

Virtu Financial Investors Advance Suit Over Trading Data Access

Virtu Financial Inc. investors can proceed with their high-stakes, proposed class action alleging the financial services firm misrepresented its safeguards for protecting sensitive client trading information, a federal court ruled.

The investors adequately alleged four categories of false or misleading statements by the trade execution and market-making firm, Judge Nicholas G. Garaufis said in an order entered Tuesday in the US District Court for the Eastern District of New York. They also sufficiently pleaded the necessary level of intent for securities fraud, he said.

- The suit alleges the data at issue formed an “answer key into how some of the world’s largest investors were trading” and was protected with only a single, widely shared password
- A series of disclosures about the data privacy issue and a related Securities and Exchange Commission probe caused the stock price to tumble, leaving investors with hundreds of millions of dollars in losses, the plaintiffs say
- A fifth category of statements—about Virtu’s plans to improve its safeguards after acquiring another trade execution company—is protected by a “safe harbor” provision for forward-looking statements, but the investors will have a chance to replead those allegations, Garaufis said

Robbins Geller Rudman & Dowd LLP is lead counsel for the investors. Paul, Weiss, Rifkind, Wharton & Garrison LLP represents Virtu.

The case is *In re Virtu Financial, Inc. Sec. Litig.*, E.D.N.Y., No. 1:23-cv-03770, docketed 3/18/25.

To contact the reporter on this story: Martina Barash in Washington at mbarash@bloomberglaw.com

To contact the editor responsible for this story: Kiera Geraghty at kgeraghty@bloombergindustry.com

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Apellis Pharmaceuticals Beats Investor Suit Over Eye Drug Risks

- Investors didn't adequately allege material omission, intent
- Judge won't let investors replead claims over drug trials

Apellis Pharmaceuticals Inc. will escape an investor lawsuit alleging it concealed safety risks connected to its blindness-prevention treatment before a series of updates about the drug led to the company stock's worst month since its market debut, a federal judge ruled.

Investors neither sufficiently pled any material omissions nor that Apellis and chief executive officer Cedric Francois intended to mislead them over risks during clinical trials, Judge Julia E. Kobick said. The US District Court for the District of Massachusetts judge denied the stockholders' request for leave to amend, dismissing the proposed class action with prejudice Monday.

SYFOVRE is an injection targeting geographic atrophy, the last stage of a top cause of age-related blindness in older people. Shareholders claimed Apellis hid that the drug spurred some instances during two phase-three clinical trials of an eye inflammation that can increase someone's risk of vision loss. Apellis should've known it didn't accurately test for the inflammation, retinal vasculitis, the investors said.

But Kobick said disagreements over trial methodology weren't sufficient to allege the challenged statements were misleading. "Because Apellis employed the methodology prescribed for testing for retinal vasculitis by the publicly available, FDA-approved protocol, the plaintiffs do not plausibly allege that the defendants' statements about the absence of retinal vasculitis contained materially misleading omissions," she said.

Allegations that Apellis and Francois "acted with a high degree of recklessness" because they were paying close attention to SYFOVRE, and therefore should've further investigated risks, didn't bolster a strong enough inference of intent to sustain securities fraud claims, Kobick said. Nor did investors' theory that company actions taken after the alleged misrepresentations were made demonstrated a "propensity-to-lie" in earlier statements about an absence of vasculitis, she said.

After six instances of vasculitis came to light in a July 2023 American Society of Retina Specialists report, Apellis stock plummeted 38% across one trading day, the complaint said—a record single-day plummet to that point amid the stock’s worst trading month since opening in 2017, according to data compiled by Bloomberg.

Share prices fell further as more information surrounding the instances of vasculitis came out, amounting to a 70% slide over the second half of July, the complaint said. The class would’ve included those who got stock from Jan. 28, 2021, through July 28, 2023. The first complaint in this case alleging securities law violations was filed in 2023 in the District of Delaware, where the lead plaintiffs were appointed, before the case was transferred to Massachusetts in 2024.

Kobick stayed a related shareholder derivative action against Apellis leaders while the motion to dismiss in this proposed class action was pending.

Robbins Geller Rudman & Dowd LLP and Pomerantz LLP are lead counsel for the proposed class action’s lead plaintiffs, Ray Peleckas and Michigan Laborers’ Pension Fund. Wilmer Cutler Pickering Hale & Dorr LLP represents Apellis and Francois. None of these firms immediately responded to emails seeking comment.

The case is *In re Apellis Pharms., Inc. Sec. Litig.*, D. Mass., No. 1:24-cv-11470, dismissed 3/17/25.

To contact the reporter on this story: Gillian R. Brassil in Washington at gbrassil@bloombergindustry.com

To contact the editor responsible for this story: Brian Flood at bflood@bloombergindustry.com

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Class Action

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NovoCure Beats Investor Suit Over Cancer Therapy Trial Data (1)

- Judge said claims merely dispute study design, data analysis
- But investor can replead securities fraud allegations

NovoCure Ltd. defeated claims that the oncology company misled investors about results of a clinical trial testing broader use of its brain and lung cancer therapy ahead of a record stock drop, a federal judge ruled.

The investor's allegations were "at most" that the clinical trial should've had a different design or that their interpretation of the data was superior to that made by NovoCure and executives, Judge Gregory H. Woods said for the US District Court for the Southern District of New York. And lead plaintiff Clendon T. Rice didn't adequately allege the level of intent to carry securities fraud claims, Woods said in granting the company's motion to dismiss the proposed class action complaint Tuesday.

Woods is letting Rice file a second amended complaint within 21 days of his order to try to address these deficiencies.

NovoCure in 2017 initiated testing its Tumor Treating Fields therapy, which was already approved to help treat glioblastoma and a rare lung cancer linked to asbestos, to target the most common form of lung cancer, Woods said. Investors sued in 2023, alleging that NovoCure overhyped topline results from the study of its treatment that January, sending shares soaring.

Five months later, NovoCure shared issues with the trial data, including problems surrounding patient enrollment and baseline measurements, casting doubt around the drug's effectiveness, per Rice's complaint. Share prices plummeted 43% the next day, Rice said—the stock's greatest plunge at that point since its market debut, according to data compiled by Bloomberg. During the time before the disclosure, multiple leaders sold NovoCure shares, wrongly garnering a total of over \$35 million, Rice said.

Rice's allegations that NovoCure omitted information during the proposed class period about trial flaws were more like accusations over the trial's design, Woods said, and not actionable. He said Rice failed to plead motive for fraudulent intent based on stock sales, finding the allegations either speculative or mismatched timing-wise. And Rice insufficiently alleged then-executives knew or recklessly disregarded issues with trial data, such as by announcing more studies, as there weren't specific examples of the leaders learning information contrary to their public statements, and the addition of further studies are commonplace, Woods said.

Robbins Geller Rudman & Dowd LLP is lead counsel for Rice, who sought to represent a class of those who got NovoCure stock from Jan. 5, 2023, through June 5, 2023. Sidley Austin LLP represents NovoCure and three executives and board members. Neither firm immediately responded to emails seeking comment.

The case is *Bazzelle v. NovoCure Ltd.*, S.D.N.Y., No. 1:23-cv-05146, 3/18/25 .

(Updates with more information about the case throughout.)

To contact the reporter on this story: Gillian R. Brassil in Washington at gbrasil@bloombergindustry.com

To contact the editors responsible for this story: Drew Singer at dsinger@bloombergindustry.com; Brian Flood at bflood@bloombergindustry.com

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Investors Burned in \$Libra Token Collapse Sue as Part of Broader Meme Coin Trend

 [law.com/nationallawjournal/2025/03/18/investors-burned-in-libra-token-collapse-sue-as-part-of-broader-meme-coin-trend](https://www.law.com/nationallawjournal/2025/03/18/investors-burned-in-libra-token-collapse-sue-as-part-of-broader-meme-coin-trend)

Michael A. Mora

Investors in the \$Libra cryptocurrency, promoted by Argentine President Javier Milei on X as an economic initiative to stimulate private-sector funding in the country before the token's swift collapse, have sued multiple defendants in a class action lawsuit in the Supreme Court of New York.

"This is important because it is the first consumer protection case as compared to securities-focused," said Max Burwick, the managing partner in New York at Burwick Law.

Max Burwick of Burwick Law. Courtesy
photo

Burwick represents the plaintiff, Omar Hurlock, and the potential group of investors against the defendants, who include Kelsier Ventures, a Delaware-based venture capital firm specializing in investments within the Web3 technology sector, and Kip Protocol, a Singapore-based Web3 tech company specializing in blockchain infrastructure tailored for artificial intelligence apps.

Scott Armstrong, a principal in New York at McGovern Weems and an ex-federal prosecutor who served as senior leadership in cases involving crypto, said the case is part of an emerging litigation trend following recent regulatory guidance by the U.S. Securities and Exchange Commission.

"Given the SEC's recent guidance that meme coins are generally not viewed as securities under federal law, this lawsuit shows the immediate pivot by plaintiffs' attorneys away from claims under federal securities law to traditional causes of action alleging fraudulent business practices, misrepresentation, deception," said Armstrong, who is not involved in the matter.

\$Libra, a meme coin, was marked by the defendants to promote financial innovation and economic growth in Argentina while they allegedly failed to disclose the presence of predatory infrastructure techniques, such as one-sided liquidity pools and insider trading or sniping, according to the complaint.

And "by aligning the token's launch with the high-profile endorsement" of Milei and repeatedly emphasizing those economic empowerment concepts, the plaintiffs alleged in the complaint that the defendants "intentionally cultivated a veneer of legitimacy and a false assurance of the token's economic potential."

This is notable because unlike decentralized finance structures, which rely on genuine two-sided liquidity, the defendants employed a single-sided liquidity model, according to the complaint. As a result, the structure artificially inflated \$Libra's initial price, which allegedly created an illusion of market stability and value "where none truly existed."

The plaintiff alleged that the structure allowed the defendants to artificially control \$Libra's price and manipulate the market dynamics, and allowed them to strategically withhold about 85% of the token's total supply at launch. That, in turn, enabled the defendants to maintain exclusive control over the token's valuation and liquidity.

"This allowed Defendants to discreetly and systematically extract stable assets, specifically USDC and SOL, from retail purchasers once trading commenced," the plaintiff alleged in the complaint. "Within hours, Defendants' insiders rapidly siphoned approximately \$107 million from the liquidity pools, causing an immediate 94% collapse in the token's market valuation."

Blockchain analysis cited in the filing identifies key wallets that systematically withdrew millions in stable assets while concealing sales from public market indicators. "Retail purchasers thus unknowingly financed insiders' profits," the plaintiff claimed in the lawsuit, arguing that the liquidity extraction directly caused the token's price to collapse.

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Class Action

March 19, 2025, 7:36 AM PDT

Sotera Gets Investor Suit Over Emissions Risk Claims Dismissed

Sotera Health Co. defeated a proposed securities class action over its Sterigenics unit's control of toxic emissions when a federal court ruled against investors Wednesday.

The investors failed to adequately allege false or misleading statements in connection with their claims for securities fraud and initial public offering misstatements, the US District Court for the Northern District of Ohio said.

The case is *Oakland County Emps.' Ret. Sys. v. Sotera Health Co.*, N.D. Ohio, No. 1:23-cv-00143, 3/19/25 .

To contact the reporter on this story: Martina Barash in Washington at mbarash@bloomberglaw.com

To contact the editor responsible for this story: Drew Singer at dsinger@bloombergindustry.com

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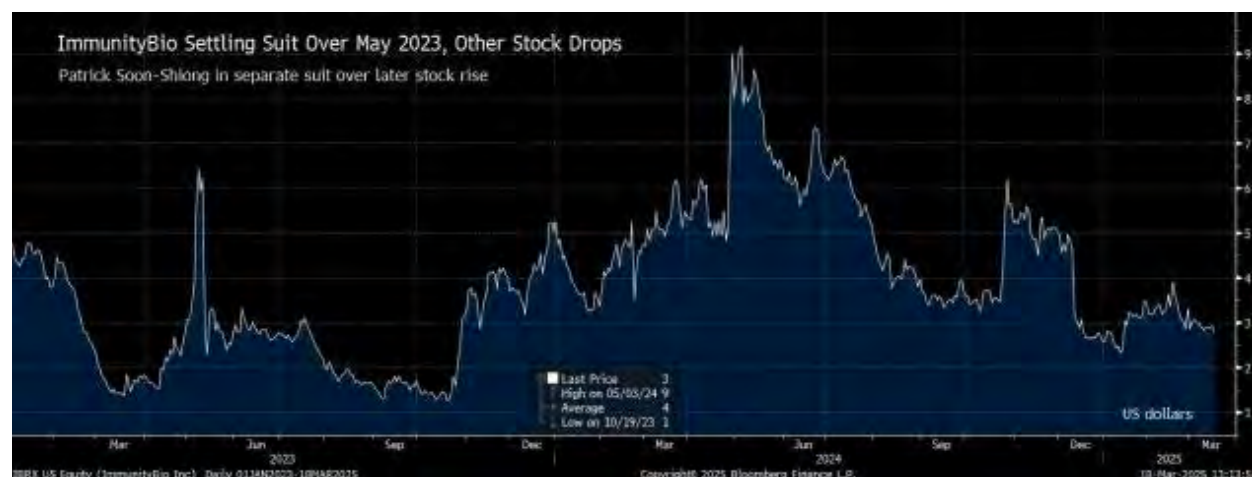
ImmunityBio \$10.5 Million Settlement Over Record Selloff Gets OK

- Biotech company allegedly misled public about manufacturing
- Executive Patrick Soon-Shiong among defendants settling suit

ImmunityBio Inc.'s \$10.5 million agreement to settle an investor class action alleging misrepresentations about a cancer drug's prospects warrants initial approval, a federal court ruled.

The settlement amount represents more than 8% of the \$131 million in damages estimated by an expert for the investors, Judge Gonzalo P. Curiel said Monday for the US District Court for the Southern District of California. As a percentage of estimated damages, the amount "is well above the median percentage of the recovery level for investor losses in securities class action settlements," Curiel said.

The investors allege the biotechnology company and three of its executives made misleading statements or omissions about its manufacturing processes at third-party facilities for its Anktiva bladder cancer therapy and overstated regulatory approval prospects for the treatment. The company announced on May 11, 2023, that federal regulators had rejected Anktiva, citing deficiencies found in a preapproval inspection at a manufacturing plant, according to the suit. The stock plummeted 55% that day, the largest selloff in the stock's history, according to data compiled by Bloomberg.



Billionaire Patrick Soon-Shiong, ImmunityBio's executive chairman and global chief scientific and medical officer, is among the executives named as defendants in the suit.

The Food and Drug Administration ultimately approved Anktiva in April. Following that development, an investor sued Soon-Shiong in Delaware Chancery Court on opposite grounds—saying he took advantage of the lower stock prices to enrich himself when the shares bounced back. Soon-Shiong, who owns the Los Angeles Times and holds a minority stake in the NBA's Lakers, made Anktiva's chances for regulatory approval look worse than he knew them to be, the November shareholder derivative suit said.

In June, Curiel denied ImmunityBio's bid to dismiss the class claims over the FDA's initial rejection of Anktiva. "A company suffering from severe and persistent manufacturing deficiencies must provide investors with some idea of the full picture if it chooses to boast of its manufacturing prowess," the judge said at the time.

Pomerantz LLP and Holzer & Holzer LLC are co-lead counsel for the proposed class. Wilson Sonsini Goodrich & Rosati represents ImmunityBio.

The case is *In re ImmunityBio, Inc. Sec. Litig.*, 2025 BL 86657, S.D. Cal., No. 3:23-CV-01216, 3/17/25.

To contact the reporter on this story: Martina Barash in Washington at mbarash@bloomberglaw.com

To contact the editor responsible for this story: Drew Singer at dsinger@bloombergindustry.com

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MDL lead counsel call Monsanto fee division 'unfair'

DJ [dailyjournal.com/articles/384406-mdl-lead-counsel-call-monsanto-fee-division-unfair](https://www.dailyjournal.com/articles/384406-mdl-lead-counsel-call-monsanto-fee-division-unfair)

U.S. District Judge Chhabria

A San Francisco federal judge's order to distribute \$24 million in common benefit fund fees to seven plaintiffs' firms in the multidistrict Roundup litigation against Monsanto Company is under fire after one of the co-lead attorneys in the coordinated proceeding echoed his colleagues' past frustrations and objected to the judge's order on Tuesday.

U.S. District Judge Chhabria wrote that the "degree to which MDL plaintiffs benefitted from the work performed by the seven firms" was "impossible to measure with any precision" and acknowledged a "degree of unfairness" in his split of the pot.

R. Brent Wisner, managing partner for Wisner Baum LLP in Los Angeles and co-lead counsel in the multi-district litigation, said in an email Tuesday that his firm intends to file an objection this week to a March 13 order from Chhabria that distributes funds to the firms that "performed work that provided a common benefit to other law firms in the MDL."

Distribution of the common benefit fund has been hotly contested by these firms, which represented thousands of plaintiffs who claim Monsanto's weedkiller, Roundup, caused them to develop cancer. Chhabria's order largely adopted the fee split recommended by special master William A. Foster, a San Francisco associate for Pillsbury & Coleman LLP, in a Jan. 15 report.

"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)," Chhabria's order stated. "In this case, the 'least worst' solution is achieved by distributing the \$24.2 million currently in the fund to the seven firms in short order."

But the lead counsel in the MDL have called the apportionment "problematic" and "unfair."

Wisner, who helped secure hundreds of millions of dollars in bellwether trial jury verdicts and settlements on behalf of plaintiffs in the MDL, said that distributing common benefit funds is "always tricky" and echoed his colleagues' sentiments in an email Tuesday.

"We object to the proposed allocation to Wisner Baum and will be filing our objection this week," the email stated. "Simply put, anybody that has been involved with this case knows the central role Wisner Baum played in prosecuting these cases. To suggest that Wisner

Baum's contribution is only 7% is not right. It's not what happened. We are confident that the Court will hear us out and make appropriate adjustments to the allocation."

The fund was created by Chhabria in 2021 after he ordered 8% of all attorney fees from plaintiff recoveries in the MDL be held back and placed into the common benefit fund. He appointed Foster as special master in May 2023 to figure out how to divide the funds fairly and proportional to each firm's contribution.

Foster declined to comment Tuesday. The following co-lead MDL counsel could not be reached for comment Tuesday: Aimee H. Wagstaff, founding partner of Andrus Wagstaff P.C. in Denver; Robin Greenwald, a New York City partner for Weitz & Luxenberg PC, and David Dickens, an attorney for the Miller Firm LLC.

Chhabria distributed fees collected from 1,600 plaintiffs who did reach a settlement in recent years to the following seven firms: Andrus Anderson LLP, Andrus Wagstaff PC (formerly Wagstaff Law Firm), Lockridge Grindal Nauen PLLP, Moore Law Group, The Miller Law Firm, Weitz & Luxenberg P.C., and Wisner Baum LLP.

Wagstaff resigned as co-lead counsel for the MDL plaintiffs on Jan. 29 more than eight years after she was appointed by the court in December 2016.

In her resignation, Wagstaff disagreed with the special master's report saying, "It is filled with misunderstandings, factual inaccuracies, and a general misapplication of the common benefit doctrine."

While there is no global settlement, Monsanto has agreed to more than \$11 billion in settlements with more than 100,000 plaintiffs throughout world the since litigation against the company over Roundup ramped up more than a decade ago. *In re: Roundup Products Litigation*, 3:16-md-02741 (N.D.Cal. filed Oct. 4, 2016).

Monsanto, now a division of Bayer AG, is still fighting lawsuits nationally over allegations that Roundup causes cancer, including thousands of pending cases in the Northern District of California.

#384406

Wisdom Howell

Daily Journal Staff Writer
wisdom_howell@dailyjournal.com

'These Cases Are Incredibly Expensive': 50+ Law Firms Leading LA Wildfire Litigation Against Edison

 [law.com/therecorder/2025/03/18/these-cases-are-incredibly-expensive-50-law-firms-leading-la-wildfire-litigation-against-edison](https://www.law.com/therecorder/2025/03/18/these-cases-are-incredibly-expensive-50-law-firms-leading-la-wildfire-litigation-against-edison)

Amanda Bronstad

What You Need to Know

- The team will manage more than 130 lawsuits filed on behalf of individuals and businesses with damages caused by the Eaton fire, which destroyed nearly 10,000 structures and killed 17 people.
- Co-liaison counsel Gerald "Jerry" Schreiber said each of the firms on the steering committee agreed to contribute \$50,000 toward discovery, experts and other upfront costs.
- Other lawyers will lead lawsuits filed by government entities and insurance firms, and two firms that filed class actions against Edison have sought involvement.

Over 50 law firms, including Austin, Texas-based Watts Law Firm and Chicago's Edelson, will be leading the growing lawsuits against Southern California Edison over one of the deadly wildfires that ravaged Los Angeles earlier this year.

At a Monday hearing, Los Angeles Superior Court Judge Laura Seigle approved a leadership team proposed by interim co-liaison counsel, who are the following: Gerald "Jerry" Singleton, of San Diego's Singleton Schreiber; Amanda Riddle, of Corey, Luzaich, de Ghetaldi & Riddle, in Millbrae, California; and Rahul Ravipudi of Los Angeles-based Panish Shea Ravipudi.

The team will manage more than 130 lawsuits filed against Southern California Edison and its parent company, Edison International, on behalf of individuals and businesses with damages caused by the Eaton fire, which destroyed nearly 10,000 structures and killed 17 people.

Schreiber told Law.com that each of the firms on the steering committee agreed to contribute \$50,000 toward discovery, experts and other upfront costs.

"The reason we did that is as follows: These cases are incredibly expensive to work up," he said. "Typically, at least \$1 million. That's if the case settles early. If you get close to trial and expert depositions, you're pushing \$2 million."

But, as in most wildfire litigation, there is no lead counsel, he said.

“One thing all of us believe strongly is that individuals have the right to select their own attorneys, and while a liaison’s job is to coordinate, we don’t have the power to make decisions that control other cases,” he said. “I try to basically herd the cats.”

The judge also approved leadership teams for related lawsuits brought against Edison on behalf of public entities, such as Los Angeles County, and subrogation claims brought by insurance firms. Baron & Budd shareholders John Fiske and Torri Sherlin, both in Dallas, and Diab Chambers partners Ed Diab and Kristen Barton, in San Diego, will lead the public entity cases, which also include the California cities of Pasadena and Sierra Madre. All three government entities filed separate suits on March 5.

Liaison counsel for more than 100 insurance firms, such as Allianz, Travelers and USAA, which brought their own subrogation suit against Edison on March 4, are the following: Jordan Everakes, of Grotefeld Hoffman in San Francisco; Amanda Stevens of Schroeder Loscutoff Stevens in Davis, California; Howard Maycon, a Los Angeles partner at Cozen O’Connor; and Matthew Delinko of Bauman Loewe Witt & Maxwell in Scottsdale, Arizona.

A 10-attorney steering committee joins the liaison counsel.

All three groups are expected to file separate master complaints in 60 days.

Class Action Conundrum

The judge heard arguments about a fourth possible track: Class actions. At least two class actions have been filed by Lawyers for Justice, in Glendale, California, and Chicago-based DiCello Levitt.

“Combining our extensive fire and natural disaster experience with our class action litigation expertise will enable us to most effectively and efficiently seek and obtain classwide relief, while still enabling Angelenos damaged by this disaster to tell their individual stories in their quest for economic justice,” DiCello Levitt partner Adam Levitt said in a statement when his firm filed its class action last month against Edison.

Los Angeles Superior Court Judge
Laura Seigle

In a filing ahead of Monday’s hearing, Lawyers for Justice’s Joanna Ghosh argued for a separate leadership structure for the class actions.

Most wildfire lawyers, however, believe class actions are not as successful or appropriate in wildfire litigation.

“Every one of these fires I do there’s a new attorney who thinks they’re going to make a lot of money by bringing a class action, and it’s never successful,” Schreiber told Law.com. “That’s fine. What our main thing is, we don’t want them to slow down the work we’re doing in pushing our case to trial.”

In addition to Edelson and Watts, the firms on the steering committee include the following: Andrews & Thornton in Newport Beach, California; San Diego’s Casey Gerry Francavilla Blatt; Cotchett, Pitre & McCarthy in Burlingame, California; Los Angeles-based Engstrom, Lipscomb & Lack; Keller Rohrback; San Francisco’s Lieff Cabraser Heimann & Bernstein; Morgan & Morgan in Orlando, Florida; Los Angeles-based Quinn Emanuel Urquhart & Sullivan; and Wisner Baum in Los Angeles.

Note: Bronstad is an Edison customer impacted by the Eaton fire.

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Class Action

March 18, 2025, 11:39 AM PDT

Blue Cross Blue Shield Accused of Blocking Spine-Fusion Coverage

- **COURT:** E.D. Pa.
- **TRACK DOCKET:** [2:25-cv-01422](#) (Bloomberg Law subscription)

Blue Cross Blue Shield Association and its member plans were sued by a company that claims they illegally blocked reimbursements for its spinal fusion treatment, adding to a barrage of other suits filed against the insurance giant.

Plaintiff TranS1 LLC alleges the insurer and its network of plans ran an unlawful group boycott by refusing to reimburse medical expenses associated with the firm's AxiaLIF spinal fusions, according to a complaint filed Monday in the US District Court for the Eastern District of Pennsylvania.

Blue Cross Blue Shield and its members make up the largest insurance network in the US. They are among several health insurers including UnitedHealth Group Inc. that have been targeted by private plaintiffs and federal agencies over their role in rising health-care costs.

Blue Cross Blue Shield is separately facing numerous lawsuits by hospitals and other medical providers that opted out of the insurer's \$2.8 billion antitrust settlement.

TranS1 alleges that Blue Cross Blue Shield refuses to provide coverage for its AxiaLIF treatment because doing so would likely increase the insurer's overall reimbursement burden.

"Defendants are driven by improper financial motive: because AxiaLIF is safe and effective for a wider pool of patients than the spinal fusion procedures that Defendants reimburse, more patients could get a spinal fusion if Defendants reimbursed AxiaLIF," the suit says.

AxiaLIF is touted by TranS1 as a less-invasive spinal surgery that accesses the vertebrae through a small incision near the tailbone. TranS1 alleges Blue Cross Blue Shield has falsely claimed the treatment is "experimental, investigational, and not medically necessary."

TranS1 seeks relief under the Sherman Act, the Clayton Act, and state laws.

Blue Cross Blue Shield declined to comment.

TranS1 is represented by Susman Godfrey LLP and Hangley Aronchick Segal Pudlin & Schiller.

The case is TranS1 LLC v. Blue Cross Blue Shield Ass'n , E.D. Pa., No. 2:25-cv-01422, 3/17/25 .

To contact the reporter on this story: Katie Arcieri in Washington at karcieri@bloombergindustry.com

To contact the editor responsible for this story: Rob Tricchinelli at rtricchinelli@bloombergindustry.com

Class Action

March 19, 2025, 1:30 AM PDT

Don't Let Plaintiffs Get Fat on Rising Food Addiction Complaints

DLA Piper's Chris Gismondi and Angela Agrusa say courts need to be careful with addiction suits, as doctors haven't agreed whether ultra-processed foods are addictive.

Courts face new challenges as they adjudicate cases about a wide range of "addictions" that go beyond drug or alcohol dependence. Including nicotine use and gambling, for example, already put a medical diagnostic term into the common vernacular to describe an individual's frequent and sometimes compulsive behaviors.

People now self-describe addiction—typically without diagnosis—to devices, hobbies, activities, and food. Ambitious plaintiff lawyers are seizing on this cultural moment by filing lawsuits seeking compensation for undiagnosed "addictions" and the negative consequences alleged to flow from them.

Addiction-related lawsuits are pending against social media companies, video game developers, and food manufacturers. In December 2024, plaintiffs sued 11 food makers, claiming they produce nutrient-dense, "ultra-processed foods" designed to be addictive and seriously injure addicted consumers. The complaint frames the issue as Tobacco 2.0, and attorney advertising and plaintiff screening tools seek to attract additional plaintiffs.

Courts must scrutinize these claims. An injury must actually exist, and the plaintiff must actually suffer that injury, for the claim to proceed. And while the plaintiffs' bar has declared ultra-processed foods addictive, the medical community hasn't.

"UPF addiction" is a proposed mental health condition based on the inference that ultra-processed foods (but not all foods) are addictive due to their effect on the body's reward system. The Yale Food Addiction Scale is the proposed diagnostic tool used to identify UPF addiction, which leverages the criteria used to diagnose substance use disorder such as alcoholism and drug addiction.

An individual is UPF addicted, according to the Yale scale, if they self-endorse at least two of 11 criteria, which include negative consequences, attempts to cut down consumption, withdrawal, belief of psychological injury, or interference with life.

The Yale scale and food addiction were rejected for inclusion in the current edition of the Diagnostic and Statistical Manual of Mental Disorders, or DSM-5, the authoritative guide on mental health disorders. Federal and state assistance for mental health conditions often require a DSM diagnosis. The Reference Manual on Scientific Evidence for litigation states that the DSM embodies the "standard nomenclature and diagnostic criteria for mental disorders."

Despite this, some researchers claim rising obesity rates are evidence of—and a justification for—declaring UPFs addictive. This thinking is far too simplistic, as multiple factors may be attributing to the rise in obesity and diabetes.

For example, modern lifestyles, with lesser average physical workloads and greater time sitting, have been linked to weight gain and obesity. Advances in agriculture and food processing have made food more accessible and affordable. Global food availability between 1961 to 2013 has grown from 2200 kcal/cap/day to 2884 kcal/cap/day, according to the Intergovernmental Panel on Climate Change.

But researchers attempting to establish UPFs' addictiveness have adopted the "nicotine addiction" model. They argue that UPFs, like nicotine, can cause compulsive use, psychoactivity, reinforcing behavior, and cravings, citing binge eating, eating past satiation, and cravings as evidence. They also cite rodent studies demonstrating the reward system (dopamine release) is triggered in response to certain types of UPFs in a similar fashion to drugs and alcohol.

But this is another oversimplification. Other explanations for the behavioral phenomena of compulsive eating and cravings include that certain types of UPFs simply taste good, and the reward provided by the taste is being confused as addiction.

Dopamine release isn't unique to drugs and alcohol—the reward system is triggered by many events that bring us pleasure, including charitable donations. If dopamine release were all that was needed to diagnose addiction, then almost anything that brings pleasure could be deemed addictive.

To account for this, and to bolster the "addiction" argument, researchers and plaintiff lawyers must attach a behavioral response, typically in the form of negative consequences that are serious enough to trigger a need to for the average person to stop consuming UPFs.

While certain diseases from overconsumption, such as obesity and diabetes, might fit the mold of a negative consequence, the food addiction scale diagnoses many individuals who are normal weight and underweight with addictions.

This may be explained by issues with a scale that is based entirely on self-assessment, putting it at risk for bias, misdiagnosis, and overdiagnosis. Individuals who have complex relationships with food, such as those suffering from anorexia, often are misdiagnosed with food addiction based on the scale.

The few limited studies and journal articles that support the UPF addiction theory rely on research related to foods that are high in sugar and fat such as pastries, candy, packaged snacks, fast foods, and sugar-sweetened beverages. But UPF is a far broader classification of food that includes everything from chicken stock to veggie burgers to frozen foods.

There are plenty of UPFs that don't contain high levels of sugar and fat and are considered part of a healthy diet. To find that UPFs as a category, as opposed to certain ingredients in certain types of UPFs, are addictive is to conclude that chicken bouillon could cause addiction—a leap that's likely too far for even the most creative plaintiff attorney.

Threshold medical questions are unresolved as to whether UPFs, or even food, are capable of being addictive and, if so, how to objectively diagnose such a condition. The courts shouldn't open the door for protracted litigation while so many questions remain unanswered.

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Author Information

Christopher Gismondi is of counsel and Angela C. Agrusa is co-chair with DLA Piper's products liability, mass tort, and class action group.

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To contact the editors responsible for this story: Max Thornberry at jthornberry@bloombergindustry.com; Rebecca Baker at rbaker@bloombergindustry.com

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Trump's attacks on law firms alarm lawyers but most firms stay silent

 [reuters.com/world/us/some-us-lawyers-decry-trump-orders-their-law-firms-stay-silent-2025-03-18](https://www.reuters.com/world/us/some-us-lawyers-decry-trump-orders-their-law-firms-stay-silent-2025-03-18)

Mike Scarcella, David Thomas, Sara Merken

U.S. President Donald Trump signs an executive order in the Oval Office of the White House in Washington, D.C., U.S., March 7, 2025. REUTERS/Evelyn Hockstein/File Photo Purchase Licensing Rights , opens new tab

March 17 (Reuters) - U.S. President Donald Trump's targeting of major law firms over their diversity policies and political clients has earned condemnation from law professors, bar associations and a federal judge - but not, so far, from other law firms.

Instead, the public reaction from large corporate firms has come mainly from a few of their lawyers, via LinkedIn posts and an online effort involving junior lawyers at Skadden and other firms to encourage a larger institutional response.

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Partners at top firms who have denounced Trump's actions on social media have stressed that they are not speaking for their employers. A partner at Polsinelli, who criticized Trump's orders targeting other law firms on LinkedIn, deleted a post accusing the government of "trying to destroy the rule of law and instill fear" after she was contacted by Reuters on Monday.

Reuters contacted 30 of the largest U.S. firms, including some representing clients suing the Trump administration over other matters, for their response to recent government actions against law firms. All either declined to comment or did not respond to requests for comment.

An early sign emerged on Tuesday that Munger Tolles & Olson may be organizing other law firms to file a friend-of-the-court brief challenging an executive order Trump issued against Perkins Coie. A legal executive at GE Healthcare, Mara Senn, said in a LinkedIn post that the firm would be submitting the brief next month and encouraged others to sign on. Senn, GE Healthcare and lawyers at Munger did not immediately respond to requests for comment.

No major law firm that was not directly targeted by Trump has spoken publicly against the president's actions other than Williams & Connolly, which is representing Perkins Coie in its lawsuit challenging the White House executive order.

Trump issued his latest law firm executive order on Friday against Paul Weiss, a litigation and dealmaking powerhouse whose 1,000-plus lawyers advise some of the country's largest financial and technology companies.

On Monday, the U.S. Equal Employment Opportunity Commission sent letters to 20 large firms demanding extensive details about their lawyers' demographics in a broad crackdown on legal industry diversity efforts.

The Paul Weiss and Perkins Coie orders suspended their lawyers' security clearances and restricted their access to government buildings, officials and federal contracting work. Trump also last month suspended security clearances of two lawyers at Covington & Burling, in each case citing the firms' past work for his political or legal opponents.

MARSHALING SUPPORT

Twenty U.S. states and the District of Columbia filed a court brief backing Perkins Coie last week, calling Trump's executive order "menacing" and a threat to the practice of law across the country. The American Bar Association and other professional groups have also issued statements backing the targeted firms.

Organized efforts to mount a joint response by large law firms have yet to yield concrete results, however.

As of Tuesday afternoon, an open letter urging major firms "to defend their colleagues and the legal profession" from Trump's actions had 444 signatories who identified themselves as associates at dozens of firms. The letter did not name the lawyers, only their firms.

Associates at three of the firms told Reuters they were looking for more ways to support those targeted by Trump, such as advocating for their firms to sign onto a legal brief backing Perkins Coie's lawsuit.

"It can't stop with saying, largely anonymously, someone should really do something about this," said Rachel Cohen, a banking associate at Skadden who was an early organizer of the letter.

Cohen said she was speaking only for herself. A spokesperson for Skadden did not immediately respond to a request for comment.

The bar has been caught off guard by how quickly Trump has moved "to dismantle the rule of law and American-style checks and balances in this country," said Daniel McCuaig, an antitrust litigator at plaintiffs law firm Cohen Milstein Sellers & Toll.

McCuaig, speaking on his own behalf, said lawyers especially "need to start raising their voices now to turn this tide."

McCuaig's firm did not immediately respond to a request for comment.

AVOIDING RISK

Legal experts said concerns about the reaction of their corporate clients and potential retribution from the administration are helping to mute law firms' response to the president's actions so far.

"Most lawyers are risk averse. They are not naturally brave," said Leslie Levin, a legal ethics scholar at the University of Connecticut School of Law. "You need to be brave to speak out under the present circumstances."

Perkins Coie's lawsuit said at least seven of its clients, including a major government contractor, have already withdrawn legal work because of Trump's executive order or were considering doing so, costing the firm "significant revenue."

A federal judge last week granted Perkins Coie's request to temporarily block parts of the order against it, saying the legal industry was "watching in horror" at what the law firm was experiencing.

Reporting by David Thomas in Chicago, Mike Scarcella in Washington and Sara Merken in New York; Editing by David Bario and Richard Chang

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David Thomas
Thomson Reuters

David Thomas reports on the business of law, including law firm strategy, hiring, mergers and litigation. He is based out of Chicago. He can be reached at d.thomas@thomsonreuters.com and on Twitter [@DaveThomas5150](https://twitter.com/DaveThomas5150).

Sara Merken
Thomson Reuters

Sara Merken reports on the business of law, including legal innovation and law firms in New York and nationally.

Trump's Big Law Fury Shows Additional Firms Are Target Risks

Big Law Spotlight

- Trump orders revoking credentials from firms with ties to enemies
- President's definition of 'weaponization' implicates several firms

As President Donald Trump targets a handful of Big Law firms for fronting actions he considers unfair, he's got the whole industry wondering: Who's next?

Trump issued directives against Covington & Burling, Perkins Coie, and Paul Weiss in the last three weeks. Those are not the only firms with ties to investigations against the former president or which have gone up against him in court.

"This list of three can easily grow to 23," said Peter Mirijanian, a Washington, D.C.-based public relations consultant, "because there will be other firms that are representing interests that are adverse to the Trump administration."

The Equal Employment Opportunity Commission opened a new front in Trump's fight with Big Law March 17, highlighting the broad risks facing firms. The agency sent letters to 20 large firms, including Kirkland & Ellis, Latham & Watkins, Ropes & Gray, and Simpson Thacher, launching investigations for possible discrimination in their diversity programs.

Trump three days earlier issued an executive order against Paul, Weiss, Rifkind, Wharton & Garrison that stripped the Wall Street firm of security clearances and threatened to cancel government contracts held by its clients, while ordering agency heads to restrict its lawyers' access to federal government buildings. The order referenced Mark Pomerantz, a former firm partner who led a Manhattan district attorney's investigation that resulted in convictions against Trump on 34 counts of falsifying business records.

Trump's March 6 executive order targeting Perkins Coie was similar to the one issued against Paul Weiss. It mentioned that Perkins Coie in 2016, while working for presidential candidate Hillary Clinton, "hired Fusion GPS, which then manufactured a false 'dossier' designed to steal an election." Trump also noted the firm's work on a bevy of elections cases.

Trump's Feb. 25 memo against Covington targeted partner Peter Koski, citing his relationship with former special counsel Jack Smith, who brought two criminal cases against the president.

Here are other firms at risk of drawing Trump's attention.

WilmerHale

Former special counsel Robert Mueller, who led a probe into the 2016 Trump campaign's alleged coordination with Russian state officials, practiced at WilmerHale until 2021.

Firm webpages archived as late as Nov. 5, 2024, show Mueller's affiliation as a "retired partner." WilmerHale has since updated the web page to state: "Robert S. Mueller III is no longer with our firm." WilmerHale didn't respond to a request for comment.

The firm steered several election suits for Democrats in the run up to last year's election. WilmerHale lawyers also are suing the Trump administration to challenge some of the president's actions after retaking the White House.

Former Solicitor General Seth Waxman and ex-deputy attorney general David Ogden, both firm partners, filed a complaint in February on behalf of eight inspectors general of federal agencies who were terminated as part of the White House's wide-ranging purge of federal employees.

Jenner & Block

The Chicago-founded firm has deep ties to Democrats among its current and former lawyers. Trump called Andrew Weissmann, the former Jenner & Block partner who aided in the Mueller probe, "scum" in a March 14 speech at the Justice Department.

Weissmann rejoined Jenner & Block in 2020 after leading the prosecution against Paul Manafort, the former campaign chairman for Trump's first presidential run. Manafort was sentenced to nearly eight years in prison for money laundering, illegal lobbying, and bank and tax fraud. Weissmann later decamped for an in-house job at Ronald Perelman's MacAndrews & Forbes.

Jenner & Block and Weissmann didn't respond to requests for comment.

Foley & Lardner

Foley & Lardner announced in 2021 it was declining to work on any cases that challenged the results of the 2020 presidential election, which Trump insisted was stolen from him.

The firm is the former home of Cleta Mitchell, who left after Foley said it was investigating her role in a phone call between Trump and Georgia Secretary of State Brad Raffensperger. In that call, Trump asked Raffensperger to "find" additional Georgia votes.

Foley & Lardner didn't immediately respond to a request for comment.

Gibson Dunn & Crutcher

Barry Berke, the top lawyer for one of Trump's impeachment probes, joined Gibson Dunn in October 2024. Berke serves as co-chair of the firm's litigation group.

The elite law firm is home to lawyers from all ends of the political spectrum, including former Trump Labor Secretary Eugene Scalia.

Gibson Dunn is representing parties in two lawsuits against the Trump administration challenging its immigration and refugee policies. The firm didn't respond to a request for comment.

Elias Law Group

Marc Elias, who Trump also lashed out at during the Justice Department speech, ran Perkins Coie's political practice group before leaving to launch his elections law boutique in 2021. Elias was also tapped as outside counsel to the Harris-Walz 2024 presidential campaign.

While at Perkins Coie, Elias retained Washington firm Fusion GPS to conduct the opposition research against Trump. It resulted in the Steele dossier, which alleged coordination between the Trump campaign and Russian state officials.

Elias Law Group didn't respond to a request for comment. Elias said he won't "back down" in a March 14 social media post on Bluesky.

Hecker Fink

Joshua Matz, a partner at the boutique litigation shop, was counsel for the House Judiciary Committee in its first impeachment attempt against Trump. He also worked on the committee's inquiries into the Jan. 6 riot at the US Capitol. Matz was part of a team, led by New York litigator Roberta Kaplan, that represented advice columnist E. Jean Carroll in sexual assault and defamation lawsuits against Trump.

Matz more recently represented special counsel Hampton Dellinger in his lawsuit against the Trump administration over Dellinger's firing. The firm and Matz didn't respond to a request for comment.

To contact the reporter on this story: Justin Henry at jhenry@bloombergindustry.com; Tatyana Monnay at tmonnay@bloombergindustry.com

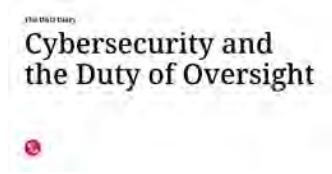
To contact the editors responsible for this story: John Hughes at jhughes@bloombergindustry.com

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Cybersecurity and the Duty of Oversight

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March 18, 2025



By Kevin LaCroix on March 18, 2025

Posted in Cyber Liability



In the immediate aftermath of the Delaware Supreme Court’s 2019 decision in *Marchand v. Barnhill*, which revitalized so-called *Caremark* claims for breach of the duty of oversight, one question I was asked was whether claimants might seek to assert breach of the duty of oversight claims in the context of cybersecurity and data privacy issues. Claimants did, in fact, subsequently raise *Caremark* claims in connection with the high-profile data breaches at Marriott and SolarWinds, but in each case, the Delaware Chancery Court granted the defendants’ motions to dismiss (as discussed here and here, respectively), raising questions about the viability of duty of oversight claims in the cybersecurity context.

Notwithstanding the less than promising track record for these kinds of claims, in a recent article, NYU Law Professor Jennifer Arlen argues that cybersecurity-related claims for breach of the duty of oversight should support *Caremark* liability in at least one class of cases – that is, cases relating to companies for whom cybersecurity is a “mission critical legal risk” and in which it is alleged that the company had inadequate cybersecurity that risked (and later caused) substantial harm to businesses and government agency customers, and that the company had misled the customers through statements that were designed to defraud the customers into believing that the company’s cybersecurity systems were materially better than they were. Professor Arlen’s March 18, 2025, post on the *Harvard Law School Forum on Corporate Governance* about *Caremark* claims in the cybersecurity context can be found here.

As many readers know, cybersecurity threats pose a substantial threat to companies, threats that can in many cases be deterred. Yet, Professor Arlen states, “many companies have not taken the steps necessary to adequately deter threat actors.” Deficiencies can be found even at software companies and cloud services providers, and other companies that make products or provide services that could leave companies, government agencies, and financial institutions vulnerable to a cyber event.

Companies may, Professor Arlen suggests, have incentives to misrepresent their level of cybersecurity preparedness. For example, fast-growth companies that are under pressure to show rapid growth and to achieve profitability may have incentives to skimp on cybersecurity measures, since good cybersecurity is expensive and can be effort intensive to maintain. Company management may have their own incentives to misrepresent their company's cyber readiness, for compensation reasons or even for job-security reasons.

For some companies – those whose products' or services' cybersecurity effectiveness is critical for its customers – cybersecurity represents a mission critical legal risk. For these companies, Delaware law imposes “enhanced and specific duties on directors to set up systems and assert oversight.” Specifically, directors must determine which committee is responsible for overseeing the risks; establish procedures that require management to report compliance deficiencies; and ensure that management does report to them on deficiencies. The directors must assume primary responsibility over investigations of detected misconduct as well.

These enhanced duties are designed to ensure that the board and not just management are informed about compliance deficiencies and detected misconduct. The information-channeling impact should “help deter violations by shifting control from managers (who are more likely to obtain private benefits from misconduct or face termination), to directors, who have less to lose from revelation of misconduct.”

Professor Arlen notes that Delaware's courts have not provided specific guidance on precisely what legal risks trigger enhanced oversight duties; the critical factor in the cases is “whether the legal violation could cause egregious long-run harm to the firm,” through lost revenues through loss of customers or through regulatory action. These considerations are of greatest concern to companies for whom weak cybersecurity could cause substantial harm to large institutions, such as multinational businesses or governmental agencies. In this context, making “knowingly misleading statements to institutional customers is likely to be a mission critical legal risk because the confluence of the company's weak cybersecurity, the attack, and the lies is likely to cause customers to flee whom might not have but for the company's dishonesty.”

As noted above, the breach of the duty of oversight claim filed against the SolarWinds board was dismissed. Interestingly, Professor Arlen contends that the derivative plaintiffs “likely would have avoided dismissal had they predicated their claims on the corporate trauma to SolarWinds from the confluence of its materially misleading statements about its cybersecurity, its apparent cybersecurity deficiencies, and the cyber-hack it suffered.” The core of her arguments in this regard are based on her suggestions both that SolarWinds allegedly made materially misleading statements and that “it was mission critical for SolarWinds to avoid defrauding its customers about its cybersecurity given the nature of its clients and the risks they faced from SolarWinds' products.” Under these circumstances,

SolarWinds was subject to the enhanced Caremark duties, as a result of which plaintiffs need only show, in order to establish liability, that “the directors did not require management to report to them on whether the company’s public statements were materially misleading and did not seek the company’s own audit of its systems that would have informed the board about material deficiencies.”

Cases like these, Professor Arlen observes, “would induce directors of companies for whom cybersecurity quality is mission critical to the company and its customers to attend both to the accuracy of the company’s disclosures and to the company’s cybersecurity itself, to the benefit of the company and society.”

Professor Arlen’s commentary is both interesting and noteworthy because it suggests that notwithstanding the relatively poor track record for plaintiffs’ seeking to assert breach of the duty of oversight claims in the cybersecurity context, it may yet be possible to plead a viable cybersecurity-related Caremark claim. Her commentary is also interesting for her suggestion that – for companies for whom cybersecurity is a mission critical legal risk — the board’s cybersecurity oversight duties extend not only to cybersecurity function, operation, and performance, but also extend to oversight of the company’s *disclosures* about the effectiveness of its cybersecurity. Professor Arlen’s commentary suggests that the duty of oversight remains critically important in the cybersecurity context, particularly for those companies for whom cybersecurity is mission critical.

Matt Levine's Money Stuff: Strategy Sells Perpetual Strife

Perpetual ... strife?

Strategy, the company formerly known as MicroStrategy Inc., is in the business of selling securities to raise money to buy Bitcoin. The securities that it has sold to buy Bitcoin include:

1. Its common stock, which trades at a premium to the value of its underlying Bitcoin, making this a very nice trade for Strategy and a somewhat perplexing one for the people buying the stock.
- 2. Convertible bonds, bonds that can be converted into common stock, which benefit from the extreme volatility of Strategy's stock: Convertible arbitrageurs make money as Strategy's stock bounces up and down, which it does a lot. There is also a simpler investment case for the convertibles: If you buy a Strategy convertible and Bitcoin goes up a lot, you get exposure to Bitcoin's rise, but if Bitcoin goes down a lot you (maybe?) still get your money back.
- 3. Convertible preferred stock, which is sort of like a convertible bond: You give Strategy money, it pays you fixed quarterly interest (technically a dividend), and if the stock goes up you can convert your preferred stock into common stock.

What's missing from that list? An obvious one is *straight* bonds — debt instruments that *can't* convert into common stock — but "lend money against our pot of Bitcoins" is less appealing as a pitch than the stock or convertibles are. (I once wrote: "My gut sense is that the one-sentence intuitive credit analysis of MicroStrategy — 'it has a huge pot of Bitcoins, has borrowed significantly less than the market value of that pot in the convertible market, and has like a \$90 billion equity cushion' — is *just fine* for convertible investors in a way that it might not be for, like, ratings agencies or traditional credit investors.")

Another possibility is straight preferred stock, an instrument that (1) is junior to bonds (but senior to common stock), (2) never has to be paid back, (3) pays a relatively high cash dividend and (4) is *not* convertible into common stock. Strategy has been teasing preferred stock for a while, and when I first saw that I assumed it meant non-convertible preferred. I was puzzled, writing:

I have to say that perpetual preferred stock of a software company is not exactly a traditional product; there are not a ton of, like, mutual funds devoted to holding that sort of paper. But I guess a mezzanine claim on a giant pot of Bitcoin — junior to the convertibles, but senior to a giant pile of common stock — is a decent fixed-income investment?

But in fact Strategy went and did an odd *convertible* preferred, one with a very high conversion price, which it called a “perpetual strike preferred stock.” I thought that was kind of weird too: A convertible preferred with an 8% coupon and a 900% conversion premium is an unusual instrument — it doesn’t give you the equity exposure you normally want in a convertible — and in fact it struggled to find buyers. The name is also odd — I had never heard of “perpetual strike preferred stock” before, and I used to underwrite convertible preferred stock for a living — but you could parse it. “Perpetual preferred stock” is a common term for preferred stock (since it never has to be paid back), and is sometimes used to distinguish *regular* (non-convertible) preferred from convertible preferred; “strike” is a common term for the exercise price of a convertible instrument. So a “perpetual strike preferred stock” means something like “a convertible preferred stock with a strike price that is so high you might never convert.”

An alternate parsing might be “if you buy this preferred stock we will constantly punch you,” but at the time that did not occur to me.

Anyway Strategy announced last week that it might sell as much as \$21 billion more of that perpetual strike preferred stock which, sure, okay, why not. But now here’s this:

Strategy™ (Nasdaq: MSTR; STRK) today announced that, subject to market and other conditions, it intends to offer, in a public offering registered under the Securities Act of 1933, as amended (the “Securities Act”), 5,000,000 shares of Strategy’s Series A Perpetual Strife Preferred Stock (the “perpetual strife preferred stock”).

Strategy intends to use the net proceeds from the offering for general corporate purposes, including the acquisition of bitcoin and for working capital.

The perpetual strife preferred stock will accumulate cumulative dividends at a fixed rate of 10.00% per annum on the stated amount.

This does appear to be a non-convertible perpetual preferred stock. I have no special technical knowledge about how to parse the name; the first four times I read it I thought it was a typo. It is not. So I assume it’s the obvious parsing: “If you buy this preferred stock you will constantly be engaged in bitter struggle and conflict.” Seems right. I could not love this company more.

Lottery ETF

We talked recently about a Texas lottery arbitrage. The way Lotto Texas (and many other important US lotteries, including Powerball and MegaMillions) works is that you pick some numbers, there's a drawing of random numbers, if you match every number in the drawing you win the jackpot, and if no one wins the jackpot it rolls over to the next drawing. So your chances of winning are fixed — for Lotto Texas, they are about 1 in 25.8 million; for Powerball they are about 1 in 292 million — but the amount that you can win varies. As the jackpot grows, the expected value of buying a lottery ticket might become positive: If the Lotto Texas jackpot is \$100 million, the expected value of a 1-in-25.8-million chance at \$100 million is greater than the \$1 cost of a ticket.

That's not exactly right, because if two or more people match every number, they will split the jackpot. This is not a huge worry if you are buying a \$1 lottery ticket — live a little! — but it is if you are doing the obvious lottery arbitrage, which is buying *every* ticket. If the Lotto Texas jackpot is \$100 million and you spend \$25.8 million buying every possible number, then you will definitely win the jackpot, but if you split it four ways you'll lose money. And other people might notice this too! If five people each spend \$25.8 million buying every possible number, they will all definitely lose money.

The actual problem here turns out to be: Is there some reason to think that (1) you can buy every ticket and (2) no one else can? There are two components to this analysis. One is operational: Can you actually, like, go around to convenience stores to get every ticket printed out in time for the drawing? This is meant to be hard — Lotto Texas's rules discourage it — but there are examples; someone figured it out with Lotto Texas, and there is a famous earlier example in Massachusetts.

The other is financing: If you want to win the \$2 billion Powerball, you can buy every ticket for \$584.4 million (tickets are \$2), but you need \$584.4 million. Where are you going to get that kind of money? It would be pretty amazing if Jeff Bezos won the Powerball just for fun, but realistically the people with the operational skills and, like, desire to do this trade do not have \$584.4 million lying around. You'd need to raise a fund.

Here's a fun post from anonymous blogger "No Dumb Ideas" proposing a hypothetical lottery exchange-traded fund, why not:

Introducing: \$LUCKY, the ETF that buys lottery tickets. ...

\$LUCKY takes a pool of money (the assets under management, or AUM) and puts it all into short term treasury bonds. When the Powerball hits a threshold — call it \$584m, the cost of buying every combination — \$LUCKY spends 10% of its assets on lottery tickets. If it loses, it waits for the next jackpot. If it wins, \$LUCKY holders get paid. Finally, you can get lottery exposure in your IRA.

The basic problem is that spending 10% of assets on lottery tickets is risky — you have a high likelihood of losing 10% of the fund — unless you buy a *ton* of lottery tickets, in which case you have a high chance of winning the lottery. “Using our 10% rule, we get a 100% chance of winning the Powerball at \$5.8b in AUM,” which I guess returns 10%. “So scale really matters.” How do you get to that scale? How do you raise billions of dollars quickly? “\$LUCKY may be the most memeable ETF of all time,” argues the post, and, maybe?

The obvious risks are:

1. Ehhhhh the US Securities and Exchange Commission is not going to like this, though who knows these days.
- 2. The *lottery* authorities might not like this, and you do have to address the operational problem of actually buying every number.
- 3. You might split the jackpot: If this works for you, it could work for someone else. “With two players, it would be a race to see who can white knuckle their way through split prizes long enough for the other fund to give up. Unfortunately, there’s only room for one \$LUCKY in this market.”

I don’t think this will happen; this is just a joke or a thought experiment. But ... I kind of think we are about two years away from a sports gambling ETF? Sorry sorry sorry sorry sorry sorry sorry, a “sports event contract” ETF. There are filings for memecoin ETFs right now, and last month Robinhood Markets briefly launched (and then withdrew) a Super Bowl event contract. “Robinhood’s mission is to democratize finance for all,” said Robinhood at the time. “With an emerging asset class like event contracts, we recognize an opportunity to better serve our customers as their interests converge across the markets, news, sports, and entertainment.”

I made fun of that language — sports betting is not an asset class! — but clearly Robinhood is the future and I am the past and financial markets are for betting now. Why *shouldn’t* all the technology of finance be applied to emerging asset classes like gambling? Put lottery tickets in ETFs, sure.

Staffers

Investment bankers work on deals (mergers, stock offerings, etc.) and pitches (meeting with potential clients to get them to do deals). Senior investment bankers have a list of companies they cover, and they make their own work: They call up companies and say “I’d love to come in to talk to you,” if the company says yes then they put together a pitch, and if the pitch works then they have a deal. All pretty organic.

Junior investment bankers do not bring in their own work; they do the work created by senior investment bankers. Sometimes this also works pretty organically: The senior banker has a few junior bankers on her team, and when she schedules a pitch or lands a deal, her juniors work on it for her.

But for junior analysts in big groups at big banks, this is not the norm. Instead, a group will have a bunch of senior bankers and a bunch of junior bankers, and when a senior banker creates some work, she will pull some junior bankers from a centralized pool to do the work for her. Each junior banker will work on several pitches and deals at a time, for several different senior bankers. And there is a person, generally called a “staffer,” who coordinates this: The senior banker will call the staffer and say “I need an analyst to build me a merger model,” and the staffer will look at his list of analysts and say “I see Alice has some free time” and hand the work off to Alice.

The staffer is traditionally a midlevel investment banker, and it has always seemed to me that it’s a terrible job. It doesn’t seem particularly fun to keep track of junior analysts’ abilities and availability, and it takes away from the time that you would otherwise spend actually doing investment banking. Senior bankers will always be mad at you, because they will call you to say “I need three analysts to format a pitchbook” and you will have to say “everyone is super busy, could you live with two?” Junior bankers will always be mad at you, because you will constantly be calling them at midnight to say “can you make a new pitchbook by 8 a.m.?”

The consolations for the staffer are that (1) it’s usually a short-term job and (2) it’s probably good training: Being a staffer is often a midlevel banker’s first exposure to *management*, and it’s a way to prepare the staffer for bigger roles in the future. Ideally the staffer, in addition to being the staffer, is also a *good banker*, so the senior bankers respect him (and accept his pushback when they demand too much) and the junior bankers respect him (and don’t push back too much when he calls them at midnight). And then he gets promoted out of the role and goes on to bigger and better things and in 20 years, when he wins the power struggle to become CEO of the bank, thinks “everything I needed to know about managing egos I learned in my year as a staffer.”

I don’t know, that’s roughly the theory. There are ways for it to break down. The staffer, being ambitious, might be too keen to please the senior bankers (who will decide his promotions) and work the junior bankers too hard. Or the staffer, being fairly junior himself, might be ignored by the senior bankers: A managing director might just walk into the bullpen, point at an analyst and say “you, LBO model, now” rather than bother with the staffing system.

If you are worried about overworked junior bankers, I suppose you might try to tweak this system. The Wall Street Journal reports:

Bank of America says it is stepping up its oversight of young bankers’ workloads, the firm’s latest change since the death of an employee working 100-hour weeks sparked an outcry across Wall Street.

The bank previously relied on midlevel employees on one-year rotations to assign work to its thousands of junior investment bankers. One of their responsibilities was supposed to be ensuring young bankers aren’t overworked. But the midlevel employees weren’t always provided incentive or equipped to enforce limits, according to people who work at the bank.

Bank of America has now made that role a permanent position for senior bankers, with the goal of strengthening supervision of young employees who may be facing heavy workloads.

One risk is that “one-year staffer” is a prestigious position for an ambitious midlevel banker looking to become a manager, while “permanent staffer” might be kind of a dead-end position for a less-ambitious senior banker. If you’re a senior banker, the goal is to manage other senior bankers, not to manage first-year analysts.

Overnight trading

Every stock trade involves an extension of credit. If I go to my brokerage app and click “buy” and you go to your app and click “sell” at the same time, you might sell me some stock, but you won’t get the money — and I won’t get the stock — immediately. I will owe you the money, and you will owe me the stock, and we will settle up — actually delivering the money and the stock — on the next business day. This gives us time to get things all lined up: I can make sure I have the money, maybe moving it out of a bank account or converting it from euros to dollars, and you can make sure you have the stock, maybe recalling it from stock borrowers.

What if I change my mind? What if I just decide not to show up with the money? (What if I lost all my money?) Well, in the US stock market, there is a pretty robust backup system called “clearing.” As soon as we agree on a trade, it gets submitted to a clearinghouse, the Depository Trust & Clearing Corp. DTCC becomes our counterparty: I owe the money to DTCC, and DTCC owes it to you; you owe the stock to DTCC, and DTCC owes it to me. For the stock this works very well: DTCC holds all the stocks anyway, so transferring it from you to me just means updating DTCC’s own database. For the money there is more risk — if I don’t pay DTCC, someone still has to pay you — but the risk is pretty carefully managed. If I don’t pay DTCC, my broker (or its clearing broker) will have to pay, and DTCC takes collateral from brokers to make sure that they’ll be able to pay. (We once talked about how this got Robinhood Markets in trouble during the January 2021 meme-stock frenzy, when DTCC demanded a lot of collateral from Robinhood that it didn’t happen to have.)

There is a small weird technical problem: What if you and I agree on a trade, say at midnight, and we try to submit it to DTCC, but DTCC isn’t open? Well! DTCC can’t clear the trade — it can’t become our counterparty — until it opens and acknowledges the trade. What if something goes wrong at 2 a.m.? What if I message you and say “never mind, I’m fleeing the country with the money”? Does DTCC still owe you the money for your stock? It’s just a gap. Between midnight and when DTCC opens, there is a creepy residual credit exposure. Seems bad.

If we are trading in a dark pool run by a bank, I guess the bank takes the credit risk, but on a stock exchange it’s weirder. From a February New York Stock Exchange blog post:

We strongly believe exchanges should not match buyers and sellers when centralized clearing is not available because exchange clearing is fundamentally different than alternative trading systems (ATS) or other broker-to-broker clearing. When the clearing house (Depository Trust and Clearing Corporation or DTCC) is open, trades are submitted immediately, and counterparty risk is well defined. However, when DTCC is not open, the clearing firm absorbs counterparty risk. Clearing firms are specifically managed and regulated to serve this function; exchanges are not clearing firms and current market rules do not contemplate exchanges assuming counterparty risk by “holding” trades until the clearing house opens.

This is meaningful, even for small windows of time, as world events could create extreme volatility and volume. In such scenarios when the clearing house is closed, market participants trading on an exchange could have substantial exposure to an unknown counterparty, whereas on an ATS during such an event their exposure is to the ATS's clearing firm.

The obvious solution is: DTCC is in the first instance mostly a computer, so keep the computer open later. Bloomberg's Katherine Doherty reports:

The Depository Trust & Clearing Corp. will begin clearing equities trades 24 hours a day, five days a week by the second quarter of next year, the company said in a statement Tuesday. The move, which needs regulatory approval, will take place in phases over the coming months to support both off-exchange and on-exchange stock venues.

"As interest in near round-the-clock trading of US equities grows, we are meeting this demand by extending our clearing hours to support our clients and further strengthen the safety and soundness of the markets," Brian Steele, a managing director and president of clearing and securities services at DTCC, said in the statement.

I suppose if you agree on a trade on a stock exchange at midnight, the settlement risk is particularly acute. (What if your counterparty says "I was drunk, I don't want these shares"?) So you do want to make sure that it gets cleared immediately.

Self-perpetuating AI

A standard worry about artificial intelligence is that there will be an inflection point where AI models get better at making AI models than humans are. Right now, highly paid researchers at big AI firms build large language models that are pretty good at computer programming, but eventually the LLMs will be better at building LLMs than the human researchers are, and they will just build themselves into self-improving superintelligent AI models that enslave us all. Something to look forward to!

In the meantime, though, what happens when AI models get better at *selling AI models to enterprise customers* than human salespeople are? The Financial Times reports:

Artificial intelligence start-up Anthropic is preparing to release a range of new features focused on business users, pitching its AI models at enterprise over seeking mass market adoption. ...

Internally, the company has been testing a prototype which it plans to "commercialise" and build into Claude in the coming months.

The feature examines workers' calendars and prepares a report ahead of their meetings, analysing internal and external information about the client, such as who else they have met internally and previous notes about the company.

"Ideally, you're a salesperson who walks into every one of those meetings as prepared as possible, but they don't have time to do that report for every single company," [chief product officer Mike] Krieger said.

"That's a way in which the models do what they're really good at: go off and do asynchronous work, think about the problem, and then create something consumable. Hopefully, that will be an accelerant for our sales folks."

What if Claude is really really good at selling itself to business users? What if it is, like, unsettlingly good? What if every pitch is like "you should replace all of your executives with Claude and just let Claude take over your business," but written so hypnotically that every customer says yes? It seems unlikely. Still it feels very Silicon Valley to worry that AI will replace humans when it becomes better than humans at software design; what if really you should worry about AI getting better than humans at business-to-business sales?

Things happen

Morgan Stanley Went Big on DEI, and No One Is Happy About It. Google Agrees to Buy Cloud Security Firm Wiz for \$32 Billion. PepsiCo to Acquire Prebiotic Soda Brand Poppi for \$1.95 Billion. JPMorgan Stock Traders Reel In Windfall as Trump Whipsaws Market. Hedge-Fund Momentum Bets Crater All at Once in Volatile Markets. A Secret Mortgage Blacklist Is Leaving Homeowners Stuck With Unsellable Condos. Saudi Fund Broadens Cash Quest to Meet MBS' Spending Goals. Spain's Biggest Bank Is Making a Big Push in the U.S. Spanish defence champion accuses General Dynamics of 'destroying' arms maker in battle for control. Short sellers make \$16bn profit from Tesla's share price plunge. UBS Braces for Most Complex Phase of Credit Suisse Integration. "European credit markets are trading at a premium to the US for the first time in more than three years." Thames Water Says It's Been Assessing Six Equity Proposals. Forever 21 Files for Bankruptcy for Second Time in Six Years. San Francisco Giants Sells 10% Stake to Sixth Street Partners. How Bribes Helped a Crime Ring Steal Thousands of iPhones From Porches. Equities in Dallas.

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To contact the author of this story:

Matt Levine at mlevine51@bloomberg.net

To contact the editor responsible for this story:

Michael Newman at mnewman43@bloomberg.net

- 1. Technically it is still "MicroStrategy Incorporated d/b/a Strategy" but I guess we can call it Strategy.
- 2. The premium is still pretty big. As of Sunday, Strategy owned about 499,226 Bitcoins, worth about \$40.7 billion at today's Bitcoin price of around \$81,500. MicroStrategy's market capitalization as of yesterday's close was about \$76.6 billion; its enterprise value (including debt) reported on its website is \$83.8 billion, so still roughly a 100% premium to the value of its Bitcoins.
- 3. It seems — see page S-30 of the prospectus — to rank senior to the convertible preferred. Confusingly both the perpetual strike and perpetual strike preferreds are called "Series A."
- 4. The threshold is not \$25.8 million, because your actual prize is significantly haircut by (1) taxes on your winnings and (2) the fact that those jackpot numbers refer to the total undiscounted cash flows on some

annuity prize, and taking the prize as a lump sum gets you much less. Here's an analysis finding that the expected value of a \$71 million jackpot is about \$29 million.

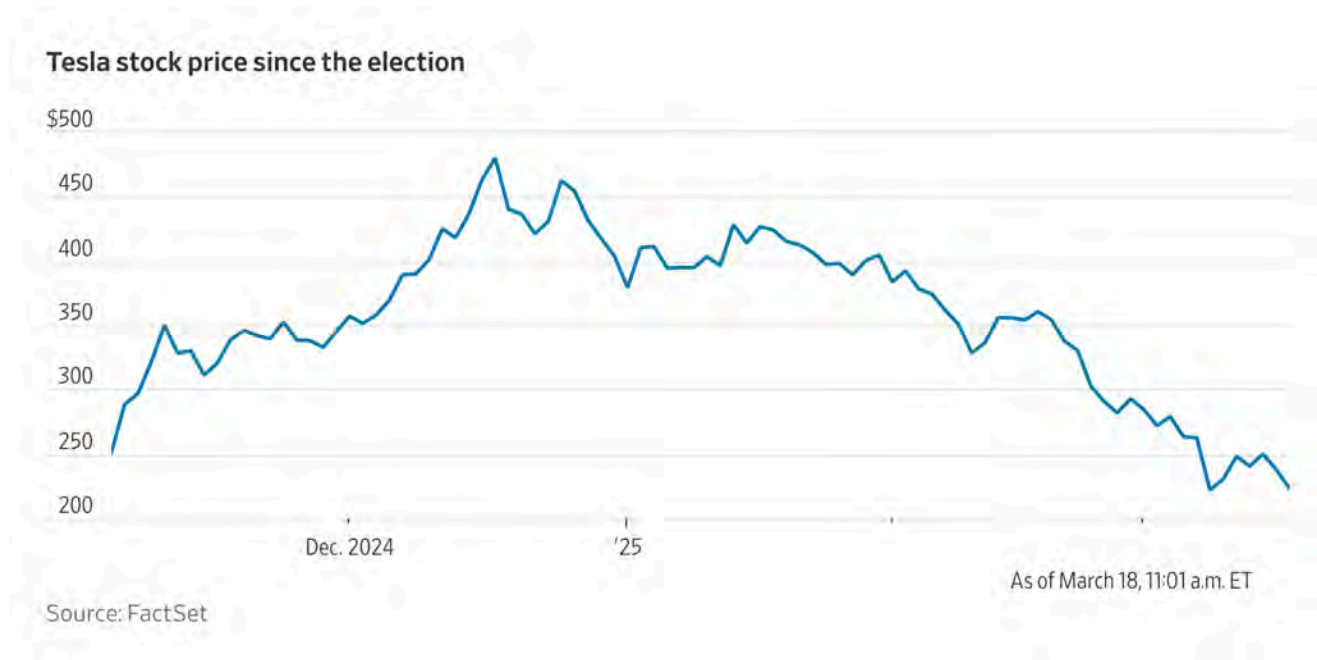
- 5. Their ticket purchases will increase the jackpot, but not by nearly the amount of their purchases; the states take a big cut.
- 6. Mostly? It does *kind of* feel like a Jane Street trade, but the risk of splitting the jackpot is real.
- 7. Depends on your actual rules: If the rule is "spend 10% to buy tickets every time the Powerball hits \$584 million," that's actually a negative-expected-value bet due to taxes and lump-sum discounts, but if it's "spend 10% to buy tickets every time the Powerball hits \$1.5 billion" then buying all the tickets is rare but probably returns more than 10%. (Again, ignoring multiple winners, which you shouldn't.)
- 8. Blockchain solves this, lol.
- 9. DTCC has various entities that do various things, with the counterparty risk stuff being in the National Securities Clearing Corp., but I won't bother with the distinctions.

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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)



Updated 36 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 closed 5.3% lower at \$225.31, 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.

FT Alphaville Tesla Inc

\$1.4bn is a lot to fall through the cracks, even for Tesla

When money spent on assets doesn't result in assets



© REUTERS

Dan McCrum in London and **Stephen Morris** in San Francisco

Published 4 HOURS AGO



As Tesla's car [sales](#) and [share price](#) plummet in response to Elon Musk's [political](#) and [physical](#) stances, we would like to draw readers' attention to something puzzling in the group's accounts.

Compare Tesla's capital expenditure in the last six months of 2024 to its valuation of the assets that money was spent on, and \$1.4bn appears to have gone astray.

The sum is big enough to matter even at Tesla, and comes at a moment when attention is returning to the group's [underlying numbers](#), now that its fully diluted stock market valuation has crashed from \$1.7tn to below \$800bn.

A closer look at Tesla's cash flow statement may also prompt investors to ask other questions, such as why a business with a \$37bn cash pile raised \$6bn of new debt last year?

First, consider the apparent anomaly. Tesla is investing heavily, particularly in AI infrastructure. It intends to spend at least \$11bn in each of the next few years, aiming to take advantage of opportunities in robots, computing and batteries.

Looking at last year, in the third and fourth quarter combined, Tesla spent \$6.3bn on “purchases of property and equipment excluding finance leases, net of sales” according to its cashflow statements.

Over on the balance sheet, however, the gross value of property, plant and equipment rose by only \$4.9bn in that period, to \$51bn. Note seven to the financial statements has the breakdown:

Note 7 – Property, Plant and Equipment, Net
Our property, plant and equipment, net, consisted of the following (in millions):

	December 31, 2024	December 31, 2023
Machinery, equipment, vehicles and office furniture	\$ 18,339	\$ 16,309
Land and buildings	10,677	9,498
AI infrastructure	5,152	1,510
Tooling	3,883	3,129
Leasehold improvements	3,688	3,136
Computer equipment, hardware and software	2,902	2,409
Construction in progress	6,783	5,791
	51,424	41,782
Less: Accumulated depreciation	(15,588)	(12,057)
Total	\$ 35,836	\$ 29,725

(Edited to fit on page, zoomable fuller version [here](#).)

We’d expect the numbers to tally. General Motors, for instance, spent \$30bn on capex over the past three years, disposed of \$14bn of assets, and so reported a \$16bn rise in the gross value of property, plant & equipment to \$88.7bn at the end of last year.

Luzi Hail, professor of accounting at the Wharton School, told us:

“

The reasons for why the reported numbers will not fully add up in most cases is that we only see the net changes in these accounts (i.e., PP&E and the associated Accumulated Depreciation accounts) but do not have all the detailed transactions that were going on. Maybe they sold off some PP&E and we do not know what the net book value (the respective gross amounts) were. Other things that will make an exact reconciliation impossible are M&A transactions and foreign currency transactions. So, in most cases, the capex number will give you a good approximation for the increase in gross PP&E but there could be other reasons going on for why in a particular case this might not be the case.

Tesla reports the gross figures and the accumulated depreciation, so we can see how the net figure is arrived at. It didn't disclose any sales or "material" asset impairments that would account for the missing \$1.4bn, and we're sure auditors [PWC](#) would be alive to the important signal such declarations of mal-investment would send.

Foreign exchange seems unlikely to explain the gap either. Tesla makes cars in the US, China, and Germany, and while the euro did weaken against the dollar in the periods, four-fifths of Tesla's "long-lived assets" are in America. See note 17, for those reading along:

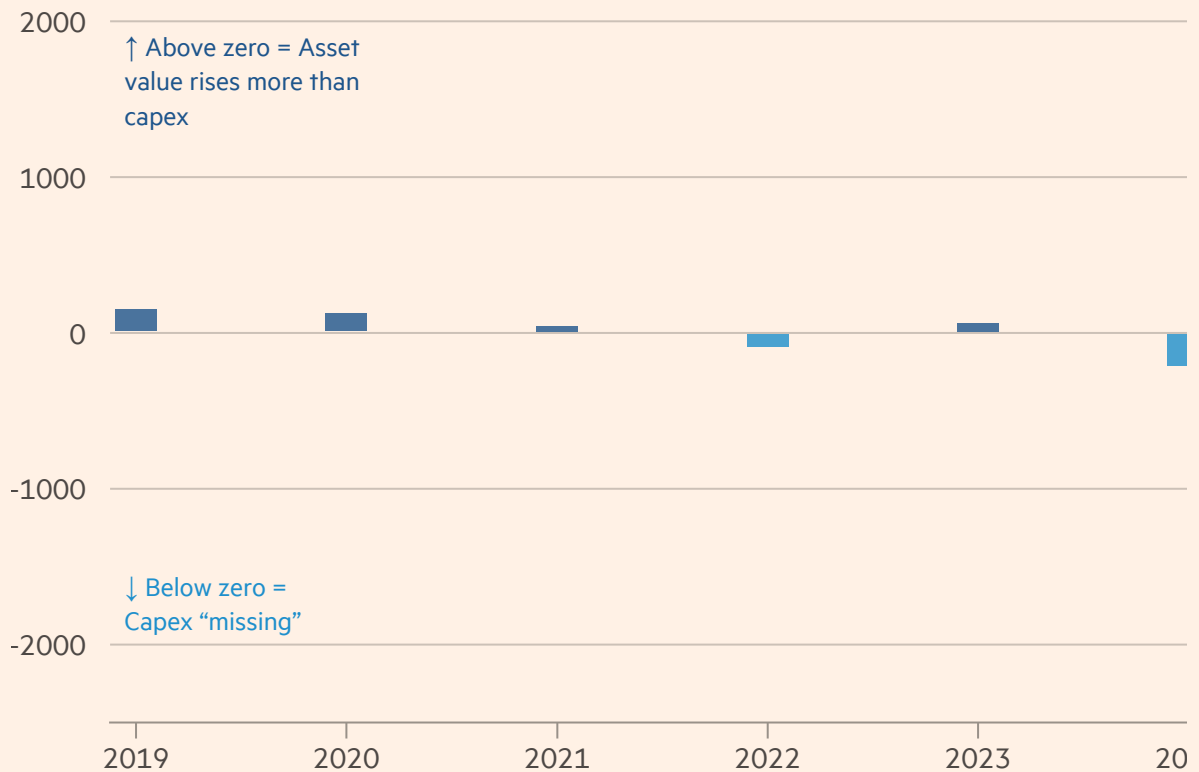


(Edited to fit on page, fuller zoomable version [here](#).)

Tesla's gap is also unusual by its own standards. Here's a chart of capital expenditure on PP&E vs the change in gross value of those assets for every quarter since the start of 2019:

A hard asset question at Tesla

Comparing capex on PP&E with the gross increase in value of PP&E, quarterly \$m



FINANCIAL TIMES

Source: Company filings, FTAV research

A positive number indicates that the balance sheet value of assets rose by more than capex. Aside from 2021, when there was a \$1.3bn rise in the value of the assets, the variance has tended to even out and has not approached the scale of the last quarter.

Such anomalies can be red flags, potentially indicative of weak internal controls. Aggressive classification of operating expenses as investment can be used to artificially boost reported profits.

Tesla did not respond to requests for comment.

Perhaps the assets will show up next quarter. It's also possible the recent [presidential endorsement](#) will boost sales, and that some would-be buyers are waiting for an [updated](#) Model Y to hit showrooms.

If not, the question of what Tesla is doing with its cash, and where the money is held, may become more pertinent.

Last year the group generated \$15bn of operating cashflow. It invested \$11bn into its businesses, and didn't pay a dividend or buy back shares with its large cash pile (putting Tesla in a [very select club](#) of large companies that do not, along with mysterious Temu owner [PDD](#)).

Yet Tesla also raised a net \$3.9bn in new finance, on top of the \$2.6bn raised in 2023.

A combination of excess cash flow and ongoing capital raising is another red flag that can signal accounting misstatements. Jacek Welc, professor of corporate finance at the SRH Berlin University of Applied Sciences, has examined 17 such examples including Germany's [Wirecard](#), the US-listed but Chinese-based [Longtop Financial Technologies](#), and the FTSE-listed hospital chain [NMC Health](#).

He says in those cases "allegedly healthy (but in reality inflated) operating cash flows tend to be matched by significantly positive financing cash flows (and a seeming "cash cow" appears to require large amounts of new debt and/or new equity financing)."

Tesla may of course be [opportunistically](#) managing its balance sheet, given its plans for substantial further capital investment.

The group sometimes has to manage short-term cash needs. Last year rising inventories soaked up \$1.5bn in the [first quarter](#). With thieves now [targeting](#) car parks holding spare vehicles and dealerships attracting [protests](#), this year's figure could be significantly higher.

Related links:

- [What is cockroach theory?](#) (Investopedia)
- [Tesla's departure from reality, in one chart](#) (FTAV)
- [Tesla is nuts, will it ever crash?](#) (FTAV, 2020)

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BYD Fast Charger Cemented China's Lead on Tesla

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By Liam Denning

(Bloomberg Opinion) --



In the driver's seat.

Photographer: Hector Retamal/AFP

Sometimes a chart is just a chart. Sometimes, when you're looking at Tesla Inc. and BYD Co. Ltd. in early 2025, it's a striking squiggly metaphor.



Tesla, the biggest US electric vehicle maker, has shocked the world this year with its overt politicization and slumping sales and stock price. BYD, its great Chinese rival, just shocked the world by announcing its newest model can recharge in five minutes. The symbolism, capturing the lead that China has taken in EVs compared with a US still fighting with itself about the relative wokeness of EVs, could hardly be clearer.

BYD's boast of adding 400 kilometers (248 miles) of range to new vehicles sporting its Super-e Platform in as little as five minutes should be treated with the same caution advisable with any auto announcement. Delivering peak power of 1 megawatt would be unprecedented for passenger EVs and raises questions about the longevity of the battery and the cost of building that level of charger, including associated upgrades to the grid. On the other hand, this is no start-up scouting for funding but rather the biggest EV maker in the world, including plug-in hybrids.

Incredibly, first deliveries of BYD's new vehicles capable of this "flash" charging are reportedly due as soon as April, which would count as flash deployment. Taken together, this would be game-changing — and not in a good way for Tesla or the rest of the US automakers.

Charging an EV in a time comparable with that of visiting a gas-station would kick away an important obstacle to drivers making the switch from internal combustion engines. Not only does fast-charging dispense with having to think about how you will occupy yourself while the battery refills, it addresses range anxiety, too. If charging is as convenient as filling up,

there's even less reason to worry about getting stranded and, therefore, pay up for an oversized battery — which also has implications for critical minerals demand. BYD says it will build 4,000 megawatt-capable chargers across China.

Delivering this, and quickly, would cement China's lead in an EV industry that had its breakout moment in the Bay Area when Tesla launched the Model S sedan a little over a decade ago. That Musk felt compelled to stage a bizarre event at the White House last week with President Donald Trump, who is no fan of EVs, apparently buying a Model S to show support says a lot about where innovation can be found these days.

Musk's politicking damages Tesla's brand, but the underlying problem is its relatively old line-up of models even as competitors release new ones. While Tesla abandoned plans for a cheap EV, instead launching the Cybertruck priced at six figures, BYD and its competitors churned out an array of models going for less than \$30,000. As much as Tesla's stock has fallen, it remains expensive at 84 times forward earnings, four times higher than BYD's multiple. Tesla's premium is now justified less by promises of growing EV sales and more by expansive, but elusive, visions of robotaxis and robots. BYD has also clouded that by releasing an advanced driver assistance system across most of its range as standard. Tesla's, albeit more sophisticated technology, costs thousands of dollars extra for customers.

The challenge extends beyond Tesla, though. I wrote here that Big Auto as a whole faces a "made in China crisis," and BYD's announcement is a flashing warning of that. Perfecting flash-charging could not only accelerate EV sales in BYD's domestic market — where two out of every three EVs are sold already — but also provide another powerful vector for Chinese auto companies to compete in or dominate markets overseas.

The US has its tariffs to keep Chinese technology out, of course. Yet, these leave US drivers underserved with EVs now accounting for all the growth in global auto sales, benefiting from falling battery prices and offering unquestionable advantages in efficiency and emissions. It is hard to see how better, more innovative EVs can be kept out forever. Moreover, Trump's taste for tariffs is expansive and his threats against Canada and Mexico promise severe disruption for the likes of General Motors Co. and Ford Motor Co. Protectionism for Detroit encourages its reliance on high-priced trucks in its home market and stifles the competitive dynamic required to innovate, all while potentially ripping up its carefully constructed North American supply chain.

The US industry that defined mobility for much of the 20th century sees its chance of doing the same in the 21st slipping away — and fast.

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To contact the author of this story:

Liam Denning at ldenning1@bloomberg.net

To contact the editor responsible for this story:

Candice Zachariahs at czachariahs2@bloomberg.net

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Matthew Martin, Kurt Wagner and Devon Pendleton

Elon Musk Has Been Buying Up X Shares Near His Initial Purchase Price

Matthew Martin, Kurt Wagner and Devon Pendleton

Tue, March 18, 2025 at 12:15 p.m. PDT 3 min read

(Bloomberg) -- Elon Musk invested \$150 million to acquire more shares in X last year at a valuation approaching the price he paid for the company's equity in 2022.

Musk, who's the majority shareholder of the company, has also "expressed willingness" to buy more minority stakes at the same valuation, according to Kingdom Holding Co.'s 2024 annual report. The Saudi investment firm has been a shareholder of X since 2011, when it was still known as Twitter.

The report didn't reference Musk or X by name, but a person with knowledge of the investment, who asked not to be named discussing private information, confirmed the report was referring to X.

Kingdom stated that the majority shareholder of "a privately held social media services company" recently invested at a transaction price equal to the carrying value of the investment on Kingdom's balance sheet. As of Dec. 31, the firm valued its investment in X at 985 million riyals (\$262.7 million), implying a net valuation for all of X of about \$29.2 billion — close to what Musk and other investors paid for Twitter's equity in October 2022. The company also had \$13 billion in debt.

Musk, the world's richest person with a net worth of \$311.9 billion, owned almost 74% of X as of October 2023, according to an ownership chart submitted to state regulators in Nebraska. The transaction last year hasn't previously been reported.

Kingdom, along with its founder Prince Alwaleed bin Talal Al Saud, is among X's largest minority shareholders.

Musk and Kingdom Holding didn't immediately respond to a request for comment.

X's business has struggled for much of Musk's tenure as owner. Many advertisers fled the service, or paused their spending, shortly after his takeover for fear that their sponsored messages may appear alongside inappropriate content. Fidelity Investments had marked down X's value by 68% as of January.

Musk has since gone to war with marketers to try and bring them back. The company is suing several major brands, alleging that their decision to withhold advertising spending from the social network amounts to anti-competitive behavior.

Some advertisers have started to return, though the threat of legal action has been a topic of conversation among those in the advertising industry, Bloomberg News has reported. Musk's powerful role within the Trump administration has also been a factor for some marketers.

Litigation

March 19, 2025, 2:00 AM PDT

SEC Enforcement Director Loses Obama-Era Subpoena Authority

Deep Dive

- **Commissioners will now have more enforcement control**
- **Agency delegated formal subpoena order authority in 2009**

The Securities and Exchange Commission's top brass will exercise stricter control over investigations into US public companies as the Trump administration rolls back a 2009 policy that delegated subpoena power to the securities cop's enforcement chief.

In a final rule adopted last week, the SEC removed its enforcement director's authority to issue formal orders of investigation that enabled staff members to slap subpoenas on companies and individuals under investigation. Moving forward, those orders will require a commissioner's blessing.

"The Commission, by removing sub-delegated and delegated authority, does get earlier insight into what types of investigations are being conducted and early ability to weigh in on whether formal order authority should be granted," said Akita Adkins, of counsel at Steptoe LLP and a former senior counsel in the SEC's enforcement division.

The SEC rule change comes after Mark Uyeda—the agency's acting chairman—asked enforcement staff members earlier this year to declare that a case against multibillionaire Elon Musk over his acquisition of Twitter wasn't motivated by politics, as reported by Bloomberg News.

Musk, whose Department of Government Efficiency is now looking for ways to slash the SEC, accused the agency under the Biden administration of using its subpoena power to "harass" him.

The SEC had authorized the enforcement director to approve subpoena orders as part of a broader shakeup in 2009, after the agency failed to prevent Bernie Madoff's Ponzi scheme and faced broader charges of acting sluggishly.

"The Division of Enforcement operated for 40 years without delegated authority," an SEC spokesman said in an email. "We are returning to how the Division operated for most of its existence, ensuring the Commission has the utmost insight into the cases we bring throughout the process."

SEC staff members who handle investigations will still be able to seek voluntary testimony from regulated entities under the new rule, published March 14 without public comment. Companies and individuals are unlikely to object to such requests, given the lingering possibility of a subpoena and such incentives as cooperation credits.

"I do think there is a change in terms of whose desk it lands on, but there is still a requirement that the staff, in seeking a formal order, write a memo detailing the reasons for seeking formal order authority and the alleged violations of federal securities laws they believed to have occurred," Adkins said.

'Tightening the Reins'

The final rule cited the SEC's experience with nonpublic investigations as context for deleting the delegated formal order authority, reversing course on who can empower staff to subpoena witnesses or compel the production of certain information from regulated entities.

"The commission's decision to revoke delegated authority appears to reflect a desire for it to be more involved in the allocation of resources by the enforcement division," said Steven Peikin, a partner at Sullivan & Cromwell LLP and former co-director of the division.

"For the past 15 years, the delegation of authority reflected a general deference to the staff's decision of what matters to investigate," Peikin said. "This change reflects a move in the other direction."

Reverting to the pre-2009 norm underscores Uyeda's aim to focus commissioner oversight more keenly on investigations that may require subpoenas for certain information, while others will continue to rely on voluntary participation.

"They've been very focused on improving capital-raising and making the public markets more attractive, and one piece of that is reassuring companies that they won't be penalized for inadvertent disclosure missteps," said Liz Dunshee, a shareholder at Fredrikson & Byron PA who focuses on securities law compliance. "Tightening the reins around when a formal investigation is launched probably fits into that overall objective."

The SEC under Trump-appointed leadership is widely expected to target traditional fraud rather than disclosure-based infractions, setting itself apart from Biden-era Chair Gary Gensler and perceptions he was too aggressive cracking down on climate and other disclosures.

Stripping the enforcement director of the delegated order authority may have the unintended consequence of shifting more investigations toward regulated entities that are already required by the SEC to respond to information requests, according to Melissa Hodgman, a partner at Freshfields LLP and former associate director in the SEC's enforcement division.

But SEC probes can also accomplish a lot informally without an order, she noted.

"Gary and the commission already took formal order authority off the plates of the associate directors, so it had already been pulled to the director level," she said. "My teams and I did investigations soup to nuts without getting a formal order."

Shifting Perception

The new administration has taken several steps to set itself apart from Gensler-era priorities and processes, such as refashioning a unit formerly focused on crypto enforcement actions to a smaller outfit for cyber-related fraud.

"There was a perception during the time that Gary Gensler was chairing the SEC that companies were facing a lot more investigative scrutiny and having to respond to onerous requests based on what some people might call foot-faults," Dunshee said. "It's reasonable to think that under the current leadership that they don't want companies to have that perception."

Those that do hear from the SEC will likely continue to comply and cooperate with informal requests from agency staff members, even without a formal investigation or subpoena, securities lawyers said.

Regulated entities may also welcome the shift as part of a broader move away from disclosure-based enforcement.

"That's what people are expecting, that there will be fewer enforcement actions downstream," Dunshee said. "With delegated authority it could just be a few days for the enforcement director to sign off on it, but seeking formal authority will take longer."

To contact the reporter on this story: Ben Miller in New York at bmiller2@bloombergindustry.com

To contact the editors responsible for this story: Michael Smallberg at msmallberg@bloombergindustry.com; Rob Tricchinelli at rtricchinelli@bloombergindustry.com

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Former Wirecard CEO Joins Advisory Group for US Audit Watchdog

The former Wirecard executive who unraveled the massive fraud that toppled the payments processor will join a group of corporate governance and investment professionals who advise the US audit regulator.

James Freis is among a slate of new members picked to serve on the largest advisory group to the Public Company Accounting Oversight Board, the Enron-era regulator tasked with overseeing US auditors. He previously led the Treasury Department's Financial Crimes Enforcement Network and now runs his own advisory firm, Market Integrity Solutions.

The board's standards and emerging issues group includes investment managers, academics, and representatives of the Big Four accounting firms. Other new members announced Tuesday include:

- Stephen Rivera, vice president of global technical accounting advisory services and policy at Johnson & Johnson
- Steven Lipiner, an independent board trustee for PIMCO Mutual Funds and the former chief operating officer and chief financial officer of State Street Global Advisors
- Robert Hirth, a consultant at Protiviti, former chair of the Committee of Sponsoring Organizations of the Treadway Commission and a former member of the Sustainability Accounting Standards Board

Freis joined Wirecard as the company's compliance officer in June 2020. He learned of the company's revenue and asset fraud on his first day and informed the company's corporate directors, who named him interim CEO. The company admitted that roughly \$2 billion in listed assets likely didn't exist, filing for insolvency days later.

Wirecard auditor Ernst & Young faces ongoing civil suits and was barred from accepting new audit clients for two years by the German audit watchdog.

The PCAOB also named members to its investor advisory group.

To contact the reporter on this story: Amanda Iacone in Washington at aiacone@bloombergtax.com

To contact the editors responsible for this story: Amelia Gruber Cohn at agrubercohn@bloombergindustry.com; Kathy Larsen at klarsen@bloombergindustry.com

DOGE Member Stanley Named to Fannie Mae Board Amid Shakeup (1)

Mortgage giant Fannie Mae has added Christopher Stanley, a cybersecurity engineer at SpaceX and social media platform X — who is also involved with the Department of Government Efficiency — to its board of directors, the latest sign of how Elon Musk's allies are embedding into the federal government.

The appointment, detailed in a regulatory filing on Monday, lists a series of changes at Fannie, including adding Stanley to the board alongside newly confirmed Federal Housing Finance Agency director **Bill Pulte** and the FHFA's general counsel Clinton Jones.

The board shakeup comes days after Pulte was confirmed to his post to lead the FHFA, the agency that sits at the crux of the US housing market, with oversight of Fannie and Freddie Mac.



Bill Pulte

Photographer: Al Drago/Bloomberg

The appointment gives a key Musk ally a high-ranking role in overseeing the future of an entity that has been under government supervision since the 2008 financial crisis. Investors have pushed the Trump administration to release Fannie and Freddie from government conservatorship, a move that has the potential to net hedge funds billions.

In addition to having sway over the government-sponsored entity, Stanley also has the potential to access Fannie's home-lending data as a member of its board. DOGE, Musk's federal cost-cutting effort, has burrowed into agencies across the government bureaucracy, calling for staff cuts and terminating contracts.

Musk's team has also sought access to valuable databases, including the Treasury's payment system and Social Security files, moves that have raised alarms from Democrats and federal officials who say the billionaire entrepreneur has access to information that could benefit his web of businesses.

Stanley will be compensated for his role on the board, Monday's disclosure said. Non-management directors receive annual cash compensation of \$160,000, according to an SEC filing.

Pulte, a self-proclaimed online philanthropist also has ties to Musk — he is an active user of X and disclosed a small investment in the social media site.

He is the grandson and namesake of the homebuilder Bill Pulte, who expanded PulteGroup Inc. into one of the largest US homebuilders. The younger Pulte previously served on PulteGroup's board. He's more recently feuded with company management, and is better known for his online activities, where he rose to fame by giving cash to social media followers to help them pay for medical bills, rent and other expenses.

Earlier: FHFA Nominee Bill Pulte Reveals GameStop Profits, MrBeast Stake

Pulte has already suggested he could shake up operations at the FHFA, posting on social media last week that Fannie and Freddie make more than \$30 billion per year.

"The Fannie & Freddie Management Teams and I will immediately review their 2025 budgets (like business does!) to help restore the American Dream for Americans who have been crushed these last 4 years," he said on X.

Pulte also told Fox News in an interview Monday evening that he plans to push for more workers to return to the office, saying that a very low number of the 2,900 employees based at one Fannie Mae location were showing up every day.

(Updates with Pulte comments in the final paragraph)

--With assistance from **Saleha Mohsin**.

Apollo Again Escapes Harbinger's Fraud Claims in \$2 Billion Deal

- Harbinger didn't bring its claims in a reasonable timeframe
- Company should have investigated fraud sooner, court says

Apollo Global Management LLC again shed fraud claims after a New York appellate court on Tuesday found Harbinger Capital Partners II LP failed to sue within the six-year statute of limitations.

Apollo showed that Harbinger, which sued Apollo for fraud in 2017, was on notice in 2011 that it had been defrauded, the New York Supreme Court First Appellate Department wrote in its ruling affirming a May 2023 lower court decision dismissing Harbinger's lawsuit.

Harbinger didn't meet its "burden of showing that, even if they had exercised reasonable diligence, they could not have discovered the basis for their claims" within the two-year window in which they were required to sue after finding out about the alleged fraud, the court said in its unsigned opinion.

The company claimed it was fraudulently induced to purchase for \$2 billion Apollo's controlling stock interest in SkyTerra Networks LLC—later known as LightSquared Inc.—which at the time was in the middle of developing a telecommunications network. The lawsuit says Apollo concealed from Harbinger and the Federal Communications Commission that LightSquared's network wouldn't work because it would interfere with GPS devices critical to national security.

Harbinger argued it wasn't on notice of the fraud until 2015, despite emails from 2011 that indicate the company's CEO Phil Falcone was at least suspicious of potential fraud. During oral arguments in February, judges pointed to one email in particular in which Falcone said he was being told to sue LightSquared for fraud and asked LightSquared's then-CEO whether he should listen to that advice.

The company failed to meet the two-year window where it could "with reasonable diligence have discovered the alleged misconduct," the court said, and the company offered "no real 'explanation why [they] could not have performed that investigation earlier.'".

The decision also upholds dismissal of Harbinger's claims against Rajendra Singh, who was a LightSquared investor and technical consultant for a limited period of time, and CCTV One Four Holdings LLC—a company that sold Harbinger wireless spectrum that could only be used with LightSquared's spectrum but that Harbinger concedes wasn't involved in LightSquared.

O'Melveny & Myers LLP represents Apollo Global. Walden Macht Haran & Williams LLP represents CCTV One and Singh.

The case is Harbinger Cap. Partners II LP v. Apollo Glob. Mgmt. LLC , N.Y. App. Div., 1st Dep't, No. 2023-03932, 3/18/25 .

To contact the reporter on this story: Beth Wang in New York City at bwang@bloombergindustry.com

To contact the editor responsible for this story: Alex Clearfield at aclearfield@bloombergindustry.com

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Gap Flags DEI Scrutiny as New Risk Factor in Shareholder Report

- Gap is the latest business to point to diversity pressures
- The retailer also highlighted “inclusion” and “belonging”

The Gap, Inc. told investors on Tuesday that heightened scrutiny of corporate diversity, equity and inclusion initiatives posed a risk to its business.

In its 10-K annual report, the clothing giant pointed to mounting attention on DEI, adding that “negative perception of our diversity, equity, and inclusion initiatives, whether due to perceived over or under pursuit of such initiatives, may likewise result in criticism as well as potential litigation or other adverse impacts.”

The retail chain also joined dozens of companies in shifting how it refers to diversity in its annual report, using “inclusion and belonging” instead of “diversity, equity and inclusion” in some sections of its report.

Gap did not immediately respond to a request for comment.

The change in rhetoric comes amid President Donald Trump’s directive for agencies to scour Corporate America’s diversity efforts in a quest to root out what his administration describes as illegal programs.

Even before the administration’s crackdown, a wave of companies had pointed to DEI in their annual reports last year as a risk factor amid mounting conservative attacks.

Gap also flagged the spate of new tariffs Trump has proposed on goods from China, Mexico and Canada as a possible risk to its supply chain. But it specified that less than 10% of its merchandise by dollar value was purchased from factories in China, and less than 1% was purchased from factories in Mexico and Canada combined.

To contact the reporter on this story: Clara Hudson in Washington at chudson@bloombergindustry.com

To contact the editors responsible for this story: Jeff Harrington at jharrington@bloombergindustry.com; David Jolly at djolly@bloombergindustry.com



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Trading Giant Virtu Must Face Suit Over Confidentiality Issues

By **Katryna Perera**

Law360 (March 18, 2025, 9:19 PM EDT) -- A New York federal judge has trimmed a consolidated class action accusing trading giant Virtu Financial Inc. of misleading investors on issues around access to confidential customer trading information, finding that one category of statements in the complaint is not actionable but otherwise allowing the suit to proceed.

U.S. District Judge Nicholas G. Garaufis issued a **memorandum and order** on Monday stating that the suit's lead plaintiff, the City of Birmingham Retirement and Relief System, has adequately pleaded that the defendants made materially false and misleading statements with scienter as to all but one category of statements, which concerns Virtu's plans to enhance its safeguards to protect client information following an acquisition.

The operative complaint, filed in January, alleges that Virtu and the individual defendants failed to disclose to investors that it had improper safeguards in place and was not monitoring which of its employees were accessing the primary database containing sensitive trader information, known as the FS Database.

According to the order, "essentially anyone at Virtu, including its proprietary traders" could directly access this material non-public information from at least January 2018 through April 2019, and to do so, Virtu traders only needed to use a "widely known and frequently shared username and password."

The category of statements tossed by Judge Garaufis on Monday is identified as "Category 3" in the complaint and order, and he dismissed the category for mainly containing forward-looking statements protected by the safe-harbor provision of the Private Securities Litigation Reform Act.

The judge said none of the forward-looking statements are accompanied by meaningful cautionary language but still concluded that the retirement system failed to properly plead that the defendants made the statements with knowledge of their falsity.

"Plaintiff only makes conclusory allegations that 'defendants knew' ... these allegations reflect recklessness ... that is not enough to adequately allege 'proof of knowing falsity,'" the order states. "Thus, plaintiff fails to adequately allege that the Category 3 statements are actionable."

Regarding the remaining four categories of statements, Judge Garaufis found them all to be material and actionable, and he also concluded that the retirement system adequately pleaded that the defendants were reckless when making them.

The judge pointed to the individual defendants' corporate positions, the specificity of the statements, and remarks made about the small size of Virtu as well-pleaded allegations of scienter.

"The court concludes that plaintiff's 'inference of scienter,' supported by circumstantial evidence of defendants' reckless failure to inform its investors about the FS Database issue, is 'cogent and at least as compelling as' defendants' opposing inference that they identified the FS Database issue, rectified it, and self-reported it to the SEC, while continuously updating the market on the fact of and substance of the resultant SEC investigation," the order states.

The amended complaint alleges that the FS Database issue started to come to light in 2018 when the

U.S. Securities and Exchange Commission **issued an order** against Investment Technology Group Inc., which Virtu planned to acquire, finding that ITG had failed to establish its own adequate safeguards to limit access to confidential trading information.

"This order 'raised concerns in the market about Virtu's ability to protect the sensitive trading information generated and/or maintained' in the FS Database," the order states.

The suit claims that to respond to these concerns, the defendants made several false and misleading statements regarding Virtu's own safeguards throughout the proposed class period, even though they knew or were recklessly disregarding the FS Database issues.

According to the order, the truth finally emerged in 2023, when Virtu disclosed that it "ha[d] been responding to requests for information from the [SEC] in connection with an investigation of aspects of [Virtu's] information access barriers."

The order states that following this disclosure and other information gradually revealed to investors, Virtu's stock price declined to "just over \$17 per share, more than 54% below the class period high."

In a statement to Law360 on Tuesday, Robert Gerson of Robbins Geller Rudman & Dowd LLP, counsel for the investors, said: "We appreciate the court's thoughtful analysis and look forward to commencing discovery and ultimately presenting our case to a jury."

Counsel for Virtu did not immediately respond to requests for comment on Tuesday.

The investors are represented by Samuel H. Rudman, David A. Rosenfeld, Mario Alba Jr., Robert D. Gerson and Magdalene Economou of Robbins Geller Rudman & Dowd LLP.

Virtu and the individual defendants are represented by Audra J. Soloway, Andrew G. Gordon and Kristina A. Bunting of Paul Weiss Rifkind Wharton & Garrison LLP.

The case is In re Virtu Financial Inc. Securities Litigation, case number 1:23-cv-03770, in the U.S. District Court for the Eastern District of New York.

--Editing by Vaqas Asghar.



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Emisphere, Novo Nordisk Sale Suit On Track For Settlement

By **Rae Ann Varona**

Law360 (March 18, 2025, 10:45 PM EDT) -- Former Emisphere Technologies Inc. stockholders are set to settle stockholder litigation over the \$1.8 billion sale of the biotechnology company to Novo Nordisk A/S, a Robbins Geller Rudman & Dowd LLP attorney informed Delaware's Chancery Court on Tuesday, saying a stipulation of settlement should be in next month.

Robbins Geller attorney Christopher H. Lyons said in a letter to Vice Chancellor Nathan A. Cook that the parties in the stockholder suit reached an "agreement in principle" to settle the action and that they won't require any new trial dates.

The attorney said the parties will quickly work to submit a stipulation of settlement and related documents by April 16.

The settlement agreement will resolve litigation seeking damages stemming from the \$1.8 billion merger of Emisphere Technologies Inc. and Danish multinational pharmaceutical Novo Nordisk that former Emisphere stockholders **allege** was made under terms that unfairly benefited the company's controlling investors.

Novo Nordisk completed its acquisition of Emisphere in December 2020 for nearly \$1.4 billion in cash, or roughly \$7.83 per share, according to a press release at the time. The two companies had long worked together on Emisphere's Eligen, which aids in drug delivery by facilitating enhanced oral absorption of molecules without changing their chemical form, biological integrity, or pharmacological properties, according to a November 2020 announcement of the acquisition. Novo Nordisk was using the drug delivery technology under license in its oral Type 2 diabetes drug, Rybelsus, the announcement stated.

The deal also saw Novo Nordisk paying \$450 million to acquire royalty stream obligations owed to affiliates of New York-based private equity outfit MHR Fund Management LLC, a backer of Emisphere, giving the merger agreement a total value of \$1.8 billion.

Several suits emerged from the merger, alleging that MHR captured control of Emisphere through predatory "vulture" lending practices dating back to 2005.

Suits alleged that a "number of irrational assumptions" that MHR interests injected into negotiations, including allegedly unsupported risks to Emisphere's intellectual property, had driven the acquisition price down.

A contentious battle to lead the suit ensued, with Vice Chancellor Joseph R. Slight III once giving counsel teams "subtle, but not so subtle" advice to try to **work together**.

In December 2021, Vice Chancellor Slight chose Robbins Geller and Friedlander & Gorris PA to steer the stockholder litigation and selected Johnson Fistel LLP as additional plaintiffs counsel. Vice Chancellor Slight also consolidated four suits to be led by plaintiffs represented by Robbins Geller and Friedlander & Gorris.

Vice Chancellor Slight's selection came despite contentions by other firms that one of the investor plaintiffs Robbins Geller and Friedlander & Gorris represented presented "serious conflict, typicality, and adequacy issues."

A separate lawsuit filed in the Chancery Court had accused that investor of breaching his fiduciary duties as a controlling stockholder and officer of Macrophage Therapeutics Inc. by allegedly causing Macrophage to transfer its intellectual property to a subsidiary exclusively in the stockholder's control. That case resulted in just **\$1 in damages**.

Vice Chancellor Slight said in his December 2021 order that concerns over the stockholder likely would have been disqualifying if the stockholder stood alone as a proposed lead plaintiff. The stockholder, however, was "just one of several stockholders" in the group of long-term stockholders.

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

The stockholders are represented by Joel Friedlander, Jeffrey M. Gorris, and David Hahn of Friedlander & Gorris PA, and Tayler D. Bolton and Christopher H. Lyons of Robbins Geller Rudman & Dowd LLP.

The MHR parties are represented by Blake Rohrbacher and Andrew L. Milam of Richards Layton & Finger PA.

The Emisphere parties are represented by Megan W. Cascio, Matthew R. Clark, and Rachel R. Tunney of Morris Nichols Arsht & Tunnell LLP.

The case is *In re Emisphere Technologies Inc. Stockholders Litigation*, case 2021-0025, in the Court of Chancery of the State of Delaware.

--Additional reporting by Jeff Montgomery and Rose Krebs. Editing by Linda Voorhis.

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Bancorp Downplayed CRE Bridge Loan Risks, Investor Claims

By **Isaac Monterose**

Law360 (March 18, 2025, 5:12 PM EDT) -- An investor in The Bancorp Inc. is accusing the financial holding company in Delaware federal court of causing stock value to decline by misleading investors, including by not fully disclosing how its commercial real estate bridge loans were in danger of defaulting.

In his proposed class action filed Friday, named plaintiff Nathan Linden alleges that investment research firm Culper Research put out a March 2024 report claiming that Bancorp downplayed the chances of its commercial real estate bridge loans, or REBLs, defaulting or causing losses.

According to the complaint, these loans mainly use apartment buildings as collateral.

"The report alleged the company's loan book is 'rife with unsophisticated syndicated borrowers' who were 'coaxed by promises of generational wealth through passive income' with 'get rich quick' promises," Linden's complaint asserts. "The report alleged that the company's REBL loan portfolio is filled with apartments which are 'quite literally, crumbling,' with high vacancies and multiple condemnations.

The report stated the company "blindly reassures investors that its book contains 'no substantial risk of default or loss,'" the complaint states, asserting that, "in reality, the company's 'REBL portfolio faces meaningful risks and will result in meaningful losses,'" the complaint adds.

According to Linden, when the report hit, the price of Bancorp's shares declined by 10.15% and closed at \$32.12 per share on a day that saw "unusually heavy trading volume."

When Bancorp put out its Q3 2024 financial results after the stock market closed on Oct. 24, 2024, the results showed that the company reported that it "only" made \$51.5 million in net income, Linden claims.

His complaint says Bancorp pointed to how it used its current expected credit losses methodology for analyzing its troubled commercial real estate bridge loans as the main reason for its reporting net income in that quarter.

Once this news landed, Bancorp's share prices declined the next day by 14.47% and closed at \$47.01 per share on a day that saw an unusual amount of trading, according to the complaint.

Several months later, on Mar. 4, Bancorp announced that it "inappropriately filed" an annual report for its fiscal year ending on Dec. 31, 2024, on its Form 10-K, according to Linden. The company also stated that the financial statements it put out from 2022 to 2024 were now unreliable, according to Linden's complaint.

"The company explained that its auditors for those years 'did not provide approval to include [the] audit opinion ... or [the] consent to the incorporation by reference of their audit report in certain registration statements,'" the complaint states.

"The company further revealed it is 'working expeditiously to perform and complete additional closing procedures related to accounting for consumer fintech loans in the allowance for credit losses' in order to file an amended annual report," the complaint also states.

According to Linden, this news caused Bancorp share prices to decline by 4.38% on Mar. 5, and the shares closed at \$51.25 per share on that day, which the complaint says had "unusually heavy trading volume."

The complaint states that Linden wants to represent investors who acquired Bancorp securities during a class period from Jan. 25, 2024, to March 4, 2025. According to Linden, the proposed class potentially has "at least hundreds or thousands of members."

Counsel for the proposed class didn't respond to requests for comment Tuesday. Nor did Bancorp, for which counsel information wasn't immediately available.

The proposed class is represented by Ryan M. Ernst of Bielli & Klauder LLC, Rebecca Dawson of Glancy Prongay & Murray LLP, and Howard G. Smith of Law Offices of Howard G. Smith.

The case is *Linden v. The Bancorp Inc. et al.*, case number 1:25-cv-00326, in the U.S. District Court for the District of Delaware.

--Editing by Amy French.

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PVC Pipe Giant's Top Brass Sued For Hiding Price-Fix Scheme

By **Lauraann Wood**

Law360 (March 18, 2025, 10:14 PM EDT) -- PVC pipe maker Atkore Inc.'s top executives and board members were hit with derivative claims Tuesday for allegedly shielding the company's participation in a pandemic-era price-fixing scheme, just days after investors sued the company and three executives for the same alleged conduct.

In his **complaint**, shareholder Mike Blatzer claimed Atkore CEO and president William Waltz Jr., financial chief John Deitzer and several other company leaders' illegal failure to disclose the company's anticompetitive conduct and its negative impacts has only harmed the business, which has suffered a plummeting stock value, legal costs and a blow to its reputation and goodwill.

The shareholders suits, **including the latest** filed Friday, claim Atkore conspired with competitors to inflate their PVC pipe prices while supply chain disruptions and spiking costs kept foreign manufacturers from entering the U.S. market during the COVID-19 pandemic. Atkore has also since revealed that the U.S. Department of Justice has opened a **grand jury investigation** into the company's PVC pipe manufacturing.

The price-fixing scheme allowed Atkore to experience "historic profits," with the company reporting \$913.4 million in net income in 2022 alone, according to Blatzer's suit.

PVC prices began to drop as supply-chain stresses began easing and foreign manufacturers began re-entering the market, according to Blatzer's suit. Despite this, Atkore's leaders "repeatedly assured investors that Atkore was on a path of continued success post-pandemic and that the PVC Pipe price drops were based on normal supply and demand competition," the shareholder claimed.

Company financials continued to seem positive until February 2024, when Atkore reported a 4.2% yearly revenue decrease attributed partly to "decreased average selling prices" across company products, Blatzer alleged. Former financial chief David Johnson also assured investors during a call that day that the decrease was normal and expected, stating it aligned with pricing trends company officials had discussed for several years, the shareholder claimed.

Atkore reported a double-digit financial decline in the second financial quarter of 2024, assuring investors again that it was the result of "expected pricing normalization," Blatzer alleged. Waltz also assured investors during an earnings call that day the company was operating within pricing expectations, and that the company had a price premium due to its "reputation," "quality" and "ability to ship," he claimed.

That July, a short seller issued a report asserting PVC pipe manufacturers were using a central data sharing service to illegally coordinate and fix their pricing, according to Blatzer's suit.

Atkore reported declining revenues again in August, the same day the company was named in several antitrust suits targeting its alleged conspiracy, Blatzer alleged. The company disclosed the suits in forms filed with the U.S. Securities Exchange Commission, stating it didn't believe the proceedings will have "a material adverse effect" on its financial condition but "cannot give assurance" that they won't materially affect its operations, the suit said.

Waltz continued to attribute financial declines to "pricing normalization" and other previous expectations as Atkore reported losses again in the fourth quarter of 2024. And in answering for

continued declines and decreased financial guidance in the first quarter of 2025, Waltz stated the company is facing challenges it hadn't anticipated while discussing normalized record profits in 2022, Blatzer alleged.

That news caused Atkore's stock price to fall 20% and close at \$64.13 on Feb. 4, the shareholder claimed.

The company has lost and expended millions of dollars because of its leaders' conduct, and it will continue to do so without court relief, Blatzer alleged. He's asking the court to award joint and several damages with interest, alongside punitive damages related costs and other relief deemed proper.

Blatzer is represented by Seth Rigrodsky, Vincent Licata and Leah Wihtelin of Rigrodsky Law PA and Carl Malmstrom of Wolf Haldenstein Alder Freeman & Herz LLC.

Counsel and contact information for the defendants couldn't be determined Tuesday.

The case is Mike Blatzer v. William E. Waltz Jr. et al., case number 1:25-cv-02833, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Bryan Koenig. Editing by Dave Trumbore.

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Citi, HSBC Ink \$12M Deal To End UK Bond Price-Fixing Suit

By **Gina Kim**

Law360 (March 18, 2025, 8:09 PM EDT) -- A New York federal judge gave his preliminary blessing Monday to a \$12 million settlement between investors and major financial institutions, including Citigroup and HSBC Bank, in a proposed antitrust class action accusing the banks' traders of colluding to fix the prices of U.K. government bonds through digital communications.

U.S. District Judge John G. Koeltl of the Southern District of New York **granted the preliminary approval motion** filed by Oklahoma Firefighters Pension and Retirement System on Jan. 22, which provided the monetary settlement and cooperation from the settling banks to turn over chatroom communications handed over to the U.K. Competition and Markets Authority.

The settling banks include Citigroup Global Markets Ltd., HSBC Bank PLC, RBC Europe and Morgan Stanley & Co. LLC. The defendant banks were **accused of scheming** to fix the price of British pound sterling denominated U.K. government bonds, also known as gilt bonds, which are issued by the British government to fund government programs and pay down debt, among other things.

The U.K. government sells gilt bonds on the primary market to major financial institutions, which then trades them on a secondary market. The investors, however, alleged that gilt bond traders who worked at the defendant banks schemed via online chatrooms to fix the so-called bid-ask spreads from 2009 to 2013.

According to the plaintiffs' preliminary approval motion, the settlement terms include a \$12 million fund as well as a non-monetary component of cooperation from the settling banks to turn over their traders' chatroom communications. The settlement class consists of all those who entered into Gilt Bond transactions in the U.S. from the four settling defendants between Jan. 1, 2009, to Dec. 31, 2013.

In his order Monday, Judge Koeltl wrote that class certification was appropriate for settlement purposes. The judge's order granting preliminary approval noted there were common legal and factual questions among the class and that the plaintiffs' counsel have and will continue to fairly and adequately protect their interests.

Monday's preliminary approval order is the latest development in a proposed class action that Oklahoma Firefighters Pension and Retirement System filed in June 2023, accusing five banks — Deutsche Bank AG, Citigroup Global Markets Inc., RBC Europe Ltd., HSBC Bank PLC and Morgan Stanley & Co LLC — and their related entities of scheming to fix U.K. bond prices.

According to the plaintiff's preliminary approval motion, Deutsche Bank is not a part of the group of settling defendants.

The plaintiffs' lawsuit cited a U.K. Competition and Markets Authority's **announcement** in May 2023 that said it had discovered that traders at those banks had unlawfully shared sensitive information with one another in alleged violation of U.K. competition laws, which could come with steep fines.

CMA said that Deutsche Bank first disclosed the alleged scheme to U.K. regulators in order to secure "provisional immunity" during the probe. Citibank also cooperated and applied for leniency.

The pension fund plaintiff alleged that the price fixing harmed investors, who have transacted billions

of dollars' worth of gilt bonds in the U.S., and the alleged collusion had led to lower gilt bond yield curves than they otherwise would have been without the alleged collusion.

In October, the plaintiffs filed their initial motion for preliminary approval, which didn't include a monetary settlement. Rather, the four settling banks agreed to produce chatroom logs and communications among the defendants for cooperation, upon entry of the court's order granting preliminary approval, the Oct. 31 motion said.

After the court held a conference on the matter on Jan. 8 regarding the initial settlement reached between the investors and the four settling banks, the parties had supplemental negotiations, which led to a monetary settlement as well. The plaintiffs filed another preliminary approval motion on Jan. 22.

There were significant risks facing the plaintiffs if they chose to proceed with litigation, the Jan. 22 motion said. The plaintiffs reiterated concerns from the court about the lack of chatroom or statistical evidence of parallel pricing that'd be indicative of an alleged conspiracy.

The plaintiffs also noted that the court agreed with the banks that the investors lacked antitrust standing, since they didn't reference any transaction in which they paid too much or received too little when it either sold or purchased a gilt with any of the bank defendants.

"Here, the cooperation and seven figure settlement fund 'confer real and substantial benefits upon the class,'" the Jan. 22 motion said. "Moreover, under joint and several liability, plaintiff can seek the full amount of damages on behalf of the class from the non-settling defendant, Deutsche Bank — and the stipulation ... specifically reserves this right."

According to the Jan. 22 motion for preliminary approval, class counsel said they don't intend to seek an attorney fee award from the settlement, and instead, only want reimbursement for certain litigation expenses that won't exceed \$500,000.

The settling banks have also agreed to fork over \$1 million to pay for settlement notice and administration costs, the plaintiffs said.

Plaintiffs' counsel Patrick Coughlin of Scott + Scott Attorneys at Law LLP told Law360 on Tuesday that the plaintiffs were ready to pursue liability against Deutsche Bank, the lone defendant left in the case.

"We're really excited to get the documents from overseas and finish up the case against Deutsche Bank," Coughlin said. "We have big pension funds in the U.S. that were hurt by this fraud."

Representatives for the defendant banks did not immediately respond to inquiries seeking comment Tuesday.

Oklahoma Firefighters Pension and Retirement System is represented by Patrick Coughlin, Carmen Medici, Fatima Brizuela, Patrick J. Rodriguez, Daniel J. Brockwell, John Smallwood, Kristen M. Anderson, Donald A. Broggi, Michelle E. Conston, David R. Scott and Amanda Lawrence of Scott + Scott Attorneys at Law LLP.

Citigroup Global Markets Inc. and Citigroup Global Markets Ltd. are represented by Boris Bershteyn, Lara A. Flath, Sam Auld and Zachary C. Siegler of Skadden Arps Slate Meagher & Flom LLP.

HSBC Bank PLC and HSBC Securities (USA) Inc. are represented by Katrina M. Robson, Wesley R. Powell and Matthew Freimuth Willkie Farr & Gallagher LLP.

Morgan Stanley & Co. International PLC and Morgan Stanley & Co. LLC are represented by Michael A. Paskin and Lauren M. Rosenberg of Cravath Swaine & Moore LLP.

RBC Europe Ltd. and RBC Capital Markets are represented by Alexander J. Willscher, Matthew J. Porpora and Jonathan S. Carter of Sullivan & Cromwell LLP.

Deutsche Bank AG is represented by John Terzaken and Avia Gridi of Simpson Thacher & Bartlett LLP.

The case is Oklahoma Firefighters Pension and Retirement System v. Deutsche Bank AG et al., case number 1:23-cv-05095, in the U.S. District Court for the Southern District of New York

--Additional reporting by Dorothy Atkins. Editing by Dave Trumbore.

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Crypto Firms Tied To Milei-Promoted Libra Token Face NY Suit

By **Aislinn Keely**

Law360 (March 18, 2025, 9:50 PM EDT) -- A trio of crypto firms linked to a token known as Libra face a proposed class action accusing them of fraudulently raising \$107 million from the controversial project, which was promoted by Argentine President Javier Milei prior to its collapse.

New York-based Libra buyer Omar Hurlock said in a complaint filed Monday evening that venture capital firm Kelsier Ventures, decentralized trading platform Meteora and blockchain infrastructure firm KIP Protocol represented the project as a potential boon to the Argentinian economy to "cultivate a veneer of legitimacy" while obscuring aspects of the token's launch that were "fundamentally unfair" to buyers.

The operators "siphoned approximately \$107 million" from the offering while buyers felt the fallout when the token's value tanked by 94% hours after launch, the suit filed in New York state court said.

"Defendants failed to inform potential purchasers about the true liquidity structures, insider control of token supply, and deliberate mechanisms that allowed insiders to monetize token holdings secretly," said the complaint. "Instead, defendants created a misleading narrative promoting the \$LIBRA token as a legitimate product intended to support economic growth in Argentina."

Hurlock argued the firms and individual executives also named in the suit violated New York's general business law, engaged in negligent misrepresentation and unjustly enriched themselves at the expense of a proposed class that could number in the hundreds.

Libra made headlines on Feb. 14 when Argentina's President Milei promoted the meme coin on multiple social media platforms minutes after its launch, endorsing it as a private initiative that aimed to stimulate the country's economic growth by funding small businesses and startups. Milei is not named as a defendant in the suit, but Hurlock argued the project used the political promotion to create "the appearance of legitimacy and significant investment value," which drove up the price.

But Hurlock claimed Kelsier Ventures, which allegedly minted the tokens, misled the public with a "tokenomics" breakdown of how certain swaths of the assets would be used, when in reality the firm held onto most of the supply thanks to an unusual distribution strategy made possible through the Meteora decentralized exchange. The suit also names Kelsier CEO Hayden Davis, Chief Operating Officer Gideon Davis and Chairman Thomas Davis, as well as Meteora founder Ben Chow and KIP Protocol CEO Julian Peh.

By holding on to the lion's share of the tokens, Kelsier and other insiders were able to inflate the initial price and leave buyers holding the bag when the value fell as they secretly exited their positions, Hurlock said.

"In sum, defendants' actions constituted a classic fraudulent scheme: they artificially inflated the token's value, publicly disseminated materially false and misleading claims regarding the token's economic purpose and management, and deliberately structured market liquidity to enable insiders to profit substantially at the expense of retail purchasers," said the suit.

Hurlock is seeking damages, disgorgement, an order barring the firms from future fraudulent token offerings and "the appointment of a receiver to protect the public and secure remaining investor assets" from the Libra project.

Kelsier Ventures, Meteora and KIP Protocol did not immediately respond to messages sent through public channels.

The suit is brought by Burwick Law, a firm that has taken to representing spurned buyers of crypto projects in recent months. The firm has brought suits against **meme coin platform** Pump.Fun, the alleged operators of the **Hawk Tuah** meme coin and **nonfungible token project** Game of Silks, among **others**.

In a statement to social media site X, plaintiff's counsel Max Burwick said the firm looks forward to pursuing potential recoveries for Libra buyers.

"We never undertake litigation lightly," Burwick said. "While these are only allegations at this stage, we believe it's important to shine a light on conduct that could harm retail purchasers."

Hurlock is represented by Max Burwick of Burwick Law PLLC.

Counsel information for the defendants was not immediately available on Tuesday.

The case is Omar Hurlock v. Kelsier Ventures et al., case number not yet available, in the Supreme Court of the State of New York, County of New York.

--Editing by Jay Jackson Jr.

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Drugmaker's \$10.5M Deal In Investor FDA Approval Suit OK'd

By **Sydney Price**

Law360 (March 18, 2025, 10:12 PM EDT) -- A California federal judge has preliminarily approved a \$10.5 million settlement between oncology drug company ImmunityBio and investors who claim they were misled over the likelihood the U.S. Food and Drug Administration would approve the company's bladder cancer drug.

According to the **order** U.S. District Judge Gonzalo P. Curiel signed Monday, the \$10.5 million settlement represents approximately 8% of the maximum recoverable \$130.6 million in alleged damages. The investors' counsel estimates a gross recovery of 9 cents per damaged share for each settlement class member.

The parties reached an agreement days after a full-day mediation session in December, according to the order.

"Based on the risks of litigation, plaintiff contends that the settlement provides adequate relief to the proposed class, especially considering the fact that lead plaintiff 'would need to secure certification of a liability class and prove — and, thus, defeat defendants' counterargument as to — falsity, scienter, loss causation, and damages,'" Judge Curiel said.

According to the order, lead counsel will request up to approximately one-third of the settlement fund in fees, which the court has deemed reasonable.

The complaint, which was most recently amended in November 2023, states ImmunityBio had no approved drugs and thus no source of meaningful revenues at the start of the class period in March 2021, and its lead product candidate was a bladder cancer treatment called Anktiva.

ImmunityBio and its executives represented to investors that Anktiva fully complied with the FDA's minimum standards for drug manufacturing, known as "current good manufacturing practices," despite knowing the facility used to manufacture Anktiva was "plagued" with issues.

The suit's individual defendants include Patrick Soon-Shiong, who is ImmunityBio's global chief scientific and medical officer and the owner of the Los Angeles Times.

For several months, the defendants concealed the "catastrophic" findings of a February 2023 FDA inspection, the suit alleged. The violations were so severe that the FDA ultimately recommended administrative or enforcement action to remedy the violations, according to the suit.

Investors began learning of the manufacturing issues in May 2023 when ImmunityBio announced the FDA rejected its application for Anktiva due to deficiencies arising from the pre-approval inspection at its third-party contract manufacturing organization, according to the complaint. Following the announcement, ImmunityBio's shares fell more than 55% in one day, the suit alleges.

This is the second suit against ImmunityBio over Anktiva. In October, plaintiff Gary Van Luven said in a **derivative lawsuit** that for more than two years, investors were unaware of the FDA's misgivings about the processes in use by the third-party contract manufacturing organization making active ingredients for Anktiva.

Van Luven alleged investors only found out about those concerns when the company was forced to

acknowledge them when it announced the FDA had rejected a biologics license application for Anktiva.

According to ImmunityBio's website, Anktiva received FDA approval to treat certain bladder cancer patients in April 2024.

Counsel for the parties did not respond to requests for comment on Tuesday.

The investors are represented by Jeremy A. Lieberman, Justin D. D'Aloia and Jennifer Pafiti of Pomerantz LLP, and Corey D. Holzer of Holzer & Holzer LLP.

ImmunityBio and the individual defendants are represented by Gregory L. Watts and Natalie J. Morgan of Wilson Sonsini Goodrich & Rosati PC.

The case is Salzman v. ImmunityBio Inc. et al., case number 3:23-cv-01216, in the U.S. District Court for the Southern District of California.

--Editing by Lakshna Mehta.

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Purdue Pharma Files New \$7.4B Ch. 11 Plan Settlement

By **Rick Archer**

Law360 (March 19, 2025, 10:21 AM EDT) -- Bankrupt OxyContin maker Purdue Pharma LP filed a new Chapter 11 plan in a New York bankruptcy court, including a \$6.5 billion payment from members of the Sackler family who own the company and \$900 million from the debtor, that aims to compensate thousands of creditors for damages from opioid sales.

In a statement, Purdue said the late Tuesday night filing, coming five and a half years after Purdue entered bankruptcy and nine months after the U.S. Supreme Court shot down the company's prior reorganization plan for releasing creditor claims against the Sacklers without consent, said under the new plan said creditors will be able to opt in to the releases and receive the settlement money or pursue their own claims against the Sacklers.

"Following the 2024 Supreme Court ruling, we doubled down on our commitment to work with our creditors to design a new Plan that delivers unprecedented value to those affected by the opioid crisis. Today's filing is a major milestone in that effort," Purdue board of directors chairman Steve Miller said in the statement.

Purdue entered bankruptcy in 2019 facing a storm of liability as critics said it was the culprit behind the U.S. opioid epidemic. The Stamford, Connecticut-based drugmaker faced claims it aggressively marketed OxyContin — one of the most recognizable brand names in opioids — while concealing how addictive it was. The company and its owners in the Sackler family were the subject of books, documentaries and two streaming series.

The company paid a \$634.5 million federal fine in 2007 to resolve accusations it had falsely claimed OxyContin was less addictive than other pain medications. More than a decade later, Purdue was facing bellwether trials in a 2,000-claim multidistrict litigation — claims other major defendants including Mallinckrodt and Endo Pharmaceuticals had settled — brought by local and state governments. Inside and outside the MDL it was facing claims filed by all 50 states and thousands of individuals alleging damages from OxyContin sales.

It was against that backdrop that Purdue announced in **September 2019** it had reached a deal with the MDL plaintiffs and 24 states under which it would file for bankruptcy and restructure as a public benefit trust, with profits from OxyContin sales going to pay for state and local opioid abatement programs. Its Sackler owners would pay a \$3 billion settlement and relinquish their ownership in exchange for liability releases.

The releases proved a major sticking point in the case, with the nonsettling states **arguing** that Sackler family members had transferred billions of dollars in company cash to themselves since 2007.

The courtroom in White Plains, New York, was regularly packed with overflow crowds who heard emotional speeches by individuals who had lost loved ones to opioids.

Following an increase of the Sackler settlement to \$4.5 billion and a 10-day trial, Purdue's plan and the Sackler releases were approved in September 2021 with a **six-hour bench** ruling by then-U.S. Bankruptcy Judge Robert Drain.

Purdue by that time had convinced 43 states, the unsecured creditors committee and groups

representing local governments, Native American tribes, personal injury claimants, hospitals and health insurers to support the plan, but the U.S. Trustee's Office and the remaining states appealed, arguing Judge Drain had no authority under the Bankruptcy Code to release claims against nonbankrupt parties like the Sacklers without the consent of the claimants.

After U.S. District Judge Colleen McMahon agreed and **unraveled the plan** in December 2021, an offer to up the Sackler settlement to \$6 billion peeled off the remaining state appellants, and in May 2023 the Second Circuit **reversed the district court** and found the releases were legal.

The U.S. Trustee, however, persisted to the Supreme Court, which in June **ruled 5-4** that the Bankruptcy Code does not allow involuntary third-party releases, undoing the Purdue plan once and for all and sending shock waves through the bankruptcy world as it barred what had become a common if contentious plan provision in mass tort bankruptcies.

Purdue, its creditors and the Sacklers **jumped into mediation** in July, and U.S. Bankruptcy Judge Sean H. Lane — who took over after Judge Drain retired — granted repeated extensions of an order blocking the resumption of litigation against the Sacklers. On Jan. 10, Purdue **reported** to the court that it had inked a new draft settlement, and on Jan. 23 a coalition of 15 states **announced** they had agreed in principle on a new plan that would increase the Sackler's payments to \$6.5 billion.

Under the settlement terms opioid claimants will have the choice of releasing their claims against the Sacklers in exchange for a share of the full \$7.4 billion settlement fund. Parties who don't release their Sackler claims will only be eligible for a share of the \$900 million contributed by Purdue itself, an arrangement Purdue says **sidesteps** the nonconsensual release issue.

Purdue is represented by Marshall S. Huebner, Benjamin S. Kaminetzky, Eli J. Vonnegut and Christopher S. Robertson of Davis Polk & Wardwell LLP.

The case is In re: Purdue Pharma LP, case number 7:19-bk-23649, in the U.S. Bankruptcy Court for the Southern District of New York.

--Editing by Alex Hubbard.



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Quaker Oats Beats Pesticide Suit As Judge Cites EPA Limits

By **Rachel Scharf**

Law360 (March 18, 2025, 11:35 PM EDT) -- An Illinois federal judge threw out a putative class action Tuesday accusing Quaker Oats Co. of misleadingly marketing its products as healthy despite the presence of pesticides, saying the chemical levels identified in the case are far below the limits set by the U.S. Environmental Protection Agency.

The **order** from U.S. District Judge Mary M. Rowland dismissed the class claims against Quaker with prejudice a little over a year after consumer Daniel Pepper **filed suit**. Pepper was later joined by two co-plaintiffs in alleging a peer-reviewed study by the nonprofit Environmental Working Group found dangerous levels of the pesticide chlormequat in Quaker's various oat products.

Judge Rowland said the consumers lack standing because the highest chlormequat level identified in this study is only 291 parts per billion — a trace amount that cannot be tied to an injury. The judge cited EPA standards setting the tolerance for chlormequat in imported oats at 40,000 parts per billion.

The proposed class had argued that the EPA standards cannot apply in this case because there's no evidence Quaker imports its oats. But Judge Rowland said this doesn't matter.

"Plaintiffs have not plausibly alleged that the EPA's regulations establishing safe levels of chlormequat in imported oats do not also apply to oats grown in the United States for the purposes of determining whether the level of chlormequat in a product is safe or unsafe," wrote the judge. "The EWG study, and testing conducted by plaintiffs' counsel, identified chlormequat in the products at an amount that is significantly below the tolerance level set by the EPA."

Judge Rowland noted that the chlormequat level from the EWG study is just 0.7% of the EPA's tolerance ceiling.

"As a result, the only reasonable inference is that whether the oats in the products were imported or grown in the United States, the levels of chlormequat in the products were safe," the judge wrote. "Because plaintiffs failed to allege an injury-in-fact, there is no Article III standing."

Tuesday's order dismissed the putative class action with prejudice, meaning the case is over for good.

Quaker's counsel declined to comment on the decision Tuesday. Lawyers for the proposed class did not immediately return a request for comment.

The proposed class is represented by Rebecca A. Peterson, Janine L. Pollack, David J. George, Lori G. Feldman and Brittany Sackrin of George Feldman McDonald PLLC.

Quaker is represented by Andrew S. Tulumello, Arianna Scavetti and Claire L. Chapla of Weil Gotshal & Manges LLP and Erik J. Ives of Fox Swibel Levin & Carroll LLP.

The case is Daniel Pepper et al. v. The Quaker Oats Co., case number 1:24-cv-02055, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Gina Kim. Editing by Michael Watanabe.



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Judge Probes Atty Conflict In Vanguard \$40M Settlement

By **Anna Scott Farrell**

Law360 (March 18, 2025, 4:54 PM EDT) -- A Pennsylvania federal judge questioned whether attorneys representing investors suing Vanguard over surprise tax bills have a conflict of interest in pushing for a \$40 million settlement, adding to concerns about a parallel regulatory settlement that has delayed approval of the deal.

In **an order Monday**, U.S. District Judge John F. Murphy asked the investors in the class action to address whether, under state ethics rules, there was a "significant risk" that they would be limited by their attorneys' personal interests.

The parties agreed during a hearing on March 11 that rejecting the proposed settlement would result in a larger recovery for the investors because Vanguard would be required to pay out the same amount under the terms of a January regulatory settlement with the U.S. Securities and Exchange Commission, the judge said.

Taking the payout through the SEC would allow the investors to divvy up the full \$40 million among themselves without paying the attorney fees, which are about a third of the pot, under the proposed settlement.

"We need reassurance that plaintiffs' counsel's role of advocating in favor of settlement is appropriate here," Judge Murphy said in the order.

The SEC's deal — which resulted from a multistate coalition led by Connecticut, New Jersey and New York — requires Vanguard to pay more than \$100 million to settle the same sorts of claims made by class members regarding an asset sell-off that stuck investors with unexpected capital gains tax. It includes a provision that the firm make good on its pending \$40 million for the class members, who at that time had an all-but-done deal. Judge Murphy had granted the settlement his **initial approval** in November.

Then, a month after the SEC deal, a Vanguard investor who is not one of the named plaintiffs and is an attorney at Milbank, wrote to the court in his personal capacity, urging it to kill the proposed settlement. The objector, John Hughes, said the proposal "epitomizes class action abuse," and guaranteed that Vanguard would pay the \$40 million, making the proposed deal of no benefit to the class.

During the March 11 hearing, Hughes, whose practice includes experience with class actions, said the proposed settlement actually strips value from the class "because nearly \$15 million in consideration that would otherwise flow to the class thanks to the efforts of government regulators gets diverted here to class counsel."

Hughes said attorneys for the class are accusing him of "trying to stiff them on fees," but they could negotiate another deal, one that adds value for class members.

"Obviously, I recognize that class counsel is entitled to be paid, and they could," Hughes said. "If this deal is rejected, they would be free to negotiate a new settlement."

Judge Murphy then added, "Or win the case and get lots of money."

The judge's order probing a potential conflict came as an addendum to a **March 12 order** in which the judge said the impact of the SEC settlement on the pending class deal was "underbriefed by plaintiffs and unbrieft by defendants." He ordered them to respond specifically to Hughes' objections.

The investors filed a putative class action against Vanguard in 2022, saying it breached its fiduciary duty and failed to protect its smaller investors in an attempt to lower fees. Investors in what are known as set-it-and-forget-it funds were forced to sell off as much as 15% of their assets, leaving those with taxable accounts holding the bag, they said.

Vanguard agreed to settle the suit in September after mediation. The investors told the court they faced "significant obstacles" to continuing litigation, including getting class certification and proving damages. Their best case would have netted them \$260 million in damages, the investors said. They considered the \$40 million, a roughly 15% recovery of their claimed losses, "an excellent result," according to a Nov. 6 filing.

The investors urged the court to approve the settlement following the SEC deal, saying in a Feb. 25 filing that the SEC settlement "simply added a backstop, effectively guaranteeing the \$40 million recovery already secured in this action only if this settlement was ultimately terminated or not approved."

Only nine objections to the proposed settlement were filed with the court, with the reaction from the class being "overwhelmingly positive," the investors said. More than 312,000 potential settlement class members were notified about the pending settlement, and more than 181,000 claims were submitted, they said.

Attorneys for the class and Vanguard continued to argue for final approval at last week's hearing, with a class attorney saying the team had spared no expense in fighting the case. An attorney for Vanguard, Maeve O'Connor of Debevoise & Plimpton LLP, said Hughes' suggestion that a new deal could be reached if the proposed settlement were rejected was "very optimistic" and that years of additional litigation was more likely.

She said the SEC never intended for its deal "to blow up our settlement" and that its language clearly positioned the \$40 million pending to the class as an offset to Vanguard's more-than-\$100 million agreement.

"Through a fluke of timing, the objector is asking for a windfall," O'Connor said. "The SEC blesses this settlement and builds upon it. That's the proper way to read this."

Representatives for Vanguard did not respond to requests for comment. A representative for The Rosen Law Firm PA, one of the firms representing the investors, declined to comment.

Hughes declined to comment.

The plaintiff investors are represented by Gregory Dovel, Julien Adams, Jonas B. Jacobson, Christin Cho and Simon Carlo Franzini of Dovel & Luner LLP, Joshua Baker, Phillip Kim, Jonathan Stern, Erica L. Stone and Jacob A. Goldberg of The Rosen Law Firm PA, Kenneth J. Grunfeld of Kopelowitz Ostrow Ferguson Weiselberg Gilbert, Mark C. Rifkin and Matthew M. Guiney of Wolf Haldenstein Adler Freeman & Herz LLP, Richard M. Golomb and Kevin W. Fay of Golomb Legal, W. Daniel Miles III and James B. Eubank of Beasley Allen Crow Methvin Portis & Miles PC, and Timothy Brown of The Brown Law Firm PC.

Vanguard and its officers are represented by Brandon Fetzer, Elliot Greenfield and Maeve O'Connor of Debevoise & Plimpton LLP, and Samuel W. Silver of Welsh & Recker PC.

The independent trustees managing the funds are represented by Andrew J. Ehrlich and Daniel J. Kramer of Paul Weiss Rifkind Wharton & Garrison LLP, and Francis P. Devine III and Michael E. Baughman of Troutman Pepper Locke LLP.

The case is In re: Vanguard Chester Funds Litigation, case number 2:22-cv-00955, in the U.S. District Court for the Eastern District of Pennsylvania.



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6th Circ. Panel Torn On Reviving Chevy Cruze Emissions Suit

By Carolyn Muyskens

Law360 (March 18, 2025, 8:41 PM EDT) -- A Sixth Circuit panel wrestled Tuesday with whether it is precedent-bound to revive claims that General Motors misled car buyers about the emissions of Chevrolet Cruze vehicles marketed as having "clean" diesel engines.

Drivers led by plaintiff Jason Counts sought to reopen a consumer-fraud class action alleging that GM's diesel-powered Cruze has a feature that disables pollution controls under "common" driving conditions and that the carmaker defrauded buyers that paid a premium for an environmentally friendly option.

During oral arguments, the judges asked if the drivers' claims ultimately turn on whether GM concealed the true, "real-world" emissions of the Cruze from federal regulators to receive approval that the car met federal emissions standards.

If so, the judges suggested, the drivers' claims could be considered "fraud-on-the-agency" claims and impliedly be preempted by the U.S. Environmental Protection Agency's fraud policing powers and power to regulate emissions under the Clean Air Act.

Garth D. Wojtanowicz of Hagens Berman Sobol Shapiro LLP, a lawyer for the plaintiffs, said the drivers claimed that GM did not disclose to the EPA that the Cruze contained devices that would disable emissions controls under certain conditions, such as extremely high or low temperatures.

But the drivers claim GM deceived consumers about the emissions of its vehicles, which is different from second-guessing the EPA's certification of the cars as compliant with federal regulations, they argued.

"If it's fraud on the consumer not to disclose that stuff, it's pretty hard not to imagine that it's fraud on the EPA not to disclose that stuff," U.S. Circuit Judge Raymond M. Kethledge said.

"I would imagine the EPA would be even more indignant, given that it's precisely their mission in life to review this," Judge Kethledge said.

The judges were also weighing whether there was any daylight between the case and a Sixth Circuit decision in August that found similar claims involving GM's Chevrolet Silverado and GMC Sierra were not preempted by federal law.

In that case, *Andrei Fenner et al. v. General Motors LLC et al.*, the Sixth Circuit held that drivers' consumer fraud claims **were not preempted** by the Clean Air Act because the consumers had an independent claim that the emissions exceeded a "reasonable consumers' expectations" that didn't depend on EPA standards.

All three judges on Tuesday's panel — U.S. Circuit Judges Richard Allen Griffin, Kethledge and John K. Bush — have criticized the majority opinion in that case. Judge Kethledge sat on the Fenner panel and dissented from the majority's opinion, and when GM was **denied** a rehearing before the full Sixth Circuit, Judge Kethledge and Judge Griffin wrote separate dissents, both of which were joined by Judge Bush.

But Judge Kethledge acknowledged Tuesday that it would be difficult for the panel to justify not

following the precedent set by the Fenner ruling.

"It's a very high bar to say we're just going to disregard this precedent," Judge Kethledge told counsel for GM.

The Fenner case and the Counts case were in front of the same Michigan district court judge, U.S. District Judge Thomas L. Ludington, who **ruled** in July 2023 that in both cases the drivers' claims were preempted by federal law following a Sixth Circuit ruling in a case against Ford Motor Co.

In November dissents in the Fenner case, Judges Griffin and Kethledge argued that the claims in Fenner are analogous to the Ford claims and the Sixth Circuit should have also found the Fenner claims preempted by federal law.

EPA regulators are tasked with determining whether emissions control devices are illegal defeat devices, so asking a jury to find GM deceived the EPA is asking a jury to second-guess federal regulators' judgment approving the vehicles and usurping the EPA's fraud-policing authority, the judges said in their dissents.

The drivers in the Counts case had also sued Robert Bosch LLC, the maker of the diesel engines. The drivers and Bosch had reached a settlement to resolve their claims, but Judge Ludington denied a joint motion to approve the settlement **before** he dismissed the case. Bosch called off the deal following the case's dismissal.

U.S. Circuit Judges Richard Allen Griffin, Raymond M. Kethledge and John K. Bush sat on the panel for the Sixth Circuit.

The drivers are represented by Steve W. Berman and Garth Wojtanowicz of Hagens Berman Sobol Shapiro LLP, Christopher A. Seeger and Shauna B. Itri of Seeger Weiss LLP and James E. Cecchi and James A. O'Brien III of Carella Byrne Cecchi Olstein Brody & Agnello PC.

General Motors is represented by Jay P. Lefkowitz, Renee D. Smith, Jeffrey S. Bramson and Cole T. Carter of Kirkland & Ellis LLP.

Robert Bosch LLC is represented by Matthew D. Slater, Abena A. Mainoo and Carmine D. Boccuzzi Jr. of Cleary Gottlieb Steen & Hamilton LLP and William R. Jansen and Jonathan E. Lauderbach of Warner Norcross + Judd LLP.

The case is Jason Counts et al. v. General Motors LLC et al., case number 24-1139, in the U.S. Court of Appeals for the Sixth Circuit.

--Additional reporting by Linda Chiem. Editing by Rich Mills.



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BlackRock Calls Red States' Suit Over Coal Prices 'Farfetched'

By **Katryna Perera**

Law360 (March 18, 2025, 5:36 PM EDT) -- BlackRock Inc. and two other large asset managers have urged a Texas federal judge to toss claims brought by a coalition of Republican-led states alleging the firms ran a scheme to drive up coal prices as part of an "investment cartel," saying the case "spins a farfetched theory."

BlackRock, State Street Corp. and the Vanguard Group filed a joint dismissal **motion** on Monday, saying the states' case relies on a theory that the asset managers conspired "without speaking with each other" to decrease coal output by controlling the production decisions of coal companies, "in which they each never held more than small minority stakes."

This asserted antitrust claim requires "contorting the law in a way that would hurt both coal companies and individual investors," the asset managers said, and the court should reject the states' "adventurous" attempt to rewrite antitrust law.

The states filed suit in November, claiming that the three asset managers **teamed up** to pressure the nation's largest coal producers, including Peabody Energy and Arch Resources, into reducing their output to meet carbon emissions reduction goals. That decreased output led to higher coal prices, which in turn hurt American consumers and businesses that have had to pay higher electricity prices, according to the lawsuit.

The Texas Attorney General's Office is leading the suit and accuses the trio of asset managers of running an "investment cartel" because they collectively hold a large number of shares in every "significant" publicly traded coal producer in the United States.

The other states in the suit are Alabama, Arkansas, Indiana, Iowa, Kansas, Missouri, Montana, Nebraska, West Virginia and Wyoming.

The lawsuit alleges violations of the Sherman Antitrust Act of 1890, the Clayton Act, and state laws against price fixing and deceptive trade practices.

However, the asset managers pushed back on Monday, saying the operative complaint does not offer any plausible facts to back up the suit's claim of a conspiracy, "no agreement, no coordinated actions, and no communication among defendants about reducing coal output (much less their investment strategies), nor any alleged act taken to effectuate such a reduction."

The complaint also fails to allege any details about the decision-making of the coal companies, which actually control the output of coal, or that their decisions were coordinated, the asset managers argued.

"Lacking these basic facts, the complaint attempts to recast as sinister routine (and SEC-mandated) proxy voting determinations by each defendant — despite quietly acknowledging that defendants cast their votes differently from one another," the motion said. "Worse still, the complaint concedes that coal output increased during the period of the supposed 'output reduction scheme.'"

It also said the states fail to explain their assertion that the defendants agreed to exchange competitively sensitive information, since the complaint does not contain any details about what information was exchanged, who exchanged it or how the alleged exchange affected coal production.

The asset managers further argued that the suit's federal antitrust claim asserted under Section 7 of the Clayton Act advances a theory that's not accepted by any court.

"Section 7 prohibits acquisitions that substantially lessen competition. Plaintiffs advance the unprecedented theory that each defendant somehow reduced competition simply by acquiring small minority stakes in coal companies," the motion said.

The asset managers said this theory fails for multiple reasons. First, the Clayton Act "expressly exempts" acquisitions made solely for investment, which are the ones at issue in the suit. Second, even without this "statutory safe harbor," the defendants said the complaint does not allege a connection between the asset managers' separate investments and the output decisions at each coal company.

"An unsurprising failure given that each defendant's minority interest provided no plausible mechanism for controlling coal company output decisions," the motion said.

The asset managers argued the case should end here because "commonplace activities" like offering index funds that may invest in multiple companies in the same industry, voting in corporate elections, or meeting with corporations to understand their governance practices are not marks of an anticompetitive scheme but instead allow them to "provide the low-cost funds that millions of Americans rely on to save for retirement and other purposes."

"That business model benefits both American consumers and the companies they invest in. The court should not chill this conduct based on half-baked and untested theories. The antitrust claims should be dismissed in their entirety and with prejudice," the motion said.

The Nebraska Attorney General's Office declined to comment on Tuesday. Representatives for the other parties did not immediately respond to requests for comment.

BlackRock is represented by Gregg Costa, Prerak Shah and Rachel Brass of Gibson Dunn & Crutcher LLP and Thomas Mueller, Jennifer Milici, Perry Lange, John O'Toole, David Gringer and Lauren Ige of WilmerHale.

State Street Corp. is represented by Jason M. Powers, Stacey Neumann Vu, George M. Kryder, Megan Cloud, Stephen M. Medlock and Mackenzie G. Newman of Vinson & Elkins LLP.

The Vanguard Group is represented by Robert D. Wick, John S. Playforth and Shadman Zaman of Covington & Burling LLP and Bradley C. Weber and Chase T. Cobb of Troutman Pepper Locke LLP.

Texas and Montana are represented by their respective attorneys general and by David H. Thompson, Brian W. Barnes and Harold S. Reeves of Cooper & Kirk PLLC. The state of Texas is also represented by Anthony G. Buzbee and Christopher J. Leavitt of The Buzbee Law Firm.

The other states are represented by their own attorneys general.

The case is Texas et al. v. BlackRock Inc. et al., case number 6:24-cv-00437, in the U.S. District Court for the Eastern District of Texas.

--Additional reporting by Jessica Corso. Editing by Dave Trumbore.