study and pushing litigation. In July 2023, it published its own report on costs in Pennsylvania, claiming municipalities will spend more than \$15 billion by 2040.

Should that happen, the money will need to come from somewhere. Litigation against Big Oil could provide it, but those cases don't seem promising.

In fact, defendants have sprinkled the Bucks County docket with decisions in other states rejecting them, in an effort to remind Judge Stephen Corr that other judges are hesitant to advance them past an opening motion to dismiss.

Corr is holding a hearing on the defendants' arguments on March 24. There, defendants will note that five judges have already thrown the cases out after a lengthy battle over whether they should be heard in federal or state courts.

The most recent came Feb. 5, when Mercer County Superior Court Judge Douglas Hurd threw out New Jersey's lawsuit.

Hurd joined two state judges in Maryland, one in Delaware and one in New York in dismissing this type of case. His is the third dismissal since the U.S. Supreme Court declined to take up the issue, which kept Honolulu's case going past the motion-to-dismiss stage.

The cases, dozens of which have been filed around the country, allege consumers would not have burned as many fossil fuels as they did had companies been more forthright about their effects.

Judge Videtta Brown of Baltimore said the litigation goes beyond the limits of Maryland law, or whatever states other cases are filed in. Most municipalities and states that have filed suit are near oceans.

Brown said the U.S. Constitution's structure does not allow state-law claims like those put forth by the City, which, like others, wants money for infrastructure projects to address climate change.

"The explanation by Baltimore that it only seeks to address and hold Defendants accountable for a deceptive misinformation campaign is simply a way to get in the back door what they cannot get in the front door," she wrote.

In the Bucks County case, defendants have noted one of the county's own commissioners has renounced the case. They also claim the county skipped the step of approving litigation in a public meeting.

While it is normal for county commissioners to discuss litigation matters in closed special sessions, the companies say, Pennsylvania law requires them to approve any "official action" by majority vote in an open meeting.

“The County’s public records demonstrate that Bucks County lacked capacity to file this action because the Commissioners never deliberated or voted to file suit at an open public meeting,” the oil companies argued in an Aug. 5 brief.

Bucks County is represented by DiCello Levitt, which represents Michigan in its PFAS litigation. The firm also tried to build a business around representing communities suing to collect taxes on streaming video services, but most of those cases have been dismissed.

Bucks County Commissioner Bob Harvie, in a March 25 news release, boasted his was the first county in Pennsylvania to take on “Big Oil” with a climate lawsuit. The county also sued 3M, Du Pont and other PFAS manufacturers in 2022, hiring Baron & Budd, Cossich Sumich Parsiola & Taylor, and Dilworth Paxson on a contingency-fee basis.

Bucks County commissioners voted on Jan. 17 to hire DiCello Levitt on a 25% contingency basis “to evaluate and litigate potential environmental claims.” The defendant companies say that notice in the meeting minutes wasn’t enough to comply with Pennsylvania’s Sunshine Act, which requires a public meeting to authorize the actual lawsuit.

When Gene DiGirolamo withdrew his support for the lawsuit at an April 3 public meeting, the companies said, he didn’t refer back to the Jan. 17 action but to the county’s announcement it had filed suit on March 25. There was no public meeting in which the commissioners debated the lawsuit before it was filed, the companies say.

ORGANIZATIONS IN THIS STORY

Pennsylvania General Assembly

Google settles \$28M class action over alleged pay disparities

DJ [dailyjournal.com/articles/384384-google-settles-28m-class-action-over-alleged-pay-disparities](https://www.dailyjournal.com/articles/384384-google-settles-28m-class-action-over-alleged-pay-disparities)

Labor/Employment

Mar. 18, 2025

A Santa Clara County judge found the tech giant violated employment laws related to race and ethnicity, allegedly paying certain minority employees less than White and Asian colleagues for similar work. The lawsuit, filed under California's Private Attorneys General Act, accused Google of perpetuating wage disparities through its hiring and salary-setting practices.



Google has agreed to a \$28 million class settlement with employees after a judge found the company violated employment laws related to race and ethnicity, uncovering pay disparities among similarly situated workers.

The lawsuit, brought by Google employee Ana Cantu under California's Private Attorneys General Act, alleged systemic pay discrimination against Hispanic, Latinx, Indigenous, Native American, Native Hawaiian, Pacific Islander, and Alaska Native employees compared to their White and Asian colleagues. *Ana Cantu v. Google, LLC, et al.*, 21CV392049 (S.C. Super Ct. filed Dec. 8, 2021).

"I commend Ms. Cantu who brought this suit against Google, one of the most powerful companies in the world," said Cathy Coble, founding partner of Gunn Coble LLP, in a news announcement of the settlement. "She risked her career to raise race/ethnicity pay disparity at Google.

"I also want to acknowledge the bravery of both the diverse and ally Googlers who self-reported their pay and leaked that data to the media, enabling us to push for discovery of the data necessary to support this class action. Suspected pay inequity is too easily concealed without this kind of collective action from employees," Coble said.

Courtenay Mencini, a spokesperson for Google said, "We reached a resolution, but continue to disagree with the allegations that we treated anyone differently, and remain committed to paying, hiring, and leveling all employees fairly."

Judge Charles F. Adams of the Santa Clara County Superior Court granted preliminary approval of the settlement on March 12.

Adams found that Google paid Hispanic, Latinx, Indigenous, Native American, Native Hawaiian, Pacific Islander, and Alaska Native employees less than White and Asian colleagues for similar work.

The lawsuit claimed Google systematically hired diverse employees at lower salaries and job levels, basing starting pay on prior salary-- a practice that perpetuated racial and ethnic pay disparities.

According to Gunn Coble, plaintiffs relied on a leaked 2022 internal Google pay spreadsheet showing lower compensation for diverse employees, a finding later confirmed by a labor economist analyzing Google's payroll data.

#384384

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Perrigo Beats Worker's Retaliation Claim Over Ethics Hotline Tip

- Assistant treasurer said Perrigo failed loan obligations
- Company didn't know who made the complaint, judge says

Perrigo Co. PLC persuaded a federal court to toss a former employee's suit saying he was fired for reporting that the company was out of compliance with a loan agreement.

Ex-Perrigo assistant treasurer Scott Finch failed to sufficiently allege retaliation because he didn't show the company knew he'd made the complaint, the US District Court for the Western District of Michigan said in a March 14 decision.

The court granted summary judgment to Perrigo. Finch, who worked for a Michigan subsidiary of the pharmaceutical company, said he was terminated for submitting an anonymous internal complaint through Perrigo's ethics hotline.

Finch brought a Michigan state claim of retaliatory discharge in violation of public policy. The complaint said Perrigo failed to make proper payments and fulfill notification requirements related to a loan agreement with JP Morgan Chase Bank NA, the court said.

Finch's complaint failed to establish a retaliation claim because such a claim requires that the employer know of the worker's protected activity, Judge Robert J. Jonker said.

"Every piece of the record evidence instead confirms that Perrigo's decisionmakers did not know the complainant's identity and affirmatively avoided efforts to find out who the anonymous writer was," Jonker wrote.

Finch's claim also failed because Michigan requires the absence of another available remedy for the retaliation claim, and Finch had another remedy through federal whistleblower protections, the judge said. The Sarbanes-Oxley Act prohibits the discharge of an employee for providing information regarding potential securities fraud, the court said.

"Michigan law is crystal clear that if an applicable statutory remedy exists in some form, the common law public policy claim cannot survive," the judge wrote.

Warner Norcross & Judd LLP represented Perrigo. Sommers Schwartz PC represented Finch.

The case is Finch v. Perrigo Co. , W.D. Mich., No. 1:23-cv-00314, 3/14/25 .

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BlackRock, Vanguard, State Street ask court to dismiss US antitrust lawsuit

 [reuters.com/legal/blackrock-vanguard-state-street-ask-court-dismiss-us-antitrust-lawsuit-2025-03-18](https://www.reuters.com/legal/blackrock-vanguard-state-street-ask-court-dismiss-us-antitrust-lawsuit-2025-03-18)

Shivani Tanna, Ross Kerber

By Shivani Tanna and Ross Kerber

March 18, 2025 1:49 AM PDT Updated 6 hours ago

Item 1 of 2 The logo for Vanguard is displayed on a screen on the floor of the New York Stock Exchange (NYSE) in New York City, U.S., June 1, 2022. REUTERS/Brendan McDermid/File Photo

[1/2] The logo for Vanguard is displayed on a screen on the floor of the New York Stock Exchange (NYSE) in New York City, U.S., June 1, 2022. REUTERS/Brendan McDermid/File Photo [Purchase Licensing Rights](#) , opens new tab

March 17 (Reuters) - BlackRock (BLK.N) , opens new tab, Vanguard and State Street (STT.N) , opens new tab asked a Texas court late on Monday to dismiss a U.S. state lawsuit accusing them of conspiring to decrease coal output, saying the allegations were "half-baked and untested" legal theories.

"To find that Plaintiffs have stated an antitrust claim on these alleged facts requires contorting the law in a way that would hurt both coal companies and individual investors," the asset managers told the judge, asking the court to reject this "adventurous attempt to rewrite antitrust law."

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The companies said that the complaint, led by the Texas state government, does not offer any example of them ever telling a coal company to reduce output.

BlackRock, Vanguard and State Street together manage more than \$26 trillion in assets. Their influential proxy votes have made them major voices in how U.S. corporations pay executives, elect directors and set environmental, social and governance (ESG) policies.

But their reach has also generated criticism from various political perspectives. The suit is part of a wave of pressure on the firms from conservative U.S. politicians, many from energy-producing states, who among other things have alleged that the firms' cooperation in industry net-zero groups amounts to collusion.

The claim is at the center of the suit filed by Texas and 10 other Republican-led states, which said the three violated antitrust law through climate activism that reduced coal production

and boosted energy prices.

In their response the companies called their activities "commonplace" ones for their index funds that are "the core ingredients allowing asset managers to provide the low-cost funds that millions of Americans rely on to save for retirement and other purposes."

The case is Texas et al v BlackRock Inc et al, U.S. District Court, Eastern District of Texas, No. 24-00437.

Reporting by Ross Kerber in Boston and Shivani Tanna in Bengaluru; Editing by Muralikumar Anantharaman

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Ross Kerber
Thomson Reuters

Ross Kerber is U.S. Sustainable Business Correspondent for Reuters News, a beat he created to cover investors' growing concern for environmental, social and governance (ESG) issues, and the response from executives and policymakers. Ross joined Reuters in 2009 after a decade at The Boston Globe and has written on topics including proxy voting by the largest asset managers, the corporate response to social movements like Black Lives Matter, and the backlash to ESG efforts by conservatives. He writes the weekly Reuters Sustainable Finance Newsletter.

Gibson Dunn Lawsuit Says White House Unlawfully Terminated Immigrant Program Funding

 [law.com/nationallawjournal/2025/03/17/gibson-dunn-lawsuit-says-white-house-unlawfully-terminated-immigrant-program-funding](https://www.law.com/nationallawjournal/2025/03/17/gibson-dunn-lawsuit-says-white-house-unlawfully-terminated-immigrant-program-funding)

Sulaiman Abdur-Rahman

Gibson, Dunn & Crutcher, representing immigration advocates, argued for a preliminary injunction Monday seeking to block the Trump administration from defunding federal programs that assist noncitizens who face possible deportation.

Gibson Dunn alleges the Justice and Homeland Security departments under President Donald Trump arbitrarily terminated congressionally appropriated funding for key programs in violation of the Administrative Procedure Act.

Monday's hearing before U.S. District Judge Randolph D. Moss of the District of Columbia occurred six weeks after Gibson Dunn filed a complaint Jan. 31 on behalf of multiple advocacy groups naming Homeland Security Secretary Kristi Noem as a defendant.

The plaintiffs seek a preliminary injunction forcing the Trump administration to fund and maintain four programs that provide vital services to noncitizens, including detainees held by the U.S. Immigration and Customs Enforcement. In-house counsel for lead plaintiff the Amica Center serve as co-counsel alongside Gibson Dunn.

"An injunction to stop Defendants illegally ending the Programs and refusing to spend appropriated funding is necessary to protect Plaintiffs from severe and irreparable harm," counsel for the plaintiffs alleged in court documents.

"Plaintiffs fall well short of meeting the high bar for obtaining the extraordinary relief they request," DOJ attorneys for the Trump administration wrote in an opposition brief. "All of their claims fail on the merits."

Trump issued a memo last Tuesday requiring DOJ attorneys to request judicial enforcement of the Federal Rules of Civil Procedure Rule 65(c) requiring plaintiffs to pay bonds if they wish to secure an injunction that blocks White House policies.

Consistent with the memo, Trump's DOJ in this case argue the plaintiffs should be required to post a \$32 million bond if Moss grants the plaintiffs' motion for a preliminary injunction.

Moss heard oral arguments from the parties Monday afternoon and adjourned the hearing without making any immediate decisions on the motion. He has the discretion to waive the bond requirement if he grants the preliminary injunction.

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Trump job cuts could affect US court operations, judiciary warns

 [reuters.com/legal/government/trump-job-cuts-could-affect-us-court-operations-judiciary-warns-2025-03-18](https://www.reuters.com/legal/government/trump-job-cuts-could-affect-us-court-operations-judiciary-warns-2025-03-18)

Nate Raymond

The building exterior of the Thurgood Marshall United States Courthouse is seen in Manhattan, New York City, U.S., August 17, 2020. REUTERS/Andrew Kelly/File Photo
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March 18 (Reuters) - The federal judiciary is warning that mass layoffs at the U.S. General Services Administration that were undertaken as part of President Donald Trump's efforts to shrink the government could have "immediate and long-term effects on court operations."

Those concerns were raised in a memo [↗](#), opens new tab the Administrative Office of the U.S. Courts distributed to local courts on Monday that was reviewed by Reuters. It was the latest in a series of internal memos that show how the independent federal judiciary is grappling with the potential impact of the Trump administration's agenda on its operations. Jumpstart your morning with the latest legal news delivered straight to your inbox from The Daily Docket newsletter. Sign up here.

Paul Gamble, the chief of the Administrative Office's facilities and security office, said in Monday's memo that the office became aware of the layoffs on March 3, when GSA, which manages federal property for various parts of the government including the courts, began pursuing mass layoffs of hundreds of employees.

The cuts were nationwide but most heavily impacted GSA regions that cover California and Texas, and the agency has warned that future layoffs could affect other court locations, Gamble wrote.

"These actions have the potential to create both immediate and long-term effects on court operations and the services provided by GSA," Gamble wrote.

He cited ongoing and planned building projects, including those concerning security systems supported by the U.S. Marshals Service, as an area that "may experience disruptions as GSA reallocates its contractual oversight responsibilities to remaining GSA personnel."

Judges have publicly warned of a rising number of threats directed at their colleagues that have coincided with calls by Trump, billionaire ally Elon Musk and Republican lawmakers for judges who block Trump's agenda to be impeached.

Chief U.S. Supreme Court Justice John Roberts on Tuesday issued a rare statement publicly rebuking Trump after the president called for the impeachment of Washington-based U.S.

District Judge James Boasberg, who ordered the administration on Saturday to halt the removal of alleged Venezuelan gang members.

The AO declined to comment. GSA did not respond to requests for comment.

GSA earlier this month separately listed 69 judiciary-utilized facilities including courthouses among more than 400 federal buildings that could be potentially put up for sale.

That list was taken down a day later, with the GSA saying it generated an "overwhelming amount of interest." But it has said it plans to release a new version.

Some judges had raised concerns about the inclusion of some court facilities in the initial list. Gamble in Monday's memo said even if GSA does try to sell a judiciary-used building, it would take time to do so, providing courts time to prepare.

"The AO will continue discussions with GSA, urging them to consider the unique housing needs of the judicial branch before taking actions that could detrimentally impact daily court operations," Gamble wrote.

Read more:

US judiciary warns of threats amid 'concerning' calls to impeach judges

Courthouses eyed for potential sale by Trump administration

US judiciary raises concerns about Marshals Service's new immigration focus

Trump administration eyes canceling leases for space used by US judiciary

Reporting by Nate Raymond in Boston

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- Suggested Topics:
- Government

Nate Raymond

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Trump EEOC Hits Big Law Firms With DEI Bias Investigations (2)

- List includes some of the most prominent, powerful law firms
- Trump ordered EEOC, Justice Department to look at firms' DEI

The Equal Employment Opportunity Commission is investigating Kirkland & Ellis, Ropes & Gray, and Simpson Thacher, among other top law firms, for discrimination in their diversity programs.

"The EEOC is prepared to root out discrimination anywhere it may rear its head, including in our nation's elite law firms," Acting Chair Andrea Lucas said Monday. "No one is above the law—and certainly not the private bar."

The full list of firms facing EEOC investigations are:

- A&O Shearman
- Debevoise & Plimpton
- Cooley LLP
- Freshfields Bruckhaus Deringer
- Goodwin Procter
- Hogan Lovells
- Kirkland & Ellis
- Latham & Watkins
- McDermott Will & Emery
- Milbank LLP
- Morgan, Lewis & Bockius
- Morrison & Foerster
- Perkins Coie
- Reed Smith
- Ropes & Gray
- Sidley Austin
- Simpson Thacher & Bartlett
- Skadden, Arps, Slate, Meagher & Flom
- White & Case
- WilmerHale

WilmerHale, known recently for representing Democrats in elections cases, declined to comment. The other firms did not immediately respond to requests for comment.

President Donald Trump is ratcheting up his war on prominent law firms over their political work and ties to his perceived enemies. Trump issued executive orders aimed at Paul Weiss and Perkins Coie—threatening government contracts for their clients and suspending security clearances—as well as a memo rescinding clearances for lawyers at Covington & Burling.

The DEI probes follow a March 6 executive order in which Trump ordered the EEOC to look at “large, influential, or industry leading” law firms and their “compliance with race-based and sex-based non-discrimination laws.” Trump directed the EEOC to lead the investigation and instructed the Justice Department to “take any additional actions the Attorney General deems appropriate in light of the evidence uncovered.”

The EEOC in letters to the firms requested expansive hiring and contact information for “all law students or attorneys who applied to be hired” since 2019. It wants the names, genders, and races of those applicants, as well as law school and GPA information.

The letters also direct firms to provide similar information for lawyers promoted to partner, including whether they were members of law firm affinity groups or previously took part in diversity internships or related programs. The firms have until April 15 to respond.

It’s not clear how the EEOC determined which firms to target, although several of those on the list are among the country’s largest. Perkins Coie and Morrison Foerster made changes to their diversity fellowship programs—removing race-based eligibility requirements—after being sued in 2023 by diversity foe Edward Blum.

The EEOC is exceeding its authority with the probes, said Jenny Yang, who led the agency during the Obama administration.

“There is no basis in the statutes that EEOC enforces for this request,” Yang said. “I am not aware of any authority that would require law firms to respond to these letters.”

The EEOC letter also asks the firms to provide information on their clients’ “diversity requirements” for outside counsel, including by identifying those that provide incentive-based compensation for law firms that meet “representation goals.”

History of Change

Law firms have long struggled to diversify their ranks, even after being urged by corporate clients.

“The fact is that the legal industry is not an industry where all talent thrives,” said Nikia Gray, executive director of the National Association for Law Placement. “Lawyers of Color and LGBTQ+ lawyers are still significantly underrepresented in law firms, particularly at the partnership level where systemic bias cause both cohorts to convert to partnership at far lower rates than their majority peers.”

White lawyers accounted for about 77% of attorneys nationwide in 2022, down from 86% a decade earlier, according to a survey by the Minority Corporate Counsel Association. About 87% of all law firm equity partners—the highest-paid rung, which includes key decision makers—identified as white, down from 93% over the same time period.

Lucas, a Trump appointee to the agency in 2020, was tapped by Trump on Jan. 20 to serve as acting chair. Her priorities include “rooting out unlawful DEI-motivated race and sex discrimination,” she said in a day-one statement.

Trump later fired two Democratic commissioners, putting the EEOC in a position where it lacks quorum to vote on policy changes or to file most lawsuits. Lucas has moved quickly to shift the agency’s priorities in ways she can without holding a vote.

The EEOC and Lucas did not immediately respond to requests for comment about the letters to the law firms.

(Updated with additional reporting throughout.)

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20 Law Firms Face DEI Probe by EEOC

 [law.com/nationallawjournal/2025/03/17/eeoc-names-20-law-firms-in-dei-review](https://www.law.com/nationallawjournal/2025/03/17/eeoc-names-20-law-firms-in-dei-review)

Amanda O'Brien and Patrick Smith and Christine Simmons

The Equal Employment Opportunity Commission said on Monday that it sent letters to 20 law firms requesting information about their diversity, equity and inclusion-related employment practices.

The EEOC targets many top Am Law 100 law firms, from Kirkland & Ellis and Latham & Watkins to White & Case, McDermott Will & Emery, Cooley and Hogan Lovells. The 20 law firms are required to submit responses by April 15.

The list comes after President Donald Trump signed an executive order this month directing that the EEOC review the practices of "representative large, influential, or industry-leading law firms" for their diversity practices.

The EEOC letters point to "concerns that some firms' employment practices, including those labeled or framed as DEI, may entail unlawful disparate treatment in terms, conditions, and privileges of employment, or unlawful limiting, segregating, and classifying based on race, sex, or other protected characteristics, in violation of Title VII of the Civil Rights Act of 1964 (Title VII)," the EEOC said in an announcement.

Acting Chair Andrea Lucas said in a statement, "The EEOC is prepared to root out discrimination anywhere it may rear its head, including in our nation's elite law firms."

The EEOC said the law firms that received letters from Lucas include:

1. A&O Shearman
2. Debevoise & Plimpton
3. Cooley
4. Freshfields Bruckhaus Deringer
5. Goodwin Procter
6. Hogan Lovells
7. Kirkland & Ellis
8. Latham & Watkins
9. McDermott Will & Emery
10. Milbank
11. Morgan, Lewis & Bockius
12. Morrison & Foerster
13. Perkins Coie
14. Reed Smith
15. Ropes & Gray

16. Sidley Austin
17. Simpson Thacher & Bartlett
18. Skadden, Arps, Slate, Meagher & Flom
19. White & Case
20. Wilmer Cutler Pickering Hale and Dorr

The letters, viewable here, asked law firms for extensive information and documentation about their diversity practices, including internships, summer associates, partnership decisions, compensation for candidates, and recruiting, among other topics. The letters extensively cite law firm websites and diversity programs.

"Describe the application and selection criteria used by Kirkland & Ellis LLP for its 1L diversity internship from 2019 to the present," the letter to Kirkland says.

"Does Latham & Watkins LLP hire any 1L law students as summer associates other than participants in the firm's 1L diversity internship?" the letter to Latham says.

"Please describe the application and selection criteria used by Simpson Thacher & Bartlett LLP for its 2L diversity internship from 2019 to the present," the letter to Simpson says.

The letters ask firms whether any recruiter for the firms sought out black, Hispanic, or female candidates, or "diverse" candidates. "If so, please describe the policy or practice in detail and provide all related documentation."

The letters further ask firms whether they ever indicated that they were "not seeking male or white candidates or candidates of any other particular race, ethnicity, sex, or another protected characteristic."

Additionally, the letters ask whether the firms provided retention bonuses or other bonuses to black, Hispanic, or other "diverse" attorneys at the firm that were not provided to other similarly situated attorneys.

In the letter introductions, the EEOC highlights different statistics taken from firm, client, and scholarship websites. In the letter to Cooley, for example, the letter notes that Cooley's DEI Action Plan landing page was removed from the firm site as of March 14.

"Cooley's sudden, overnight remove of its 'board approved DEI plan' from its public-facing landing page gives me pause," the EEOC letter reads.

In at least two of the letters, the EEOC also makes mention of firms' Mansfield certification status as well as individual affinity groups as markers of alleged discrimination.

In the case of Reed Smith, the EEOC flagged the firm's "Race Equity Action Plan," or REAP, which was founded in 2020 in response to the death of George Floyd. According to the letter, REAP was designed to increase the number of Black lawyers within the firm.

"Expanding on this initiative, Reed Smith created a series of YouTube videos, which have since been removed. An initiative with overt racial 'goals,' coupled with the removal of related public-facing documents, is concerning," says the letter, which also targets various fellowship and training programs as well as the firm's status in several national rankings, including that developed by the American Lawyer and Bloomberg Law's DEI Framework.

Most of the language appears common and boilerplate between the firm letters. The few firms that have specific language tied to the firm include Cooley, Perkins and Reed Smith.

Representatives for all 20 law firms could not be reached for comment or did not immediately reply to messages seeking comment.

Robert Miller, a corporate finance law professor at the University of Iowa, noted that, since the Supreme Court's ruling in *Students For Fair Admissions*, "it is clear that the civil rights laws are to read in a colorblind manner: all discrimination on the basis of race, regardless of which groups are benefited or harmed, is illegal."

"If large law firms have engaged in forms of affirmative action that run afoul of the colorblind reading of the civil rights laws, they could well be in serious trouble here. I would think these firms should take this matter with the greatest seriousness," Miller said.

Stephen Gillers, a legal ethics professor at NYU School of Law, noted that law firms, especially Big Law, must comply with Title VII and other non-discrimination rules like anyone else. "But DEI is not a precise term. Different people may have different meanings in mind," he said. In what may be some legal arguments ahead, he said diversity policies could be considered "entirely consistent with the ethical obligations of law firms and other entities within the law."

So far, most large law firms have remained quiet about the Trump administration's actions against firms, even after presidential actions targeting Covington & Burling, Perkins Coie and Paul Weiss. It's not clear whether the EEOC's letters may change that.

The letters "definitely scare the firms," said New York legal recruiter Alisa Levin. "But these law firms are enormous engines, and they have a lot of firepower. I think the more that are targeted, the more likely there will be some organized blowback."

More may be coming from the Trump administration on this. Trump's executive order directing the DEI investigations also calls for the U.S. attorney general to investigate the practices of large law firms that do business with federal entities for "compliance with race-

based and sex-based non-discrimination laws.”

Samson Amore contributed to this report.

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You Might Like

March 07, 2025

Big Law Firms Have Quietly Removed DEI Website Language, Altered Diversity Policies

By Abigail Adcox and Dan Roe

🕒 4 minute read

US civil rights agency targets 20 big law firms with demand for DEI data

 [reuters.com/world/us/us-civil-rights-agency-warns-law-firms-over-workplace-dei-policies-2025-03-17](https://www.reuters.com/world/us/us-civil-rights-agency-warns-law-firms-over-workplace-dei-policies-2025-03-17)

Daniel Wiessner

The front of an office building is seen in New York City, U.S., July 7, 2023. REUTERS/Amr Alfiky/File Photo Purchase Licensing Rights , opens new tab

Summary

- Agency head says diversity programs at 20 firms may be illegal
- Part of Trump's broader crackdown on law firms and DEI policies
- Several firms are challenging Trump initiatives in court

March 17 (Reuters) - The head of the U.S. agency that enforces laws banning workplace discrimination on Monday warned 20 major law firms that their employment policies meant to boost diversity, equity and inclusion may be illegal.

The letters , opens new tab from the U.S. Equal Employment Opportunity Commission's acting chair, Andrea Lucas, seek detailed information on DEI programs at the firms, some of which have ties to President Donald Trump's political opponents or have challenged his policies in court.

Get weekly news and analysis on U.S. politics and how it matters to the world with the Reuters Politics U.S. newsletter. Sign up [here](#).

Lucas said some of the firms had publicly touted their commitment to diversifying their workforces and at least two had adopted explicit numerical goals for recruiting lawyers based on their race, ethnicity, sexual orientation and gender identity.

Lucas said she was concerned that the firms' policies "may entail unlawful disparate treatment in terms, conditions, and privileges of employment, or unlawful limiting, segregating, and classifying" based on race, sex, and other protected characteristics.

The letters ask the law firms for an array of information about the internships, scholarships and fellowships they offer to law students and their hiring and compensation practices.

Lucas also asked for the name, sex and race of every lawyer who has worked at or applied for a job at the firms since 2019 and whether each one participated in diversity programs or "affinity groups." She asked for some of the information in a "searchable Excel spreadsheet."

Some of the firms that received the letters, including Perkins Coie; Hogan Lovells; Ropes & Gray; and WilmerHale, are representing plaintiffs in current lawsuits against the Trump administration.

A spokesperson for Hogan Lovells said the firm had no immediate comment. The other 19 firms that received the letters did not immediately respond to requests for comment.

Lucas said in a statement that "the EEOC is prepared to root out discrimination anywhere it may rear its head, including in our nation's elite law firms."

The EEOC can investigate companies' employment practices and file lawsuits alleging discrimination, but only after a worker or one of the agency's five commissioners brings a formal complaint. There was no indication that Lucas had filed complaints against any of the law firms.

EXECUTIVE ORDERS

Trump, a Republican, has waged an aggressive campaign to eliminate DEI programs from the federal government, higher education and the private sector. He has also taken several actions against high-profile law firms, alarming many legal experts.

Trump issued executive orders this month targeting Perkins Coie and Paul, Weiss, Rifkind, Wharton & Garrison, citing their allegedly discriminatory internal diversity policies and past work for his political opponents. The orders suspended security clearances for lawyers at the firms and restricted their government access and federal contracting work.

The order involving Perkins Coie also directed Lucas [opens new tab](#), the acting EEOC chair, to "review the practices of representative large, influential, or industry leading law firms." The commission, like several other federal agencies, was designed to operate independently from the White House.

Perkins Coie filed a lawsuit alleging that the order against it violated its rights under the U.S. Constitution, and a judge in Washington temporarily blocked parts of it last week.

Law school diversity policies have also come under fire from the administration. U.S. Attorney General Pam Bondi has threatened to revoke the American Bar Association's status as the government-designated accreditor of U.S. law schools, citing its requirement that schools provide "full opportunities" for racial minorities and have a diverse student body. Some major companies have in the past implemented policies to encourage diversity from their outside law firms. The letters from Lucas ask law firms to identify clients that have since 2019 had "diversity requirements" or stated preferences for employee staffing, and the actions the firms have taken to respond to the client requirements, including producing related documents.

Law firms could argue that they cannot turn over certain information on the grounds of attorney-client privilege, and that disclosing some information could expose their clients to investigations by the administration, two legal ethics experts told Reuters.

Reporting by Daniel Wiessner in Albany, New York; Additional reporting by Mike Scarcella in Washington, D.C., Sara Merken, and David Thomas; Editing by Richard Chang, Alexia Garamfalvi and Richard Chang

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Paul Weiss—and Big Law—Face 'An Existential Threat' Amid Intensifying Trump Administration Pressure

 [law.com/nationallawjournal/2025/03/18/paul-weissand-big-lawface-an-existential-threat-amid-intensifying-trump-administration-pressure](https://www.law.com/nationallawjournal/2025/03/18/paul-weissand-big-lawface-an-existential-threat-amid-intensifying-trump-administration-pressure)

Amanda O'Brien and Patrick Smith

Donald Trump. Photo: Jim Lo Scalzo/Bloomberg

News

"What we are trying to do is put you out of business and bankrupt you," said conservative strategist Steve Bannon.

March 18, 2025 at 04:00 AM

🕒 7 minute read

Government

The original version of this story was published on The American Lawyer

President Donald Trump's order targeting Paul, Weiss, Rifkind, Wharton & Garrison late Friday may inflict significant damage to the New York law firm, both in client matters and in a larger battle for top talent, according to legal experts and observers.

It's also part of a wider strategy that the Trump administration appears to be waging against many in Big Law. Just on Monday, Trump's EEOC said it was investigating 20 law firms for its DEI programs and policies, including many top Am Law 100 firms.

Friday's order against Paul Weiss also called out "global law firms" that it alleges have undermined the judicial process. Meanwhile, Steven Bannon, a conservative strategist, said the Trump administration is seeking to bankrupt "major firms."

"They're not going to be walking around making four and five, six million bucks a year because he's going to put those law firms out of business. Let me repeat this. There's major law firms in Washington, D.C. and ... what we are trying to do is put you out of business and bankrupt you," Bannon said in a televised interview posted on Thursday.

Even though a federal judge temporarily blocked Trump's executive order against Perkins Coie last week, the order against Paul Weiss keeps up the Trump administration's momentum against the industry. Some observers pointed to the possibility of other firms getting targeted.

Stephen Gillers, a legal ethics professor at New York University School of Law, noted that “the government's strategy may be to have several cases going at once in the hope of eventually getting one of them to the Supreme Court. For that to work, Paul Weiss must challenge the executive order, just as Perkins did.”

Paul Weiss representatives on Monday didn't immediately comment on the firm's plans. In a Friday statement, the firm said the executive order focused on a lawyer, Mark Pomerantz, who has not been affiliated “with the firm for many years” and the terms of a similar order were ruled unconstitutional by a federal district court judge. Pomerantz previously sought to build a legal case against Trump while at the Manhattan District Attorney's Office.

Paul Weiss, No. 4 in the LSEG deal tables last year for global principal deal value, has some of the largest ongoing M&A deals at any one time, while it also regularly advises Apollo, Citi and other financial institutions in banking and deal work.

While deal lawyers at Paul Weiss may not face immediate consequences, the deal team working with regulatory counsel may see an impact. Meanwhile, the consequences for Paul Weiss in a global talent war can't be understated.

“If they have people who are on the fence about leaving or on the fence about joining the firm,” said a source familiar with the industry, those lawyers “may say, why take on the risk to go to Paul Weiss, when I can go to a firm that doesn't have that risk.”

On the client side, deal clients may hesitate to work with Paul Weiss, if they, like many other corporations, are seeking to curry favor with the Trump administration now, the source added.

“There's a risk that they [CEOs of major clients] will pull their work from firms who he has deemed enemies, just to curry favor with the administration,” noted the legal industry observer. “That's an existential threat firms face.”

Tom Sharbaugh, a Penn State professor who previously worked at Morgan Lewis & Bockius, noted that the “chilling effect on future engagements will be even broader because any business that can choose among a number of top-tier firms for an important project would likely choose one that has not been blacklisted by the administration in order to avoid being targeted itself.”

The order against Paul Weiss also requires government contractors to disclose if they are working with the firm, and directs that, within 30 days, all agencies should submit an “assessment of contracts” with Paul Weiss or “with entities that do business with Paul Weiss.”

Among its clientele, Paul Weiss has several clients that have had large government contracts, including Regeneron Pharmaceuticals, GlaxoSmithKline and Accenture.

Still, some observers say Paul Weiss may benefit from general counsel supportive of the firm, even if they are in an adversarial stance with the administration. “Clients hire Paul Weiss because they’re excellent at what they do, not because they’re in Trump’s good graces,” noted Robert Miller, a corporate finance law professor at the University of Iowa.

White-Collar Lawyers

A more immediate threat may be on the litigation and white-collar defense side.

Paul Weiss has a large litigation, white-collar and regulatory enforcement practices with cases and matters that are regularly before government officials. With the Friday order requiring government officials to cut off their “engagement” with Paul Weiss lawyers, that client work may now be on hold.

“The order targeting Paul Weiss is more aggressive than the order targeting Covington and somewhat less so than the order targeting Perkins,” said Gillers. “But the Paul Weiss order can cause the firm serious harm. Like the Perkins order, its language is vague, maybe intentionally so.”

Gillers said the “most damaging” parts may be the threats against government “contractors” who also do “business” with Paul Weiss, which can include the firm’s clients, and the prohibition of access to federal buildings, which would seem to include courthouses.

“Because the orders are so poorly drafted, we cannot know with any confidence what they are aiming to accomplish,” Gillers said. “While the language of the orders has some limiting phrases, the law firms and government employees are left to figure out what is forbidden.”

Rebecca Roiphe, an ethics professor at New York Law School, noted Paul Weiss “has a big corporate white collar practice,” which involves compliance work and internal monitorships. “The main effect would be deterrence. Why would you pick a firm that is targeted by the government,” she said.

The order appears similar to the executive order facing Perkins Coie in that Paul Weiss has limited access to government buildings.

The order against Paul Weiss requires that agency heads provide guidance “limiting official access from federal government buildings to employees of Paul Weiss.”

Dane Butswinkas, Perkins Coie’s lawyer at Williams & Connolly, in arguments before a federal court last week, noted the many buildings that come into play from Trump’s executive order against Perkins Coie, including the post office, the VA hospital, and buildings of other

agencies.

He said meetings were canceled because lawyers were scheduled to visit certain government office buildings or with certain government personnel. And under the rules of professional responsibility, “you have to advise your client on these limitations of practice,” Butswinkas told the judge last week.

U.S. Judge Beryl Howell wondered out loud whether the order affected lawyers’ ability to visit federal courthouses. While federal courts are under the judiciary branch, “our landlord is GSA,” Howell said, while the personnel who handle security at the front doors are Justice Department component employees.

Howell, who ultimately granted a TRO for Perkins Coie, also found it concerning that all employees of the firm, including “nonlawyers” in the mail room, needed a waiver before getting hired by the federal government. Paul Weiss employees now face the same obstacle.

Industry Reaction

Some law firms are still trying to gather support to submit an amicus brief in Perkins Coie’s case or a statement of support from a particular group of firms. But so far, it’s not clear if that will become public because firms are waiting for a much larger group of law firms to sign on, sources say.

One Big Law partner, who spoke on condition of anonymity, cast doubt on any growing momentum on firm leadership to speak up, even with some clients calling on their lawyers to get involved. Meanwhile, Trump’s actions appear to be “designed to kill” certain firms “and to send a message to anyone taking on cases against the administration’s interest.” He added: “That puts us in a really bad place.”

While individual firm leaders have not issued statements about the presidential actions against Big Law firms, several bar associations have publicly denounced Trump’s actions, including the New York State Bar Association, Los Angeles County Bar Association, the Bar Association of San Francisco, and the Cleveland Metropolitan Bar Association. Meanwhile, the ABA president William Bay has issued statements about clients’ right to access lawyers without government interference.

Christine Simmons contributed to this report.

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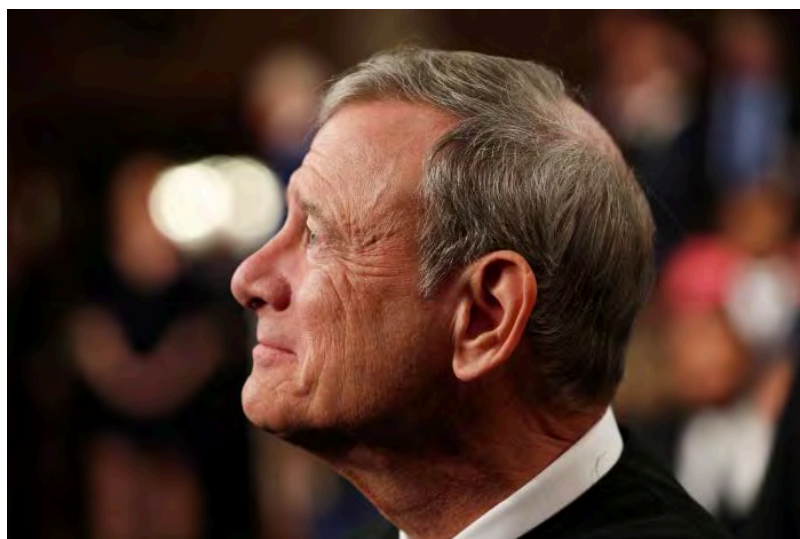
U.S. | LAW

Chief Justice Roberts Criticizes Trump's Call to Impeach Judges

Rare public statement comes hours after president called for removal of judge who sought to temporarily block some deportations

By [Jess Bravin](#) [Follow](#)

Updated March 18, 2025 12:47 pm ET



Chief Justice John Roberts PHOTO: WIN MCNAMEE/REUTERS

WASHINGTON—President Trump called for impeaching a federal [judge who issued a temporary order](#) against an administration deportation plan, drawing a rebuke from Chief Justice John Roberts for violating American legal practice dating from the founding.

“For more than two centuries, it has been established that impeachment is not an appropriate response to disagreement concerning a judicial decision,” Roberts said in a statement. “The normal appellate review process exists for that purpose.”

The back-and-forth between the heads of two branches of government [escalated the constitutional tensions](#) provoked by the Trump administration's aggressive moves to exercise executive power, often in the face of federal law or longstanding practice to the contrary.

Trump lashed out Tuesday at U.S. District Judge James Boasberg, who is hearing a lawsuit challenging the president's invocation of the 18th century Alien Enemies Act to remove alleged Venezuelan gang members with minimal procedures.

The administration [sent more than 250 migrants to a prison in El Salvador](#) this weekend, despite Boasberg's order freezing the deportation for 14 days.

In a social-media post Tuesday, the president called Boasberg "a troublemaker and agitator who was sadly appointed by Barack Hussein Obama," and touted his own fight against illegal immigration.

"I'm just doing what the VOTERS wanted me to do. This judge, like many of the Crooked Judges' I am forced to appear before, should be IMPEACHED!!!" the president said.

For weeks, the president's supporters, including his billionaire benefactor [Elon Musk](#), have been calling for impeachment of judges who found against the administration in preliminary stages of litigation over its policies.

Write to Jess Bravin at Jess.Bravin@wsj.com

Videos

Litigation

March 18, 2025, 7:04AM PDT; Updated: March 18, 2025, 9:04AM PDT

Roberts Pushes Back on Trump's Judicial Impeachment Calls (2)

- Targeted chief judge in Washington over deportation case
- House Republicans moved to impeach several judges

Chief Justice John Roberts spoke out against President Donald Trump's call for the impeachment of a judge who ruled against his effort to swiftly deport alleged Venezuelan gang members.

Trump didn't refer to Chief US District Judge Jeb Boasberg in Washington by name in a social media post on Tuesday, calling him a "Radical Left Lunatic of a Judge."

The president's attack on Boasberg escalated his administration's battle against the judiciary, coming hours before Justice Department attorneys are supposed to detail the administration's compliance with the judge's March 15 order not to carry out deportations based on Trump's invocation of the Alien Enemies Act.

In a rare statement Tuesday, Roberts said, "For more than two centuries, it has been established that impeachment is not an appropriate response to disagreement concerning a judicial decision." Roberts added, "The normal appellate review process exists for that purpose."

The Justice Department has also sought to have the case reassigned from Boasberg, making the request in a Monday letter to a federal appeals court in Washington.

Trump had previously stayed away from calls to impeach judges, even as some House Republicans have filed articles of impeachment against judges who have ruled against the administration's sweeping early actions. Rep. Brandon Gill (R-Texas) said in a social media post Monday that he will move to impeach Boasberg this week.

The Trump administration faces a noon deadline to answer questions from Boasberg on complying with his temporary restraining order. The judge also said that, if the government won't answer his questions on the particulars of deportation flights that left after his order, it "must support such position, including with classified authorities if necessary."

A pair of prominent federal judges last week spoke out against the use of impeachment against judges, with one noting that other tools like appeals are an option.

"Impeachment is not—shouldn't be—a short circuiting of that process, and so it is concerning if impeachment is used in a way that is designed to do just that," Judge Richard Sullivan of the Second Circuit, who chairs a judiciary committee on judicial security, told reporters.

Judges have come under fire as courts are flooded with challenges to Trump administration actions. Other judges have faced articles of impeachment for rulings against Elon Musk's efficiency team from accessing Treasury Department systems and the removal of public health data, as well as allowing the release of foreign aid payments from the US Agency for International Development.

Rep. Darrell Issa (R-Calif.), who chairs the House Judiciary subcommittee on the courts, on Tuesday backed up Trump's attack. "The Resistance now wears robes," he said in a social media post.

Trump v. Judges

Trump, whose reputation as a fierce litigator predates his ascension to the White House, has often attacked judges. He took issue with the courts after his 2020 election loss, going after those who didn't rule in favor of overturning the results.

Trump's return to the White House means he is facing a judiciary he reshaped during his first term. But the lawsuits filed against his administration so far have accumulated in circuits where there are a majority of liberal appointees, including the First, Fourth, and DC Circuits.

During March 14 remarks he gave at the Justice Department, he defended one of his appointees, US District Judge Aileen Cannon in the Southern District of Florida. She had dismissed charges against Trump over the retention of classified documents after he left office, finding the special counsel behind the prosecution was improperly appointed.

Trump during the speech attacked lawyers who have been critical of Cannon and some of the Supreme Court justices.

"They're humans, and they don't want to be accused of many, many things, including gross incompetence," Trump said. "They don't like it and they don't want it. There's not much they can do about it, you know. They're in a position, they can't really fight back really very well. And so what they do is sometimes they get weak. I would say a majority, maybe, of the times."

"That's why I'm so impressed with Judge Cannon in Florida, how strong she was, how she held up," he added.

Chief Judge

Boasberg was appointed by Barack Obama and unanimously confirmed by the Senate in 2011. He is a former federal prosecutor who was previously appointed by George W. Bush to the local DC Superior court.

Boasberg has served as chief judge in Washington since 2023, and presided over some grand jury proceedings related to criminal charges filed against Trump.

He presided over the US Foreign Intelligence Surveillance Court in 2020 and 2021, considering government requests for secret surveillance warrants.

The former Yale basketball player has a genial but straightforward approach on the bench. He's also known as a voracious reader who occasionally makes literary references in his rulings, and is a strong enforcer of a local court rule against "excessive footnotes."

(Updates with statement from Chief Justice Roberts)

—With assistance from Suzanne Monyak

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Chief Justice Roberts Condemns Impeachment Threats Of Judges After Trump Attack

 [law.com/nationallawjournal/2025/03/18/chief-justice-roberts-condemns-impeachment-threats-of-judges-after-trump-attack](https://www.law.com/nationallawjournal/2025/03/18/chief-justice-roberts-condemns-impeachment-threats-of-judges-after-trump-attack)

Jimmy Hoover

Chief Justice John Roberts Jr. released a rare statement Tuesday condemning efforts to impeach federal judges after President Donald Trump escalated his attacks on a Washington, D.C., federal judge who ruled against him in an immigration case.

"For more than two centuries, it has been established that impeachment is not an appropriate response to disagreement concerning a judicial decision," Roberts, the nation's top judicial official, said in a statement shared by a spokeswoman for the U.S. Supreme Court. "The normal appellate review process exists for that purpose."

Earlier Tuesday, Trump attacked Chief U.S. District Judge James Boasberg of the District of Columbia on social media as a "Radical Left Lunatic of a Judge" who "should be IMPEACHED!!!" along with "many of the Crooked Judges' I am forced to appear before."

Boasberg had ruled against Trump's invocation of war powers from a 1798 law to hastily deport alleged members of the Venezuelan criminal gang Tren de Aragua. Civil rights groups say the Trump administration has run roughshod over due process, and have raised doubts about some of the migrants' alleged ties to the organization.

Earlier this week, Boasberg ordered the government to temporarily pause its deportation efforts under the 18th century Alien Enemies Act while he considers a lawsuit brought on behalf of the immigrants.

The U.S. Department of Justice has taken the extraordinary step of asking the federal appeals court in Washington to reassign the case to a different judge.

Tuesday's statement is the second time Roberts has appeared to publicly admonish Trump for his rhetorical attacks on federal judges who rule against him.

During Trump's first term, the President George W. Bush-appointed jurist stated that "we do not have Obama judges or Trump judges, Bush judges or Clinton judges" in response to Trump's epithet for the judge hearing a case over his first administration's asylum policy.

Nearly two months into Trump's second term, his administration has escalated its confrontation with the U.S. judiciary in response to what it considers power grabs on the part individual federal judges ruling against the president's policies. Vice President JD Vance and Trump confidant Elon Musk have also deployed rhetoric that some critics view as calling for open defiance of federal court rulings.

Prior to Trump's swearing in, Roberts used his annual report on the judiciary to denounce attacks from public officials on the U.S. judiciary as suggesting "open disregard for federal court rulings."

"These dangerous suggestions, however sporadic, must be soundly rejected," Roberts wrote at the time.

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US Chief Justice John Roberts Rebukes Trump Call to Impeach Judges for Rulings

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March 18, 2025, 10:10 AM PDT



Greg Stohr

Bloomberg Editorial



- Roberts' comment follows Trump call to remove 'lunatic' judge
- Impeachment 'not an appropriate response to disagreement'

By Greg Stohr

(Bloomberg) --

US Chief Justice Calls Impeaching Judges for Rulings Improper

US Chief Justice John Roberts said the impeachment of federal judges is “not an appropriate response” to disagreement with their rulings, issuing an extraordinary statement hours after President Donald Trump called for removal of a judge in Washington.

“For more than two centuries, it has been established that impeachment is not an appropriate response to disagreement concerning a judicial decision,” the Supreme Court’s leader said Tuesday in an emailed statement. “The normal appellate review process exists for that purpose.”

Trump on Tuesday called for the impeachment of US District Judge James Boasberg, who on Saturday tried to pause the deportation of hundreds of alleged Venezuelan gang members. In a social media post, Trump, without referring to Boasberg by name, called him “Radical Left Lunatic of a Judge, a troublemaker and agitator.”

The Justice Department has resisted Boasberg’s orders in the case, saying he lacked power to order airplanes to turn around. Government lawyers also have largely refused to answer Boasberg’s questions about the deportation flights.

Roberts’ comments follow weeks of scathing criticism from the Trump administration of judges who have halted parts of the president’s far-reaching agenda. Elon Musk has been among the loudest critics, calling for the removal of judges who have slowed overhauls of

government spending and the federal workforce sought by his Department of Government Efficiency.

Lifetime Job

Federal judges are appointed for life, a protection designed to insulate them from political interference. The Constitution holds they can be removed for treason, bribery, or other high crimes and misdemeanors, and doing so requires both houses of Congress.

No judge has been impeached over his or her rulings in more than two centuries. Only 15 judges have ever been impeached, including eight who were ultimately convicted.

The comments are Roberts' first public remarks about the judiciary since his annual Dec. 31 report warned that violence, threats to defy lawful judgments and other "illegitimate activity" endanger judicial independence.

Trump has a history of tangling with Roberts. In 2018, Trump derisively referred to a federal judge who issued a ruling against an immigration policy in his first administration as "an Obama judge."

That prompted the Republican-appointment Roberts to make a rare public statement, saying that "we do not have Obama judges or Trump judges, Bush judges or Clinton judges."

"What we have is an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them," the chief justice added. "That independent judiciary is something we should all be thankful for."

On Tuesday, shortly after Roberts' statement was made public, another Republican congressman, Brandon Gill, of Texas, said in a social media post that he introduced articles of impeachment against Boasberg. "He is guilty of high crimes and misdemeanors and should be removed from office," Gill wrote.

(Updates with criticism of judiciary starting in fifth paragraph.)

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Steve Stroth

Senator Husted: FirstEnergy's Lucky Charm

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March 17, 2025

COLUMBUS, Ohio, March 17 -- The Ohio Democratic Party posted the following news:

* * *

Senator Husted: FirstEnergy's Lucky Charm

Columbus, Ohio - Ohioans aren't feeling so lucky when they see their energy bills. However, Senator Husted is still ignoring Ohioans' questions about his involvement in Ohio's largest corruption scandal that gave breaks to billionaires while raising their bills.

FirstEnergy gave \$1 million to a dark money group supporting Husted's gubernatorial primary campaign. Following the 2018 election, Husted and DeWine had dinner with the lobbyists responsible for paying alleged bribes on the same night FirstEnergy agreed to pay over \$4 million in bribes to convicted PUCO administrator Sam Randazzo. Husted has refused to say if he knew about this pot of gold from FirstEnergy.

Meanwhile, during the legislative process, Husted was seemingly FirstEnergy's lucky charm. Indicted lobbyist Neil Clark called Husted the "golden boy" and a "good friend" of FirstEnergy. Husted claimed that he played no role in moving the legislation, but text messages revealed conversations with indicted lobbyists about details of the bill.

"While Husted refuses to answer questions about the pot of gold he received in connection with the largest corruption scandal in our state's history, Ohioans are still paying \$500,000 per day," said Ohio Democratic Party spokeswoman Katie Seewer. "But his luck will run out when Ohioans hold him accountable at the polls."

Read more about Senator Husted's work with FirstEnergy and House Bill 6 at StateOfficialTwo.Com

SEC's New Barrier to Formal Investigation Orders May Slow Pace

Akerman's Douglas Paul and Ashley Akapo say that requiring SEC commissioners to approve formal orders of investigation could alter the timeline and breadth of investigations—and enforcement staff's decision-making.

The Securities and Exchange Commission published a final rule last week reversing a 15-year-old policy that permitted the director of enforcement to issue formal orders of investigation. The rule returns the SEC to its pre-2009 methodology, in which requests for formal orders of investigation must be presented to and approved by a vote of the commissioners.

The rule, issued March 10, will likely have several ripple effects—including investigations that stay in the informal stage for longer periods of time and changes to the pace and scope of SEC investigations—but in most cases will result in compliance with the staff voluntary requests to avoid negative consequences of not cooperating.

A formal order of investigation allows the SEC staff broad authority to investigate alleged securities law violations through the issuance of subpoenas for documents and testimony. After the SEC's failure to timely detect and address Bernie Madoff's Ponzi scheme, the agency in 2009 decentralized its investigative power by delegating authority to issue formal orders of investigation to the director of enforcement, who subsequently delegated that power to certain senior personnel. The SEC aimed to conduct investigations more quickly and nimbly, without the need to wait for commissioners to approve or deny a request for a formal order.

This isn't the first time that the SEC under President Donald Trump limited the delegating authority to issue formal orders. After Trump first took office, former acting SEC Chair Michael Piwowar in February 2017 withdrew the sub-delegation power to allow only the director of enforcement to approve the issuance of formal orders—though he didn't go so far as to entirely withdraw the delegation of power. Former acting SEC Chair Allison Herren Lee then reversed this change at the start of former President Joe Biden's term.

The new final rule strips the Enforcement Division's director and senior officers of their ability to issue a formal order of investigation. Now, SEC enforcement staff must present the commissioners with enough factual information to allow the panel to approve the issuance of a formal order. The SEC stated the final rule "is intended to increase effectiveness by more closely aligning the Commission's use of its investigative resources with Commission priorities."

Although a formal order is required to issue a subpoena for documents, the SEC enforcement staff often begins with an informal investigation or a Matter Under Inquiry, both of which allow the staff to conduct a preliminary analysis to determine "whether the facts underlying the MUI show that there is potential to address conduct that violates the federal securities laws."

During this informal stage of the investigation, staff can request the voluntary production of documents and voluntary creation of documents, such as chronologies. The staff can't subpoena documents or testimony without the issuance of a formal order.

"Voluntary" may be a somewhat misleading term for these inquiries, though, as failure to cooperate with enforcement staff often negatively affects the company. Noncompliance could raise negative inferences about what a company or individual may be trying to conceal from the SEC—possibly forcing the staff to seek a formal order and subpoena power to compel a company to provide information.

Lack of cooperation also starts the company's relationship with SEC staff off on negative footing, as the staff weighs degree of cooperation in considering negotiation and resolution of the matter.

With the new rule's added hurdle to issuing a formal order, investigations may now idle in the informal stage for longer than they previously have. Enforcement staff will likely feel obligated to build a strong factual foundation before requesting a formal order from the SEC. This informal stage does present an opportunity for counsel to engage in dialogue with the staff, foster a good working relationship, and make presentations to the staff.

The new rule may also affect the pace and scope of the SEC's investigations. Investigations may move more slowly, and companies may need to respond to more informal requests for information before a subpoena is ever issued. It's also likely formal orders that are issued will more closely align with the SEC's broader enforcement agenda, as they may face more scrutiny and public attention.

It's unclear whether the rule will embolden companies and individuals not to comply with a voluntary request, thus compelling commissioner approval of formal orders solely to gain subpoena power to force compliance. Commissioners likely wouldn't deny the issuance of a formal order against companies or individuals who refuse to cooperate with the staff's voluntary request for information.

As a practical matter, this new rule changes the procedural landscape under which the SEC will receive information from targets of an investigation. But in most cases, a company or individual's response to a voluntary request for information will be the same as its response pursuant to a subpoena—it will cooperate with the staff and provide documents or information to reach a favorable outcome of the investigation, whether it's formal or informal.

This article does not necessarily reflect the opinion of Bloomberg Industry Group, Inc., the publisher of Bloomberg Law and Bloomberg Tax, or its owners.

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Tesla Inc

Short sellers make \$16bn profit from Tesla's share price plunge

Payday follows years of pain for hedge funds that bet against Elon Musk's electric-car maker



Tesla's value has plunged by more than \$700bn in the past three months, wiping about \$100bn from Elon Musk's net worth © Alex Wheeler/FT/AFP/Getty Images

George Steer in New York and **Costas Mourselas** in London

Published YESTERDAY



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Hedge fund short sellers have made \$16.2bn betting against Tesla's shares as the value of Elon Musk's electric car company has halved over the past three months.

Traders positioned to make money from falls in the share price have accumulated the paper profits since the stock's closing high on December 17, according to data provider S3 Partners. Tesla's market value has plunged more than \$700bn over the same period, wiping more than \$100bn from Musk's net worth.

The [Tesla](#) chief executive's public interventions in European politics including support for far-right parties have contributed to [falling car sales](#) across Europe, while the swingeing cuts he is making to federal government spending as head of the so-called Department of Government Efficiency have also sparked a [backlash](#).

"Tesla had a very strong brand value and Elon has managed to totally destroy it," said Per Lekander, managing partner of \$1.5bn hedge fund Clean Energy Transition, who first went short on Tesla several years ago. "[Musk] is on the wrong side of his buyership. It's not people with cowboy boots who buy Teslas."

JPMorgan last week lowered its end-of-year Tesla target price to \$120 from \$135, writing in a note: "We struggle to think of anything analogous in the history of the automotive industry, in which a brand has lost so much value so quickly." Shares closed at \$238.01 on Monday.

Tesla's rise and fall

Share price, \$



Source: LSEG via markets.ft.com/data

The recent profits for short sellers mark a partial reversal of what has been a highly painful trade for them in recent years, with many hedge funds forced to give up on their negative bets as losses mounted. Paper losses for short sellers total \$64.5bn since Tesla went public in 2010, even after accounting for the recent gains.

The number of Tesla shares being shorted has ticked up 16.3 per cent over the past month to 71.5mn or 2.6 per cent of the company's total shares according to S3, amid a broader US stock market sell-off fuelled by fears over the potential economic damage caused by US President Donald Trump's aggressive tariffs.

The recent plunge in Tesla's share price has erased its post-election gains, when investors had piled in on hopes the stock would benefit from Musk's proximity to Trump.

Tesla's fourth-quarter results in late January missed expectations, and the company last week warned in a letter to a US trade representative that Trump's trade war could leave it [exposed to retaliatory tariffs](#) that would raise the cost of making vehicles in the US.

For years the carmaker ranked among the US stock market's most popular shorts, with around 300mn shares shorted in spring 2020.

But a rally of more than 1,500 per cent in the two years to mid-2021 shattered those negative bets, even as some investors maintained the company's valuation was becoming increasingly detached from economic reality.

Musk has a history of taunting Tesla short sellers big and small. Last year he said anyone with a short position would be "obliterated" once the company "fully solves autonomy".

In 2020, in response to short seller David Einhorn's [criticism of Tesla's accounting methods](#), Musk said "mental illness is tragic & did you know that Einhorn means unicorn?"

Trump's second term is proving a wild ride for Tesla longs and shorts alike. Hedge fund Bridgewater Associates opened a new long position in Tesla in the fourth quarter of 2024, while ClearBridge, DE Shaw and Norges Bank all added to their existing stakes, according to 13F filings. Bridgewater declined to comment. ClearBridge, DE Shaw and Norges Bank did not respond to requests for comment.

"A lot of these momentum stocks [like Tesla] have become glorified memecoins," said Marc Cohodes, a California-based short seller who does not have a position in Tesla. "When they went up, everyone buying thought they were smart. Now they're falling, they're causing huge damage."

Additional reporting by Stephen Morris in San Francisco

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Elon Musk's own brother among Tesla insiders who've unloaded more than \$100M in shares

 [rawstory.com/tesla-share-price-2671348064](https://www.rawstory.com/tesla-share-price-2671348064)

Brad Reed

March 18, 2025

Brad Reed

March 18, 2025 8:12AM ET

FILE PHOTO: A Tesla Cybertruck is parked on a local Tesla dealer in Paramus, New Jersey, U.S., July 23, 2024. REUTERS/Eduardo Munoz/File Photo

Share prices of electric car manufacturer Tesla have been tanking in recent weeks as CEO Elon Musk draws controversy by taking a hatchet to the federal workforce.

ABC News reports that recent filings with the Securities and Exchange Commission show that "members of the board and an executive at Elon Musk's company have been selling off millions of dollars in stock" since the start of February as the company's market cap has shed hundreds of billions of dollars in value.

In fact, Tesla insiders have dumped \$100 million worth of shares since the start of February.

ALSO READ: 'Knives out': CNN reports top Trump official becoming scapegoat for tariff-induced turmoil

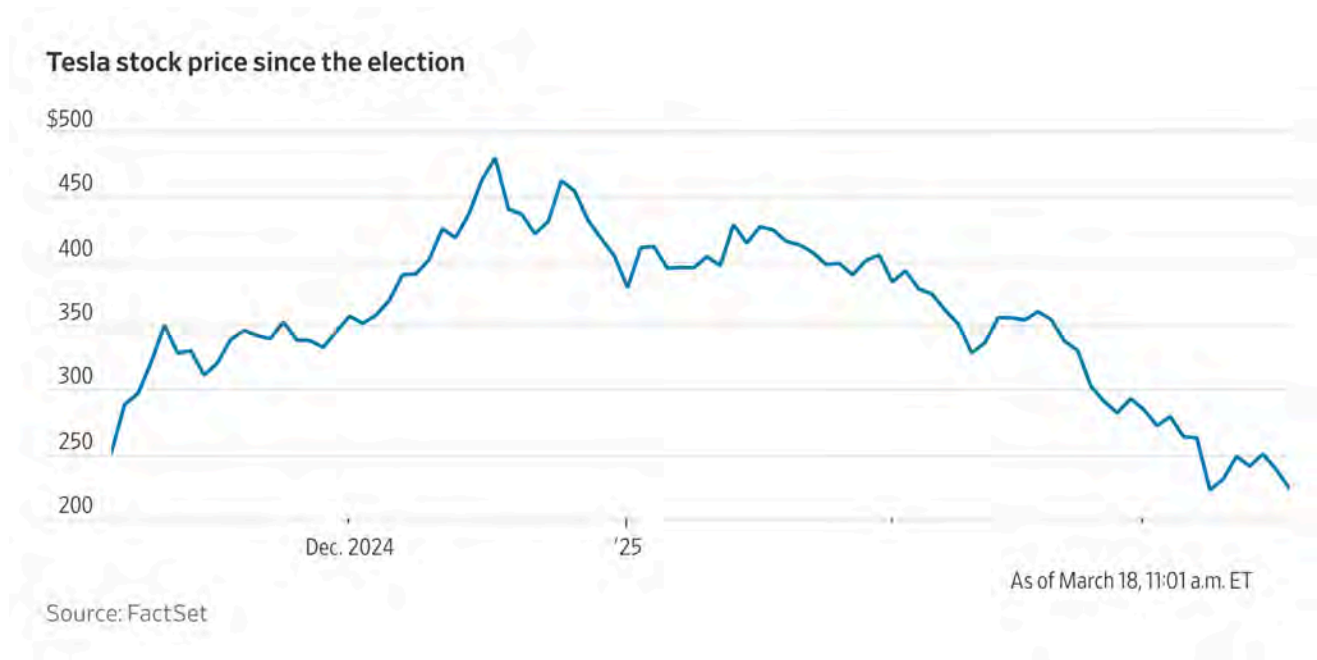
"Last week, longtime Musk ally James Murdoch — the estranged son of Fox boss Rupert Murdoch and a board member since 2017 — became the latest to do so, exercising a stock option and selling shares worth approximately \$13 million, according to an SEC filing," writes ABC News. "The sale took place on March 10, coinciding with the stock's largest single-day decline in five years."

Additionally, ABC found that "Elon Musk's brother, Kimbal Musk, who also sits on the board, unloaded 75,000 shares worth approximately \$27 million last month" and "the chairman of the board, Robyn Denholm, has offloaded more than \$75 million dollars worth of shares in two transactions in the past five weeks."

Tesla dealerships have become the targets of nationwide protests and boycotts as activists channel their anger toward Musk's slash-and-burn campaign against the federal workforce by trying to damage the value of his flagship business.

Tesla Stock Extends Selloff; 'Politicized' Brand Faces Backlash

WSJ [wsj.com/livecoverage/stock-market-today-dow-nasdaq-sp500-03-18-2025/card/tesla-stock-extends-selloff-politicized-brand-faces-backlash-sIS7JmTH9D59FpDJIDuO](https://www.wsj.com/livecoverage/stock-market-today-dow-nasdaq-sp500-03-18-2025/card/tesla-stock-extends-selloff-politicized-brand-faces-backlash-sIS7JmTH9D59FpDJIDuO)



46 min ago

By

Katy Barnato

Tesla shares dropped amid a broader tech selloff, as analysts warned of lower overseas demand for the EV maker's cars and a consumer backlash against Elon Musk's political activities.

The stock was down nearly 4% at below \$229 in midday trading, extending Monday's decline.

Shares are so far on pace for another weekly decline, having fallen for eight consecutive weeks though Friday. That's Tesla's longest such losing streak, ever. The stock has roughly halved since hitting a record high in December—but Heard on the Street columnist Dan Gallagher argues it still isn't a bargain.

Analysts at Oppenheimer expressed concern Tuesday about the Tesla brand becoming "increasingly politicized" and said it needed to show it could both attract conservative-leaning customers, and progress on its autonomy and AI initiatives.

RBC Capital Markets analysts cut their price target on Tesla this week, citing falling market share in Europe and China, among other factors.

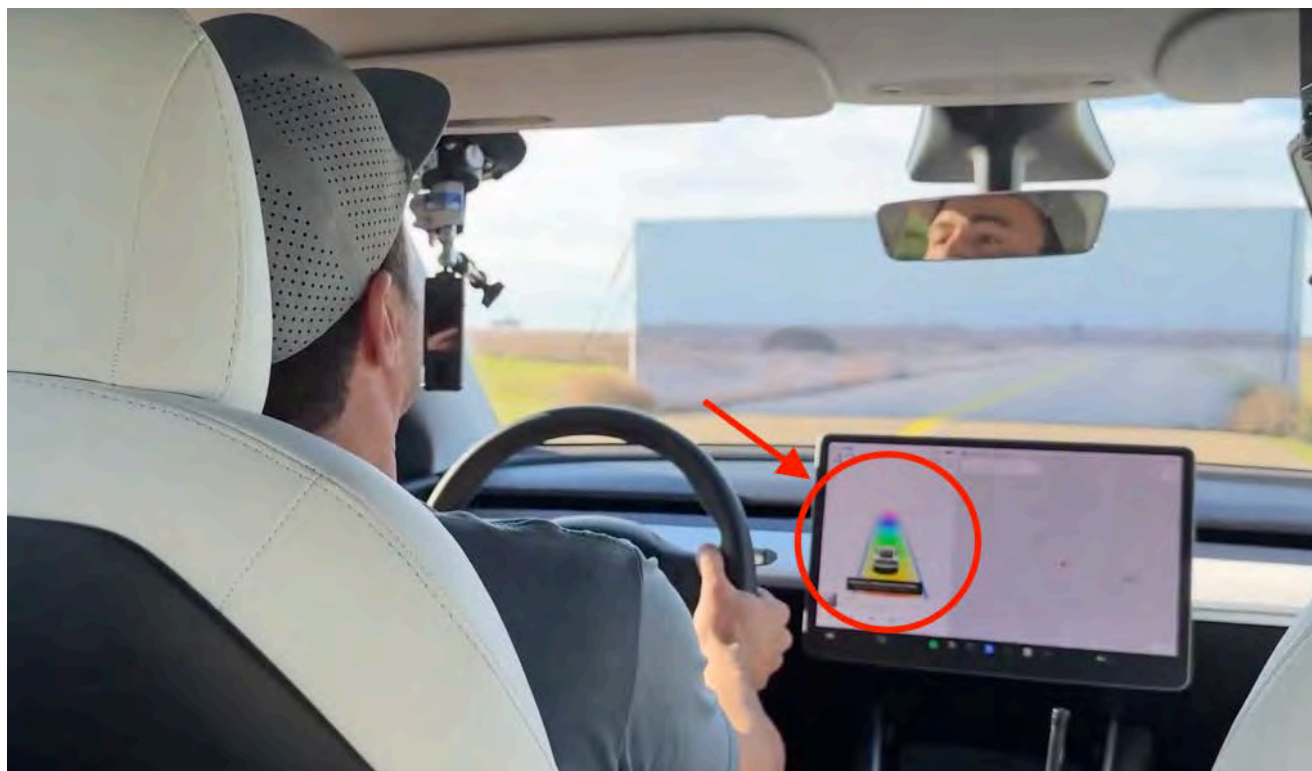
Meanwhile, Chinese EV makers put out a flurry of news Tuesday: **BYD** unveiled new technology that can charge a car in five minutes; **Li Auto** released a new autonomous-driving model; and **XPeng** posted a smaller-than-expected loss. Industry newcomer **Xiaomi** also posted record quarterly revenue.

Tesla fans exposes Tesla's own shadiness in attempt to defend Autopilot crash

electrek.co/2025/03/17/tesla-fans-exposes-shadiness-defend-autopilot-crash

Fred Lambert

March 17, 2025



A group of Tesla fans and investors has inadvertently exposed Tesla's shadiness regarding crashes involving Autopilot by attempting to claim that the advanced driver-assist system was not active in a crash test.

It was not only active, but it also disengaged itself less than a second before the crash—a known shady behavior of Tesla's Autopilot.

Yesterday, we reported on a crash test video that demonstrates the difference between camera-based and lidar-based advanced driver assist (ADAS) systems by famous engineering Youtuber Mark Rober.

The video included a series of tests in which a Tesla Model Y on Autopilot went against a vehicle equipped with an ADAS system powered by a lidar sensor.

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The global democracy index: how did countries perform in 2024? The Economist

The last test was the headline-grabbing one as it tested to see if the vehicles would stop for a Wile E. Coyote-style fake road wall in the middle of the road, but it was simply to illustrate the clear advantage of lidar in this case.

The other tests involving fog and rain where lidar outperformed Tesla's vision-based system were obviously the more relevant and newsworthy tests.



I thought it was simply a well-made video that illustrated the difference between vision-based systems, like Tesla's, and lidar-based systems, which are more commonly used by companies delivering self-driving technology and now even regular ADAS systems.

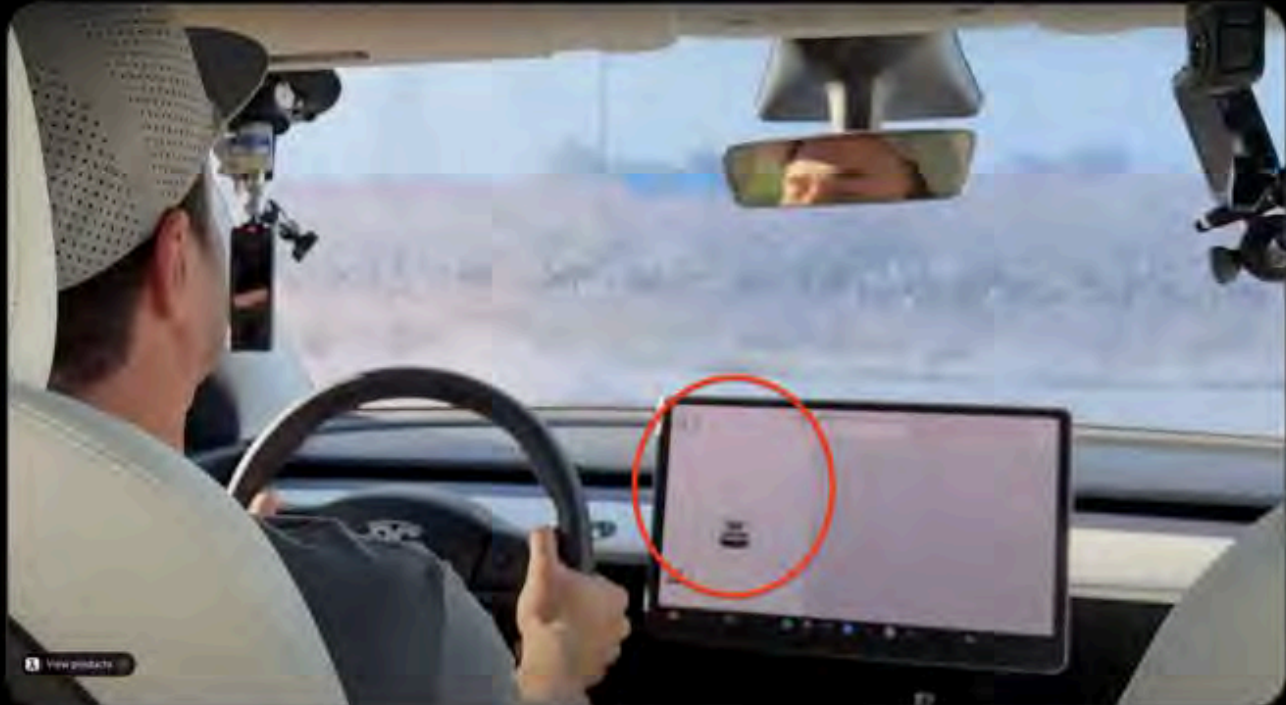
But I was surprised to see my X feed inundated with Tesla fans calling me “fake news” for posting it.

The accusations started with an account named “AI Drivr” who is part of a group called “Rebellionaires”, which help “Tesla all-ins investors”. They claimed that “Autopilot wasn't even turned on during the test”:

**AI DRIVR**  
@AIDRIVR

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not that this will make Fred think any differently, but Autopilot wasn't even turned on during this test (even though @MarkRober pinky promised it was)



 **Electrek.co**   @ElectrekCo · 18h

Tesla Autopilot drives into Wile E Coyote fake road wall in camera vs lidar test
[electrek.co/2025/03/16/tes...](https://electrek.co/2025/03/16/tesla-autopilot-crash/) by @fredericlambert

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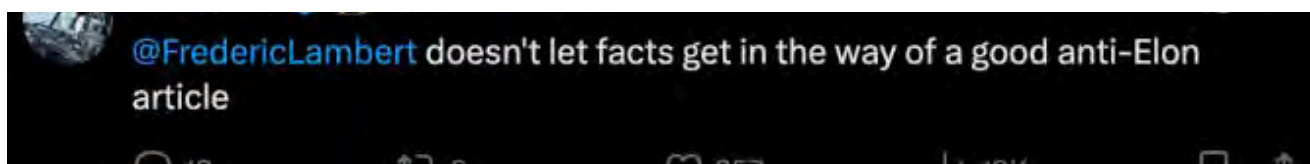
4:51 PM · Mar 16, 2025 · **264K** Views

 130  209  4.1K  122 

 Post your reply

Reply

**AI DRIVR**   @AIDRIVR · 15h  



They also claimed that I ignored this fact because I wanted “a good anti-Elon article”.

They even got my article on the video “community noted” (since removed, but I have a screenshot here):



The only problem for them is that Autopilot was turned on during the test as clearly shown in the video below.

Rober accelerates to the test’s set speed of ~40 mph. You can see he tried to double-tap the stalk but sort of misses the second, though he quickly does it again, and you can see Autopilot turns on.

It’s true that Autopilot disengages a fraction of a second before the crash when it is impossible to stop it:

From the video, it is clear that Autopilot is engaged, and neither the ADAS system nor the automatic emergency braking system activated to avoid the accident.

However, Autopilot appears to automatically disengage a fraction of a second before the impact as the crash becomes inevitable.

It would still count as an “Autopilot crash” as crashes that happen within 5 seconds of Autopilot being engaged count as Autopilot crashes. The community note was eventually removed from my article this morning, but AI Drivr and his “Tesla all-ins” never issued a retraction to their defamatory comments.

The funny thing is that I missed that Autopilot disengaged at the last second, but the attacks from Tesla investors pointed it out and actually exposed video evidence of a shady practice from Tesla that has been reported in the past.

In NHTSA's investigation of Tesla vehicles on Autopilot crashing into emergency vehicles on the highway, the safety agency found that Autopilot would disengage within less than one second prior to impact on average in the crashes that it was investigating:

“On average in these crashes, Autopilot aborted vehicle control less than one second prior to the first impact.”

This would suggest that the ADAS system detected the collision but too late and disengaged the system instead of applying the brakes.

Top comment by Mike

★ Liked by 21 people

Cast in the light friendliest to Tesla, you could argue that returning control to a human operator makes sense whenever any automated control system detects circumstances beyond its ability to handle. But FSD effectively saying “It's all yours, bud” 500 ms before certain impact feels more like an attempt to create legal confusion that favors Tesla in liability lawsuits.

[View all comments](#)

Now, it looks like the Rober video has caught this behavior on camera.

There are many issues with the way Tesla reports or doesn't report ADAS data. As we previously reported, Tesla went out of its way to avoid reporting data to the California DMV about its autonomous driving tests.

Furthermore, Tesla has been abusing NHTSA's self-driving crash redaction policies. The automaker is required to report all crashes where Autopilot or its “Full Self-Driving” systems are involved, but it has consistently had all important details redacted from the reports.

You can download the report [here](#), where you can see that all the important data from Tesla crashes and almost all instances are fully redacted, which is not the case for most other automakers.

Elon Musk's Tesla Bet on MAGA Customers Will Fail

B [bloomberglaw.com/bloombergtterminalnews/bloomberg-terminal-news/STBD4DDWRGG0](https://www.bloomberglaw.com/bloombergtterminalnews/bloomberg-terminal-news/STBD4DDWRGG0)

By Amanda Mull

(Bloomberg Businessweek) --



A torched Tesla found in Berlin on March 15. Police suspect it was set on fire the night before.
Photographer: Christophe Gateau/Getty Images

On the most basic level, there are two steps to selling anything: You create a product, and then you figure out how to persuade people to buy it.

Sometimes the pitch is straightforward. Maybe there's a need for some widget, and you've figured out how to produce widgets at a lower cost than others. Usually, though, you're going to have to spin more of a yarn. Consumers are being pitched near-identical products with near-identical purposes all the time; if you want to catch anyone's attention, that usually means addressing not just what people want or need but also how they want to feel. A widget that also lets people mark themselves as smart or rich or rebellious or virtuous is a more valuable product than one that simply performs the same baseline function. In a saturated consumer market, your product needs vibes. This is, more or less, what "branding" means.

With that in mind, consider Tesla Inc., which is in the middle of what might be politely described as a vibe shift. The company has long enjoyed a massive advantage among the predominantly left-of-center car buyers who make up the American market for electric vehicles. First, because it was pretty much the only game in town for zippy, attractive EVs, and then, as more competition emerged, because owning a Tesla had already become a status symbol for a certain kind of affluent progressive. Until recently, Tesla Chief Executive Officer Elon Musk had enthusiastically encouraged that association, branding himself and his company as bold, brash innovators fighting climate change.

And, well, Musk—whose massive public profile as the face of Tesla has always been one of the company's main value propositions for investors and car buyers alike—isn't doing that anymore. He's swung the whole operation to the hard right, positioning Tesla as an antagonist to pretty much its entire customer base.



A bumper sticker on a Tesla Model 3 in Larkspur, California, on March 12.

Photographer: Justin Sullivan/Getty Images

That base has gotten the message: Cybertruck owners have found their vehicles defaced with everything from spray paint to dog feces, and embarrassed drivers of less controversial Tesla models have taken to adding bumper stickers or magnets to their cars to make clear they purchased them before they knew about Musk's politics. Tesla showrooms and Superchargers have attracted "Tesla Takedown" protests across the US, and a handful of suspected arson incidents of the company's cars and facilities have also been reported. Sales numbers and registration rates for new Teslas have fallen around the world in 2025:

Sales are down 45% across Europe; in Australia, the Electric Vehicle Council estimates a sales drop of 70% over the previous year; in China, shipments of domestically manufactured Teslas have plunged 49%.

It's nearly impossible to think of a comparable example of a company detonating its own brand. Musk long ago revealed himself to be, at best, a clumsy wielder of symbolism—remember when he hauled a bathroom sink into Twitter's offices when his takeover became official?—and he appears to have completely misapprehended the symbolic value of Tesla's brand. Or, at the very least, he seems to have misunderstood his own capacity to change the nature of that value without also diminishing it.



Police outside a Tesla showroom in New York during a protest directed against Musk on March 13.

Photographer: Selcuk Acar/Getty Images

At first, people seemed to think he might pull it off, even as the Trump transition team promised to end policies that benefited the company's business. Tesla's share price jumped to an all-time high of almost \$480 in December, in part because investors seemed to assume that Musk's proximity to President Donald Trump was bound to benefit his businesses. Do you even need to worry about your customers' feelings when your company can just drink directly from the federal government's money hose?

It's beginning to look like the answer to that question might be yes, at least for Musk. Tesla's shares have since lost almost half their value, wiping out more than \$150 billion of his personal net worth. Americans are socialized to view consumption as the front lines of

politics, in part because it's easier to govern a populace that sees themselves as shoppers instead of political actors. But that's only true when the governing elites aren't also retailers who can be directly damaged by massive swings in personal purchasing behavior.

There's little indication that Musk will simply be able to switch his product from one ideological market to another of equal size, having now remade Tesla into a symbol of sneering anti-progressivism. Some Tesla watchers posit that all of this will be little more than a bump in the road toward some masterful gambit that will make the company's traditional customer base irrelevant—perhaps the advent of self-driving robotaxis, which Musk has promised for years are just over the horizon.

In the meantime—and the meantime could be quite lengthy—Tesla needs to sell cars. There are only so many anarcho-capitalist crypto guys, Musk's most dedicated constituency, more or less, in the conservative coalition. And regular conservatives, many of whom endlessly mocked liberals for buying EVs in the first place, want conventional vehicles. If they want to own the libs through their choice of vehicle, they already have a variety of ways to do that, including an ever-expanding lineup of enormous gas guzzlers they can modify to guzzle even more gas. Why buy a little plug-in sedan that aligns you with some internet dorks when you can put a lift kit on your diesel F-250 and tinker with its engine to make it roll coal?



Trump, joined by Musk, delivers remarks next to a Tesla Model Y, a Cybertruck and two Model S vehicles outside the White House on March 11.

Photographer: Andrew Harnik/Getty Images

Musk does seem to be worried about his ability to pull off this rebrand, now that his ideological project seems to be hurting Tesla's business. Last week, as the company's shares plummeted, he enlisted Trump for a public infomercial for his cars on the White House lawn, where the president said that he would buy one of the cars at full price as a vote of confidence and that he planned to categorize Tesla vandalism as domestic terrorism. (Whether federal judges would buy that designation is another matter.) The spectacle felt as desperate as it did bizarre; Trump is uniquely capable in the history of American politics of changing his supporters' beliefs about reality, and Musk seemed to hope a little bit of that magic would be conferred on his cars. Maybe enough rank-and-file GOP voters would buy into Trump's belief in Tesla to prompt a surge in sales, even as his administration shuts down charging stations and makes other policy moves that tell voters that EVs are not part of the MAGA movement.

Fundamentally, though, Musk seems to have made a similar error with Tesla that he made a couple of years ago with one of his other businesses, Twitter. In that instance, he stripped the blue verification checkmarks that the social platform's old regime had given out freely to public figures and journalists, viewing them largely as markers of elite status within the platform's petty little social hierarchy. (We were, to be fair, very annoying about the blue checks.) Under Musk, anyone who wanted their blue check back would have to pay a monthly fee to the company, and anyone who wanted one for the first time could also buy in. The company's leadership seemed surprised when relatively few people volunteered to pay, but they shouldn't have been. The verification marks had been changed from a symbol of professional status into a symbol of fealty to Musk, which meant they weren't valuable to the same people anymore.

Brands decide to pursue new types of customers all the time, but usually they do so consciously—they find a target market and court it, often after assembling some kind of proof that they might be able to foment a particular type of demand among a new set of buyers. That's why soda brands launch healthy beverages, for example, or why Louis Vuitton recently announced plans to introduce a line of color cosmetics. These companies know that some of the goodwill they've built up among the public can be transferred to new products, if done carefully—the meaning remains stable, but it's contained in new vessels. What Musk is trying to do with Tesla, knowingly or not, is something different. The cars are the same, but he's changed their meaning to satisfy a much smaller audience: himself.

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Trump's Crypto Project Has Raised \$550 Million in Token Sales

- A company connected to Trump collects 75% of revenue
- World Liberty has been buying up other coins, including Ether

World Liberty Financial, the crypto project promoted by President Donald Trump, has completed its second set of token sales and raised a total of \$550 million in gross proceeds, according to a press release.

A company affiliated with Trump receives 75% of net revenue as a fee, including the proceeds of token sales, according to the offering document for World Liberty's initial token sale. Buyers of the tokens aren't allowed to resell them yet and aren't entitled to any profit.

The project started its first token sale in mid-October and was marketed to both US and non-US investors. The exact functionality of the decentralized-finance, or DeFi, project is still under wraps. However, it's been buying up millions of dollars worth of other cryptocurrencies, including Ether and Tron. Tron creator Justin Sun is an investor in the project.

World Liberty has discussed doing business with crypto exchange Binance, Bloomberg reported last week. Representatives of the Trump family have also held talks with Binance about taking a stake in the exchange's US arm, Binance.US, the Wall Street Journal reported last week. Binance founder **Changpeng Zhao**, who in 2023 pled guilty to anti-money laundering failures at the exchange, has been pushing for the Trump administration to grant him a pardon, according to the Wall Street Journal's report.

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Michael P. Regan

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Jack Daniels, Warby Parker Warn of Risks From Canada Boycott

- Some Canadians souring on American-made goods
- Boycotts create “significant uncertainty,” companies say

Warby Parker, Allbirds and the maker of Jack Daniels are among the companies telling shareholders that anti-American consumer sentiment fueled by the Trump administration’s tariff wars poses a business risk.

Footwear maker Allbirds said in its annual 10-K report last week that the US government’s onslaught of tariffs “as well as a government’s adoption of ‘buy national’ policies or retaliation by another government against such tariffs or policies have introduced significant uncertainty into the market.” Warby Parker used similar language about the impact on its eyeglass and contact lens business in its annual report in February. And Beyond Meat specifically cited the risk that Canadian discontent with US policies would hurt demand for its plant-based meat substitutes in its annual report this month.

The new disclosure trend flows from the Canadian consumer fallout to President Donald Trump’s proposal of a 25% tariff on the country’s goods, as well as his suggestion that Canada become a US state. The ‘buy national’ movement has particularly targeted Canadian imports of US alcoholic beverages.

US beverage makers have aired their concerns to shareholders: Lawson Whiting, the CEO of Jack Daniel’s owner Brown-Forman, told investors in an earnings call earlier in March that taking US products off shelves is “a very disproportionate response” to the tariffs. He stressed that Canada contributes only about 1% of its sales, but said “it’s disappointing that some of our consumers aren’t going to be able to get our bottles of Jack Daniel’s up there because it’s a big brand in Canada and popular.”

Walmart didn’t explicitly refer to ‘buy national’ boycotts, but it told investors late last week that “consumer boycotts in certain regions” could impact its business. The disclosure was made in a section of its 10-K focused on international trade.

Beyond Meat indicated to investors that its profit margins would be tight if tariffs are imposed.

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

Separate consumer boycotts have been rattling companies that reeled in certain diversity, equity and inclusions policies under a Trump administration directive. In its 10-K last week, Target Corp. referred to discontent over its DEI reversal—which it now faces a consumer boycott over—in the wake of a 2023 consumer boycott over its Pride Month products.

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Climate change

US multinationals purge website references to climate change

Walmart and Kraft Heinz among big corporations deleting or rewriting statements as Trump climate attacks intensify



© Alex Wheeler/FT/Bloomberg/Dreamstime/Getty Images

Attracta Mooney and Susannah Savage in London

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Big companies and non-profit groups have begun purging or rewriting references to climate change on their websites, mirroring similar action by US government departments in response to the policies of Donald Trump.

Financial Times analysis shows that statements on climate change from leading corporations including Walmart and Kraft Heinz have been deleted or rewritten over the past year at the same time as a Republican backlash against green action has intensified and companies have begun [rolling back their net zero targets](#).

Trump, who has called [climate change](#) a hoax, has launched a sweeping attack on environmental policy since taking office, while his administration has started to remove or downgrade mentions of climate change across US government websites.

Among those companies that had previously boasted of their climate action, [Walmart](#) expunged a section in which it previously said it was “deeply committed to addressing climate change”.



Walmart has removed a section from its statement on climate change in which it had said it was ‘deeply committed to addressing climate change’ © David Paul Morris/Bloomberg

In a statement on its website in the middle of last year, the retailer said: “Climate change is one of the greatest challenges of our time. If we don’t take more aggressive action now, the damage will only worsen, and the consequences will be disastrous for this and future generations.”

In December, these references were removed and the text on the webpage significantly shortened and rewritten. The retailer, which did not respond to a request for comment, on its webpage continued to include that it was “focused on reducing emissions in our operations [and] engaging suppliers to reduce emissions in supply chains”.

Areeba Hamid, co-executive director of Greenpeace UK, warned companies were at risk of “committing brand self-sabotage by erasing and diluting references to climate on their websites”.

“We know . . . customers and employees worry about how climate change is upending their lives because it’s making the air harder to breathe, their water dirtier and products more expensive,” she said.

“Ultimately, tackling climate change is responsible business and reinforces the foundations on which economic prosperity is built.”

Other examples include Kraft Heinz, which rewrote its Net Zero and Science Based Targets webpage in January, removing a reference from the text to a target to cut emissions by 50 per cent by 2030. Instead, the company wrote that it had “faced internal and external challenges in delivering our net zero targets” and said it was re-evaluating these.



Kraft Heinz says it has ‘faced internal and external challenges in delivering our net zero targets’ © Brandon Bell/Getty Images

In a statement, Kraft Heinz said the webpage was updated following its latest environmental, social and governance report, adding that it was “fully committed to our net zero ambition”.

On American Airlines’ climate change webpage a reference to how the “low-carbon transition is both urgent and under way” that appeared in July was removed in November before the election. American Airlines said the “website was refreshed with language from our latest sustainability report. As the website shows, our sustainability goals have not changed.”

US tech giant Meta, which did not respond to a request for comment, included a section on its sustainability webpage last summer about “leading the way on climate change” and “tak[ing] bold climate action”. These references have since been removed, although it still said it was working with partners to address climate change.

Ford removed a reference to “targeting climate change action” last summer from the top of its UK sustainability page where it published a new climate change report, while keeping mentions further down. Ford declined to comment.

Coca-Cola, meanwhile, watered down statements around tackling waste on its sustainability webpage after weakening its environmental targets last December. The company did not respond to a request for comment.



Meta has removed references on its sustainability webpage about 'leading the way on climate change' © David Paul Morris/Bloomberg

Non-US companies have also altered their websites. A chart looking at the usage of renewable energy at Nestlé manufacturing sites was removed from the consumer goods company’s climate change webpage, as have details of tree planting. Nestlé said the chart and information about tree planting still appeared on other parts of its website.

Ben Caldecott, director of the Oxford Sustainable Finance Group, warned that so-called greenhushing, where companies underplay their environmental efforts, “undermines transparency and accountability”.

Charities also told the FT they were rejigging their websites, with one US non-profit group that operates internationally saying they had scrubbed whole pages about climate change online, partly in a bid to help shore up US grants.

Trump has backed a funding freeze that shut down US humanitarian aid and development work around the world, including the work of the US Agency for International Development. This has sparked fears that non-profit groups will struggle to access US grants for climate development projects.

Others said climate change projects were being rebranded with other titles, playing up a focus on food or water for example.

A person familiar with the UN's World Food Programme's thinking said even before the USAID cuts there were already expectations that projects would need to be rebranded.

"Let's not talk about them in terms of climate change, let's talk about them as resilience, that basically using phrases like climate change is going to be just a red rag to a bull."

Climate Capital



Where climate change meets business, markets and politics. [Explore the FT's coverage here.](#)

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Workplace diversity & equality**US companies drop DEI from annual reports as Trump targets corporate values**

Federal investigation of initiatives is bosses' 'number one' worry as Trump attacks 'immoral discrimination'



© FT Montage/Bloomberg/Dreamstime

Eva Xiao and **Taylor Nicole Rogers** in New York and **Clara Murray** in London

Published MAR 15 2025



Hundreds of US companies have removed references to “diversity, equity and inclusion” from their annual reports in a rapid pullback from the corporate values that have become a target of President Donald Trump’s administration.

More than 200 of America’s largest corporate groups have culled mentions of DEI and related terms such as “diversity”, according to FactSet data and company filings analysed by the Financial Times.

Of the top 400 companies in the S&P 500 index, 90 per cent of those that have filed an annual report since Trump’s election have cut at least some references to DEI, with many ditching the term entirely.

The figures, which relate only to annual reports covering companies’ financial years that ended since the election, underscore the speed and scale of the impact of Trump’s crusade against what he has described as “illegal and immoral discrimination programmes”.

In addition, many companies no longer include statistics breaking down their workforce by race or have dropped references to awards for DEI initiatives or internal affinity groups, such as networks for Black professionals.

Separate data from recruitment website Indeed shows that US job postings with DEI-related titles have halved since their mid-2022 peak, while some companies have scrapped diversity programmes.

The number of firms that have opted not to refer to DEI, or its individual components such as diversity, in their latest annual reports far outstrips those that have publicly announced changes to their workplace policies or values.

Mastercard, Salesforce, S&P Global, Palantir and American Express are among the companies that changed the language they used about diversity between annual filings published in 2024 and 2025.

Many companies have instead stressed “inclusion” or “belonging”, saying they want a culture where “all employees” thrive.

Mastercard

2024

Diversity, equity and inclusion underpin everything we do, helping us build a healthy culture, attract talent and drive long-term value for stockholders.

Mastercard's annual filing published in 2024 referred to 'diversity, equity and inclusion'.

Its latest annual report, published in February 2025, does not mention DEI.

Salesforce's annual report published last year included a section headed 'Equality, Diversity and Inclusion'.

In the latest edition, filed this month, the section does not refer to 'diversity'.

In a statement to the FT, Salesforce said it remained committed to its “long-standing core value of equality”. The other companies did not respond to requests for comment or declined to comment.

The analysis of company filings shows that the president’s attacks on DEI have prompted a widespread retreat by companies from publicly discussing their diversity and inclusion initiatives as executives rush to assess whether to cancel or modify the programmes.

Within days of taking office in January, Trump signed executive orders prohibiting DEI “discrimination” in federal agencies, and requiring federal government contractors to certify that they do not operate inclusion programmes that violate federal anti-discrimination laws.

The orders did not clearly define which types of policies the administration views as illegal, leaving companies to assess how to comply. Deloitte told staff in its US government consulting division to [remove gender pronouns](#) from their email signatures, for example.

Executives view supplier diversity initiatives and programmes that are open only to specific groups, such as a women’s mentoring schemes, as carrying the highest risk, said Joelle Emerson, chief executive of Paradigm, a software and consultancy group that advises companies on culture and inclusion.

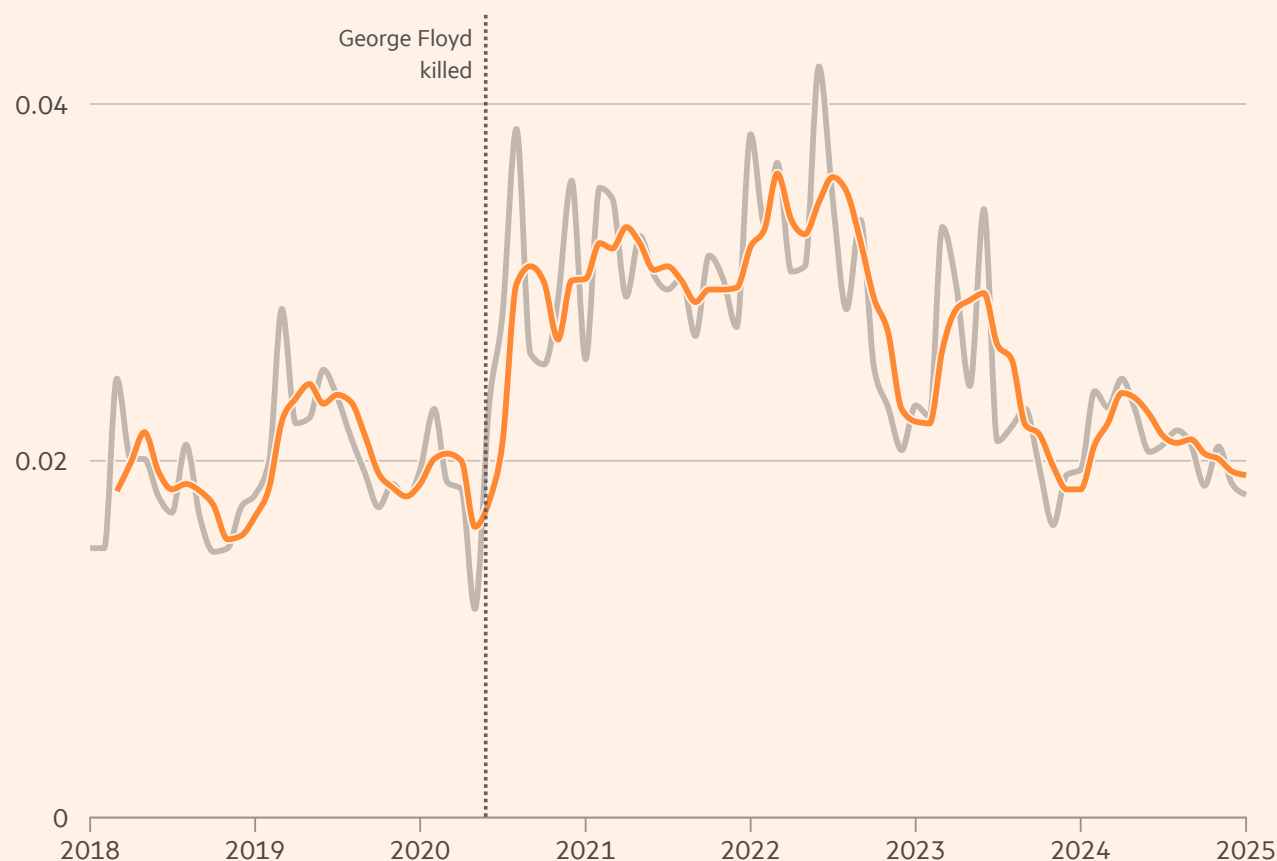
Trump also directed federal agencies to identify “potential civil compliance investigations” into publicly traded companies and other organisations as part of a plan to deter DEI programmes that constitute “illegal discrimination or preferences”.

Emerson said this had created a “chilling effect” across corporate America, with companies spending so much time trying to interpret the government’s plans “that they’ve stopped doing things that are in their own best interest and that are perfectly lawful out of fear”.

The share of advertised job titles with DEI-related terms has halved from its mid-2022 peak

Share of all US job postings (%)

— 3-month average — Monthly



Source: Indeed • 2025 data to January
FT graphic: Clara Murray

FINANCIAL TIMES

Luke Hartig, president of consultancy Gravity Research, which advises firms on reputational concerns, said that the threat of investigations into DEI initiatives was causing executives “serious anxiety” and was their “number one ‘up at night’ concern”.

Even before Trump was elected, at least 20 companies on the S&P 500 had already removed some DEI-related terms in annual filings published between 2021 and 2024, according to FT analysis.

In its most recent annual filing, published last month, Meta included a section headed: “The Strength of Our Workforce and People Processes”. Previous annual reports had used different headings such as “Diversity, Equity and Inclusion” or “Diverse and Inclusive Workplace”.

[Rightwing](#) campaigners have pressured companies to halt diversity programmes, with Walmart and Harley-Davidson targeted by activists last year.

Progressives have also criticised some DEI initiatives for superficially promoting diversity without substantially improving equality or representation of disadvantaged groups.

But proponents say the programmes help to improve opportunities and career progression for historically under-represented groups while boosting business performance.

While many companies have been culling references to DEI, some have added language to stress merit-based hiring. These include Morgan Stanley, whose most recent annual filing, published last month, says: “Meritocracy is at the heart of Morgan Stanley’s talent development.”

Some companies have continued to pursue diversity and equity initiatives despite [opposition](#), such as Costco, whose shareholders recently voted overwhelmingly to continue the company’s policies.

Chuck Robbins, CEO of telecommunications group Cisco and chair of the influential Business Roundtable of US corporate leaders, also made a staunch defence of his company’s DEI initiatives in January, although the group dropped a reference to “diversity” in its latest quarterly filing in February.

“You cannot argue with the fact that a diverse workforce is better,” he told Axios in January. “There’s too much business value.”

Additional data visualisation by Jana Tauschinski and reporting by Chris Cook

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March 17, 2025, 8:26 AM PDT

UBS Auditor Issues Adverse Opinion Over Credit Suisse Controls

UBS Group AG's auditor Ernst & Young expressed an "adverse opinion" on internal controls over financial reporting related to legacy Credit Suisse matters.

The bank's annual report published on Monday revealed that Ernst & Young was of the opinion UBS had "not maintained effective internal control over financial reporting as of 31 December 2024."

[Read More: Credit Suisse Finds 'Material Weakness' in Reporting Since 2021](#)

The issue relates to "material weaknesses" originally discovered at Credit Suisse when it was still a standalone bank.

Since the acquisition UBS said it has taken action to address the issue and has implemented additional controls and procedures.

"Although Credit Suisse AG is no longer a separate legal entity, numerous of its booking, accounting and risk management systems remain in use for activities that have not yet been exited or migrated to UBS systems," UBS said.

"Management has concluded that additional evidence of effective operation of the remediated controls is required to conclude that the risk assessment processes are operating effectively on a sustainable basis," UBS said.

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Rippling Sues HR Software Rival Deel for Trade Secret Theft (1)

- **COURT:** N.D. Cal.
- **TRACK DOCKET:** No. [3:25-cv-2576](#) (Bloomberg Law subscription)

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

The complaint, filed Monday in the US District Court for the Northern District of California, alleges violations of the Racketeer Influenced and Corrupt Organizations Act, RICO conspiracy, and misappropriation of trade secrets.

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.”

Rippling is represented as Quinn Emanuel Urquhart & Sullivan LLP.

The case is People Center Inc. v. Deel Inc. , N.D. Cal., No. 3:25-CV-2576, complaint 3/17/25 .



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Burger King Workers Defend Revived No-Poach Case

By **Matthew Perlman**

Law360 (March 17, 2025, 7:33 PM EDT) -- Burger King employees are defending their proposed class action over the fast-food chain's past use of no-poach provisions in its franchise agreements, as the restaurant urges a Florida federal court to toss the claims despite an appeals court reviving them in 2022.

Burger King and the workers both filed supplemental briefs on Friday addressing issues in the company's **motion to dismiss** that are still outstanding after the Eleventh Circuit reversed a prior dismissal order.

The workers alleged Burger King violated antitrust law with its past use of provisions in franchise agreements that barred franchisees from hiring another location's employees.

The workers pointed in their brief to a Seventh Circuit ruling that revived a **similar case** over the use of no-poach provisions by McDonald's and said the same outcome is warranted here since both restaurant chains own some of their own locations and compete with franchisees for workers.

"Plaintiffs plausibly allege the involvement of all defendants and the franchisees in the no-hire agreement and adequately plead that fraudulent concealment tolled the statute of limitations," the workers' brief said. "The court should deny the remainder of Burger King's motion and allow the case to proceed with discovery."

The Eleventh Circuit reversed dismissal of the Burger King case in September 2022, with the panel ruling that U.S. District Judge Jose E. Martinez was wrong to find that Burger King and its franchisees were a **single company** incapable of conspiring to restrict the market.

The sides called for a status conference to discuss moving the case forward on remand in January, and the judge responded by asking for supplemental briefs covering any issues in the original motion to dismiss that were not addressed by the appeals court.

The workers' brief on Friday relied heavily on the McDonald's case, which the U.S. Supreme Court **refused to review** in March 2024, where the Seventh Circuit found it was too early in the litigation to decide what standard applies to the claims. The lower court there had found the per se standard would not apply, opening the door for the restaurant chain to argue the no-poach provisions were ancillary to the broader franchise agreements.

In trying to distinguish its case from McDonald's, the workers said Burger King was arguing that its no-poach agreements were "vertical," since they were part of its broader agreements with franchisees, who compete against other chains. But the workers said the no-hire provisions restrict competition in the market for labor, where Burger King and the franchisees compete against each other for workers, just like McDonald's.

"The relationship is not vertical in the labor market," Friday's brief said. "Instead, Burger King participates at the same market level as franchisees, rendering their relationship horizontal, not vertical."

Burger King argued in its own brief on Friday that its case is different from the McDonald's case because while McDonald's owns around 20% of its own locations, at the time the provisions were in use, Burger King only owned 50 locations, all in the Miami area, out of more than 7,000 nationally.

This, the brief said, makes the relationship between Burger King and its franchisees more "vertical" than McDonald's relationship with its franchisees.

"That fundamental difference makes this case unlike the litigation against McDonald's. That case involved a horizontal agreement," Burger King's brief said.

Since the arrangement is vertical, Burger King argued the no-poach provisions need to be viewed through a rule of reason analysis to determine if they hurt competition in a specific market. But the workers cannot show there's a national market specifically for Burger King workers, who look for jobs in local markets near their homes, including at other fast-food chains, Burger King's brief said.

"Plaintiffs do not even provide a rudimentary market analysis and so their contention that they provided evidence of an actual detrimental impact necessarily falls short," the brief said. "Although plaintiffs allege that defendants' actions have depressed workers' wages and limited their mobility, that is a bald legal conclusion, devoid of any factual support and does not suffice to withstand a motion to dismiss."

The workers contended that it is still too soon to consider whether the no-hire provisions were ancillary to a broader agreement since they clearly restrained competition for labor. Burger King argued the franchise agreements promote interbrand competition, but the brief said this refers to competition for burgers, not workers.

"An anticompetitive restraint in one market (labor) cannot be justified because of purported procompetitive benefits in another market (burger sales)," the workers said in their Friday brief.

Representatives for Burger King and the workers did not respond to requests for comment Monday.

Burger King is represented by Stuart H. Singer and Carl E. Goldfarb of Boies Schiller Flexner LLP and Luis E. Suarez, Mark J. Heise and Patricia A. Melville of Heise Suarez Melville PA.

The consolidated class is represented by Peter Prieto and Matthew P. Weinshall of Podhurst Orseck PA, Joseph H. Meltzer of Kessler Topaz Meltzer & Check LLP, Richard D. McCune and Michele M. Vercoski of McCune Wright Arevalo LLP, Paul J. Geller, Stuart A. Davidson, Jason H. Alperstein, David W. Mitchell and Carmen A. Medici of Robbins Geller Rudman & Dowd LLP, John Radice and Daniel Rubenstein of Radice Law Firm PC, Dean M. Harvey, Anne B. Shaver and Yaman Salahi of Lieff Cabraser Heimann & Bernstein LLP, Michael L. Schrag, Eric H. Gibbs and Joshua J. Bloomfield of Gibbs Law Group LLP, George W. Sampson of Sampson Dunlap LLP and Derek Y. Brandt of Brandt Law LLC.

The case is Arrington et al. v. Burger King Worldwide Inc. et al., case number 1:18-cv-24128, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by David Minsky, Anne Cullen and Dorothy Atkins. Editing by Janice Carter Brown.



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Exxon Committed 'Straightforward Fraud,' Investors Say

By **Spencer Brewer**

Law360 (March 17, 2025, 8:15 PM EDT) -- Exxon Mobil Corp. investors told a Texas federal court that the energy giant's antics surrounding its operations in Kearsarge Lake amount to a "straightforward fraud," and that the court should reject Exxon's bid for judgment as a matter of law.

In a Friday **brief** responding to Exxon's **summary judgment bid to end claims** it engaged in a stock inflation scheme, the investors told the court that a "wealth" of evidence shows that Exxon's executives knew certain operations weren't profitable and that the company breached securities law by delaying the release of that information to investors.

"Defendants nonetheless claim that the facts entitle them to summary judgment," the investors said. "But slapping the term 'undisputed' on their preferred set of facts does not make them so."

In the lead-up to the class period, oil and gas prices weren't doing so hot and fell steadily around the globe. Exxon's oil and gas competitors took over \$93 billion in write-downs and impairments, including to Canadian tar sand and dry gas assets similar to Exxon's Kearsarge reserves and Rocky Mountain Dry Gas assets that are at issue in the suit. Kearsarge Lake is the site of a Canadian oil sands deposit.

But despite suffering from the same pricing slump, Exxon alone refused to write down its Kearsarge reserves or Rocky Mountain Dry Gas assets, the investors said. Then Exxon CEO Rex W. Tillerson said while he was the chief executive "we don't do write downs," according to Friday's response brief.

The write-downs at issue in the suit were delayed a full year and didn't happen until Tillerson left the company to become the U.S. Secretary of State in January 2017, the investors said. Instead of admitting the Kearsarge reserves were bleeding money and Rocky Mountain Dry Gas — or RMDG — assets were impaired, the investors allege, the company filed a securities form that contained misleading statements about Kearsarge's profitability and Exxon's proved reserves and earnings.

The defendants knew all of this and knew they were breaching securities law, the investors allege.

"While their knowledge is sufficient on its own to prove scienter, the record also demonstrates that defendants were motivated to delay the inevitable write downs and impairments to protect Exxon's coveted AAA credit rating and complete a massive \$12 billion bond offering on March 2, 2016, on the most favorable terms," the investors said.

Eventually, Exxon fessed up to the poor state of its operations in Kearsarge Lake and RMDG. In 2016, Exxon disclosed it would likely de-book Kearsarge's entire 3.6 billion barrels of proved reserves because Kearsarge was not profitable under governing SEC regulations. The company broke similarly bad news about RMDG a short time later.

Following the news, Exxon's shares dropped by \$3.44 per share, and the company's investors took that loss to the teeth, according to the investors' response brief.

"Defendants' motion at best presents a counterfactual narrative that is contradicted and disputed by testimony from the individual defendants, their employees, and their experts, as well as documentary evidence," the investors said. "The resulting host of triable issues of material fact renders summary judgment inappropriate."

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

Lead plaintiff Greater Pennsylvania Carpenters Pension Fund is represented by Joe Kendall of Kendall Law Group PLLC, Balon B. Bradley of Balon B. Bradley Law Firm, and Darren J. Robbins, Michael J. Dowd, Spencer A. Burkholz, Scott H. Saham, Sam S. Sheldon, Jonah H. Goldstein, Nathan R. Lindell, Sara B. Polychron, Erika L. Oliver, T. Alex B. Folkerth and Justin G. Oetting of Robbins Geller Rudman & Dowd LLP.

Exxon Mobil Corporation is represented by Theodore V. Wells, Jr., Daniel J. Kramer, Audra J. Soloway, Daniel J. Toal, Paul D. Brachman, Matthew D. Stachel, Samuel M. Kleiner and Lyuba Shamailova of Paul Weiss Rifkind Wharton & Garrison LLP and Nina Cortell and Jason Bloom of Haynes and Boone LLP.

Rex W. Tillerson is represented by D. Patrick Long of Squire Patton Boggs.

The case is Ramirez v. Exxon Mobil Corporation et al., case number 3:16-cv-03111, in the U.S. District Court for the Northern District of Texas.

--Additional reporting by Elliot Weld. Editing by Amy French.

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Singaporean Tech Co. Inks \$46M Investor Settlement

By **Rachel Scharf**

Law360 (March 17, 2025, 9:29 PM EDT) -- Singaporean tech conglomerate Sea Ltd. has reached a \$46 million settlement to end a putative securities class action over investor statements that allegedly downplayed massive losses to its video game and e-commerce divisions, according to a filing in Arizona federal court.

The all-cash settlement was revealed Friday in a **preliminary approval motion** filed by Laborers District Council Construction Industry Pension Fund, lead plaintiff in the **shareholder class suit** against Sea. The deal was reached in December during mediation before Phillips ADR Services and executed in early February, court papers say.

"The settlement is not only fair, reasonable and adequate; it is a tremendous result for the putative class," wrote the pension fund. "Accordingly, plaintiff requests preliminary approval of the settlement and certification for settlement purposes for those persons who purchased or otherwise acquired Sea Ltd.'s publicly traded American depository shares during the period from November 15, 2022, through August 14, 2023."

The deal allows lead counsel for the proposed class, Robbins Geller Rudman & Dowd LLP, to request up to 25% of the \$46 million settlement amount as attorney fees.

Reached for comment on the settlement Monday, Marco Janoski Gray of Robbins Geller said, "Our client secured an outstanding result for the class. We are pleased with this excellent outcome."

Sea's counsel did not immediately respond to a request for comment.

Laborers District Council filed suit in 2023 alleging Sea was in "crisis" in the fall of 2022 but misled investors about the extent of its losses in order to prop up share prices. For example, the complaint alleged, Sea falsely claimed that its video game unit Garena's loss of the rights to publish the popular game League of Legends would have "no impact" on its bottom line.

These misstatements also allegedly extended to Sea's e-commerce business Shopee. According to the pension fund's complaint, Sea misleadingly told investors in 2022 that Shopee would be profitable despite massive losses.

These misstatements supposedly inflated Sea's share value, only for stock prices to drop nearly 60% after the truth of its losses were revealed in 2023.

U.S. District Judge Douglas L. Rayes trimmed the suit during the motion to dismiss phase in August. The judge kept alive all the proposed class' claims regarding Garena but cut away some allegations about Shopee, such as statements about post-pandemic office reopening trends.

The proposed class is represented by Theodore J. Pinter, Tor Gronborg, J. Marco Janoski Gray, T. Alex B. Folkerth, Jessica E. Robertson and Evelyn Sanchez Gonzalez of Robbins Geller Rudman & Dowd LLP and Hart L. Robinovitch of Zimmerman Reed LLP.

Sea is represented by John C. Gray of Womble Bond Dickinson and Adam S. Hakki, Daniel C. Lewis, Joshua T. Ebersole and Nikolai Krylov of Allen Overy Shearman Sterling.

The case is Laborers District Council Construction Industry Pension Fund et al. v. Sea Ltd. et al., case number 2:23-cv-01455, in the U.S. District Court for the District of Arizona.



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Meta Facing Investor Suit Over €1.2B EU Data Privacy Fine

By **Hailey Konnath**

Law360 (March 17, 2025, 11:24 PM EDT) -- A pair of pension funds on Monday filed suit against Meta Platforms Inc. in Delaware's Court of Chancery, accusing the company of repeatedly violating data privacy laws, a pattern that the funds say led to the company being fined €1.2 billion (\$1.3 billion) by European authorities.

The Northern California Pipe Trades Trust Funds and Employees' Retirement System of Rhode Island lodged their complaint under seal. However, according to accompanying filings, they want to inspect Meta's books and records "to investigate potential breaches of fiduciary duties by the company's board of directors and/or senior executives."

Those potential breaches are connected to Meta being hit with the **"largest such fine ever levied"** for infringing the European Union's General Data Protection Regulation. That fine came after Meta sent European Facebook users' data to the U.S. using a mechanism known as a standard contractual clause without ensuring that adequate privacy safeguards were in place to protect the information.

The funds initially filed demands to inspect Meta's records and books back in 2023, shortly after the fine was levied. Monday's suit, too, looks to "compel the inspection of books and records," according to a motion for expedited proceedings filed alongside the sealed complaint.

"Meta is a recidivist where data privacy violations are concerned," the funds said their initial demands, adding that the fine "is just the latest in a string of similar violations."

"For years, Meta has mishandled private user information and obscured the details of how it shares that information," they said.

Meta and counsel for the investors didn't immediately respond to requests for comment late Monday.

Ireland's Data Protection Commission issued the fine in May 2023 and also ordered Meta to suspend any transfer of personal data to the U.S. relying on this framework within five months and to bring its data transfer operations into compliance with the GDPR within six months.

EU and U.S. policymakers announced in March 2022 that they had reached a deal to replace the Privacy Shield data transfer framework, which had enabled thousands of multinationals to legally transfer data from the EU to the U.S. but was struck down by the European Court of Justice in 2020 due to concerns over the framework's failure to provide Europeans with effective redress rights or adequately protect them from having their data intercepted by U.S. intelligence authorities.

The investors are represented by Christine M. Mackintosh, Edward M. Lilly and Demetrius M. Davis of Grant & Eisenhofer PA.

Counsel information for Meta wasn't immediately available Monday.

The case is Northern California Pipe Trades Trust Funds et al. v. Meta Platforms Inc., case number 2025-0291, in the Court of Chancery of the State of Delaware.

--Additional reporting by Allison Grande. Editing by Jay Jackson Jr.



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PVC Pipe Co. Faces Investor COVID-Era Antitrust Claims

By **Emilie Ruscoe**

Law360 (March 17, 2025, 10:26 PM EDT) -- PVC pipe maker Atkore Inc. and three current and former executives face a proposed investor class action over the company's alleged involvement in a conspiracy to fix prices for PVC pipes amid the COVID-19 pandemic.

In a complaint filed Friday in Chicago federal court, Atkore investor King P. Coles II took aim at the company, its CEO William E. Waltz, its former Chief Financial Officer David P. Johnson and Johnson's successor in the role, John M. Deitzer, with claims they were part of a scheme to fix prices for PVC pipes while pipe manufacturers outside the U.S. were frozen out of the market by high shipping costs.

This alleged scheme caused the company's stock to spike during the proposed class period and then crater more than 60% after a series of disclosures this year and last, including a revelation that the company had received a subpoena from the U.S. Department of Justice's antitrust division, Coles said.

Coles described Atkore as a manufacturer of, among other things, electrical conduit pipes made of the widely used plastic material PVC. The company has an approximately 35% share of the PVC electrical conduit market, the investor claimed, asserting that this share is "the largest among its competitors."

"Atkore is a key player in the PVC Pipe industry, which was valued at more than \$58 billion in 2023," Coles claimed.

The investor contended that the PVC pipe industry has "long been ripe for collusion" because Atkore and its consolidated group of competitors all subscribe to the same price reporting agency wire service for daily petrochemical prices.

In the lead up to, and during, Coles' proposed class period, which spans August 2022 to February 2025, "Atkore was one of the primary participants in, and beneficiary of, a multi-year illegal price fixing scheme in the PVC pipe market," the investor claimed.

Specifically, the investor said that when shipping costs skyrocketed during the COVID-19 pandemic, PVC pipe manufacturers outside the U.S. saw profits erode for U.S. sales, resulting in an absence of foreign competition in the U.S. PVC pipe market.

Without competition, Coles claimed, Atkore and its competitors "exchanged competitively sensitive data in a concerted effort to artificially inflate the price of their PVC pipes."

During Coles' proposed class period, the investor claimed, Atkore saw "unusually" high profitability and margins. But "rather than reveal that the source of Atkore's success was anticompetitive behavior," the company told investors it expected to see the gravy train continue.

When foreign manufacturers began selling in the U.S. again, Coles said, the price-fixing conspiracy "unravel[ed]," and Atkore told investors its declining sales prices resulted from a return to normal supply and demand dynamics."

The investor pointed to a series of alleged disclosures that he claimed revealed the scheme, including

a short seller report he described as citing evidence of collusion between the U.S.-based PVC pipe companies.

As the company missed earnings projections, cut its guidance and saw Johnson "abruptly" exit the company, Coles said, it also became the target of seven separate private antitrust class actions and later received a grand jury subpoena from the Justice Department's antitrust division.

In total, this proved very costly to Atkore shareholders, Coles said.

"From May 6, 2024, through February 4, 2025, as the fraudulent scheme was slowly disclosed, Atkore's stock price dropped \$112.27 per share, or 64%, from a closing price of \$176.40 per share to \$64.13 per share, erasing nearly \$4 billion in the Company's market capitalization," the complaint said.

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

Coles is represented by Lisa B. Weinstein, Caitlin M. Moyna, Karin E. Fisch and Vincent J. Pontrello of Grant & Eisenhofer PA.

Counsel information for the defendants was not immediately available Monday.

The case is Coles II v. Atkore Inc et al., case number 1:25-cv-02686, in the U.S. District Court for the Northern District of Illinois.

--Editing by Vaqas Asghar.

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Toyota Seeks Exit From Investors' Emission Tests Fraud Suit

By **Linda Chiem**

Law360 (March 17, 2025, 9:24 PM EDT) -- Toyota Motor Corp. has asked a California federal judge to dump a proposed class action alleging it deceived investors by failing to thoroughly investigate reports of falsified vehicle certification data, saying the plaintiffs have twisted executives' public statements to inflate their securities fraud claims.

The Japanese automaker maintained in a Friday **motion to dismiss** that it conducted investigations and implemented initiatives to enhance governance and compliance after its subsidiaries, Hino Motors Ltd. and Daihatsu Motor Co. Ltd., disclosed in 2022 and 2023, respectively, that they had submitted falsified vehicle certification data to regulators.

Hino announced in March 2022 that falsified emissions and fuel-economy data were submitted for thousands of trucks equipped with its medium- and heavy-duty engines, dating back years. Then, Daihatsu announced in April 2023 that "it committed wrongdoings in approval application[s] for side collision tests for vehicles (4 models) developed by Daihatsu destined for overseas markets," including models sold under the Toyota brand.

Toyota told U.S. District Judge Serena R. Murillo in Friday's motion that the investor plaintiffs are taking various statements from the company's top executives out of context to claim they were somehow false or misleading. The investor plaintiffs alleged that the "defendants' statements gave the false impression that, during the class period, the entire Toyota Group, including Toyota itself, had been properly investigated, and no other malfeasance existed."

Akio Toyoda, Toyota's chairman, stated in April 2023, in connection with Daihatsu's certification issues, that "[w]e will begin by conducting a detailed investigation and thoroughly collecting facts to understand the situation, determine the true cause, and work diligently to prevent a recurrence" and that he "will lead initiatives for governance and compliance."

"Taking that statement out of context, plaintiffs claim it was a false promise that [Toyota Motor Corp.] was — in 2023 — undertaking an investigation of certification issues at TMC itself. The securities laws, however, require that a company's statements be reviewed in context to determine how they would be understood by a reasonable investor," Toyota asserted. "The statement was made in the context of discussing the Daihatsu certification issues and there is no dispute that Daihatsu conducted the promised investigation in 2023."

"A reasonable investor would not interpret these statements as promising that TMC was investigating certification issues at TMC instead of Daihatsu," Toyota continued. "Yet Plaintiffs' case — including the handful of other statements in 2023 and January 2024 that plaintiffs claim were similarly false or misleading — hinges on this characterization."

Toyota's June 2023 annual report also noted that Toyota was "working with all of our group companies to re-examine our past governance structure" and believes that the Toyota Group should return to its founding philosophy of "mak[ing] improvements" when issues arise and will "work together to regain the trust of our customers."

But those disclosures in the annual report "suggest that a reasonable investor would understand them as pertaining to a review of the Toyota Group's structure and a recommitment to a compliance and remediation culture, not a specific representation that TMC would review thousands of its prior

certification tests," Toyota argued.

The investor plaintiffs led by Islam Abeed **first filed suit** in June 2024, and they filed an amended complaint last month. They alleged that for years, Toyota's entire corporate structure falsified test results to obtain government certifications for its vehicles.

"When early warning signs of this egregious misconduct came to light, defendants told investors that Toyota was doing exactly what a responsible corporate citizen would do: investigating the problem, root and branch," the investor plaintiffs alleged. "Defendants' claims, however, were not true, and their later assertions of being unaware of any further misconduct within the Toyota group were at best misleading."

"Investors suffered the consequences when defendants were forced to reveal they had not properly investigated Toyota, that a previously concealed government-ordered investigation had uncovered misconduct at Toyota, and that the government itself had found additional misconduct after Toyota cleared itself," the plaintiffs alleged.

The suit also names defendants Toyoda; Koji Sato, Toyota's president and CEO; and Yoichi Miyazaki, its chief financial officer.

Separately, in January, Hino cut a deal with the U.S. Department of Justice, **agreeing to pay** approximately \$1.6 billion in criminal and civil penalties to close out claims it illegally manipulated emissions and fuel-economy test results for more than 100,000 diesel vehicles sold in the U.S.

Hino in 2023 reached a \$237.5 million settlement to end a **proposed class action** in Florida federal court from trucking companies and businesses that bought Hino trucks. A judge signed off on that settlement in April 2024.

Counsel or representatives for the parties could not be immediately reached for comment Monday.

The investor plaintiffs are represented by Adam M. Apton of Levi & Korsinsky LLP, Laurence M. Rosen and Jonathan Stern of The Rosen Law Firm PA, and Brian Schall, Brian R. England and Rina Restaino of The Schall Law Firm.

Toyota is represented by Agnès Dunogué, Paula Anderson, Daniel H.R. Laguardia and Daniel H. Gold of Allen Overy Shearman Sterling.

The case is Abeed v. Toyota Motor Corp. et al., case number 2:24-cv-05284, in the U.S. District Court for the Central District of California.

--Additional reporting by Lauren Berg. Editing by Andrew Cohen.



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\$4.4B Alteryx Sale Was Lowball Offer, Investors Tell Del. Court

By Jeff Montgomery

Law360 (March 17, 2025, 6:19 PM EDT) -- Former stockholders of cloud-based enterprise analytics platform Alteryx Inc. have challenged the venture's allegedly lowball, \$4.4 billion sale in 2024 to two private equity buyers, claiming breaches of fiduciary duty in Delaware Chancery Court that include undisclosed conflicts among directors and key officers.

The **complaint**, filed on Friday by stockholders Wisconsin Laborers' Pension Fund and Mark B. Nardella, cited undisclosed or late-disclosed conflicts involving two members of a board special committee that assessed the deal as well as Alteryx's chief legal officer.

The case includes claims against the CLO, four directors, Alteryx founder and executive chairman Dean A. Stoecker, and investor Insight Venture Management LLC. Those named were accused of doing nothing as the committee allegedly "showered" favoritism on Insight and Clearlake Capital Group LP, which partnered with Insight.

The two buyers "had an inside edge from the very beginning because they were affiliated with key participants in the sale process," the complaint said.

The complaint asserted conflicts ranging from one director's initially undisclosed service on "no fewer than 13" boards that also had Insight representatives, to another director's services as a "senior advisor" to Insight during the sale process. Two investment banks as well served as financial advisers to Insight and Clearlake, which partnered with Insight in the acquisition.

"Due in no small part to these rampant and unmanaged conflicts of interest, the special committee conducted a flawed sale process and repeatedly betrayed its favoritism towards Insight and Clearlake," the complaint said.

The two private equity buyers closed on the deal in May 2024, paying public stockholders \$48.25 per share, despite what were described as "far higher" initial offers from an undisclosed bidder, including a \$50 offer at a time when the winning bidders had initially offered \$41.50.

According to the complaint, Alteryx's special committee was skeptical of the higher offer but "expressed no such skepticism toward Insight/Clearlake" despite its acknowledgment of a need to approach additional equity investors.

The initial deal with Insight was also widely reported as a \$5 billion transaction above \$50 per share, but fell before closing.

"That the special committee's flawed process left money on the table is supported by market evidence and independent valuations," the complaint said. "When news of Alteryx's sale for more than \$50 per share leaked, the company's stock price fell more than 2%; the final merger price was \$48.25."

Multiple directors, the complaint said, knew that one of the board members had a role at Insight but took no action despite requiring another Insight-aligned director to recuse himself from portions of multiple board meetings, including on Alteryx's strategic plans and finances.

Alteryx's chief legal officer, Christopher M. Lal, had a personal relationship with a principal at

Clearlake, the complaint said, but left the relationship undisclosed for months despite attending every meeting of the special committee and board. Lal waited even longer, the complaint noted, to disclose that he was personally invested in a Clearlake fund.

"Additionally, the proxy fails to disclose that the two investment banks that advised the special committee on the company's trading also served as financial advisors to Insight and Clearlake in connection with the merger," the complaint said.

Alteryx chose to conceal from its stockholders that one of its directors "worked for and earned compensation from the company's acquirer; that at least several members of the board and the CLO knew about this conflict; that this director participated in the sale process in full; and that the board did nothing whatsoever to manage this conflict," the complaint said.

Alteryx and Insight did not immediately respond to requests for comment on Monday.

Nardella is represented by Christine M. Mackintosh, Vivek Upadhya and Casimir O. Szustak of Grant & Eisenhofer PA.

The Wisconsin Laborers' Pension Fund is represented by Kimberly A. Evans, Lindsay K. Faccenda and Daniel M. Baker of Block & Leviton LLP and Jason Leviton of Block & Leviton LLP.

Counsel information for the other parties could not be determined.

The case is Wisconsin Laborers' Petition Fund et al. v. Joshi et al., case number 2025-0267-NAC, in the Court of Chancery of the State of Delaware.

--Editing by Adam LoBelia.

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Amazon Beats Investor Suit Over Third-Party Seller Practices

By **Dorothy Atkins**

Law360 (March 17, 2025, 8:08 PM EDT) -- A Washington federal judge on Monday tossed a consolidated proposed securities class action claiming Amazon and its top brass duped investors about the company's fulfillment capacity and third-party seller practices, finding the lawsuit doesn't sufficiently allege the executives were deliberately reckless or motivated to deceive shareholders.

In a 32-page order, U.S. District Judge John H. Chun found the shareholders' second amended complaint doesn't sufficiently allege statements by the company's executives, including Amazon founder and chairman Jeffrey Bezos, were deliberately recklessness or made to "deceive, manipulate or defraud" investors. Therefore, the investors haven't sufficiently met the high bar to state a claim of securities fraud and scienter, the judge wrote.

"The motive allegations are not compelling; they show only that the individual defendants' compensation was tied to routine business objectives and that the individual defendants did not engage in suspicious stock sales," Judge Chun concluded.

The ruling marks an end to consolidated shareholder litigation initially launched in May 2022 alleging Amazon failed to inform investors about anticompetitive tactics used against third-party sellers and misrepresented the growth of its fulfillment business when it was scaling back its expansion plans, in violation of the Securities and Exchange Act and related federal regulations.

The investors supported their claims by citing **investigations** by the Federal Trade Commission and other government bodies, and the consolidated complaint sought to certify a class of investors who purchased Amazon.com Inc. stock between Feb. 1, 2019, and April 28, 2022.

In December 2023, Judge Chun tossed an earlier iteration of the suit, concluding the investors had failed to show the company and executives made false statements intended to deceive shareholders. However, he gave the plaintiffs another shot at stating their claims.

The investors filed another rendition of the suit that included additional details regarding Amazon executives' purported motives to commit securities fraud. The new lawsuit pointed to executives' stock sales, including Bezos' \$23 billion stock sale during the proposed class period, arguing those help show the executives intended to profit from the fraud.

The amended complaint also beefed up other allegations, adding three additional executive defendants, 22 additional allegedly fraudulent statements and more details of pending antitrust litigation against Amazon, as well as details regarding Amazon's plans to add more fulfillment sites in the United States and Canada.

But in April, Amazon and its executives asked the court to throw out the litigation for good, and **during a hearing** on the motion last week, the judge doubted the viability of the allegations.

In his ruling Monday, Judge Chun sided with Amazon and rejected the investors' two theories regarding the executives' motives for allegedly duping investors.

The investors had claimed Amazon executives wanted to increase their pay under Amazon's executive compensation plan and improve the timing and dollar value of their stock sales. However, that's not a compelling enough motive to support an allegation of scienter, the judge concluded.

"These allegations reflect some motivation to engage in fraud because each executive stood to receive millions in stock awards every year if Amazon continued to be a success," Judge Chun wrote. "But it is hardly unusual for an officer of a publicly traded company to hope to maintain — or increase — the company's stock price. And allegations of a desire to achieve routine business objectives, 'absent some truly compelling allegations,' do not suffice to allege scienter on their own."

The judge also rejected the investors' arguments that the timing of one Amazon executive's departure from the company was "highly suspicious" and enough to infer scienter.

Although the judge acknowledged that Dave Clark, former CEO of Amazon Worldwide Consumer, left roughly \$77 million in stock options on the table when he resigned in July 2022, without a successor named, shortly after overcapacity issues were raised, that's not enough to infer scienter, as Clark may have received a larger pay package at another job.

"And while plaintiffs contend that Clark departed under unusual circumstances, they offer no allegations about Amazon's typical hiring and firing practices for corporate executives," the order says. "Plaintiffs provide no allegation that Amazon typically identifies a successor before an executive's departure or that Amazon generally provides a reason when its executives leave the company. Plaintiffs similarly do not provide any information about the compensation that executives typically forfeit when they leave Amazon."

Without those additional details, the allegations do not provide "sufficient information to differentiate between a suspicious change in personnel and a benign one," the order concludes.

The judge additionally noted the amended complaint doesn't allege facts showing the stock sales for most of the executives differed from any prior trading history, and although it "give[s] the court pause" that Amazon executives used the **encrypted Signal messaging application** to conceal their internal communications, the allegations are too generic and unsupported by the details to support a strong inference of scienter.

The judge added that the investors had multiple chances and nearly two years to adequately plead their complaint but have failed to do so, and as such, giving them another chance to revise the lawsuit would be futile.

Counsel for the parties and representatives for Amazon did not immediately respond to requests for comment on Monday.

The investors are represented by Roger Townsend of Townsend Legal Corp., William Norton of Motley Rice LLC, James Harrod of Bernstein Litowitz Berger & Grossmann LLP and Villi Shteyn of Pomerantz LLP.

Amazon and its executives are represented by Brian Buckley of Fenwick & West LLP and Audra Soloway and Alison Benedon of Paul Weiss Rifkind Wharton & Garrison LLP.

The consolidated case is Sonny Joyce v. Amazon.com Inc. et al., case number 2:22-cv-00617, in U.S. District Court for the Western District of Washington.

--Additional reporting by Rachel Riley. Editing by Philip Shea.



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4 Suits Benefits Attys Should Watch As ESG Pressures Persist

By Kellie Mejdrich

Law360 (March 17, 2025, 7:29 PM EDT) -- A New York City pension fund recently escaped a proposed class action challenging its decision to divest nearly \$4 billion in fossil fuel stocks, but experts say potential liability related to environmental, social and governance investment factors in retirement plan investment decisions is on the rise.

A unanimous five-member panel of New York's First Department on **March 11 affirmed dismissal** of the suit alleging the selloff breached fiduciary duties filed by four New York City workers and Americans for Fair Treatment Inc., a nonprofit that says it educates workers on constitutional rights around union membership. The panel backed Justice Andrea Masley's **July ruling that tossed the suit** for lack of standing, and backed her reasoning that retirees' defined benefit pension plans guaranteed a set monthly payment regardless of how the plan's investments performed.

Attorneys say the case represents something of a lucky break for one employer plan among many others who are facing increased scrutiny over their investment decisions involving employee retirement plan assets, with plenty of other cases to watch involving ESG.

"It's just a canary in the coal mine," said Jeff Witt, employer-side partner at Morris Manning & Martin LLP, of the decision granting the NYC pension fund's motion to dismiss ESG-related retirement claims in what he called a "highly charged" litigation environment.

Witt added that given the lawsuit activity, he's advising his employer clients "if you're a [retirement plan] committee, and you're thinking about how to best use plan assets, try and avoid the litigation altogether" over ESG issues.

Here are four suits involving challenges to employee retirement plan investing and ESG that attorneys say they're watching after New York City escaped a suit from its workers.

ESG Prompts American Airlines 401(k) Suit

Damages briefing is underway in an American Airlines pilot's proposed class action alleging the company's focus on ESG factors in its employee 401(k) plan decisions violated the Employee Retirement Income Security Act, after the **court in January concluded** American violated ERISA's fiduciary duty of loyalty.

U.S. District Judge Reed C. O'Connor on Jan. 10 faulted American's ESG focus via the unchecked actions of its investment manager, BlackRock, and cited a lack of monitoring processes regarding BlackRock's proxy voting activity on the part of American's benefits investment committee. But Judge O'Connor found American didn't violate ERISA's fiduciary duty of prudence, and that the airline was insulated in part from breaching the duty of prudence due to its benefits consultant Aon.

Josh Lichtenstein, an employer-side partner at Ropes & Gray LLP, said in terms of ESG retirement challenges, the proposed class action against American was "the king of these cases." He and other attorneys took note of how the court faulted the employer for breaching duties of loyalty but not prudence.

Judge O'Connor's decision "raises a lot of questions for plans," Lichtenstein said, who added that he's watching for a potential Fifth Circuit appeal in the case once the court makes a ruling on damages.

Witt, with Morris Manning & Martin, said he's also watching how the court rules on damages in the American case because it could spark future proposed class actions against employers targeting their ESG-related investment decisions.

"If the American Airlines suit has an economic win for the plaintiffs, the plaintiff's bar will be more interested in that," Witt said.

The case is *Spence v. American Airlines Inc. et al.*, case number 4:23-cv-00552, in the U.S. District Court for the Northern District of Texas.

States' Fight over DOL's ESG Rule

A group of states' challenge to a Biden-era rule from the U.S. Department of Labor related to how ERISA plan fiduciaries can — but don't have to — consider ESG in retirement investment decisions could be headed back to the Fifth Circuit following a Texas court's decision to end the case in February.

U.S. District Judge Matthew J. Kacsmaryk **granted the DOL summary judgment and closed the case** on Feb. 20. That leaves just a few days for a group of states to appeal dismissal to the Fifth Circuit. An attorney from the state of Arkansas docketed an appearance with the appellate court last week after another attorney withdrew, but no appeal notice has been filed in district court.

Representatives from the attorneys general for the conservative states in the case didn't respond to requests for comment on whether they plan to appeal Judge Kacsmaryk's ruling from February.

Judge Kacsmaryk had **earlier granted the DOL summary judgment** in the case in September 2023. But the Fifth Circuit **vacated that decision in July** citing the Supreme Court's decision to do away with the so-called Chevron doctrine via decisions in *Loper Bright Enterprises v. Raimondo and Relentless Inc. v. Department of Commerce* .

Attorneys say they're watching for developments in the case and the regulation more broadly because it's not clear yet what a revised policy on ESG investment selection might look like in the second Trump administration, but the policy has whipsawed in previous years.

Andrew Oringer, partner at the Wagner Law Group, took note of how the Fifth Circuit's decision to uphold the Biden ESG rule surprised some attorneys.

"The ESG rule on the Biden side was really trying to return the interpretive advice to where it was before the Trump administration's regulation, and the Biden ESG rule really does a lot less in terms of affirmatively reinterpreting the statute," Oringer said.

The appellate case is *State of Utah v. Micone*, case number 23-11097, in the U.S. Court of Appeals For the Fifth Circuit. The district case is *State of Utah et al. v. Micone et al.*, case number 4:23-cv-00552, in the U.S. District Court for the Northern District of Texas.

State Anti-ESG Law Prompts Investor Suit

Another dispute over ESG considerations in employee retirement investing is proceeding in an Oklahoma appeals court, after a state judge enjoined a law restricting state employee retirement funds from investing in financial companies that the state has determined to have boycotted fossil fuel producers.

The state's attorney general has appealed to the Oklahoma Supreme Court after Oklahoma County District Court Judge Shelia D. Stinson blocked enforcement of the law last year. Oklahoma isn't the only state to move toward passing legislation restricting how public employee retirement funds can invest in financial companies a state labels as anti-fossil fuel, with Texas and Arkansas among other states that have taken similar actions.

Former Oklahoma state employee Don Keenan first sued Oklahoma state treasurer Todd Russ in December 2023, alleging the state's law was unconstitutional in violation of his freedom of speech

and created illegal barriers to a court challenge. Judge Stinson approved an initial block on the law in May, which was made permanent later in the year.

The injunction bars Oklahoma Treasury Secretary Todd Russ from implementing the Oklahoma Energy Discrimination Act of 2022. The law, effective as of November 2022, prohibits state retirement systems from investing in enterprises that "without an ordinary business purpose" refuse to invest in companies that manufacture, transport or sell fossil fuel-based energy, and instructs the treasury secretary to keep a list of financial companies that boycott energy firms.

Lichtenstein, at Ropes & Gray, said he thought the Oklahoma case was a "pretty juicy" dispute involving fiduciary duties and investment of state retirement assets.

"It's interesting, because the legislature is considering making changes to the way the law operates, so maybe they have an end-run around, if they get a unfavorable ruling at the state Supreme Court," Lichtenstein said.

The case is Don Keenan v. Todd Russ, in his capacity as the treasurer of the state of Oklahoma, case number CV-2023-3021, in the Supreme Court for the State of Oklahoma.

Fla. Police Fund Sues Target over ESG Goals

Allegations involving ESG in employee retirement investing have also sparked claims of securities fraud, with a Florida police department's pension fund hitting Target in January with a proposed class action alleging the company prompted a customer backlash via its ESG and diversity, equity and inclusion initiatives.

The City of Riviera Beach Police Pension fund **sued Target and its senior executives** on Jan. 31 in the U.S. District Court for the Middle District of Florida, claiming that the company lost billions in stock value due to false and misleading statements about ESG and DEI. The lawsuit alleges that Target CEO Brian Cornell was aware that "woke capitalism" was stirring a backlash since at least May 2023, citing an interview in Fortune magazine.

The suit alleges that the company should have been clearer that its ESG and DEI initiatives had sparked a consumer backlash, in particular its 2023 LGBT-Pride campaign, which the company said at an earnings call in the second quarter of the year had harmed the company's earnings and other financial metrics. That led investors to make misinformed proxy voting decisions, the suit alleges.

"As a result of Target's misleading 2023 Proxy, shareholders voted to reject good-governance proposals that would have increased board accountability and enabled enhanced oversight of ESG/DEI initiatives like the 2023 LGBT-Pride Campaign," the complaint said.

The case is City of Riviera Beach Police Pension Fund v. Target Corp. et al., case number 2:25-cv-00085, in the U.S. District Court for the Middle District of Florida.

--Editing by Amy Rowe and Nick Petruncio.



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Amazon Hit With Greenwashing Suit Over Paper Products

By **Sarah Jarvis**

Law360 (March 17, 2025, 8:54 PM EDT) -- Consumers in four different states have launched a proposed class action against Amazon in Washington federal court, accusing the retail giant of greenwashing its claims about its "Basics" line of paper products and misleading buyers about the sustainability of products whose supply chains are in fact "deeply unsustainable."

In a **complaint** filed Friday, the consumers said the web pages for Amazon's "Aware" and Basics toilet paper lines each feature "Climate Pledge Friendly" and Forest Stewardship Council logos. Although Amazon's website features the same environmental claims for both lines, the Aware toilet paper is derived from 100% bamboo from 100% FSC forests, while the Basics toilet paper "is made from 100% virgin fiber derived from clearcutting and burning the boreal forest," according to the suit.

"Because of these misleading practices, Amazon is able to infer to consumers that two of its private brands have identical environmental benefits — even though the supply chain for one of these products is devastating to the environment," the complaint said.

The plaintiffs — California resident Rey Rain Ramos, David Ramirez in Florida, Idaho resident Robert Parker and Roy Campbell of New York — purchased Amazon Basics products and were deceived by the climate and environment logos and badges on Amazon's website, according to their suit. They noted the web page for paper towels from Amazon's Basics line also features the environmental logos.

The shoppers accused Amazon of violating green guides issued by the Federal Trade Commission and Amazon's own green guides.

"Amazon's logos and badges are essentially useless to consumers in their search for sustainable products," according to the complaint. "Yet Amazon still reaps the substantial financial and reputational rewards of positioning itself as a leading environmental steward offering sustainable products."

The company's use of the environmental logos constitutes greenwashing, and it misleads consumers by not disclosing that its Basics paper products are sourced through harmful logging practices, such as clearcutting and burning Canada's boreal forest, the consumers alleged.

"Amazon's sustainability promises are also misleading to consumers because Amazon's suppliers are systematically converting critically important old-growth forests (essential to carbon neutralization and wildlife rehabilitation efforts) into environmentally devastating tree farms or plantation-like areas that have none of the biodiversity and carbon capture capabilities of the centuries-old primary forests that were previously destroyed by Amazon suppliers," according to the suit.

The consumers asserted that Amazon continues to source the pulp for its Basics paper products from "deeply unsustainable" supply chains despite having direct access to supply chains that would make its sustainability claims not misleading

"Simply put, Amazon cannot have it both ways without unlawfully deceiving its own customers," they said. "It must either source its Amazon Basics paper products from more sustainable supply chains or come clean to consumers about the environmental footprint of these products."

The consumers brought their claims on behalf of several proposed classes, including ones specific to each of their home states and two multistate classes comprising other states. The 48-count complaint included various state-specific fraud and consumer protection claims.

They are asking the court to grant unspecified restitution, punitive damages, disgorgement and interest, as well as attorney fees and an order permanently blocking Amazon from practices they described as deceptive and fraudulent.

Steve W. Berman of Hagens Berman Sobol Shapiro LLP, who is representing the consumers, said, "Trees that have stood for centuries are being ripped down so they can be flushed away in seconds."

"Consumers would not purchase these products if they knew they were made by destroying the Canadian boreal forest," according to Berman.

A representative of Amazon didn't immediately respond to requests for comment Monday.

The consumers are represented by Steve W. Berman and Catherine Y.N. Gannon of Hagens Berman Sobol Shapiro LLP and Rebecca A. Peterson of George Feldman McDonald PLLC.

Counsel information for Amazon wasn't immediately available.

The case is Ramos et al. v. Amazon.com Inc., case number 2:25-cv-00465, in the U.S. District Court for the Western District of Washington.

--Editing by Covey Son.

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Poppi Buyers Ink \$8.9M Deal Over 'Gut Healthy' Soda Claims

By **Lauren Berg**

Law360 (March 17, 2025, 11:08 PM EDT) -- A group of Poppi-brand soda consumers asked a California federal judge Friday to greenlight an \$8.9 million proposed settlement that would resolve consolidated false advertising claims alleging the beverage company misleadingly touted its products as "prebiotics for a healthy gut."

Lead plaintiffs Kristin Cobbs, Sarah Coleman and Megan Wheeler say the "exceptional" deal brings meaningful and quick relief to class members — anyone in the U.S. who, between Jan. 23, 2020, and the settlement notice date, bought Poppi beverage products — without the continued risk and cost of continuing litigation, according to the **motion for preliminary approval**.

VNGR Beverage LLC, which does business as Poppi, "vigorously denies plaintiffs' allegations and asserts that neither plaintiffs nor the class suffered any harm or damages," the motion states.

"In addition, defendant would no doubt present a vigorous defense at trial, and there is no assurance that the class would prevail — or even if they did, that they would be able to obtain an award of damages significantly more than achieved here absent such risks," it states.

Out of the gross settlement amount of \$8.9 million, claimants can receive a payment of \$0.75 per single can of the products purchased, \$3 per four-pack of products, \$6 per eight-pack, and \$9 per 12- or 15-pack, according to the motion. The minimum class payment for an approved claim will be \$5 per household, even if the class member bought fewer products, the motion states.

Cobbs in May 2024 was the first of the plaintiffs to bring claims against Poppi, alleging that the company's gut health claims were false and misleading because the products didn't contain enough prebiotic to cause any meaningful health benefits. Coleman then filed a similar complaint in June, with Wheeler following with a complaint in July.

The three cases were then consolidated and Poppi filed a motion to dismiss in September.

According to the operative **consolidated complaint**, Poppi misleadingly claims its sodas are "gut healthy" because they include "prebiotic" fiber, which is commonly found in foods like bananas and whole grains, and reportedly supports the growth of beneficial microorganisms in the gut.

"However, defendant's Poppi soda only contains two grams of fiber, an amount too low to cause any meaningful gut health benefits or even considered a 'fortified' or 'good source' of fiber, in contravention of [Food and Drug Administration] regulations," the plaintiffs said, adding that a consumer would need to drink more than four Poppi sodas in a day to get any such potential gut health benefits.

But "even if a consumer were to do that, Poppi's high sugar content would offset most, if not all, of those gut health benefits," they said.

What's more, the main source of Poppi's prebiotic fiber is agave inulin, which is less effective than other prebiotic fibers at promoting gut health, according to the complaint. This type of fiber has also been linked to adverse effects, like bloating, abdominal pain and liver damage, the suit states.

"Despite defendant's alluring 'prebiotic' marketing claims, which assure consumers, on the can, that

they can 'Be Gut Happy [and] Be Gut Healthy,' as one nutritionist bluntly explained: the products 'are basically sugared water,' which has been shown to actually harm gut health," the plaintiffs said.

The suit asserted violations of California's Consumer Legal Remedies Act, False Advertising Law and Unfair Competition Law, as well as common law fraud, unjust enrichment, and breach of warranty.

The parties went to mediation in December and hashed out an agreement some days later, before asking the case to be stayed while they worked out the details of the instant settlement.

"Although the \$8.9 million gross settlement amount may be less than the maximum amount plaintiffs could potentially recover if fully successful at trial, it is reasonable in light of the risks of proceeding to trial," Friday's motion states.

"Given that defendant moved to dismiss all of plaintiffs' claims, this settlement is outstanding as defendant could have prevailed on the motion to dismiss, narrowed the scope of the products at issue, the breadth of the class, and/or the claims," it states. "Indeed, this settlement provides an exceptional result compared with similar mislabeling beverages cases."

In addition, class counsel at Bursor & Fisher PA and Gutride Safier LLP intend to ask for up to 30%, or about \$2.7 million, in attorney fees, as well as about \$30,000 in out-of-pocket litigation expenses, the motion states.

Any money that is not distributed from the settlement fund will be given to Feeding America, which provides free meals and nutrition education, as the cy pres recipient, according to the motion.

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

The settlement came just before PepsiCo Inc. announced Monday that it has agreed to pay **\$1.65 billion to acquire** Poppi, as the beverage giant looks to capitalize on growing consumer interest in health and wellness.

Created by Allison and Stephen Ellsworth, and initially known as Mother Beverage, Poppi got its first big break when it scored investments on the ABC reality television show "Shark Tank."

The class is represented by L. Timothy Fisher and Joshua B. Glatt of Bursor & Fisher PA and Seth A. Safier, Marie A. McCrary and Anthony J. Patek of Gutride Safier LLP. Cobbs is additionally represented by Adrian Gucovski and Benjamin Rozenshteyn of Gucovski Rozenshteyn PLLC. Wheeler is additionally represented by Laurence D. King, Matthew B. George, Blair E. Reed and Clarissa R. Olivares of Kaplan Fox & Kilsheimer LLP.

Poppi is represented by Michelle Doolin, Megan Donohue, Vivienne Pismarov and Maximilian Sladek de la Cal of Cooley LLP.

The consolidated case is In re: VNGR Beverage LLC Litigation, case number 4:24-cv-03229, in the U.S. District Court for the Northern District of California.

--Additional reporting by Gina Kim. Editing by Emily Kokoll.



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Google To Pay \$28M On Claim It Favored White, Asian Workers

By **Hailey Konnath**

Law360 (March 17, 2025, 10:17 PM EDT) -- Google LLC will pay \$28 million to put to rest allegations it pays and promotes certain nonwhite employees less than their white and Asian colleagues, counsel for a class of workers said Monday.

The class settlement, which garnered preliminary approval from a Santa Clara County Superior Court judge last week, resolves claims that workers identifying as Latino, Native American and other ethnicities were paid less than white, Asian and Asian American employees for substantially similar work.

As part of the deal, Google will also work with a labor economist and industrial and occupational psychologist to review its annual pay equity audits and process for determining the levels at which workers are hired, Gunn Coble LLP said in a statement.

The suit was filed by Ana Cantu in 2021. According to the complaint, Google uses a common organizational and pay structure establishing compensation ranges based on employees' job levels and positions. However, Cantu says, Google uses a hiree's salary history to determine the new employee's pay and job level while at the same time limiting merit and promotion-related raises to a percentage of the previous salary.

That means employees' compensation is "inextricably linked" to previous salaries and embedded with preexisting race- and ethnicity-based differences in compensation, since nonwhite employees historically have been paid disproportionately low salaries, Cantu claims.

Notably, Cantu points to a leaked 2022 employee pay spreadsheet showing that nonwhite employees reported lower compensation.

Santa Clara Superior Court Judge Sunil R. Kulkarni in February 2023 **denied Google's motion** to narrow the suit

Cathy Coble of Gunn Coble, one of Cantu's lawyers, said Monday that she commends her client for bringing the suit against "one of the most powerful companies in the world."

"She risked her career to raise race/ethnicity pay disparity at Google," Coble said in a statement. "I also want to acknowledge the bravery of both the diverse and ally Googlers who self-reported their pay and leaked that data to the media, enabling us to push for discovery of the data necessary to support this class action. Suspected pay inequity is too easily concealed without this kind of collective action from employees."

The settlement class includes all "current and former Hispanic, Latinx, Indigenous, Native American, American Indian, Native Hawaiian, Pacific Islander, and/or Alaska Native employees" of Google in California between Feb. 18, 2018, and last Dec. 31, the firm said.

Google continues to deny the allegations. "We reached a resolution, but continue to disagree with the allegations that we treated anyone differently, and remain committed to paying, hiring, and leveling all employees fairly," Courtenay Mencini, a Google spokesperson, said in a statement Monday.

Beth Gunn of Gunn Coble, another lawyer for Cantu, said in Monday's statement that "despite the

current national political climate, I hope California will continue to take the lead in enacting and enforcing civil rights laws like the California Equal Pay Act."

"Committing to closing the loopholes allowing discriminatory wage gaps to continue will stop losses of millions of dollars in employee take-home pay and tax revenue to the state, and ensure that workers of diverse races and ethnicities are equitably compensated," Gunn said. "We hope this settlement will prompt California employers to seriously commit to this goal."

The workers are represented by Beth Gunn and Catherine J. Coble of Gunn Coble LLP and Jennifer Kramer of Kramer Brown Hui LLP.

Google and Chen are represented by Felicia A. Davis and Eric DistelBurger of Paul Hastings LLP.

The case is Ana Cantu v. Google LLC et al., case number 21CV392049, in the Superior Court of the State of California, County of Santa Clara.

--Additional reporting by Patrick Hoff. Editing by Brian Baresch.

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Hershey Customer Agrees To End Metals-In-Chocolate Suit

By **Gina Kim**

Law360 (March 17, 2025, 7:02 PM EDT) -- A Hershey customer has agreed to permanently end her suit accusing the confectionery giant of selling dark chocolate products containing dangerous levels of heavy metals, but left open the opportunity for absent proposed class members to pursue claims, according to a notice filed Monday in California federal court.

In a brief notice, counsel for Eva Grausz and the Hershey Co. informed U.S. District Judge Anthony J. Battaglia of the Southern District of California that the plaintiff had agreed to end her claims for good, with prejudice, but noted that the claims are dismissed without prejudice for absent putative class members.

Monday's notice comes a year and a half after Grausz **first began** her putative class action in January 2023 alleging that some of Hershey's dark chocolate products contained dangerous levels of lead and cadmium. The suit referenced a finding published by Consumer Reports magazine in December 2022 that said toxic levels of lead and cadmium were found in some of the candy bars, including Hershey's Special Dark Mildly Sweet Chocolate and Lily's Extremely Dark Chocolate 85% Cocoa.

Grausz said she regularly bought Lily's Extremely Dark Chocolate 85% Cocoa, which tested at 143% of the maximum allowable dose level for lead in California and 101% of the maximum allowable dose for cadmium, according to Consumer Reports. Lead and cadmium are two of 900 chemicals listed under Proposition 65, a California law requiring businesses to warn state residents about significant exposures to chemicals known to cause cancer or reproductive harm.

Hershey wasn't the only company targeted for allegedly having heavy metals in its dark chocolate as a result of the Consumer Reports story. Mars Inc. and Trader Joe's were **both sued** in proposed class actions in January 2023 as well.

Hershey moved to dismiss Grausz's lawsuit **in March 2023**, arguing that it "never promised, in words or substance, that its products were utterly lead- and cadmium-free," just that they were safe to eat. Grausz also failed to allege that she suffered an injury since her suit didn't say the chocolate bars she purchased were contaminated.

Rather, Grausz simply claims that some bars tested by Consumer Reports came up positive for those substances, Hershey argued.

In September 2023, Judge Battaglia **pared down** Grausz's suit, finding she didn't demonstrate that lead or cadmium levels in Hershey's dark chocolate products "create an unreasonable safety hazard" but allowed a claim seeking an injunction to require the company to disclose the presence of heavy metals.

Judge Battaglia said Grausz's theory of injury was enough for standing in that she alleged that she was harmed since she wouldn't have bought the bars or would've paid less for them had she been aware that the products risked containing heavy metals.

The judge however, concluded that Grausz failed to plead a duty to disclose, and granted Hershey's bid to toss claims related to the alleged omission under California's Consumer Legal Remedies Act, which covers the state's false advertising and unfair competition laws.

Grausz filed a third amended complaint in February 2024, which Hershey **moved to dismiss** later that month, arguing that the small amount of heavy metals in the chocolate are naturally occurring and not dangerous. Hershey also asked the court to again toss the plaintiff's claims that the company unfairly added heavy metals to the chocolate, arguing that it wasn't unfair to sell foods that contain "naturally occurring elements in trace amounts well below the levels that regulators have recognized as safe and lawful."

Representatives for the parties did not immediately respond to inquiries seeking comment Monday.

Grausz is represented by Jack Fitzgerald, Melanie R. Monroe, Trevor Flynn and Peter Grazul of Fitzgerald Monroe Flynn PC, by Andrew Sacks and John K. Weston of Sacks Law LLC, and by Charles Schaffer of Levin Sedran & Berman LLP.

Hershey is represented by Steven A. Zalesin and Jonah M. Knobler of Patterson Belknap Webb & Tyler LLP, and by Robert Kenneth Dixon of Sanders Roberts LLP.

The case is Eva Grausz v. the Hershey Co., case number 3:23-cv-00028, in the U.S. District Court for the Southern District of California.

--Additional reporting by Craig Clough, Bonnie Eslinger, Gianna Ferrarin and Jonathan Capriel. Editing by Karin Roberts.



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Del. Corporate Law Rework Has Roots In 2 Academic Papers

By **Jeff Montgomery**

Law360 (March 17, 2025, 9:13 PM EDT) -- A proposed overhaul of Delaware's corporations law that has rocked the First State's legal world has its origins in two works published in 2021 and 2001, written by some of the same jurists who helped draft legislation driven by alarm over corporate charter exits and shareholder suits.

The measure, S.B. 21, is expected to come to a final vote in the Delaware House of Representatives this week after clearing the state Senate without an opposing vote on Thursday. It has nevertheless faced public criticism that included a statewide public mailing last week branding the bill and its restrictive court standards of review as "A License to Steal" and ratcheting up debate that recently saw Tesla CEO Elon Musk recommend company exits from Delaware "as soon as possible."

All around, meanwhile, are footprints laid down in the earlier papers — "Optimizing The World's Leading Corporate Law: A 20-Year Retrospective and Look Ahead," published in 2021, and "Function Over Form: A Reassessment: of Standards of Review in Delaware Corporation Law," published in 2001.

Former Chief Justice Leo E. Strine Jr. and ex-Justice Jack B. Jacobs co-authored both works along with retired Delaware law professor Lawrence A. Hamermesh, who also served as an adviser on the earlier paper, which was co-authored by the late former Chancellor William T. Allen.

Both reports addressed concerns over issues seen as encouraging stockholder class litigation and big class and fee awards. The 2021 paper examined what were described as emerging "standards of review that involve greater-than-optimal litigation intensity and less than ideal respect for decision-making in which independent directors and disinterested stockholders have potent say."

S.B. 21 goes several steps further.

"It certainly is the most-sweeping legislative shift that I've seen in Delaware on these topics," said Kate D. Shapiro, an Akin Gump Strauss Hauer & Feld LLP partner. "I think, obviously, it is a reaction to some recent case law developments over the past 10 years or so – 20 years."

The legislation has been a focus of social media, professional blog and conference debate for weeks. Final votes will come on the heels of a narrower, rushed amendment to the Delaware General Corporation Law last year that validated "market practice amendments" permitting agreements with stockholders that restrict corporate actions or require specified shareholder consents, among other terms.

Driving the latest effort is a flurry of recent, highly public corporate exits to other states — prominently, Tesla's flight to Texas after a \$56 million Court of Chancery compensation setback for Musk and social media attacks on Delaware's courts — with warnings of more to come, according to those supporting the bill.

Gov. Matt Meyer publicly cited the need for change and "a fair shot" for Court of Chancery litigants in February, after reports that multiple big companies, including Mark Zuckerberg's Meta, Pershing Square Capital and others were considering or planning moves — a sobering prospect in a state where corporate franchise fees account for 20% of the state's general fund budget.

The Delaware State Bar Association and others, including Hamermesh, moved quickly.

S.B. 21 would, among other provisions, be retroactive, covering cases launched prior to and after the bill's introduction on Feb. 17, but excluding those under litigation on that date. It would also limit initial stockholder access to corporate books and records.

The 2001 report partly took aim at what it said were "standards of review that unduly encouraged litigation and did not appropriately credit intra-corporate procedures designed to ensure fairness."

Both papers recommended changes to the law and pointed to issues worthy of action, leading to the drafting of S.B. 21. The bill was approved by senators Thursday without an endorsement by the full Delaware State Bar Association.

The 2021 report, in particular, carried a warning: "Corporate jurisprudence cannot require a microscopic review of every situation that might involve unfairness. Rather, it must rely on rules that incentivize the use of high-integrity procedures in most cases, and reduce the costs to society and investors of litigation and judicial second-guessing."

Hamermesh said during a Senate committee hearing last week that the proposals are an "incremental course correction" and not radical. In an email to Law360 on Friday, he said that S.B. 21 would establish as law three of the principal actions recommended by the "Optimizing" paper to improve predictability and balance — eliminating the double, unanimous special committee and independent approval standard imposed by the *In re: Match Group Inc. Derivative Litigation* decision in April on all transactions with controlling stockholders; developing a much-clearer definition of when someone is a controlling stockholder; and making books and records litigation a viable summary proceeding instead of pre-suit discovery.

"I consider the provisions that accomplish these objectives to be the most important ones in the bill," Hamermesh said. "The biggest task that remains after S.B. 21 is its implementation by the courts, which would still play a critical role in defining and enforcing fiduciary duties in conflict transactions."

The statewide mailing last week nevertheless branded the bill an "attack on Delaware judges" and "a license to steal from your pension fund," among other claims. It listed as opponents the groups Public Citizen, Americans for Financial Reform, the Consumer Federation of America and the American Association for Justice.

In written comments to the Senate on Thursday opposing the measure, Joel Friedlander of Friedlander & Gorris PA said that "the Senate and Gov. Meyer are trying to rewrite decades of carefully developed Delaware law to provide unprecedented protections for billionaire controlling shareholders. This rushed bill makes clear that when Delaware Court judgments inconvenience powerful CEOs, they can simply change the rules rather than follow the law."

Still remaining to be seen are potential state constitutional objections that could tangle up applications of the legislation.

"If it passes in its current form, there is an arguable case, and I think it can go either way and will have to be heard by the Delaware Supreme Court that the state is committing kind of a foot fault on separation of powers between the judiciary and legislature," said Eric Talley, Isidor and Seville Sulzbacher professor of law at Columbia University.

"It's essentially handcuffing the traditional powers of the court and those powers are memorialized in the Delaware Constitution," Talley said. "You've got a proposed amendment that was drafted in kind of weird obscurity, not in the usual court. The Delaware [Bar Association] counsel didn't produce it. They were asked to suggest a few line edits. It's not necessarily being launched from a position that people agreed there's a problem."

--Editing by Melissa Treolo.