

Delaware corporate law overhaul heads to final vote amid criticism it favors billionaires

 [reuters.com/world/us/delaware-lawmakers-vote-corporate-law-overhaul-face-criticism-2025-03-20](https://www.reuters.com/world/us/delaware-lawmakers-vote-corporate-law-overhaul-face-criticism-2025-03-20)

Tom Hals

Figurines are seen in front of the Tripadvisor logo in this illustration taken, February 27, 2022. REUTERS/Dado Ruvic/Illustration/File Photo Purchase Licensing Rights , opens new tab

- Critics call proposal 'billionaire's bill'
- Bill creates 'safe harbors' for transactions with controlling shareholders
- Delaware Senate has approved bill, governor plans to sign it

WILMINGTON, Delaware, March 20 (Reuters) - Delaware lawmakers are expected to vote as soon as next week to overhaul the state's corporate law to protect its business-friendly reputation, but opponents have called the bill a giveaway to billionaires.

The bill makes it hard for investors to sue over certain transactions involving controlling shareholders, such as buying a controlling shareholder's business, if the deal follows certain steps. It also applies to deals with board members and executives, but will not impact existing rules for a takeover of the company by the controlling shareholder.

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The proposed legislation has politicized the normally sleepy annual process of tweaking the state's corporate code. Attorneys who represent shareholders have dubbed it "the billionaire's bill" and have launched a public campaign against it.

Opponents had expected a vote on Thursday, although the leadership of Delaware's House of Representatives had not committed to a schedule. A spokesperson for the House Democrats, who control the chamber, said a vote is now likely on Tuesday but could change, and sources said both sides were trying to line up support. Two-thirds of House members must approve the bill for it to pass. Delaware's Senate approved the bill last week and Governor Matt Meyer has said he will sign it.

The bill, known as SB 21, is being considered amid concerns of a "DExit" stampede by companies from one of the country's smallest and least populated states. While other states are trying to attract incorporations, Delaware still remains home to most large public companies and related fees generate 20% of its budget revenue.

Several companies, mostly with controlling shareholders, have said they might or will leave Delaware, including Dropbox (DBX.O) , opens new tab, Meta Platforms , opens new

tab(META.O) [opens new tab](#), Tripadvisor (TRIP.O) [opens new tab](#) and President Donald Trump's media company.

Amy Simmerman, a corporate lawyer in Wilmington, told the Delaware House Judiciary Committee, which approved the bill on Wednesday, that she has 15 significant corporate clients that were considering leaving the state. "This is serious," said Simmerman, who declined to identify the clients. "I don't think it's just bluffing."

'THIS IS APPALLING'

Under the proposed bill, if a deal is approved by a board committee that has a majority of independent directors or by a vote by public shareholders, investors cannot challenge it in court. Currently, litigation can only be avoided if both steps are used and the committee must be entirely made up of independent directors.

The bill also makes it harder to challenge whether a director is independent. It defines "controlling shareholder" and limits records available to shareholders who want to investigate a deal for conflicts.

At the committee hearing on Wednesday, lawmakers focused largely on the risk of companies leaving Delaware. Witnesses included corporate lawyers, law professors and a former judge on the state's Court of Chancery, its business court, and mostly spoke in support of the bill.

Public comment was dominated by opposition from attorneys for shareholders who said they were excluded from the drafting process. They described the changes as radical, rushed and corrupt.

Joel Fleming, a lawyer who represents shareholders, told lawmakers the bill was a result of lobbying by Meta Platforms and would protect its CEO and controlling shareholder Mark Zuckerberg from potential liability that shareholders are currently investigating. CNBC published documents on Wednesday which it obtained from an open records request showing that Meyer, a Democrat, met with Meta officials in the weeks leading up to proposal of the bill.

"Those claims may now be dead," Fleming told the lawmakers. "This is appalling."

Meyer's spokesperson Mila Myles said the governor met with Meta representatives to discuss corporate law but noted that the company did not lobby for the bill. She said the governor has been "meeting with everyone" to ensure the state remains a global leader.

Meta declined to comment.

Corporate leaders have expressed frustration in recent years over court rulings that upset certain expectations about the state's law. Tech billionaire Elon Musk fueled the debate last year by urging companies to follow Tesla (TSLA.O) [↗](#), opens new tab and leave the state after a Delaware judge rescinded his \$56 billion pay package as CEO of the electric car maker.

Reporting by Tom Hals in Wilmington, Delaware; Editing by Noeleen Walder, Diane Craft and Paul Simao

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Lobbying on corporate law change SB21 enters final stretch

 spotlightdelaware.org/2025/03/21/sb21-final-stretch

March 21, 2025

Why Should Delaware Care?

Taxes and fees from corporate filings account for nearly a third of Delaware state revenue. Worried about recent announcements for major corporate departures from Delaware, leaders are proposing significant changes to the state's foundational corporate law to stem the tide, which could have unintended consequences too.

Supporters and opponents of Delaware's controversial corporate law bill have a few days left to try and change the minds of lawmakers in the state's House of Representatives on a measure that could shift the balance of power within some of the biggest companies in the world.

The bill has sparked a national debate that has reached an unprecedented size for a corporate law change in little Delaware. Opponents say the measure, Senate Bill 21, allows powerful investors to strike self-serving deals with companies at the expense of mom-and-pop investors.

But backers, including Gov. Matt Meyer and the Senate's Democratic leadership, have called the bill a "course correction" for Delaware's business courts whose rulings, they say, have given small shareholders too much latitude in recent years to challenge corporate deals, such as spin-offs or acquisitions.

Backers of the bill also say it is needed to pacify corporate executives who may threaten to cancel their companies' Delaware registrations and set up legal homes in other states.

Last week, Meyer called for a swift passage of the measure.

But, in a surprise move, the House did not schedule a vote on the proposal Thursday as had been expected, pushing it instead to next week.

A spokeswoman for Speaker of the House Melissa Minor-Brown said she postponed the vote in order to give lawmakers "time to review the bill and make a thoughtful decision."

Minor-Brown's decision is in contrast with the Delaware Senate, which unanimously passed the bill last week, one day after it was sent out of committee.

Because Senate Bill 21 is changing the Delaware General Corporation Law, it must pass a two-thirds majority, which in the House is 28 members. That means that opponents would have to successfully convince 14 representatives to oppose it – a high hurdle considering the

bill is likely to receive full support from the chamber's 14 Republicans.

A small wrinkle in the vote would also include the likely absence of Democratic Rep. Stell Parker Selby, who has been absent for the entirety of the legislative session so far due to a reported injury.

Opposition tries to rally

Following the Senate's vote, Rep. Madinah Wilson-Anton (D-Bear), a critic of the legislation, promised that there would be "a robust debate in the people's House."

That debate appeared to begin on Tuesday, when another critic, Rep. Sophie Phillips (D-Newark), introduced an amendment that has been favored by several nationally prominent law professors.

In its original form, Senate Bill 21 would make dozens of changes that, in sum, would make it harder for small investors to challenge deals in court that companies had previously struck with powerful shareholders, such as their founders.

Phillips' proposed change would make the bill only apply to companies if a majority of their shareholders vote to "opt in" to its provisions.

On Wednesday, one of the professors that favors the change spoke to the House Judiciary Committee. Columbia Law School's Eric Talley argued the bill, without Phillips' amendment, would amount to a rebuke of Delaware's revered judiciary because it would overturn previous cases.

His comments were followed by remarks from more than 20 other opponents of the bill, largely from the legal industry, who spoke during a public comment period.

One attorney said the bill would undo Delaware exceptionalism. Another said it would allow companies to rip off shareholders.

A handful of proponents also spoke at the hearing, with comments that largely pointed to the Delaware government's reliance on the more than \$2 billion in revenues it brings in from the state's corporate franchise industry.

Without passing Senate Bill 21, they said, companies could leave Delaware for other states, putting at risk government services, including its schools and police.

Lobbying efforts heat up

Over the next four days, any lawmaker perceived as a fence sitter will almost certainly face a barrage of advocacy from proponents and opponents of Senate Bill 21, including from several prominent lobbying firms that have been contracted in recent weeks by local chambers of commerce, business groups, law firms, and even Walmart.

All of those companies appear to support Senate Bill 21.

According to data from the Delaware lobbyist database, 21 people are lobbying on the bill, and Dover-based Ruggerio Willson & Watson has secured most of the lobbying work.

Founder Rhett Ruggerio confirmed to Spotlight Delaware that he is lobbying in favor of Senate Bill 21 and on behalf of companies, such as Richards Layton & Finger, and the American Investment Council, an industry group that represents private equity firms.

One company that has hired a lobbyist but not one from Ruggerio's firm is an entity called Alliance to Protect Delaware's Future. The group's website does not state who is behind it, but state lobbying records lists its address at the same office building that houses Richards Layton & Finger, among other businesses.

In addition to lobbying, the group recently paid Spotlight Delaware to run pro-Senate Bill 21 advertising. In their ad, the group lists its entity name as Alliance to Protect Delaware's Future, Inc.

The Delaware government's business search page does not show a company existing with that name, or a variation of it, as of Thursday.

How the bill came to be

In recent weeks, Richards Layton & Finger has been at the center of the debate over Senate Bill 21, after CNBC reported that an attorney with the firm was among those who drafted the bill. The story also noted that Richards Layton Finger has defended Elon Musk in Delaware, leading to suspicions that the richest person in the world had influenced the legislative process.

Others who helped draft the original bill include former Chief Justice of the Delaware Supreme Court Leo Strine Jr., former Court of Chancery Chancellor William Chandler III, and Delaware Law School professor Lawrence Hamermesh.

Today, both Strine and Chandler work for top law firms that regularly defend corporations against lawsuits from small shareholders.

On Wednesday, CNBC again reported on the origins of Senate Bill 21. This time, the story claimed that Meyer had met with attorneys for Meta, one day after the Wall Street Journal reported that the company's CEO, Mark Zuckerberg, was considering moving his company out of Delaware.

Meyer again met with Meta representatives the following day, according to the report – that time with company executives.

Two weeks later, Senate Majority Leader Bryan Townsend introduced Senate Bill 21 and characterized it as a joint proposal with Meyer and Republican lawmakers.

CNBC's reporting was based on emails obtained through an open records request.

Last month, Spotlight Delaware sent a similar request for emails to the governors' office and to the Delaware Secretary of State. State officials have since declared that those responsive records are pending a legal review.



Ann M. Lipton @annmlipton.bsky.social · 4h

In all seriousness, this is what kills the franchise in the end. Its legitimacy depends on the appearance of technocracy (a word I think I made up). When it's obviously raw political power, there's no reason for any other jurisdiction to respect it.



Dael Norwood @dael.bsky.social · 4h

This is the real story: the billionaires that wrote SB21 are now spending big, big money on lobbyists to get it through.



Lobbying on corporate law change SB21 enters final stretch

The Delaware House postponed a vote on the controversial corporate law proposal Senate Bill 21 until next week, giving time for lobbying.

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This is the real story: the billionaires that wrote SB21 are now spending big, big money on lobbyists to get it through.



'This Is Our Industry': Why Lawyers Say Delaware's Economic Future Turns on Bill to Amend Corporate Law

 [law.com/delbizcourt/2025/03/20/this-is-our-industry-why-lawyers-say-delawares-economic-future-turns-on-bill-to-amend-corporate-law-](https://www.law.com/delbizcourt/2025/03/20/this-is-our-industry-why-lawyers-say-delawares-economic-future-turns-on-bill-to-amend-corporate-law-/)

Ellen Bardash

What You Need to Know

- Supporters say without SB 21, Delaware risks corporate franchise income.
- Opponents say passing the bill would cut back on litigation, risking law firm jobs.
- Delaware's corporate franchise and its legal industry can both be valued at more than \$2 billion annually.

Third in a series.

Whether wide-ranging revisions to Delaware corporate law in Senate Bill 21 are accepted or rejected, advocates on both sides say there will be fallout for Delaware's economy and the corporate and legal work that drives it.

Those who oppose SB 21 say they're worried it would be detrimental to Delaware's legal industry, with less corporate work available for law firms as breach of fiduciary duty cases that would otherwise be litigated in the Court of Chancery and appealed to the Delaware Supreme Court are precluded by the changes proposed in the bill, while legislators, lawyers and other Delawareans who have expressed support for the bill posit that without a course correction, the state will hemorrhage corporations and the revenue they provide, jeopardizing funding for government operations and public services.

"This is our industry," said Justin Reliford, managing partner of Scott+Scott's Delaware office. "It's not tech. It's not oil and gas. Our corporate law, our Court of Chancery, our Supreme Court—the franchise has all worked together to create an industry that is specific to Delaware, and that industry is going to be hurt by this because it's going to mean less work for the industry."

Advocates for passage of SB 21 have repeatedly said the legislation is necessary to keep corporations put off by recent Delaware corporate case law from reincorporating elsewhere and to keep new companies from organizing in other states from their start.

"Maybe it's a little too hard to get to the business judgment rule. Maybe the fee awards are getting too high for some people," said Mark Nelson, a senior legal analyst at Wolters Kluwer. "I think maybe that is what's driving a lot of the conversation."

Litigators and corporate attorneys have said they're having conversations with clients expressing concerns about Delaware with increasing frequency. Those who have testified in favor of SB 21 have said while the number of corporations actually leaving Delaware may be relatively small at present, those conversations show there's reason to act now to quell a possible mass exit in the future.

"Whether companies are going to start moving or incorporating elsewhere I think remains to be seen," said Gibson, Dunn & Crutcher partner Jason Mendro. "My guess is that with young, new companies that are just IPOing, you probably will start to see companies testing out other jurisdictions as an experiment to see how it goes. My suspicion is that large, mature companies incorporated in Delaware are not likely to move anytime soon."

Each public company incorporated in Delaware pays an annual franchise tax based on its number of authorized shares, which adds up to about \$1.32 billion of that \$2.4 billion. For corporations with less than 5,000 shares, that tax can be as low as \$175. The franchise tax is capped at \$200,000, or \$250,000 for companies designated as large corporate filers.

Revenue from corporate entities—franchise and corporate income taxes, business entity fees and partnership and LLC formation—accounts for just under a third of the state's projected revenue for the 2026 fiscal year, at an estimated \$2.4 billion.

That's the same amount the legal industry contributed to Delaware in 2018, the DSBA reported the following year. That same report stated every job in Delaware's legal industry equated to \$314,000 contributed to the state's economy.

In an op ed published earlier this week, Joseph Mason, an economist and senior fellow at The Wharton School, wrote he performed an economic impact study that showed SB 21 could lead to the loss of up to 900 jobs and \$235 million in economic activity in the state from Delaware-based law firms alone.

"The data show that we have not seen a real threat of a mass scale exodus of public corporations from Delaware as a practical matter," Reliford said. "This is a debate between fear mongering and actual data."

Larry Hamermesh, the Delaware Law School professor emeritus who has testified in favor of SB 21 before the Senate and the judiciary committees in both legislative chambers, said during a House Judiciary Committee hearing on Wednesday that in his roughly 50 years of experience with Delaware corporate law, the amount of litigation has had an upward trajectory.

"There may be, at the margin, less fiduciary litigation, but for better or worse—and I think it's largely for better—the Delaware courts will continue, after SB 21 is adopted, if it is, to be a central focal point for litigation about interpreting charter provisions, interpreting stockholder

agreements, dealing with fiduciary duty issues," Hamermesh said. "I am much more concerned about the prospect that Delaware would become the next New Jersey."

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Millstreet Pushed Cobalt Supplier to Wipe Out Equity, Suit Says

- **COURT:** S.D.N.Y.
- **TRACK DOCKET:** [No. 1:25-cv-02293](#) (Bloomberg Law subscription)

Jervois Global Ltd. shareholders' equity is on the verge of being extinguished in a voluntary bankruptcy instigated by financier Millstreet Capital Management LLC, investors say in a proposed class action filed Thursday.

Jervois, related entities, company directors, and Millstreet tried to recapitalize Jervois—"despite a questionable need to do so"—without shareholder knowledge or approval, two Australian investment funds say. They filed their suit for violation of US, Australian, and Canadian laws in the US District Court for the Southern District of New York.

Shares in Jervois, a cobalt and nickel supplier with operations in several countries, trade on the Australian Securities Exchange, the Toronto Stock Exchange, and the US over-the-counter market, according to the complaint. Jervois is based in the Australian state of Victoria.

Jervois entered into a recapitalization agreement with Millstreet, a Boston hedge fund, on Jan. 2, the investors say. "On January 14, 2025, Jervois Texas LLC was incorporated for the sole purpose of attracting the bankruptcy jurisdiction of the Texas bankruptcy court," they say. Jervois investors' holdings were extinguished in that proceeding on March 6, and the company entered into voluntary administration, a comparable proceeding, in Australia on March 12, they say.

The complaint doesn't estimate the size of the proposed class of investors.

The funds, Kadoo Pty. Ltd. and Binvid Pty. Ltd., bring claims that include violations of securities laws and misrepresentation, breach of fiduciary duty, failure to obtain shareholder approval, and shareholder oppression. They seek compensatory damages, punitive damages, disgorgement, and injunctive relief, including an unwinding of the bankruptcy plan.

Neither Jervois nor Millstreet immediately responded to emailed requests for comment.

Ryan McCrosson, who practices in Indianapolis, and Laura Keily, who practices in Australia, represent the funds.

The case is Kadoo Pty. Ltd. v. Jervois Global Ltd. , S.D.N.Y., No. 1:25-cv-02293, complaint 3/20/25 .

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

To contact the editor responsible for this story: Adam Ramirez at aramirez@bloombergindustry.com

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Software Execs Hit With Shareholder Complaint Over Pivot to AI-Powered Software

 [law.com/newyorklawjournal/2025/03/20/software-execs-hit-with-shareholder-complaint-over-pivot-to-ai-powered-software](https://www.law.com/newyorklawjournal/2025/03/20/software-execs-hit-with-shareholder-complaint-over-pivot-to-ai-powered-software)

Alyssa Aquino

The top brass of customer experience software provider, Sprinklr, were accused of failing to disclose to investors that the company's move to scale up an AI-powered software product would harm its traditional revenue drivers.

Sara Beth Coffey, backed by The Brown Law Firm, claimed that company leadership breached their fiduciary duties to investors by providing projections on the new venture—which drew “significant funds”—that didn't account for issues with scaling up the new product, or what the ramp-up would mean for existing business.

“Contrary to certain of the Individual Defendants material public representations, the Company had emigrated from its established growth areas to emphatically prioritize scaling a new business venture with [Contact Center as a Service]—a decision that produced artificially inflated growth in the short-term,” Coffey alleged in a complaint filed in the U.S. District Court for the Southern District of New York on Tuesday. “The company injected significant funds into the new venture, which negatively impacted Sprinklr's already established business.”

Counsel for Coffey declined to comment on Thursday. Sprinklr didn't respond to a request for comment.

Coffey, who looks to represent Sprinklr derivatively, targeted the executives and board members who were running Sprinklr between March 29, 2023, and June 5, 2024. During that period, those executives “willfully or recklessly” made a series of false and misleading statements concerning a business strategy that was adopted in June 2021.

Sprinklr sells the Unified Customer Experience Management, or UnifiedCXM, platform, an AI-powered system for businesses and organizations to manage customer experiences. The platform includes a cloud-based CCaaS that uses “industry-leading AI” to provide customer service support, according to Sprinklr's website. In the middle of 2021, Sprinklr honed in on the CCaaS component, according to Coffey's complaint.

But Coffey argued that company leadership misled shareholders on how the shift was going, saying executives covered up slowing subscription revenue and overall macroeconomic risks and overstated the success of Sprinklr's entrance into the CCaaS market.

Among others, she pointed to a March 2023 conference call in which company founder, Ragy Thomas, said Sprinklr was “going to be a disruptive player in CCaaS.” Coffey further noted a July 2023 conference in which Sprinklr CFO, Manish Sarin, announced the company had set a \$1 billion floor for subscription revenue for FY 2027.

But during a December 2023 earnings call, the company cut its growth forecast, with executives revealing that the number of customers spending more than \$1 million had fallen, based on macroeconomic conditions. Sprinklr later cut its growth forecast again in June 2024, with Thomas saying they weren’t “happy with the pace of progress,” and Sarin revealing that Sprinklr experienced “higher churn in our core product suites.” Both news were followed by stock drops of 33% and 15%, according to the complaint.

The lawsuit comes a few months after Levi & Korsinsky filed a securities class action against Sprinklr in the Southern District. The plaintiffs in that case made similar claims of investor fraud, also centered on Sprinklr’s prioritization of the CCaaS business.

To defend itself, Sprinklr retained Cooley, which recently moved to dismiss the securities class action, arguing that Sprinklr had repeatedly warned investors about the risks of its business priorities.

“Companies cannot see the future, and securities laws do not expect them to. Sprinklr made good-faith projections, then revised them when conditions changed,” the motion to dismiss says. “That is not securities fraud—it is how public companies should operate.”

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Boeing Faces State Pension Funds in Delaware Safety Lawsuit

- Funds' teams include attorneys who challenged Tesla, Facebook
- Lawsuit concerns fallout of safety problems with Boeing planes

Public pension funds from Ohio and Oklahoma, represented by lawfirms that headed prior challenges against Tesla Inc. and Meta Platforms Inc., will lead litigation in Delaware over the fallout of safety problems plaguing Boeing Co.'s aircraft.

The Ohio Public Employees Retirement System, the State Teacher Retirement System of Ohio, and the Oklahoma Firefighters Pension and Retirement System were named lead plaintiffs in a hearing Thursday before the Delaware Chancery Court.

The Ohio attorney general's support for the funds' lawsuit over the blowout of a door panel on a 737 Max jet operated by Alaska Airlines in 2024 and other safety problems, along with the months they've spent litigating parallel claims in a Virginia federal court, bolstered their application, Vice Chancellor Morgan T. Zurn said in a bench ruling.

The Ohio and Oklahoma pension funds are represented by Bleichmar Fonti & Auld, Grant & Eisenhofer, and Scott + Scott Attorneys at Law LLP.

"These are not firms that settle cheap," Derrick Farrell of Bleichmar Fonti & Auld told Zurn in arguing for their leadership in the litigation.

The Chancery Court's chief judge in January awarded \$176 million in legal fees to Farrell's firm and two others in a \$919 million settlement to resolve a Detroit pension fund's lawsuit challenging four years of pay for the Tesla board of directors, including Elon Musk. Tesla has appealed to the Delaware Supreme Court to overturn the legal fee award.

Attorneys from Scott + Scott also are preparing for trial next month in a lawsuit lined to a \$5 billion fine Facebook—now a unit of Meta—paid the US government to resolve a privacy probe into its business with Cambridge Analytica, which had been hired by Donald Trump's first presidential campaign in 2016.

It would be the first trial ever for *Caremark* claims against a public company. Such claims are named for the Chancery Court's 1996 ruling in *In re Caremark Int'l Inc. Derivative Litig.* , which set the parameters for oversight liability under Delaware law.

The size of the states' holdings in Boeing also factored into Zurn's decision.

The state funds collectively own over 800,000 Boeing shares worth about \$142 million, Farrell said. Three Delaware-based plaintiffs who also sought leadership in the case—the Construction and General Building Laborers' Local Union No. 79 General Fund, the Central Laborers' Pension Fund, and an individual investor—hold shares only worth about \$3 million.

"The states have more to lose and therefore greater motivation to succeed in this litigation on Boeing's behalf," Zurn said in her ruling.

Boeing settled a previous shareholder lawsuit in Delaware over 737 Max safety problems and fatal crashes for \$237 million in 2022.

The Delaware group is represented by Prickett Jones & Elliott, Block & Leviton, and Hach Rose Schirripa & Cheverie. Boeing and its directors are represented by Richards Layton & Finger.

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

To contact the reporter on this story: Jennifer Kay in Philadelphia at jkay@bloombergindustry.com

To contact the editor responsible for this story: Stephanie Gleason at sgleason@bloombergindustry.com

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Class Action

March 21, 2025, 8:33AM PDT

Dish Beats Securities Lawsuit Over Delayed 5G Network Rollout

- **Comments were optimistic, forward-looking statements, judge says**
- **Plaintiffs failed to show statements were made with intent**

Dish Network Corp. won its bid to dismiss a class action alleging the company made misleading statements related to its development and deployment of a wireless network.

The investors' allegations "simply do not support a conclusion that the statements were false when made, as required, and Defendants acted with scienter, particularly under the stringent pleading requirements" of the Private Securities Litigation Reform Act, Judge Gordon P. Gallagher, of the US District Court for the District of Colorado, wrote in a Thursday order.

Dish allegedly undertook a risky plan to create a wireless network based on new and unproven technologies, and experienced integration and other issues that caused significant delays in launching the network. The roadblocks allegedly prevented Dish from rolling out its 5G network more than six months after the original date provided to investors, the order said.

A group of Dish investors sued the company, its Chair Charles Ergen, and several other top executives and board members for allegedly making false and misleading statements about Dish's progress and capabilities of its 5G network. The class action asserted several violations of federal securities laws.

The plaintiffs pointed to several statements they claimed were misleading or omitted key information from shareholders, and asserted Dish knew of "significant integration issues and that much additional work would be needed to launch by the end of the year," Gallagher wrote, but didn't disclose that information.

Dish argued the alleged false comments are "merely optimistic forward-looking statements," and that the plaintiffs didn't provide any evidence that the comments were made "knowingly or recklessly," the order said.

It's "apparent that Defendants' launch prediction was an overly optimistic forward-looking statement," and the plaintiffs didn't present evidence supporting a strong inference that the defendants made the alleged false statements knowingly or recklessly, Gallagher said.

The allegations, when taken as a whole in context, "suggest DISH was overly ambitious about its deadlines for what Plaintiffs acknowledge was an extremely risky plan reliant on developing unproven technologies," but that's insufficient to support the investors' securities fraud claims, the judge also said.

None of the complaint's allegations "indicate that an investor would have understood the statement to mean something it did not say or imply the same by omission of additional information," nor do any allegations "dispute the facts actually stated," Gallagher wrote.

Levi & Korsinsky LLP represents the investors. Sullivan & Cromwell LLP and Ireland Stapleton Pryor & Pascoe PC represent Dish.

The case is Jaramillo v. DISH Network Corp. , D. Colo., No. 1:23-cv-00734, 3/20/25 .

To contact the reporter on this story: Mallory Culhane in Washington at mculhane@bloombergindustry.com

To contact the editor responsible for this story: Martina Stewart at mstewart@bloombergindustry.com

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Securities Law Prof Blog

 lawprofessors.typepad.com/securities/2025/03/new-securities-law-articles-in-print.html

Friday, March 21, 2025

New Securities Law Articles in Print

The following law review articles relating to securities regulation are now available in paper format:

Karlie M. Bischoff, Comment, *Breaking the Corporate Code of Silence: Why Sarbanes–Oxley Whistleblowers Need Not Prove an Employer's Intent to Recover for Retaliation*, 24 U.C. Davis Bus. L.J. 47 (2024).

Abraham J.B. Cable, *Psychic Income & Democratized Investing*, 22 Colo. Tech. L.J. 203 (2024).

Jacob P. Chaas, Note, *Frankenstein's Dreamcoat: The Rise and Uncertain Future of the Collateralized Fund Obligation*, 43 Rev. Banking & Fin. L. 329 (2023).

Mirit Eyal-Cohen, *Tax Incentives for Investment Crowdfunding: A Comparative Analysis*, 22 Colo. Tech. L.J. 235 (2024).

Douglas J. Cumming, Sofia Johan & Robert S. Reardon, *Crowdfunding and Intellectual Property*, 22 Colo. Tech. L.J. 215 (2024).

Michael K. Davy, *Circuit Split in Forum Selection Provisions Foreclosing Derivative Section 14(a) Exchange Act Claims: A Proposal for Congressional Reform to the Act*, 51 W. St. U. L. Rev. 47 (2024).

Megan Daye & J.W. Verret, *A Mosaic Approach for Challenging SEC Crypto Regulation: The Major Questions Doctrine and Staff Accounting Bulletin 121*, 15 Wm. & Mary Bus. L. Rev. 553 (2024).

Scott Dodson & Joseph A. Grundfest, *The Missing Millions: Cy Pres in Federal Securities Class Actions*, 74 Emory L.J. 1 (2024).

Bernice Donald, Brian Elzweig, Neal F. Newman, H. Justin Pace & Lawrence J. Trautman, *Crisis at the Audit Committee: Challenges of a Post-Pandemic World*, 43 Rev. Banking & Fin. L. 119 (2023).

Yuliya Guseva, *Decentralized Markets and Self-Regulation*, 92 Geo. Wash. L. Rev. 1281 (2024).

Reagan Leverett, Note, *Is Sunlight the Best Disinfectant? The Role of Regulation in Addressing Cybersecurity Concerns*, 77 Vand. L. Rev. 1935 (2024).

James J. Park, *The SEC as an Entrepreneurial Enforcer*, 119 Nw. U. L. Rev. 689 (2024).

James J. Park, *Securities Regulation and Big Business*, 58 UC Davis L. Rev. 489 (2024).

A. Caleb Pirc, Note, *Gambling on Another's Dime: How ESG Investing Violates the Fiduciary Duty*, 36 Regent U. L. Rev. 373 (2024).

Alexander I. Platt, *The Shortseller Enrichment Commission? Whistleblowers, Activist Short Sellers, and the New Privatization of Public Enforcement*, 99 Wash. L. Rev. 843 (2024).

Carla L. Reyes, *Law's Detrimental Reliance on Intermediaries*, 92 Geo. Wash. L. Rev. 1343 (2024).

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Purdue Pharma fees surpass \$250 million for Davis Polk amid new bankruptcy plan

 [reuters.com/legal/legalindustry/purdue-pharma-fees-surpass-250-million-davis-polk-amid-new-bankruptcy-plan-2025-03-20](https://www.reuters.com/legal/legalindustry/purdue-pharma-fees-surpass-250-million-davis-polk-amid-new-bankruptcy-plan-2025-03-20)

David Thomas, Mike Scarcella

A pharmacist holds a bottle OxyContin made by Purdue Pharma at a pharmacy in Provo, Utah, U.S., May 9, 2019. REUTERS/George Frey/File Photo Purchase Licensing Rights , opens new tab

March 20 (Reuters) - (Billable Hours is Reuters' weekly report on lawyers and money. Please send tips or suggestions to D.Thomas@thomsonreuters.com , opens new tab)

Purdue Pharma's bankruptcy entered a new, possibly final phase this week when the drugmaker filed a new \$7.4 billion plan to resolve thousands of lawsuits that alleged its OxyContin pain medication caused a widespread opioid addiction crisis in the United States. Jumpstart your morning with the latest legal news delivered straight to your inbox from The Daily Docket newsletter. Sign up here.

The complex bankruptcy has fueled several appeals, including a U.S. Supreme Court ruling last year that upended an earlier proposed \$6 billion settlement that also would have shielded Purdue's wealthy Sackler family owners from civil liability.

Along the way, Purdue's journey through the courts has generated sprawling fees for the army of attorneys and other professionals in the case, not least for the company's lead bankruptcy lawyers at Davis Polk & Wardwell.

The New York law firm alone has received or requested more than a quarter of a billion dollars in fees since the bankruptcy began in 2019, a review of court filings shows.

A U.S. bankruptcy judge in White Plains, New York has approved \$246 million so far for the Davis Polk team, led by the firm's restructuring practice co-head Marshall Huebner. The firm has requested another \$12.2 million for its work from September 2024 through January.

The fees include a 20% discount on the lawyers' standard rates, according to recent court records.

Huebner's current hourly rate is \$2,645, Davis Polk said , opens new tab in a fee statement earlier this month. Associates at the firm reported hourly billing rates as high as \$1,780, and several law clerks billed at \$1,065. The statement, covering the month of January, included 54 lawyers and other hourly billers who spent a combined 1,775 hours on the case. Huebner and a spokesperson for Davis Polk had no immediate comment. A spokesperson for Purdue Pharma did not immediately respond to a request for comment.

Similarly high billing rates have become the norm in the largest corporate bankruptcies. A recent Reuters review of court filings in other cases showed that several firms are now charging top hourly rates above \$2,500.

Purdue Pharma filed for Chapter 11 bankruptcy in September 2019 to address its debts, nearly all of which stemmed from thousands of lawsuits alleging that OxyContin helped kickstart an opioid epidemic that has caused more than half a million U.S. overdose deaths over two decades.

The new formal bankruptcy plan Purdue Pharma filed Tuesday fleshes out the settlement with new details about how the money will be allocated to states, local governments and individuals harmed by the crisis.

The company plans to begin soliciting votes and opt-in decisions from its creditors in May. After that, the plan would be submitted for final court approval.

-- Alan Dershowitz is no longer on the hook to pay more than \$12,220 as a sanction for his limited work on an election-related lawsuit on behalf of failed Arizona gubernatorial candidate Kari Lake.

The 9th U.S. Circuit Court of Appeals last week held [☐](#), opens new tab that "of counsel" lawyers can be sanctioned for signing court pleadings that are frivolous and lack factual basis.

But the court said it would not apply that standard retroactively to Dershowitz, who had argued that he played only a nominal "of counsel" role in Lake's failed lawsuit challenging the use of electronic voting machines.

-- U.S. District Judge Katherine Polk Failla in Manhattan awarded \$5.6 million [☐](#), opens new tab in fees to attorneys at Labaton Keller Sucharow as part of a \$19.5 million settlement in a securities class action against Barclays.

The plaintiffs' attorneys said they spent more than 2,453 hours [☐](#), opens new tab on the case. Barclays, represented by Sullivan & Cromwell, denied any wrongdoing. Barclays declined to comment, and a lawyer for the plaintiffs did not immediately respond to a request for one.

-- Credit Suisse was on the losing side in a Texas appeal and is on the hook now to pay \$500,000 in legal fees [☐](#), opens new tab to the lawyers for a former wealth advisor at the firm who fought the banking giant over deferred compensation and other matters tied to his departure from the firm.

The 5th Court of Appeals in a ruling said arbitrators did not exceed their power in awarding fees to Rogge Dunn Group. A spokesperson for Credit Suisse, now owned by UBS, declined to comment. A lawyer for the plaintiff did not immediately respond to a request for comment.

Read more:

Oracle lawyers' \$58 million fee award on the line in Rimini Street appeal

Class Action

March 20, 2025, 12:45 PM PDT

Apple Exaggerated iPhone 16's AI Features, Deception Suit Says

- **COURT:** N.D. Cal.
- **TRACK DOCKET:** [No. 5:25-cv-02668](#)

Apple Inc. over-promised artificial intelligence features that don't work yet to promote the iPhone 16, a proposed consumer class action alleged.

"Apple deceived millions of consumers into purchasing new phones they did not need based on features that do not exist," the complaint filed Wednesday in the US District Court for the Northern District of California said. "For months, the trillion-dollar tech giant touted these AI-capabilities as the cornerstone of the new iPhone's appeal, promising consumers a product that would redefine smartphone use in the new AI economy."

The tech giant advertised "Apple Intelligence" as a suite of features that meant the next line of iPhone products would have specific AI capabilities. The tools would include improvements to the voice assistant Siri's ability to answer questions based on a user's on-device information.

Earlier this month, Apple said it was delaying promised upgrades to Siri, highlighting concerns about the pace of its AI development.

But by making AI-features a centerpiece of recent marketing campaigns, Apple "falsely enticed" tech-savvy consumers into buying new phones that don't have the promised features, the complaint said.

The complaint alleged Apple executives had voiced concerns that the tools weren't working yet.

"Apple knew it could not release the promised technology on time, if ever, and yet continued to falsely advertise the Products, prioritizing profits over truth in its quest to regain ground in the race for AI market share," the complaint said.

Named plaintiff Peter Landsheft brings claims for violations of California consumer protection statutes, fraud, negligent misrepresentation, breach of warranties, and unjust enrichment.

He seeks to represent a nationwide consumer class as well as a California subclass and is asking for damages. Landsheft is also asking the court to enjoin Apple from continuing to advertise the AI features and engage in a corrective advertising campaign.

Apple didn't immediately respond to a request for comment.

Landsheft is represented by Clarkson Law Firm PC.

The case is Landsheft v. Apple Inc. , N.D. Cal., No. 5:25-cv-02668, complaint filed 3/19/25 .

Class Action Targets Apple Intelligence's Marketing of Future Capabilities as Currently Available

 [law.com/therecorder/2025/03/21/class-action-targets-apple-intelligences-marketing-of-future-capabilities-as-currently-available](https://www.law.com/therecorder/2025/03/21/class-action-targets-apple-intelligences-marketing-of-future-capabilities-as-currently-available)

Mason Lawlor

Apple was hit with a consumer class action in California this week for allegedly advertising that certain capabilities of its artificial intelligence program Apple Intelligence would be available to consumers with iPhone 16 models when the features were not set to be available until 2026.

Takeaway: AI assistant features such as Apple Intelligence have been the subject of privacy lawsuits challenging Siri's recording of users' conversations without consent. Apple agreed to settle the case for \$95 million in January for allegedly violating California's wiretapping laws.

Court: California, U.S. District Court for the Northern District

Case Type: Contract, Tort

Industry: Electronics

Lawyers: The plaintiffs are represented by Ryan J. Clarkson, Yana Hart and Bryan P. Thompson of Clarkson Law Firm in Malibu, California. Counsel has not yet entered an appearance for the defendants.

Law.com Radar

Liability Arguments: The plaintiffs, owners of the iPhone 16 model led by Peter Landsheft, claimed that Apple's "pervasive" marketing campaign promoting the Apple Intelligence suite of features on new iPhones would not be available until 2026. Some of the features included Siri's ability to deliver intelligence tailored to its user and draw on a user's personal context to answer questions.

Apple said that the earliest the AI features will be available to consumers is 2026, two years following its promotion campaign. Before 2024, Apple reportedly knew its customer base was becoming increasingly interested in generative AI features. At the Worldwide Developer Conference in June, Apple announced the release of its own AI model that would be included on the upcoming iPhone 16e, 16 Plus, Pro and Pro Max.

According to their complaint, the tech giant's marketing that Apple Intelligence was the "cornerstone" of its new model was a ploy to convince consumers to upgrade at a premium price despite knowing the AI enhancements were not yet ready for use. Only recently, after

mounting pressure from outraged consumers did Apple admit that the Apple Intelligence features did not yet exist and still do not exist, the lawsuit said.

Damages Arguments: The complaint alleged that Apple intentionally deceived millions of consumers in violation of multiple false advertising and consumer protection laws. The class action seeks injunctive relief ensuring Apple stops its allegedly deceptive marketing campaign.

The plaintiffs alleged the tech giant violated unfair competition law and California business and consumer protection laws, among others.

The plaintiffs seek a refund as a "premium" for upgrades to the iPhone 16 models as damages, including punitive damages for malicious or fraudulent conduct by Apple when it knowingly disregarded the rights of consumers.

What the lawyers are saying: Neither Clarkson, Hart nor Thompson immediately returned a request for comment. A message left with an Apple spokesperson was not immediately returned.

Radar scan: A savings program implemented by prescription discount card aggregator GoodRX, is the source of a steady stream of antitrust class action lawsuits over alleging the program eliminates competition between pharmacy benefit managers. In 2024, the company faced multiple antitrust class actions that asserted the company invited price-fixing. The company has faced at least five additional lawsuits since the beginning of 2025.

Caption: *Landsheft v. Apple*

Date filed: March 19

Judge: Unassigned

Read the complaint here.

This complaint was first surfaced by Law.com Radar, ALM's source for immediate alerting on just-filed cases in state and federal courts. Law.com Radar now offers state court coverage nationwide. Sign up today and be among the first to know about new suits in your region, practice area or client sector.

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Google's AI tool faces legal battle as creators fight for copyright protection

DJ [dailyjournal.com/articles/384449-google-s-ai-tool-faces-legal-battle-as-creators-fight-for-copyright-protection](https://www.dailyjournal.com/articles/384449-google-s-ai-tool-faces-legal-battle-as-creators-fight-for-copyright-protection)

Technology,
Intellectual Property

Mar. 21, 2025

A class action lawsuit alleges Google generative AI scraper vacuums up creators' rights and royalties for copyrighted works.



Anita Taff-Rice

Founder, iCommLaw

Technology and telecommunications

1547 Palos Verdes Mall # 298
Walnut Creek , CA 94597-2228

Phone: (415) 699-7885

Email: anita@icommlaw.com

iCommLaw(r) is a Bay Area firm specializing in technology, telecommunications and cybersecurity matters.

See more...

An explosion of generative artificial intelligence in a short time has spawned litigation from actors, authors and newspapers that claim they have been harmed by unfair use of their likenesses, written works and audio clips. The suits often allege that generative AI training systems scour the internet, allegedly downloading copyrighted articles, books and even personal emails so they can mimic human language.

Google's generative AI platform Gemini was released in May 2023, and already has hundreds of millions of users worldwide, with a goal of reaching 1 billion users, or roughly one-eighth of all people worldwide. A consolidated class action lawsuit filed by 10 visual artists and authors against Google in California federal court claims that Gemini illegally downloads and uses copyrighted works and images to train its model. *In Re Google Generative Ai Copyright Litigation*, Case No. 5:23-cv-03440-EKL (N.D. Cal.) (previously titled *Jill Leovy et al. v. Google* Case No. 3:23-cv-3440-AMO before consolidation). The suit alleges that such training necessarily makes a copy of the protected work and thereby infringes the creator's copyright.

By digesting and learning to mimic these human creations, Gemini allegedly can create works using the same expressive style, words and themes of the copyrighted works on which it was trained, and for which humans would have been paid. An example of a Google Gemini AI poem created for this column is enlightening (all punctuation in the poem is provided by Gemini):

Prompt: Please draft a one-stanza poem about the risks of using generative AI in legal briefs based on the lyrics of a song by the Beatles.

Response: "Help!" the client cries, as AI's words take hold,

"Not just anybody," but truths untold.

"When I was younger," briefs were crafted true,

But now, "these days are gone," what can we do?

"I'm feeling down," with phantom legal might,

"Get my feet back on the ground," restore the light.

"My independence seems to vanish in the haze,"

As AI's false counsel leads us through a maze.

"Help me if you can," before the case is lost,

And legal judgment pays the heavy cost.

The lawsuit alleges that Google spent years secretly harvesting millions of pirated and copyrighted works, which were downloaded "without paying a dime to creators." The complaint claims that Google's AI scraper didn't stop at harvesting information from publicly available websites, but also illegally accessed restricted, subscription-based websites to copy content without permission.

The plaintiff in the lawsuit, Jill Leovy, is a New York Times investigative journalist and author. She alleges that the Google Gemini AI scraper made a full copy of her book "Ghettoside: A True Story of Murder in America," without her knowledge or consent. The book was based on years of investigative work by Leovy.

The lawsuit notes there are companies that specialize in curating and selling datasets for AI training purposes that contain information obtained with the express consent of the content creators. Leovy's complaint alleges that Google did not use these legal companies and instead downloaded and used copyrighted material without consent or payment. This improper use of copyrighted material gave Gemini a leg up on competitors and generated billions of dollars in profits by avoiding paying royalties to Leovy and other authors. The consolidated complaint is seeking damages, disgorgement of profits and injunctive relief to prevent Google from continuing to use copyrighted works.

Google filed a motion to dismiss but based it primarily on technical pleading defects and didn't directly deny that its Gemini platform uses data from copyrighted works such as Leovy's. Instead, Google asserted that the consolidated complaint used the "kitchen-sink" approach. It is worth noting that Leovy's second amended complaint was dismissed prior to consolidation and the judge directed her to file a "streamlined" complaint with a "crystallize[d]" theory of the case.

Google asserts that the consolidated complaint continues to fail to comply with Federal Rule of Civil Procedure 8, which requires a short and plain statement demonstrating that the plaintiff is entitled to relief. Specifically, Google asserted that Leovy's claims fail to apprise it of which products are allegedly infringing her copyrighted works and the basis for those accusations.

Instead, Google complained that the consolidated complaint introduced new "unsupported and irrelevant" charges of fraud and conspiracy and made sweeping allegations that seemingly implicate all "versions and iterations of virtually every product, service, and AI model Google has ever announced." Google also asserted that some of the other plaintiffs failed to identify specific works that were allegedly infringed or to prove that they were copyrighted.

Google did admit that the consolidated complaint identified some specific copyrighted works that have allegedly been infringed. But it faulted the complaint for stating that "at least" those works had been infringed, "leaving open the possibility that Plaintiffs intend the Complaint to cover and put at issue others" that were not specifically identified.

A hearing on Google's motion is scheduled for next month. This closely watched case will provide an important precedent and signal what the future of generative AI platform training holds.

Class Action

March 21, 2025, 9:10 AM PDT

Clearview AI Gets Settlement Approved in Face-Scan Privacy Case

- Deal to give 23% equity stake worth estimated \$51.75 million
- Settlement deemed fair despite objections, lack of injunction

Clearview AI received final judicial approval for a settlement that provides a 23% equity stake in the company to a class of consumers who alleged the facial recognition company improperly used people's likenesses without consent.

Approving the deal Thursday, Judge Sharon Johnson Coleman of the US District Court for the Northern District of Illinois estimated that the settlement stake was worth \$51.75 million, based on a \$225 million valuation from January 2024.

"Granted, the nature of an equity stake is that it could shrink or grow depending on the performance of the company," Coleman said in her order. But "Clearview is bullish about the company's potential growth based on the available market," she said.

And absent the agreement, it wasn't clear whether Clearview could pay out millions as part of a judgment, or had the funds to make it through a trial, according to a retired judge who facilitated settlement negotiations.

Clearview reached the settlement to resolve consolidated lawsuits alleging the company violated the Illinois Biometric Information Privacy Act by scraping billions of online photos and putting them into a facial recognition database.

The agreement calls for appointing a supervisor with the right to inspect Clearview's finances and sell the stake, in which class counsel would also share, to a third party in order to protect the interests of the settlement class.

Coleman deemed the settlement fair, reasonable, and adequate over policy objections from 22 states and the District of Columbia, as well as advocacy groups.

The court also rejected objections to the settlement's lack of injunctive relief, saying Clearview's separate 2022 agreement with the American Civil Liberties Union already effectively limited its "clientele to federal and state government agencies and their contractors," and placed a five year ban on business in Illinois.

The settlement class—which includes a nationwide class as well as subclasses of consumers in Illinois, California, New York, and Virginia—is expected to include 125,000 members.

The company itself is privately owned; an initial public offering is one of the triggers that would finance the settlement fund, in addition to a liquidation, the court said.

Loevy & Loevy leads the law firms representing consumers. Lynch Thompson LLP represents Clearview AI.

The case is In Re: Clearview AI, Inc., Consumer Privacy Litigation , N.D. Ill., No. 1:21-cv-00135, 3/20/25 .

To contact the reporter on this story: Ufonobong Umanah in Washington at
uumanah@bloombergindustry.com

To contact the editor responsible for this story: Laura D. Francis at lfrancis@bloombergindustry.com

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Jurist slams Uber's 'unintelligible' document responses

DJ [dailyjournal.com/articles/384456-jurist-slams-uber-s-unintelligible-document-responses](https://www.dailyjournal.com/articles/384456-jurist-slams-uber-s-unintelligible-document-responses)

Sarah London

Counsel for more than 1,500 Uber passengers escalated a bitter discovery dispute in the sexual assault multidistrict litigation against the company. They asked a San Francisco federal judge to impose sanctions on Uber Technologies Inc. for disobeying court orders to produce policy documents related to internal policies for handling complaints against Uber drivers.

One of the plaintiffs' lead attorneys, Sarah R. London of Girard Sharp LLP in San Francisco, argued in Wednesday's motion that Uber's defense team "reinterpreted" a previous court order to produce the documents and provided "incomplete" discovery.

Uber's defense team has accused plaintiffs' counsel of over requesting documents and depositions of senior company executives in recent court filings.

In a March 11 opposition, Uber's attorneys argued that sanctions would be "procedurally improper" because the company has "timely produced all available versions of the requested policies." They added, "there is no justification for imposing sanctions. Defendants have complied with the Court's orders, and Plaintiffs offer nothing but conclusory statements to suggest otherwise."

U.S. Magistrate Judge Laura Cisneros previously deemed Uber's document responses "unintelligible" and criticized the company for "wasting the court's and plaintiffs' time by failing to disclose at the discovery status conference that it did not review any hyperlinked documents." *In re Uber Technologies, Inc. Passenger Sexual Assault Litigation*, 3:23-md-03084 (N.D. Cal. filed Oct. 4, 2023).

"Uber's reinterpretation of the Court's orders does not mitigate these production gaps; it exacerbates them," the motion for sanctions said, "Uber does not provide the necessary metadata to permit Plaintiffs to find linked documents and pair them with policies. Plaintiffs have spent countless hours seeking fulsome production, but have received only constantly shifting explanations and missed deadlines."

Cisneros, who was appointed to oversee the parties' winding discovery battle, denied the plaintiffs' previous motion for sanctions without prejudice in a Tuesday order but criticized Uber's discovery tactics.

"Plaintiffs have demonstrated that at least some of Uber's policy documents are drastically incomplete, bordering on unintelligible, without reference to other documents hyperlinked therein-- or at the very least an understanding of where such hyperlinks are directed," Cisneros wrote. "Even if the documents to which such links are directed have been produced, plaintiffs seem to have no way to know which documents many of the hyperlinks at issue implicate, and thus no way to determine the full meaning of the policy documents."

Among the documents at issue are the company's "Global Potential Safety Concern Policy" and "Driving Change" program, launched in 2017 to prevent sexual violence. The company has committed \$15 million in funds to the program.

Uber's media relations office and its defense team handling the discovery dispute from Paul, Weiss, Rifkind, Wharton & Garrison LLP could not be reached for comment Thursday.

The sanctions motion comes on the heels of Paul, Weiss, Rifkind, Wharton & Garrison losing one of its major clients on Tuesday due to U.S. President Donald Trump's executive order that removed major law firms' security clearance.

Cisneros raised the initial idea of sanctions during a Jan. 23 discovery conference according to the minutes, which stated, "The Court noted Plaintiffs could potentially seek sanctions for documents not timely produced by Uber, much like for documents not timely produced in initial disclosures or in response to a request for production. The Court did not prejudge whether or what sanctions might be warranted for untimely production."

The sanction request is a continuation of a bitter discovery dispute the parties have been embroiled in since U.S. District Judge Charles Breyer, who is overseeing the multidistrict proceeding, denied Uber's motion to stay in February 2024.

Plaintiffs' counsel previously accused Uber of concealing violent incident reports against its drivers and other information related to the ongoing litigation by 1,500 female riders who say they were sexually assaulted and harassed by Uber drivers in a Jan. 28 discovery brief on the issue.

At the heart of the litigation are the thousands of personal injury lawsuits Uber was hit with in state and federal courts throughout the country -- all accusing the company of intentionally ignoring complaints of its drivers sexually assaulting passengers for a decade and failing to implement adequate safety measures.

The litigation was consolidated by Breyer in San Francisco in October 2023. Bellwether trials are expected to start in December.

In San Francisco Superior Court, Uber is simultaneously in a pending consolidated JCCP action combining similar state court complaints that female rideshare customers filed against Uber and its rideshare competitor, Lyft.

In the federal litigation, the following attorneys serve as co-lead counsel for the rider plaintiffs: Rachel B. Abrams of Peiffer Wolf Carr Kane Conway & Wise LLP in San Francisco; and Roopal P. Luhana of Chaffin Luhana LLP in New York City.

The following Paul, Weiss, Rifkind, Wharton & Garrison attorneys represent Uber: Randall S. Luskey of San Francisco; Robert Atkins, Caitlin E. Grusauskas, and Andrea M. Keller of New York.

The following attorneys from Shook, Hardy & Bacon LLP are also representing Uber but did not file briefs regarding the discovery dispute: Michael B. Shortnacy of Los Angeles, Veronica G. Gromada of Houston, and Patrick Oot of Washington D.C.

#384456

Wisdom Howell

Daily Journal Staff Writer
wisdom_howell@dailyjournal.com

Class Action

March 20, 2025, 9:30 AM PDT

Beech-Nut Sheds Heavy Metal Deception Suit From Baby Food Buyers

- Consumers didn't show product unusable or they overpaid
- 2021 Congressional report showed baby foods contained metals

Consumers alleging Beech-Nut Nutrition Co. failed to warn consumers that its baby food products had toxic metals didn't show they suffered an injury and so lacked standing to sue, a federal judge said.

The US District Court for the Northern District of New York on Wednesday rejected the consumers' theories that they had standing because the toxic metals made the products unusable or that they overpaid for the products.

Consumers in consolidated proposed class actions alleged Beech-Nut failed to sufficiently test its products for heavy metals or disclose that its products contained the toxic substances.

A 2021 committee report from the US House of Representatives had said many brands of baby food in the US contain elevated levels of arsenic, lead, cadmium, and mercury. These metals can be harmful to children and infants.

The consumers said they didn't receive the benefit of their bargain because the levels of heavy metals in the products rendered them unsafe and unsuitable for their purposes.

The plaintiffs "allege that they paid for safe and healthy baby food for their children," Judge David N. Hurd said. "But they do not allege that defendant's products were worth something less than this or unusable."

The consumers didn't say that the alleged contaminants made label statements false or that the products didn't serve the intended purpose.

Hurd also rejected the consumers' theory that they were injured by overpaying for the products.

The consumers "have not alleged any cheaper, comparable products to support the notion of a premium," Hurd said. "Instead plaintiffs express regret about what they paid for a product given an unfavorable report—but they do not state what they would have done differently had they known to plausibly give rise to the notion they paid a premium."

A 2023 Bloomberg Law investigation highlighted that the US Food and Drug Administration has known for years that many baby foods contain levels of heavy metals that can cause developmental problems.

Earlier this year, the FDA finalized guidance limiting lead levels in processed baby foods to be no higher than 10 parts per billion. The guidance is non-binding and is part of the agency's Closer to Zero initiative that was established in the wake of Congressional pressure to take action on heavy metals in baby foods.

The consumers were represented by Silver Golub & Teitell LLP, Hacker Murphy LLP, Scott & Scott LLP, Zigler Law Group LLC, and Walton Telken LLC.

Beech-Nut was represented by King & Spalding LLP and Bond Schoeneck & King PLLC.

The case is In re Beech-Nut Nutrition Co. Baby Food Litig. , N.D.N.Y., No. 1:21-cv-00133, 3/19/25 .

To contact the reporter on this story: Shweta Watwe in Washington at swatwe@bloombergindustry.com

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

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Litigation

March 21, 2025, 9:23 AM PDT

Resurrected Consumer Group Leads Next Attack on Regulators

- Supreme Court case follows overturning of Chevron
- Group part of web connected to mega-donors

A group that's spent the last four years attacking companies for promoting diversity, equity, inclusion and other "woke" policies is now taking aim at federal regulators in the next big swipe at the administrative state to reach the Supreme Court.

Consumers' Research's immediate target is a federal program that forces telecom carriers to contribute to a fund that makes telephone and internet services affordable for rural and low-income people. The ultimate goal of the case being argued March 26 is to revive a long-dormant legal principle that prohibits Congress from delegating its legislative power to federal agencies.

Consumers' Research Executive Director Will Hild says the work is consistent with the nonprofit's origin's as a consumer protection organization, but critics say conservatives are using the group's distant history to mask another attack on administrative power.

"This is 'Invasion of the Body Snatchers' where a group set up originally to provide consumers tangible product information has become a right-wing advocacy group with an anti-consumer agenda," said Jon Golinger, who investigates corporate influence on elections and the government for Public Citizen, a progressive consumer advocacy group.

Delegating Authority

Founded in 1929, Consumers' Research was the first independent organization to test and report on consumer products. It published bulletins and later Consumers' Research Magazine.

A year after taking over the organization in 2020, Hild, who formerly led the Federalist Society's Regulatory Transparency Project, launched the Consumers First Initiative, which accused companies like State Farm and BlackRock Inc. of putting "woke" progressive politics above consumer interests.

Consumers' Research Targets Agency Power, 'Woke' Companies

Agencies targeted with litigation



Consumer Product Safety Commission



Federal Communications Commission

Note: Graphic includes a sampling of targets
Graphic: Cordelia Gaffney Bloomberg Law
Source: Consumers' Research

Companies targeted for 'woke' politics



American Airlines, Inc.

BlackRock

BlackRock, Inc.



The Coca-Cola Company

BANK OF AMERICA

Bank of America Corporation.



State Farm Mutual
 Automobile Insurance Company

Bloomberg Law

Bloomberg Law/Cordelia Gaffney

Litigation has become another main focus of the group that's closely connected to Leonard Leo, who helped President Donald Trump choose his three Supreme Court nominees during his first term. Hild described the Federalist Society's former vice president as "a good friend and adviser to the organization."

Consumers' Research's case challenging the constitutionality of the Federal Communications Commission's multi-billion-dollar Universal Service Fund is the latest attack on administrative power to come from a web of groups tied to Leo since Trump solidified a 6-3 conservative majority on the court.

There is a Leo network pushing an agenda that's taking away the power to protect consumers, the environment, and workers, and giving it to corporate special interests, said Tony Carrk, Accountable.US executive director.

Last term, the justices overturned a legal principle that directed courts to defer to an agency's reasonable interpretation when laws are ambiguous in *Loper Bright Enterprises v. Raimondo*.

Cause of Action Institute, a group Hild helped found, was the public interest law firm behind *Loper Bright*, one of two cases challenging that principle known as the *Chevron* doctrine. New Civil Liberties Alliance, which is also backed by groups tied to Leo, was behind the other challenge, *Relentless v. Department of Commerce*. Neither group would comment on Consumers' Research or its work.

Legal scholars say its case against the FCC is the next step after *Loper Bright* to further hobble regulators by eliminating the leeway Congress has to let agencies determine what public health and safety standards are necessary to protect the public.

"It's an attempted assault on Congress' power," said Nicholas Bagley, a University of Michigan law professor, who submitted a brief supporting the FCC with a colleague.

Three federal appeals courts rejected the group's attempts to resurrect the nondelegation doctrine, which hasn't been used to invalidate a federal law since 1935. Consumers' Research found a more sympathetic bench at the US Court of Appeals for the Fifth Circuit.

Since the fund worked like a tax and that's a "quintessentially legislative power," Congress couldn't give it away to a federal agency, the appeals court said.

Name Recognition

Consumers' Research still touts itself as the nation's oldest consumer protection organization.

"We have a 90-year pedigree of standing up for the consumer and amplifying their voice in the marketplace," Hild said at the Conservative Political Action Conference, CPAC, in 2022.

The organization brought a constitutional challenge to the Consumer Product Safety Commission in 2021 that argued against its structure, but lost at the Fifth Circuit. The Supreme Court then refused to hear its appeal last year.

In its case against the FCC, Hild said Consumers' Research doesn't object to the Universal Services Fund as a subsidy program, only how it's administered, or to federal regulations overall.

The group's current work is a "natural evolution," he said, pushing back on the assertion it's latest work is at odds with its legacy.

Co-founder Stuart Chase was an adviser to President Franklin D. Roosevelt who coined the phrase "a New Deal," according to his 1985 New York Times obituary. Despite the similar sounding name, it didn't publish Consumer Reports, which started after a 1935 unionization fight led workers to form Consumers Union.

The shift to policy work happened after a new owner took over in 1981, Hild said.

"As technology and society, frankly, caught up with Consumers' Research, the need for a product review magazine declined," he said.

But critics point out the group was largely dormant for about a decade during the early 2000s when revenue dropped from \$113,000 in 2001 to about \$5,200 in 2006. It then reported \$0 in contributions from 2002 through 2006 and in 2010, reported no revenue or contributions, according to tax filings obtained through ProPublica's Nonprofit Explorer.

Consumers' Research started receiving money again in 2011 and then got \$8.02 million in 2021, the most it had gotten in grants and contributions in two decades.

"Someone knew this group was laying around with this legacy that could be deployed to try to sound consumer friendly," said Lisa Graves, director of the investigative watchdog group True North Research and managing director of Court Accountability, which works to combat corrupt abuses of judicial power.

The name, she said, helps give the group credibility with the public and the press when it's targeting companies for "woke" politics or attacking regulators in court.

"They could have called it something else," Graves said. "But they already had this asset."

– With assistance from Kimberly Strawbridge Robinson.

To contact the reporter on this story: Lydia Wheeler in Washington at lwheeler@bloomberglaw.com

To contact the editors responsible for this story: Seth Stern at sstern@bloomberglaw.com; John Crawley at jcrawley@bloomberglaw.com

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Paul Weiss Grovels To Trump, Gets Out From Under Executive Order

 abovethelaw.com/2025/03/paul-weiss-grovels-to-trump-gets-out-from-under-executive-order

March 20, 2025



(Photo by David Becker/Getty Images)

Well ain't this some shit. Faced with an Executive Order — described by the right as designed to bankrupt the firm — Paul Weiss chairman Brad Karp kissed the ring of Donald Trump.

As noted by Anna Bower of Lawfare, Donald Trump posted on Truth Social that Karp “acknowledged the wrongdoing” of former partner Mark Pomeratz as part of his offering. For the record, the “wrongdoing” was joining Manhattan District Attorney Alvin Bragg in the *successful* prosecution of Donald Trump.

Karp also agreed to eliminate all DEI programs at the firm within 14 days, provide \$40 million in pro bono services to Trump initiatives, and to abandon partisan decision making in its representations (whatever that means).

This is all taken from Trump's post so the usual grains of salt might apply, but this is one of Trump's “not-ALL-CAPS” posts, which usually mean they've been vetted and written by someone else.

As a result of this servile positioning, Trump rescinded the executive order targeting the firm.

This bodes absolutely terribly for the industry. It's an admission from one of the biggest and most powerful law firms in the nation that fighting a likely unconstitutional Executive Order in court just isn't worth it. The harm that the Trump administration can bring is too great, and the court system is unable to counter the blatant lawlessness the far right is engaged in.

Faced with calls to stand up to the Trump administration and defend the rule of law, Paul Weiss blinked. And law and order is worse off for it.

Paul Weiss attorneys and other employees, how do you feel about the firm's decision? Feel free to sound off by email, by text message (646-820-8477), or by tweet (@ATLblog). An insightful response — we'll keep you anonymous — could find its way into an update to this story.



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

Trump's deal with law firm Paul Weiss sparks alarm among lawyers

 [reuters.com/legal/trumps-deal-with-law-firm-paul-weiss-sparks-alarm-among-lawyers-2025-03-21](https://www.reuters.com/legal/trumps-deal-with-law-firm-paul-weiss-sparks-alarm-among-lawyers-2025-03-21)

Mike Scarcella, Sara Merken

President Donald Trump delivers remarks, in the Oval Office at the White House, in Washington, D.C., U.S., March 21, 2025. REUTERS/Carlos Barria/File Photo Purchase Licensing Rights , opens new tab

- Paul Weiss faced executive order threatening firm business
- Firm will drop diversity policies, provide free legal work, White House said
- Some lawyers said deal was capitulation
- Experts call Trump's actions unprecedented attack on law firms

March 21 (Reuters) - Powerful Wall Street law firm Paul Weiss faced heavy criticism on Friday over a deal it struck with the White House to escape an executive order imperiling the firm's business, even as some lawyers said the firm faced few other options.

Lawyers at some companies and law firms skewered Paul Weiss online for appearing to capitulate to Republican President Donald Trump by scrapping internal diversity policies and donating \$40 million in free legal work to support his administration's causes.

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"Embarrassed to be associated with this firm today," a lawyer at Amazon Web Services who previously worked at Paul Weiss wrote on LinkedIn.

The lawyer and Amazon (AMZN.O) , opens new tab, a Paul Weiss client, did not immediately respond to a request for comment.

Paul Weiss Chairman Brad Karp said in an internal email to its lawyers, viewed by Reuters, that the agreement with Trump was in line with the firm's principles, including a commitment to remaining politically independent.

Trump has attacked major law firms for weeks over their work for his Democratic adversaries and their internal diversity policies, amid broader moves by the president to use funding cuts and other measures to pressure universities and private companies to follow his priorities.

A person familiar with Paul Weiss' decision to make a deal with Trump said it was facing an existential threat. Paul Weiss had already lost at least one white-collar client over Trump's order, court records show.

Experts said Trump's orders against Paul Weiss and another big firm, Perkins Coie, marked an unprecedented attack on their ability to do business.

The order against Perkins Coie was "life-threatening" to the firm, its lawyer said last week in that firm's ongoing lawsuit against the administration.

Asked for comment, the White House referred to Trump's social media post on his agreement with Paul Weiss.

Trump's order against Paul Weiss cited its association with a prosecutor who investigated the president and the firm's internal diversity policies. The order suspended security clearances for the firm's lawyers and restricted their access to government buildings and officials.

Trump in an earlier order suspended security clearances for two lawyers at Covington & Burling who represent Jack Smith, the U.S. special counsel who brought criminal charges against Trump in two cases.

On Monday, the U.S. Equal Employment Opportunity Commission sent demands to 20 major law firms for detailed information about their diversity initiatives and racial and gender demographics, expanding the administration's legal industry crackdown.

Paul Weiss could face blowback from some of its lawyers and clients over its truce with Trump, said University of Connecticut law professor and legal industry expert Leslie Levin, but she said the firm likely saw a deal as the safest way forward.

The White House said on Thursday that Trump met with Karp, a longtime Democratic fundraiser and top outside lawyer for financial companies, and worked out the accord. Marc Elias, a former Perkins Coie partner and top lawyer for Democrats, assailed the Paul Weiss agreement in a social media post late on Thursday, calling it "a stain on the firm, every one of its partners, and the entire legal profession."

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

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Sara Merken
Thomson Reuters

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



Andrew Jennings
@andrewkjennings.com

+ Follow

This seems like an ... odd signal to send to clients and prospective clients.



Hugo Lowell @hugolowell.bsky.social · 19h

New: Trump rescinds order targeting the law firm Paul Weiss after it agreed to "dedicate the equivalent of \$40m in pro bono legal services over the course of President Trump's term to support the admin's initiatives" AND "acknowledged the wrongdoing of Mark Pomerantz"

March 20, 2025 at 3:42 PM Everybody can reply

20 reposts 4 quotes 148 likes



13



24



148



Write your reply



Ann M. Lipton @annmlipton.bsky.social · 19h
Not to mention entry level associates



1



20



privacylawchi.bsky.social @privacylawchi.bsky.social · 18h
Imagine those on-campus interviews next fall.



8



James Fallows Tierney @jamesftierney.bsky.social · 19h
sounds like it's just extortion



2



31



Andrew Jennings @andrewkjennings.com · 19h
It's bizarre. Other targeted firms are fighting back and will likely win. Why do something that betrays such weakness when your clients are paying for strength?



2



5



65



Too Big to Fail @toobigtofail.bsky.social · 19h
I would have to imagine that some GIANT account insisted on this. There's no other reason for them to behave this way.



2



1



15



Class Action

March 20, 2025, 3:23 PM PDT; Updated: March 20, 2025, 4:24 PM PDT

Trump Rescinds Paul Weiss Order as Firm Pledges \$40 Million (2)

- Paul Weiss security clearances, clients' contracts are reinstated
- Firm commits \$40 Million to pro bono work in line with Trump goals

President Donald Trump rescinded an executive order against Paul Weiss, saying the law firm will dedicate \$40 million in pro bono legal services during his term to support administration goals.

Trump announced his decision on Truth Social Thursday, stating Paul Weiss agreed to take on pro bono clients that "represent the full spectrum of political viewpoints." Trump also said Paul Weiss affirmed a commitment to merit-based hiring and promotion and won't pursue "DEI policies."

Trump's post said the goals Paul Weiss will spend money on include assisting the nation's veterans, fairness in the justice system, the president's task force to combat antisemitism and other "mutually agreed projects."

The president's move is the first indication that his icy relations with Big Law firms are capable of thawing, after his administration issued directives and letters targeting more than 20 legal operations in recent weeks. Trump's executive order was part of an overall effort by the administration to crack down on what Trump calls weaponization of the legal system and discriminatory DEI hiring practices.

Paul Weiss' agreement with Trump over the executive order "just shows that this is what it takes to make it go away," said Cari Brunelle, founder of legal industry advisory firm Baretz+Brunelle. "The rules of the game have changed and this is a very different game."

Trump's agreement with the firm came after a "meeting with Paul Weiss chairman Brad Karp," according to the president's post. Karp didn't immediately return a request for comment.

Trump's post included a statement by Karp that said, "We are gratified that the president has agreed to withdraw the executive order concerning Paul Weiss. We look forward to an engaged and constructive relationship with the president and his administration."

During the meeting with Trump, Karp reportedly acknowledged the "wrongdoing of former Paul Weiss partner Mark Pomerantz, the grave dangers of weaponization and the vital need to restore our system of justice."

Pomerantz is a former Paul Weiss 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 14 order stripping the law firm's security clearances and threatening to terminate clients contracts specifically mentioned Pomerantz.

The order also rebuked the firm for its work on cases related to the Jan. 6, 2021 riot at the US Capitol. Paul Weiss has strong ties to Democratic administrations, with partners who include former Obama administration officials Loretta Lynch and Jeh Johnson.

"Paul, Weiss will take on a wide range of pro bono matters that represent the full spectrum of political viewpoints of our society, whether 'conservative' or 'liberal,'" Trump's Truth Social post said.

The president's March 14 order was nearly identical to one he issued March 6 against Perkins Coie, which cited the firm's involvement in opposition research against his 2016 presidential campaign. The orders followed a Feb. 25 memo against Covington & Burling that targeted the security clearance of firm partner Peter Koski for his representation of former special counsel Jack Smith.

Meanwhile, the Equal Employment Opportunity Commission on March 17 announced investigations into 20 top law firms for allegedly discriminatory diversity hiring practices.

(Adds analyst comment in fourth paragraph.)

To contact the reporter on this story: Justin Henry in Washington DC at jhenry@bloombergindustry.com

To contact the editors responsible for this story: Chris Opfer at copfer@bloombergindustry.com; John Hughes at jhughes@bloombergindustry.com; Alessandra Rafferty at arafferty@bloombergindustry.com

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Trump withdraws order targeting Paul Weiss, says law firm promised free legal work

 [reuters.com/world/us/trump-withdraws-executive-order-targeting-paul-weiss-law-firm-2025-03-20](https://www.reuters.com/world/us/trump-withdraws-executive-order-targeting-paul-weiss-law-firm-2025-03-20)

Jasper Ward, Mike Scarcella

Signage is seen outside of the law firm Paul, Weiss, Rifkind, Wharton & Garrison LLP in Washington, D.C., U.S., August 30, 2020. REUTERS/Andrew Kelly/File Photo Purchase Licensing Rights , opens new tab

- Trump has targeted law firms over past clients, diversity policies
- Paul Weiss pledged \$40 million in pro bono work, Trump says
- Firm chairman met with president, according to White House

WASHINGTON, March 20 (Reuters) - U.S. President Donald Trump said on Thursday he is withdrawing an executive order that targeted law firm Paul Weiss, saying the firm "acknowledged the wrongdoing" of an attorney who investigated the president and has pledged \$40 million in free legal work to support the administration.

The surprise move, which comes amid a wave of attacks by the Republican president on prominent law firms, follows a meeting between the president and Paul Weiss' chairman, Brad Karp, according to the White House.

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During that meeting, Karp acknowledged the wrongdoing of Mark Pomerantz, a former partner at the New York firm, who was involved in the Manhattan district attorney's investigation into Trump's hush money payments to a porn star, the White House said. "Paul Weiss agrees that the bedrock principle of American Justice is that it must be fair and nonpartisan for all," said Trump.

Pomerantz, who worked most recently at Paul Weiss until 2022, said in a statement: "I engaged in no wrongdoing by working as a prosecutor to uphold the rule of law."

Paul Weiss did not immediately respond to a request for comment.

Trump's executive order against Paul Weiss suspended its lawyers' security clearances and restricted their access to government buildings and officials, citing the firm's diversity policies and its association with Pomerantz.

Trump said Thursday that Paul Weiss promised to dedicate the equivalent of \$40 million in pro bono legal work during the president's term toward administration priorities such as combating antisemitism and support for veterans.

The firm also agreed to audit its employment practices and purge them of any diversity, equity and inclusion (DEI) policies, the White House said.

Trump has mounted a broad campaign against DEI practices in government and the private sector that the administration alleges are discriminatory. On Monday the U.S. Equal Employment Opportunity Commission sent demands to 20 major law firms for detailed information about their diversity initiatives and racial and gender demographics. The apparent truce between Trump and Paul Weiss is in stark contrast with the response of another firm, Perkins Coie, that sued the administration after it was hit with a similar executive order this month.

A judge in Washington temporarily blocked parts of the Perkins Coie order on March 12, finding the firm was likely to win its lawsuit alleging Trump's actions violated the firm's rights under the U.S. Constitution.

Perkins Coie did not immediately respond to a request for comment on Trump's decision to rescind the Paul Weiss order.

Paul Weiss' chairman Karp helped raise funds for Trump's 2024 election opponent Kamala Harris. The firm's partners include Loretta Lynch, who was U.S. attorney general during the Democratic Obama administration.

The firm is known for guiding corporate deals on behalf of financial giants like Apollo Global Management (APO.N) [↗](#), opens new tab, Blackstone Group (BX.N) [↗](#), opens new tab, Citibank (C.N) [↗](#), opens new tab and Goldman Sachs (GS.N) [↗](#), opens new tab, and for handling high-stakes litigation for tech industry clients such as Alphabet's (GOOGL.O) [↗](#), opens new tab Google and Amazon.com (AMZN.O) [↗](#), opens new tab.

The companies either declined to comment or did not immediately respond to requests for comment.

Paul Weiss told a judge in New Jersey on Wednesday that it was fired by a client it was defending in a bribery case because of Trump's order. Perkins Coie in its lawsuit said seven of its clients had left the firm due to the order against it.

Leslie Levin, a University of Connecticut law professor and expert on the legal profession, said Paul Weiss likely feared a client exodus.

"There was no playbook for how to deal with this," she said.

Reporting by Jasper Ward and Mike Scarcella; Editing by Daniel Wallis, David Bario, Gerry Doyle and Stephen Coates

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Jasper Ward
Thomson Reuters

Jasper Ward is a breaking news reporter in Washington. She primarily covers national affairs and U.S. politics. Jasper was previously based in The Bahamas where she covered the collapse of FTX and the subsequent arrest of its founder Sam Bankman-Fried. She was a part of the Reuters team that won the Gerald Loeb Award for breaking news for its FTX coverage.

Class Action

March 21, 2025, 1:30 AM PDT; Updated: March 21, 2025, 7:21 AM PDT

Lawyers Must Not Stay Quiet in Face of Trump Attack on Firms (1)

Former Fordham Law School dean Matthew Diller says President Donald Trump's actions targeting the legal profession will force attorneys to consider their role in upholding democracy.

As the dean of two major law schools, I always told first-year students about the legal profession's essential role in our democracy—and reminded them at graduation three years later. During the intervening years, our faculty worked to give future lawyers the tools they needed to serve this role effectively and responsibly.

I often wondered how the message came across, and whether the students viewed the legal profession's claimed relationship to our democracy as pompous, self-serving hot air. The first two months of the Trump administration have quelled any doubts I may have had about the vital importance of that relationship.

It's no surprise the Trump administration has placed the ethos and values of the legal profession in its crosshairs. It started by eliminating many of the career lawyers at the Department of Justice, before moving on to axing the inspectors general at more than a dozen government agencies, overhauling the leadership of the Judge Advocate General's Corps across the military, and removing the chief counsel for the IRS.

Government lawyers are the first line of defense in preventing abusive, illegal actions by the government they serve. Former DOJ attorneys such as Danielle Sassoon, Kevin Driscoll, John Keller, Hagan Scotten, and Denise Cheung sounded the alarm by resigning rather than executing the actions Trump officials told them to carry out.

The White House expanded its attack on the legal profession to the private bar, targeting Covington & Burling, Perkins Coie, and Paul Weiss because of representations they undertook that the Trump administration viewed as hostile to the president.

President Donald Trump issued a memo revoking the security clearances for Covington lawyers representing former special counsel Jack Smith and directing his administration to terminate any contracts it has with the firm.

He went a step further in an extraordinary executive order, revoking security clearances, government contracts, access to information, and physical access to government buildings for lawyers associated with Perkins Coie and sought to punish the clients of firms for engaging them.

He later issued a similar order targeting Paul Weiss, though late Thursday he announced that he rescinded the order after Paul Weiss agreed to a number of demands, including dedicating \$40 million in pro bono legal services to support administration goals—a development almost as disturbing as the original order.

Despite the caveat “to the extent consistent with law” repeated throughout the pronouncements, these actions violate due process and the First Amendment rights of both the firms and their clients. They are unlike anything we have seen since the McCarthy era in the 1950s.

It’s telling that the administration is broadcasting its retribution. The public fight with these three highly respected law firms is designed to intimidate the entire legal community through the implicit threat of future blackballing and by intimidating clients into pressuring law firms to cooperate with the administration. Corporate clients right now are likely grilling their counsel about whether they engage in pro bono or other litigation disfavored by Trump.

Despite the likelihood Perkins Coie will prevail in court, the message has been sent.

Even if courts declare it unlawful for the government to formally blackball law firms, lawyers and clients will fear that if they challenge this administration, they will be treated unfairly during interactions with federal agencies that are the bread and butter of their practice. One client recently dropped Paul Weiss as his defense counsel, saying Trump’s order “may negatively affect his ability to obtain a favorable review of his case.”

The firms that have the greatest expertise and experience litigating against the government are most at risk. The administration’s public demonstration of vindictiveness will have ripple effects, regardless of the outcome of litigation challenging it. Given Paul Weiss’ prominence, the success of the administration’s bullying and shakedown is stunning and will reverberate through the legal profession.

If the federal government lawyers, whose job it is to put the kibosh on illegal action are neutered, and the private sector lawyers are browbeaten into submission, the only lawyers left are those working in public interest, or for state and local governments. These sectors have great value, but they have limitations and vulnerabilities when it comes to standing up for the rule of law.

The public interest community is tiny compared to the other sectors and depends on philanthropic donations. State and local government lawyers have major constraints on the types of cases they can bring. They can sue on behalf of the polity they represent, but they aren’t in the business of representing individuals or entities subject to illegal conduct by the federal government.

The Trump administration is testing these limits by defending challenges from state attorneys general by arguing states have no standing to sue.

Without the support of federal government lawyers and the private bar, the checks on government abuse are greatly weakened. The checks and balances that the courts intend to provide don’t come into play if there are no lawyers willing to bring cases.

For all the lawyers who have stood up for the ethics and integrity of their profession, there have been others who have worked to undermine it. We are waiting to see whether our profession is characterized by the likes of Sassoon, Driscoll, and Scotten, or by the appointees who implemented the president’s plans to erode the rule of law.

I'm heartened to see reports that nearly 300 associates from the nation's largest firms have signed a letter calling on firm leaders to stand up to Trump's actions. However, the most powerful voices in the private bar have mostly remained silent, and Paul Weiss' decision to placate the administration rather than challenge blatantly illegal action is deeply troubling.

Lawyers, especially those in leadership positions, need to rise to the challenge and play their role in defending our democracy, and not fold under threat of retaliation. I hope—as did the educators and leaders of the bar after the Watergate scandals—that we've been effective in conveying the values of our profession. And I hope law students, past and present, have absorbed those values.

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

Author Information

Matthew Diller is dean emeritus and professor of law at Fordham University School of Law and former dean of the Benjamin N. Cardozo School of Law.

Write for Us: Author Guidelines

(Updated with new information in the eighth, 13th, and 19th paragraphs.)

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

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'Why Are You Remaining Silent?' Some Clients Expect Big Law Public Response on Executive Actions

 [law.com/therecorder/2025/03/19/why-are-you-remaining-silent-some-clients-expect-big-law-public-response-on-executive-actions](https://www.law.com/therecorder/2025/03/19/why-are-you-remaining-silent-some-clients-expect-big-law-public-response-on-executive-actions)

Amanda O'Brien

Credit: shock/Adobe Stock

News

"I'm carefully watching the reactions of various firms, or the lack thereof, and I feel it's my duty to vote with my pocketbook in terms of where I want to send my business in the future," a clothing company GC said.

March 19, 2025 at 04:03 PM

Law Firm Client Relationships

By Amanda O'Brien



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

Most Big Law firms, in keeping silent about the Trump administration's actions against law firms, are concerned they could harm their clients or business if they were to speak publicly against the government. But some general counsel lawyers say they want their outside counsel to speak up.

Some Big Law clients are going so far as to indicate that they're willing to vote with their dollars and shift business around to those who speak out against the Trump administration, according to interviews with corporate counsel and several LinkedIn posts by general counsel.

"I'm carefully watching the reactions of various firms, or the lack thereof, and I feel it's my duty to vote with my pocketbook in terms of where I want to send my business in the future," a clothing company GC said in an interview.

A medical company chief legal officer said in an interview, "If there ends up being a split where some firms are vocal and others aren't, I will absolutely use that in my purchasing or vendor decisions. I will want a firm that is aligned with my values." The CLO expressed disappointment that firms thus far have remained silent.

Some general counsel are now contacting their outside counsel to gauge their responses, or lack thereof, to Trump's targeting of Paul Weiss, Perkins Coie, and Covington & Burling through presidential actions.

“As soon as the executive order on Perkins Coie came out, within a half hour, I emailed every law firm that I pay currently and the law firm I used to work at and a couple others where I have close contacts just to say that I expect you to be fighting this swift and strong,” said the medical CLO, who didn’t want to be identified so as not to speak on behalf of their company.

The CLO has connections with many other GCs, and “We’re all doing the same thing. We’re emailing, calling, and asking what are you doing, why are you remaining silent?”

To be clear, some clients have moved business from targeted law firms, because of the business and legal challenges in working with a law firm facing an executive order. Perkins Coie, in court documents, said it’s seen “significant revenue” losses because several clients have switched to other law firms, when, for instance, the government wouldn’t meet with firm lawyers in a case.

And in court documents filed Wednesday, an executive facing a criminal indictment in New Jersey federal court, Steven Schwartz, said he had to cut ties with his lawyers at Paul Weiss, believing the firm’s representation may “negatively affect his ability to obtain a favorable review of his case.”

Paul Weiss declined to comment on the case.

General counsel reaction to Trump’s actions against the three law firms have run the gamut, from supportive to ambivalent to disinterested, reflecting the tension and differences of opinion with the entire legal industry and within firms too.

One advertising company’s general counsel, speaking anonymously to ALM, said he would be shifting work away from the firms targeted by Trump’s actions. The GC said he felt sympathetic to the firms, and he would personally move work to firms speaking out, but a duty to his company means that a firm’s public action or statement wouldn’t be a factor in his outside counsel section.

Another GC, who serves a media-focused company, indicated that general counsel were in a “uniquely difficult” position given their fiduciary duties to the companies they serve while also remaining officers of the court and members of the legal profession.

“We aren’t merely corporate officers charged with producing shareholder value...that’s part of being a general counsel, but we’re also members of the bar, officers of the court, and part of a legal profession that’s the bedrock of the rule of law,” the GC said. “We stand apart from the narrow shareholder value paradigm and have a responsibility to the legal system, to the profession, and we’re really caught between those two prerogatives.”

Speaking Out

Still, some general counsel and chief legal officers are increasingly speaking up on LinkedIn and other social media, to support the three targeted law firms and to support law firms advocating for “rule of law” issues. Law.com observed at least seven in-house counsel who made LinkedIn posts who pushed law firms to speak up.

Several general counsel and chief legal officers have not only made note of Big Law’s silence. The general counsel for the clothing company, who also declined to be identified so as not to speak on behalf of their company, described the lack of response as “disappointing.”

Other corporate counsel are describing it as “deafening” in public-facing posts on forums such as LinkedIn.

“The silence from [the] Am Law 100 is deafening, and character-defining,” wrote one in-house counsel in a social media post. “This isn’t about ‘But we have to think about our clients’ point of view’. This is about who YOU are, what are your values, what do you stand for?”

“We’re up to three, and the silence is deafening,” wrote a general counsel from a food production company. “Where is the outrage from their peer firms? This isn’t a partisan issue – these firms take on clients from both sides of the aisle, as well as clients with no affiliation at all.”

Some general counsel say they are watching closely which law firms join in a proposed amicus brief that, according to sources, is circulating around law firms for signatures. The amicus brief may be filed in Perkins Coie’s litigation against the Trump administration, possibly by April 2, when the parties are scheduled to file motion papers.

According to sources and social media posts, Munger Tolles & Olson is helping to coordinate the amicus brief. Social media posts list an email address belonging to the firm and an intake phone number sent to an automated voicemail belonging to “voicemail amicus.” A representative for Munger Tolles declined to comment.

Some general counsel acknowledged that they had heard of the amicus brief making its way through Big Law or have had law firms ask them for their thoughts on it.

The medical CLO expressed frustration at what they felt was an attempt to use the amicus brief as a kind of smokescreen to disguise firms’ lack of response.

“I’m talking to them, and they’re saying wishy-washy things like ‘we’re reviewing our options’ and ‘there are documents like an amicus brief being circulated’ but no one will make any public statement or make any kind of stand because they’re keeping their options open,

which includes just rolling over,” the CLO said. “Their cowering in the corner is working at a disservice to them. It’s showing how they’re willing to bend a knee as soon as their revenue is threatened.”

On the other side of the argument, however, the advertising company general counsel suggested that general counsel statements pushing for firms to speak up were “virtue signalling” as opposed to an effective, concerted effort.

“It feels like a lot of this stuff is to make us feel better, feel less powerless, rather than really intended to sway the administration here,” the GC said. “It’s hard for me to imagine the resolution here.”

Big Law associates, too, have begun circulating [an open letter](#) asking firm leaders to speak up and “defend their colleagues.” But associates are also aware that client desires, rather than associate well-being, will win out in the end.

“Many firms care about associates, about their well-being and their preferences, but client desires are always going to win out,” said Skadden, Arps, Slate, Meagher & Flom third-year financial associate Rachel Cohen, one of the organizers of the associate open letter, in a prior interview. “That’s where the power rests right now, with private industry.” Cohen emphasized that she was not speaking on behalf of the firm.

It’s also not clear if the amicus brief will gather enough support to be filed. Even with some general counsel pushing firms to speak up, very few Big Law partners and leaders have voiced public alarm over the administration’s actions targeting three big law firms.

Cari Brunelle, of legal industry advisory firm Baretz + Brunelle, [previously told](#) Law.com it wasn’t surprising to see “that no law firm wants to speak publicly about what is going on,” noting the pendulum swinging away from firm leaders commenting on social issues.

“The potential threat of retaliation to a firm’s business and reputation is unprecedented. Law firm leaders must immediately assess all their risks, ranging from their DEI program and language around it to potentially controversial client matters, then figure out how to communicate about these issues internally and externally, defend their firm, and still reinforce what they stand for—all without putting a target on their back,” Brunelle said.

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A Third-Year Skadden Associate Is The Only Person In Biglaw Willing To Publicly Condemn Trump's Threat To The Rule Of Law

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March 21, 2025

The Trump administration continues to openly target Biglaw firms for their representation of clients and causes adverse to the president's political agenda. Three top firms — Covington & Burling, Perkins Coie, and Paul Weiss — have found themselves on the receiving end of Trump's retaliatory executive orders, which strip attorneys of their security clearances, terminate the firms' government contracts, and limit lawyers' access to government buildings. On top of these (likely unconstitutional) executive actions, Trump has sicced the EEOC on 20 additional Biglaw firms over their DEI policies, with the agency launching full-scale investigations into their alleged "unlawful" employment practices.



One of these legal elites, Paul Weiss, has already capitulated to Trump's demands, kissing the presidential ring to escape the financial consequences of an executive order that could wreak havoc upon the firm. All the while, Biglaw leaders have remained silent, despite being faced with calls to stand up to the Trump administration and defend the rule of law.

One brave Biglaw associate has quite frankly had enough of this, and she's once again sounding off — not just before her firm, but before the entire legal profession — to make clear just how important it is not to bow down before the Trump administration.

You may remember Rachel Cohen, a third-year finance associate at Skadden, as the one who worked to put together the open letter that's been signed by more than 600 associates, asking that Biglaw's leaders speak up in defense of the legal profession. Now, she's given her "conditional" two weeks' notice via firmwide email, due to the leading law firm's failure to address and admonish Trump's revenge tour against Biglaw. Here's an excerpt from her letter:

The firm has been given time and opportunity to do the right thing. Thus far, we have not. This is a moment that demands urgency. Whether we are failing to meet it because we are unprepared or because we don't wish to is irrelevant to me—and to the world—where the outcome is the same. If we were going to resist, we would have done so already. If we were not going to respond to the EEOC (a refusal that would be fully legal), the firm would have already told us.

This is the first firmwide email that has been sent on this topic. What. Are. We. Doing.

Colleagues, if you question if it is as bad as you think it is, it is ten times worse. Whether what we measure is the cowardice in face of lost profits, or the proximity to authoritarianism, or the trauma inflicted on our colleagues who are nonwhite, or the disappointment that I feel in this moment, take what you suspect and multiply it by a factor of ten. Act accordingly. I recognize not everyone is positioned as I am, and cannot act the same way. But do not recruit for this firm if they cannot protect their employees. Do not pretend that what is happening is normal or excusable. It isn't.

Rachel Cohen is surely not the only lawyer in the Biglaw world who feels this way — but she's the only one brave enough to state her case publicly. "We do not have time," Cohen writes. "It is now or it is never, and if it is never, I will not continue to work here."

By Sean Fitzpatrick | CEO, LexisNexis North America, UK, Ireland

Now is the time for *you* to follow suit. Shout from the rooftops that what is happening will lead to the death of the rule of law in America. It is crucial that you make your voices heard. Speak publicly about the way that Trump is misusing the justice system in order to seek retribution against those he deems to be his enemies. Protect the profession, and rise up to protect the rule of law.

UPDATE: Per Cohen's most recent TikTok video, she has officially been removed from Skadden's internal systems.

(Flip to the next page to read Rachel Cohen's full letter.)

Staci Zaretsky is a senior editor at Above the Law, where she's worked since 2011. She'd love to hear from you, so please feel free to email her with any tips, questions, comments, or critiques. You can follow her on Bluesky, X/Twitter, and Threads, or connect with her on LinkedIn.



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Skadden Associate Resigns Over Big Law's Tepid Response to Trump Pressure

 [law.com/americanlawyer/2025/03/21/skadden-associate-resigns-over-big-laws-tepid-response-to-trump-pressure](https://www.law.com/americanlawyer/2025/03/21/skadden-associate-resigns-over-big-laws-tepid-response-to-trump-pressure)

Amanda O'Brien

What You Need to Know

- Paul Weiss has struck a deal with President Trump, reentering the administration's good graces after it issued an executive order targeting the firm and its clients.
- However, not everyone appears pleased with the development; an associate at Skadden Arps sent a firmwide email submitting a conditional notice of her resignation should Skadden continue to remain silent regarding the administration's targeting of the legal industry.

Rachel Cohen, the third-year finance associate at Skadden, Arps, Slate, Meagher & Flom who'd been one of the rare voices in Big Law to attach her name to criticism of firms' quiescence in the face of an unprecedented assault from the Trump administration, had a sharp reaction to the deal Paul, Weiss, Rifkin, Wharton & Garrison negotiated with the president on Thursday.

The agreement, in which president agreed to revoke his previous executive order targeting the firm in exchange for Paul Weiss promising \$40 million in pro bono legal services to causes across the political spectrum and retaining an independent organization to evaluate its hiring practices, prompted her to send a firm-wide email Thursday night demanding her firm act, or alternatively, to accept her two-week notice.

While Cohen's profile remains on the Skadden website, she posted on LinkedIn that she had since been locked out of her firm email since sending that communication, indicating that instead of spurring the firm to action, her letter had been taken as notice.

"This is not what I saw for my career or for my evening, but Paul Weiss' decision to cave to the Trump administration on DEI, representation and staffing has forced my hand. We do not have time. It is now or it is never, and if it is never, I will not continue to work here," Cohen wrote in the conditional notice letter she later posted online.

Posted by Cohen on LinkedIn around midnight Thursday, her email demands that the firm sign onto an amicus brief in support of Perkins Coie, who has sued the administration and been granted a temporary restraining order against sections of the administration's executive order targeting the firm.

In the most recent docket update in the Perkins Coie case, the government advised all agencies, not just those named as defendants in the suit, to obey the limits of the TRO despite maintaining that the President's executive order "is permissible, and that the Court's order was erroneous. The government reserves the right to take all necessary and legal actions in response to the "dishonest and dangerous" conduct of Perkins Coie LLP" as described in the original order.

Cohen's email demands the firm reaffirm its commitment to broad future representation regardless of a client's favored status with the presidential administration, as well as refuse to cooperate with the Equal Employment Opportunity Commission's recent inquiry into the firm's diversity initiatives, refuse to fire anyone at the direction of the administration, and reaffirm its commitment to affinity groups and other diversity initiatives.

The email also details Cohen's prior efforts to gauge Skadden's potential response to the Trump administration as it continued to author executive orders against other Big Law firms and as the EEOC issued letters to 20 top firms.

"I sent emails to multiple trusted partners in management asking to help with whatever response we coordinated. One of them went unanswered. One of them replied, 'Thanks, Rachel. Always appreciate your perspective.' One of them replied offering to talk and then failed to reply for my email asking for a time until a week later, significantly after I had begun speaking publicly," Cohen wrote. "Know that I attended internal meetings about this topic, sent emails to decision makers, avoiding commenting on the EEOC investigation publicly or airing any internal firm discourse publicly."

"This is a moment that demands urgency," Cohen continued. "Whether we are failing to meet it because we are unprepared or because we don't wish to is irrelevant to me—and to the world—where the outcome is the same. If we were going to resist, we would have done so already. If we were not going to respond to the EEOC (a refusal that would be fully legal), the firm would have already told us."

"This is the first firmwide email that has been sent on this topic. What. Are. We. Doing."

In a note accompanying the post, Cohen added that she did not take the decision to write to the firm lightly.

"I've spent thirty years working to get into these spaces. I do not give them up lightly, and I have made plenty of moral compromises before. But this moment is existential, whether we get better from an already unacceptable status quo or get worse hinges on how we handle it," her post reads. "If being on this career path demands I accept that my industry—because this is certainly not unique to Skadden—will allow an authoritarian government to ignore the courts, I refuse to take it any further. As I have said before, others stand to lose far, far more than a paycheck."

Cohen's post has since been reposted over 200 times and reacted to by nearly 1800 individuals on LinkedIn. A review of the comments attached to the post offers a snapshot into a communal response displeased with Paul Weiss' deal with Trump and the overall silence emanating from BigLaw. Among those leaving comments were associates, communications officials, legal technology advisers, recruiters, university employees, and corporate leaders.

This is not the first time Cohen has made her stance on Big Law's silence regarding President Trump's ongoing targeting of the industry public. Cohen was also one of the originators of an associate open letter demanding firms begin to speak publicly and condemn the administration's targeting of other law firms. Since it was first posted, the letter has now garnered around 633 anonymous signatories from firms across the Am Law 200.

Cohen did not immediately respond to an interview request Friday, and a Skadden representative did not immediately respond to a request for comment.

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Matt Levine's Money Stuff: Netflix Producer Traded Instead

White Horse

A fairly standard story of financial fraud goes like this:

1. A guy raises money from investors to do something, promising them a nice return on their money when the thing works out.
- 2. The thing doesn't work as well as he expects, so he loses some of the money and can't give investors the promised return.
- 3. He takes some of the money he has left and uses it to make more aggressive trades, hoping to make up the losses.
- 4. This goes poorly and he loses even more of the money, so he takes even more risks to make up for it.
- 5. Eventually he has lost, like, 95% of his investors' money and there's not much hope of recovery. So he goes to Vegas with the rest and puts it on one spin of the roulette wheel.
- 6. He loses, all the money is gone, and he gets arrested.

When you put it like that, though, it stands to reason that there would be exceptions: Surely some fraudsters must win their final desperate gamble. Not a lot, obviously; you've got a 1-in-38 chance of winning at roulette. But that's not zero!

There are examples! There was an alleged Ponzi schemer in France who literally won the lottery. My favorite example might be Martin Shkreli, who, among many other things, ran a hedge fund, lost 99.9% of his clients' money, launched a second hedge fund, put that hedge fund's money into a speculative drug company he started, took the drug company public, and made piles of money that he used to pay back all of the disgruntled investors in the hedge funds. He went to prison for securities fraud anyway, but his investors really did make money. Sometimes, financially if not legally, gambling on redemption works.

But, again, the success rate should be low. In part this is a matter of risk and reward — if you need to 20x your money to pay back your investors, it stands to reason that you would only have about a 5% chance of success — and in part it is a matter of, you know, if you are the person who has already lost 95% of your investors' money, probably there is something wrong with your decision-making process. (Another favorite example of mine is Sam Israel, who ran a hedge fund, lost most of his investors' money, and tried to make it all back by getting fleeced in an insane "prime bank" scam. That will never work!)

That said ... blockchain solves this? I mean, not really, but I get the anecdotal impression that the rise of crypto has somewhat increased the rate of successful gambling on redemption. Like:

1. If you have lost 95% of your investors' money and need a 20x return in a hurry, you will naturally be tempted by crypto, because it provides the most salient recent examples of people getting rich fast without much work.
- 2. The crypto market has grown rapidly from nothing to trillions of dollars of market value, so there are pretty strong tailwinds to whatever crypto thing you happen to be investing in.
- 3. If your decision-making process is generally poor, *that is not necessarily a problem* in crypto, where the rewards do not always go to diligent effort and penetrating analysis. If you're like "I'm gonna put all my investors' money into this joke coin about a dog," that can work great!

One general feature of gambling on redemption is that, if it's really successful, you never hear about it: Some fund manager loses 95% of his investors' money, makes it all back on crypto speculation, and never bothers to tell anyone that there was a problem in the first place. So I can't prove that there are dozens of important cases of this working in crypto.

But there are some suggestive examples. A few years ago, Tether took a bunch of depositor money and loaned it to its affiliated crypto exchange, Bitfinex, to cover some misplaced customers money; this got Tether in trouble with New York regulators, but ultimately it worked out fine for the depositors because, as crypto grew, Tether and Bitfinex made lots of money and could easily pay everyone back. Or consider FTX, which lost much of its customers' money but then sort of found it again when crypto prices rallied. Tether and FTX got in trouble anyway, but I assume there were quieter cases where rising crypto prices fully solved the problem.

That said, most of the time, if your decision-making process was bad enough to lose most of your investors' money in the first place, and then you make it all back in crypto, your decision-making process is probably bad enough that you won't quit while you're ahead and will find a way to lose it all again.

Anyway here's this guy:

The Justice Department on Tuesday charged Carl Erik Rinsch, whom Netflix hired to make a science-fiction series that was never completed, with an \$11 million scheme to defraud the company.

According to the indictment, which was announced by prosecutors for the Southern District of New York and the Federal Bureau of Investigation's New York Field Office, Mr. Rinsch secured funding from the streaming company from 2018 to early 2020. But he put the money in a personal brokerage account and ultimately used it to trade securities, instead of putting it toward the series, the indictment says.

Okay sure, bad, standard. But here are the Justice Department press release and indictment, which tell a more complicated three-part story. First, Netflix gave him \$11 million to finish a show called "White Horse," he moved almost all of the money in his personal brokerage account, he "then made a number of extremely risky purchases of securities, including call options on a biopharmaceutical company," and he quickly lost "more than half of those funds" while telling Netflix that the series was "awesome and moving forward really well." There is absolutely no reason to expect a television producer to make a profit day-trading biopharma options, and he didn't.

But *then*, after losing most of the money, starting in 2021, he "transferred nearly all the remaining ... funds to a cryptocurrency exchange account" and "used those funds to speculate on cryptocurrency — which eventually proved profitable." There you go! There's no reason to expect him to make money day-trading stock options, but *everyone* was making money on crypto in 2021; why shouldn't he? He did. In fact, as far as I can tell, he made back approximately all of the money.

I can tell because the third step was that he allegedly stole it again:

Between in or about June 2021 and in or about November 2022, CARL ERIK RINSCH, the defendant, transferred [Netflix's] funds from the cryptocurrency exchange to yet another personal bank account. RINSCH then spent approximately \$10 million on personal expenses and luxury items, including but not limited to (i) approximately \$1,787,000 on credit card bills; (ii) approximately \$1,073,000 on lawyers to sue Streaming Company-I for even more money, and for lawyers related to his divorce; (iii) approximately \$395,000 to stay at the Four Seasons hotel and at various luxury rental properties; (iv) approximately \$3,787,000 on furniture and antiques, including approximately \$638,000 to purchase two mattresses and approximately \$295,000 on luxury bedding and linens; (v) approximately \$2,417,000 to purchase five Rolls-Royces and one Ferrari; and (vi) approximately \$652,000 on watches and clothing.

Yes, right, if you lose all of your investors' money day-trading stock options, and then you make it all back day-trading crypto, the rational thing to do is to hand the money back to the investors and say "sorry never mind, things didn't work out but here's your money back," but you are not going to do the rational thing now are you? You're going to sue your investors for more money.

Personalized deposit rates

The business of retail banking, to oversimplify only slightly, is about paying depositors less than the market rate of interest. The crucial asset of a bank is its "deposit franchise," which means the bank's ability "to pay a deposit rate that is low and insensitive to the market interest rate." Right now, if you are in the US, you can put money in a high-yield savings account that pays about 4.5% interest, or a money market fund that pays about 4.3%. But lots of people don't. They keep their money in an account at their long-time bank, where they get paid interest of, say, 0.01%.

Why do banks have this franchise? Why can they pay customers less than the market rate? There are a few classical answers:

1. Historically there was one bank in your town, and you put your money there, and if a bank three towns over had higher rates you didn't know or care: You banked where it was convenient. Now with the internet it is much easier to put your money in an online high-yield savings account, but (1) maybe you haven't gotten around to that and (2) convenience still matters.
- 2. Banks provide various services to depositors, which attract deposits even with low interest rates. Most straightforwardly, the bundle of services called "a checking account" usually comes with a zero-ish interest rate, but even a savings account might have a low rate and attract money anyway because depositors like the other stuff the bank does.
- 3. The same sorts of reason any company might have pricing power: branding, marketing, sponsoring the local Little League team, etc.

We talked in January about another, worse (?), funnier answer. Capital One Financial Corp. did the following trade:

It launched a high-yield savings account, "360 Savings," and prominently (and correctly) advertised that 360 Savings accounts had some of the highest interest rates in the US.

- It attracted lots of deposits to 360 Savings accounts, and paid them competitive interest.
- But then it launched a new high-yield savings account, "360 Performance Savings."
- As market interest rates went up, the rate on 360 Performance Savings went up, but the rate on 360 Savings did not.

The result is that Capital One could attract *new* customers by advertising (and paying) a high rate on 360 Performance Savings, but it could pay a low rate to its *old* customers, who had *previously* been attracted by the high rate on 360 Savings. Why didn't those customers just switch to 360 Performance Savings, or for that matter to another bank? Well, because Capital One didn't go around *telling* them this. If they weren't *paying attention*, they got the low rate. If they were paying very close attention, they got the high rate. Banks love customers who don't pay attention.

The US Consumer Financial Protection Bureau, in January, thought this was bad and sued Capital One "for cheating millions of consumers out of more than \$2 billion in interest." But that was in January, and since then the CFPB has dropped the suit and also vanished. So I guess this is fine now? (Not legal advice!) You can think of it as straightforward price discrimination: Capital One paid high interest rates to attract deposits from people who paid attention to interest rates, and low interest rates to people who didn't.

This is a pretty natural and self-executing way to do the price discrimination, but I guess you could find more sophisticated approaches. "AI," for instance? Bloomberg's Georgia Hall reports:

Fifth Third Bancorp, Huntington Bancshares Inc. and Valley National Bancorp are among regional US lenders that use artificial-intelligence tools to scrape customer data, helping them personalize deposit offerings as competition for customers' money intensifies.

Increasingly digital-savvy consumers are hunting for better online alternatives and higher interest rates, and banks, which use deposits as their main source of funding for loans, have had to adapt to win and retain customers who can easily make a switch.

"We have seen positive trends, especially in bringing new customers to the bank," Valley National Chief Data and Analytics Officer Sanjay Sidhwani said in an interview. "Use AI models and see what customers might be in the market for."

Valley National has used machine learning for about the past nine months to predict whether a customer would be a good target for a product, according to Sidhwani. The Morristown, New Jersey-based firm uses AI software to tailor online messaging for customers, and its data-analytics system flags customers who are deemed well-suited for certain accounts, he said.

"This is growing the depth of the relationships with the existing customers," he said. ...

Fifth Third's offering personalizes product and service recommendations using more than 100 AI machine-learning models, and has increased customer engagement by 40%, according to Shawn Niehaus, executive vice president and head of consumer banking at the Cincinnati-based company.

What could it mean to *personalize* deposit rates? For all customers everywhere, getting paid more on deposits is better than getting paid less. But perhaps AI can tell you which customers will notice.

QXO and Beacon

Four months ago, QXO Inc., Brad Jacobs's vehicle for rolling up building products companies, formally offered to buy Beacon Roofing Supply Inc. for \$124.25 per share. At the time, Beacon's stock was trading in the \$90s. Beacon's board thought about it for a bit and then told QXO that its bid "was inadequate and would not be the basis for any further discussions." QXO disagreed and, in January, launched a tender offer for Beacon, again at \$124.25 per share. Beacon again objected, telling shareholders "that QXO's offer to acquire Beacon for \$124.25 per share significantly undervalues our Company and our future prospects for growth and value creation and is therefore not in the best interests of Beacon and our shareholders." The debate continued for a while, and earlier this month Beacon put out another press release saying that QXO's offer "represents an opportunistic attempt to take advantage of the current macro environment and acquire Beacon at a discount to its intrinsic value for the benefit of QXO but the detriment of Beacon's shareholders."

Today it put out another press release:

QXO, Inc. (NYSE: QXO) and Beacon Roofing Supply, Inc. (Nasdaq: BECN) today announced that they have entered into a definitive merger agreement under which QXO will acquire Beacon for \$124.35 per share in cash. ...

The boards of directors of both companies have unanimously approved the transaction, which values Beacon at approximately \$11 billion, including all its outstanding debt. The transaction is expected to close by the end of April, subject to a majority of Beacon shares tendering in the offer and other customary closing conditions. Beacon's board unanimously recommends that all shareholders tender their shares into the offer.

Well, \$124.35 *is* more than \$124.25. You could imagine that the intrinsic value of Beacon is, like, \$124.31, so the previous offer was inadequate and this one is good. Seems unlikely. We talked about the 10-cent bump last week, and I suggested that Beacon might have tried its best to negotiate a better deal, and this is all it got. Today Beacon gives a better explanation:

Stuart Randle, Beacon's chairman, said, "Since QXO made its initial offer last November, we have evaluated strategic alternatives to enhance value for all of our shareholders. Following our Board's comprehensive review, we concluded that this transaction is in the best interests of Beacon and its shareholders given the immediate premium and certainty of value in cash it offers, particularly in an uncertain environment."

Yep! Any time anyone comes to you and offers to buy your company for any price, *probably* your first response should be "this offer significantly undervalues our company and we're offended that you would even suggest it, this conversation is over, get out of here you rascal." Maybe they'll come back with \$20 more per share! "The essential lesson" of finance, I once wrote, is adverse selection: "If you are being offered a trade, that probably means it's a bad trade." If Brad Jacobs, who is good at business, wants to pay \$124.25 for your company, it is reasonable to assume that he knows something that you don't, and that your company is worth at least \$150.

But then your second response should be to hire bankers and dig deep into your management's projections and figure out what your company is actually worth. Quite plausibly *you* — or your managers and bankers — know more about what your company is worth than Jacobs does, but you have to confront the facts honestly. Also you should have your bankers *shop* the company real quick, to see if anyone *else* wants to pay \$150.

And if your bankers and managers come back to you and say "\$115 tops," then you call Jacobs right back and say "hey buddy let's talk." (This is also the story of Twitter Inc.: Elon Musk, who is good at business, offered a somewhat random \$54.20 per share to buy Twitter, and the board was like "no of course not, we need more, and we're putting in a poison pill to prevent Elon Musk from stealing this company too cheap." And then a few days later, after running the numbers and looking around for other buyers, it took Musk's money.)

Obviously it's awkward to spend a few months telling shareholders that \$124.25 per share significantly undervalues their company and then pivot to saying \$124.35 is a great deal, but I guess that's what the 10 cents is for.

Silverfern

Bloomberg's Anthony Lin and Todd Gillespie have a fun story about the Silverfern Equity Club, a ... club? ... where Citigroup Inc. private banking clients were offered the chance to invest in private-equity co-investments done by Silverfern Group, with Silverfern and Citi splitting the fees. "Citi signed up 39 of its richest clients as club members with commitments of \$470 million," focusing on "'big boy' clients who had their own due diligence capabilities," because Citi's bankers *didn't* do any diligence on the deals and "frequently reminded clients that they weren't in a position to opine on the transactions." The big-boy clients "ultimately put only \$220 million in Silverfern deals, less than half of their soft commitments, with a handful passing on all of them," which I guess is what you should want: The clients made their own investment decisions, and they passed on deals they didn't like. It wasn't what Silverfern wanted, though, and Citi and Silverfern ended up in court.

It's a strange situation: If you are a private banker you are supposed to try to act in your clients' best interests, to bring them deals that you think are good, but at the high end your clients are probably more sophisticated than you are and can evaluate the deals themselves. Occasionally bringing them a deal where you're like "I dunno about this one but you make your own decision" seems like good customer service in the abstract, though if they invest and the deal goes poorly they won't be thrilled with you. (Despite the disclaimers, Citi's bankers "nonetheless heard from clients disappointed by investments that didn't go well.")

Meanwhile, from Silverfern's perspective the problem with this arrangement was that the clients often said no or, worse, "sure but only a little bit":

Citi wanted to offer a pick-and-choose buffet of opportunities to its richest clients, who were also able to participate with relatively small commitments. That didn't sit well with Silverfern, which was under constant pressure from deal sponsors to meet its allocations.

Early on, [Silverfern co-founder] Clive Holmes expressed annoyance that a club member described by a Citi banker as "worth 4x George Soros" was willing to put only \$500,000 into the first Silverfern deal, a co-investment with Partners Group in oil-services firm O-Tex Holdings.

"My car cost more than this!" Holmes wrote in an August 2012 email to a Citi banker.

Just a wonderful, canonical, all-purpose line that I hope will be used widely. Any time you're trying to get someone to push up their bid or commitment: "My car cost more than this!" Five hundred thousand dollars is the *perfect* amount for that line to be funny — your car *could* cost that much, but it's obnoxious to say so — but really it works for any number. Brad Jacobs offers \$11 billion for Beacon Roofing? "My car cost more than this!"

More lottery winners

When I was an investment banker at Goldman Sachs Group Inc., and the Mega Millions jackpot got big, our desk would pool our money to buy a bunch of tickets. This seemed very rational to me: We could afford to occasionally blow \$20 on lottery tickets, we were pretty miserable much of the time, if we won the lottery we could stop being investment bankers, and it was nice to daydream.

My only concern was that *obviously* we couldn't win, not only because the chances of anyone winning the Mega Millions are low, but because it is karmically impossible for *a group of Goldman derivatives bankers* to win the Mega Millions. Imagine the New York Post stories! Absolutely no chance. Obviously — because you are reading this — we never did.

Here's this guy though:

A lucky former Royal Bank of Canada executive is taking home the top prize in an Ontario lottery.

Charles Coffey, 81, worked at Canada's largest lender for over 44 years in banking and human resources, eventually rising to executive vice president of government affairs and business development.

Coffey's initial reaction to seeing his winning ticket: "That's interesting!" He believed he'd won C\$25,000, according to a news release by the Ontario Lottery and Gaming Corp. But when Coffey grabbed his glasses for a closer look, he realized he'd missed three extra zeroes — in his hand was the ticket to the C\$25 million (\$17.4 million) jackpot.

His statement says that the money will go to philanthropy, though "first, he said, he's going to take his family on vacation."

Things happen

Factor investing in credit. Retail investors take on hedge funds in Europe's answer to 'meme stock' mania. BlackRock Campaigns Soothe Tensions in Texas and Win Over GOP. Caterpillar hedging. AI-Cloud Firm CoreWeave Seeks \$2.7 Billion in Dialed Back IPO. London Metal Exchange fined by UK regulator over 2022 chaos in nickel market. Solana ETFs Are Coming to Wall Street in Latest Crypto Push. Kraken to Acquire Futures Platform NinjaTrader for \$1.5 Billion. Tesla falls after Commerce secretary recommends buying stock. Managers Have Won the War on Remote Work. But Where Does Everyone Sit? Beef-Loving Nation Rocked by \$300 Million in Cattle Fraud Claims. Old-age verification. "... Until, eventually, they have gained enough followers to be able to quit the 9-to-5 that they made the basis of their persona, in order to pursue the new American Dream: becoming a full-time influencer."

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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. This is oversimplified, and in fact he had an even earlier hedge fund that also seems to have lost all the clients' money.
- 2. We talked in 2023 about the more general form of Tether/Bitfinex's approach of "when the money disappears, just write yourself an IOU for it and hopefully it will work out." It saliently did *not* work out for several crypto firms that tried it in the 2022-2023 crypto winter, because crypto prices were going down, but in rising markets it probably did work out quietly for some people.
- 3. Or consider the well-known story about the early days of Alameda Research, the crypto trading firm started by Sam Bankman-Fried, who also founded FTX. Alameda lost track of some investor money, some Alameda executives panicked and wanted to tell the investors, and Bankman-Fried allegedly told them to keep quiet because the money would eventually turn up. It did! This is not a matter of "early on, crypto prices usually went up" but rather "early on, crypto was extremely operationally messy and you might lose track of your money but sometimes you'd eventually find it." So it's not the standard form of gambling on redemption, but one can read it as a formative experience in Bankman-Fried's training that ultimately led to the FTX collapse.
- 4. Obviously this paragraph is a request to readers: Please email me stories about how your crypto hedge fund lost 99% of its assets and then made it all back on Dogwifhat derivatives before anyone noticed.
- 5. Is *this* the Sam Bankman-Fried story?
- 6. The article goes on: "The New York Times covered the dispute between Mr. Rinsch and the streaming giant in 2023. He had sold Netflix the television show near the height of the streaming boom a few years earlier. But Netflix canceled the development of the show in early 2021 after Mr. Rinsch's behavior turned erratic. In texts and emails to Netflix executives, he claimed to have discovered Covid-19's secret transmission mechanism and told his wife, a producer on the show, that he could predict earthquakes and lightning strikes." Honestly that's also pretty standard.
- 7. Not legal advice, and it didn't work out for Shkreli, but still.
- 8. I suppose there is also a factor that is like "being a good credit risk": Depositing money at a bank means lending the bank money, and you'd rationally take a lower rate from a safe bank than a risky one. This is not supposed to be a big factor in modern banking, because of regulation and deposit insurance and deposits being "informationally insensitive," but for large deposits it does matter, and giant too-big-to-fail banks can pay lower rates than shaky regional banks.
- 9. Ceteris paribus, you know what I mean.
- 10. The details here come from the background section in QXO's tender offer.

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Can't Tesla shareholders sue Musk over this?

LPB businesslawprofessors.com/2025/03/cant-tesla-shareholders-sue-musk-over-this

March 21, 2025



By Ann Lipton on March 21, 2025



Is a question I get asked a lot, especially after Musk offered an enthusiastic gesture that absolutely, positively, in no way resembled a Nazi salute pleased on't sue me.

And the answer is – no.

Even under the law of Delaware-before-SB-21 (and before Texas's "hold my beer" alternative, which would among other things, prevent not only shareholders, but the corporation's *own board*, unprompted, from suing a director or officer in the right of the corporation for anything other than fraud, intentional misconduct, ultra vires acts, or knowing violations of law), this cannot be the basis for a claim by Tesla's shareholders against Elon Musk.

As Tesla's CEO and a member of the board, Elon Musk owes Tesla a duty of care, and a duty of loyalty. That means he cannot run Tesla with gross negligence – which, under Delaware law (let's assume Texas law is no more strict), would be defined as akin to recklessness – and he cannot be disloyal, which means acting under a conflict of interest, intentionally trying to harm the company, or intentionally failing to take action to benefit Tesla when he knows he has a duty to take such action.

Let's start with loyalty. Whatever his motives are, he is almost certainly not intentionally trying to harm Tesla. He may be blinded to the effects his actions are having on the brand, but he hasn't set out to wreck it, nor is he disregarding any specific action he knows needs to be taken on Tesla's behalf. There are no reports, for example, that he's letting Tesla plants idle while they wait for him to make a decision, nothing like that.

And whatever else he's doing – even his work for DOGE which he is totally not doing it's all Amy Gleason shut up – there is no evidence that his governmental work is causing him to deal with Tesla as a counterparty. He is not, for example, assuming a governmental role while bargaining with the government on Tesla's behalf (that would be what's he's doing at SpaceX.) If anything, his proximity to government is giving Tesla certain advantages, like an infomercial on the White House lawn.

So that leaves the duty of care. Which might appear to be in play, to the extent Musk is ignoring Tesla in favor of his other interests. But under Delaware law, at least, inaction is gauged – again – by conscious disregard of one's duties.

In other words, *neglect* only rises to the level of a fiduciary breach when the corporate manager intentionally refuses to take actions he knows must be taken.

A shareholder couldn't even sue on the grounds that Tesla has made false representations about Musk's role with the company, because here's the company's most recent 10-K:

We are highly dependent on the services of Elon Musk, Technoking of Tesla and our Chief Executive Officer. Although Mr. Musk spends significant time with Tesla and is highly active in our management, he does not devote his full time and attention to Tesla. For example: Mr. Musk also currently holds management positions at Space Exploration Technologies Corp., X Corp., X.AI Corp., Neuralink Corp. and The Boring Company, and is involved in other ventures and with the Department of Government Efficiency....

if our ESG practices do not meet investor or other industry stakeholder expectations, which continue to evolve, we may incur additional costs and our brand, ability to attract and retain qualified employees and business may be harmed. Compliance with any current or future legal requirements on these topics may result in additional costs or risks to us, including harm to our reputation, reduction in customer demand, and increased legal and operational risks.

Which brings us to the broader issue. Whether you consider Musk's conduct in terms of care, or in terms of loyalty, ultimately, it's up to the *board of directors* to oversee his behavior. As a formal matter, they're the ones who "hired" him as CEO and who retain him in that role; they're the ones who, in the first instance, have a responsibility to rein him in if he is not performing adequately. Which is why – even if Musk *had* violated his duties of care or loyalty – any shareholder bringing a lawsuit first would have to demonstrate that *the board* is incapable of performing its own functions.

And, I mean, yeah, it's no secret what the board's ties are to Musk, but I find it very difficult to believe any court would go so far as to hold they were incapable of overseeing him as CEO. After all, their stock compensation is tied to his performance as well. Even the *Tornetta* decision, holding that the board was captured by Musk, only applied to the pay award – not for all things forever and for all time.

If that sounds like shareholders have a lot of hurdles to overcome before bringing a lawsuit, correct! Because the system is predicated on the idea that lawsuits are a *last resort* for disciplining recalcitrant corporate managers, not a first resort. The first resort is supposed to be the *market*. Corporate CEOs (and boards) are paid with stock, so that they will care if stock prices drop. And even if they don't care, public shareholders *will* – and they'll respond to stock drops by voting in new directors who will do a better job. The system just isn't built to handle a scenario where a CEO, board, and public shareholders all respond with a collective shrug when a stock loses nearly half its value within the space of a few months.

And that's not *really* a problem. After all, if the stock drop was due to, I dunno, Tesla *philanthropy*, I probably wouldn't be having this conversation with people. The reason the question comes up, usually, is because the person doing the asking believes Elon Musk is

causing harm in the world, and so floats the possibility that he's violating shareholder rights as a mechanism to get him to stop.

But if you were *genuinely* concerned for the plight of Tesla shareholders, you wouldn't recommend a *lawsuit*. What could that possibly get you? There's no realistic chance of Musk, like, paying financial damages to make up for the price drop, so the only remedy would be some kind of judicial order that he focus more on Tesla, or that he be fired from Tesla entirely. But Tesla shareholders don't *want* his firing, nor should they – Tesla's stock price is still well above what it would be for an ordinary car company. And if Musk were to focus more on Tesla, that might be great in theory, but it's not a command that a court can realistically enforce.

So that's my point. I'm not saying corporate law is irrelevant to societal outcomes – I think it does have a role to play, actually, an important role – but not quite *this* directly. The formal duties that a corporate officer owes to a company are not going to be what causes Elon Musk to step back from DOGE.

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<https://www.wsj.com/finance/stocks/tesla-stock-selling-musk-politics-f144dbe5>

MARKETS & FINANCE | STOCKS

Meet the Former Tesla Die-Hards Now Selling Their Shares

Elon Musk's role in the Trump administration turns off some loyal investors; stock is down more than 40% this year

By [Hannah Erin Lang](#) [Follow](#) and [Owen Tucker-Smith](#) [Follow](#)

Updated March 21, 2025 9:33 am ET



Elon Musk wielded a chain saw while onstage at the Conservative Political Action Conference last month. PHOTO: JOSE LUIS MAGANA/ASSOCIATED PRESS

Key Points

What's This? ⓘ

- Tesla stock has plummeted over 40% this year, erasing about \$536 billion in market value, due to concerns about economic growth, Trump's trade fights, and Musk's role in the administration.
- Some investors are selling their Tesla shares due to disapproval of Musk's government cuts, or moral opposition to his more controversial social-media posts.
- Others are concerned that Musk is too focused on other things and losing faith that the stock could stay on track.

Michael Hanna once admired [Elon Musk](#) so much that [Tesla](#) TSLA **3.95%** ▲ stock made up about 25% of his portfolio. But in February, put off by the chief executive's behavior as part of the Trump administration, Hanna sold the last of his shares.

Hanna, a data architect in Washington state, considers himself politically independent and supports some of the goals that Musk and President Trump have pursued, such as trimming the federal budget and reviving American manufacturing. But he has been bewildered by [Musk's chainsaw-waving leadership](#) of the Department of Government Efficiency, which he called "chaotic." Controversy surrounding Musk [is bad for Tesla sales](#), he said.

"I think the brand is irreparably damaged at this point," Hanna said.

Just a few months ago, investors were betting that a second Trump administration would be great news for Tesla. Instead, the longtime stock-market highflier has plummeted in 2025. Shares have fallen more than 40% this year, erasing about \$536 billion in market value. The stock is on track for a nine-week streak of losses—its longest on record.

Part of that decline stems from investors' broad retreat from the "Magnificent Seven" tech stocks that drove markets higher last year. Worries about economic growth and [Trump's trade fights](#) have driven declines in some of the market's biggest gainers. Tesla's business has also faced unique challenges. Competition has increased while sales have faltered; on Thursday, the company [recalled most Cybertrucks](#) because an exterior panel might fall off and endanger motorists.

Tesla share-price performance:

But [Musk's role in the administration](#) has repelled some of the fans who helped popularize Tesla cars and make the stock one of Wall Street's hottest trades. For some, [mass firings of federal workers](#) are the issue, while others are concerned with his social-media posts or just think he is too [distracted with government business](#) to run Tesla. Protesters have demonstrated at Tesla showrooms and some cars and charger stations [have been vandalized](#).

The topic has entered the political arena, with Trump administration officials talking up Tesla. Trump earlier this month selected a red Tesla sedan at the White House in [a show of support](#). Commerce Secretary Howard Lutnick used a TV appearance this week [to recommend the public buy shares](#), saying: "It's unbelievable that this guy's stock is this cheap. It'll never be this cheap again."

In a recent all-hands meeting with Tesla employees, Musk urged them [not to sell their shares](#) of the company.

"There are times when there are rocky moments, a little bit of stormy weather, but I'm here to tell you the future is bright and exciting," he said, according to a

video of the meeting posted on X.

Individual investors have long flocked to the shares, betting that Musk's leadership could make Tesla worth far more than an ordinary car company. It was the kind of loyalty that inspired at least one to get the [company's logo tattooed on his arm](#).

Plenty of individual investors are still piling in. Of the \$8.3 billion that individual investors poured into single stocks last week, roughly \$3.2 billion flowed into Tesla, according to a Wednesday report from JPMorgan analysts.



Michael Hanna, who has sold all of his Tesla shares, says the brand is 'irreparably damaged.' PHOTO: CECILIA ADALYNN PHOTOGRAPHY LLC

But investors' devotion is being tested. Some sellers say they are driven by disapproval of Musk's government cuts, or moral opposition to his more controversial social-media posts.

Edward Sanchez, based in San Jose, Calif., was both a Tesla car owner and shareholder until just a week ago, when he sold the stock. Now, he's considering getting rid of the car, too.

He purchased the vehicle in 2016 and then about 150 shares in the company five or six years ago, having bought into Musk's techno-utopian vision for electric vehicles. That resonated with Sanchez, a tech worker who likes to support environmentalist causes.



Edward Sanchez is considering selling his 2016 Tesla Model S. PHOTO: EDWARD SANCHEZ

“It was a very innovative car. There was nothing at all like it back then,” he said of his 2016 Model S. “It was cool to be associated with the brand and with such a smart person.”

As Musk became more involved in conservative politics, Sanchez’s skepticism grew. He was appalled when the CEO made a gesture at an inauguration event in January that some [interpreted to be a Nazi salute](#). The recent display of various Tesla models in front of the White House was another cringeworthy moment, he said.

Sanchez finally liquidated all his shares in March, he said, though

his financial adviser suggested he hold on and wait for the stock price to recover some of its losses. “I told him, ‘I don’t care, I want out.’”

For others, the concern is more practical. Tony Herbert first spotted a Tesla at a birthday party in 2012 in Dallas and immediately wanted one for himself. In 2018, he invested around \$5,000 in the company—the first stock he ever bought—with the goal of using profits from the rising share price to purchase a Model 3.

In the years that followed, his investment ballooned. But in February, he sold it all. He felt that billionaires were being villainized by the public, and he was starting to lose faith that the stock could stay on track. Herbert said he would consider jumping back in at a lower price. First, he would like to see one change in the company: a new executive.

“Elon’s too focused on other things,” he said.

Write to Hannah Erin Lang at hannaherin.lang@wsj.com and Owen Tucker-Smith at Owen.Tucker-Smith@wsj.com

Tesla Inc

Elon Musk urges Tesla employees to 'hang on to' shares

Billionaire rails against vandalism of cars and protests at dealerships in the US and Europe



A Tesla Cybertruck. Sales at the carmaker have plunged in leading European markets in recent months © Brandon Bell/Getty Images

Kana Inagaki in London

Published AN HOUR AGO



Elon Musk has urged Tesla employees to “hang on to” the carmaker’s shares in an effort to reassure them that the carmaker’s future is “incredibly bright” despite plummeting sales, a series of [safety recalls](#) and vandalism spurred by his political activism.

The unusual communication to staff came after Donald Trump’s commerce secretary Howard Lutnick also urged Fox News viewers to “buy Tesla” in a sign of growing alarm as [Tesla](#)’s shares have plunged 51 per cent since mid-December.

“If you read the news, it feels like . . . Armageddon,” Musk, the carmaker’s chief executive, said during a meeting with employees broadcast on X late on Thursday.

“I understand if you don’t want to buy our product, but you don’t have to burn it down. Stop being psycho!” he said referring to the rise in vandalism cases against Tesla cars.

Tesla and its dealerships have become a target for protests in the US and Europe in response to the billionaire's outsized influence in the White House, his attack on the US federal government as the de facto head of the so-called Department of Government Efficiency (Doge) and his support for the far-right AfD party in Germany.

Sales have also plunged [in leading European](#) markets in recent months while demand has soared for "I bought this before Elon went Crazy" car stickers on Amazon.

The company is also facing multiple regulatory probes into Musk's claims about the capabilities of its driver-assistance systems. On Thursday, Tesla recalled more than 46,000 Cybertrucks in the US to replace an exterior panel that could fall off while driving.

Tesla shares have plunged since mid-December

Share price, \$



Source: LSEG via markets.ft.com

"There are times when there are rocky moments," Musk said. "But what I'm here to tell you is that the future is incredibly bright and exciting," he added, citing the company's efforts in autonomous driving and robotics.

Musk has previously said Tesla's pivot to autonomous driving and artificial intelligence could take its valuation as high as \$5tn. The shares rose more than 2 per cent on Friday, taking the company's market capitalisation to \$760bn.

“I think in five years, we’ll probably have regulatory approval I think globally, so you’ll have autonomous Teslas on every continent,” he said. “So what I’m saying is, hang on to your stock.”

But the Tesla chief has repeatedly missed targets to roll out self-driving taxis. He first promised fully autonomous rides from Los Angeles to New York by the end of 2017. In 2019, he predicted that 1mn robotaxis would be on the road by the following year.

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March 21, 2025, 6:33 AM PDT

Musk Tells Tesla Employees Hang On to Stock After 50% Plunge (2)

Elon Musk sought to reassure Tesla Inc. employees through what he referred to as “a little bit of stormy weather,” after the carmaker’s shares plunged more than 50% in just three months.

“If you read the news, it feels like Armageddon,” Musk said during an all-hands meeting broadcast late Thursday on X. The chief executive officer joked that he can’t walk past a television without seeing [a Tesla on fire](#), then mocked his detractors. “I understand if you don’t want to buy our product, but you don’t have to burn it down. That’s a bit unreasonable.”

The CEO then launched into a familiar pitch that Teslas will soon be capable of driving autonomously. Although the company has yet to execute on his predictions – Musk recently referred to himself as “the [boy who cried wolf](#)” – he reiterated a claim he’s made at least [as far back as 2016](#) that Teslas are an eventual software update away from self-driving.

“What I’m saying is hang on to your stock,” Musk said, pausing for applause during the event that lasted past 10 p.m. local time in Austin.

Tesla shares rose as much as 1.8% to \$240.48 shortly after the start of regular trading Friday. The stock has plummeted from a record high of \$479.86 on Dec. 17.



Investigators at a Tesla Collision Center in Las Vegas on March 18.

Photographer: Ethan Miller/Getty Images

The vandalism Musk alluded to has been part of a growing backlash against Musk’s role in President Donald Trump’s administration. Protesters have targeted the company’s showrooms, vehicles and charging stations in the US and across Europe.

Read More: [Tesla Vandalism Sparked by Fury Against Musk Draws GOP Criticism](#)

Tesla deliveries typically are slower every first quarter, but both sales and shipments have dropped precipitously in key markets early this year. In addition to political pushback, another factor at play has been the company pausing production of its most popular vehicle – the Model Y – to rework production lines and begin making a [redesigned version](#).

“How are we doing on popularity? Well, we actually literally make the best-selling car on Earth, of any kind,” Musk said of the Model Y.

Tesla has said it will launch new, more affordable models in the first half of this year, but has offered little detail about what those vehicles will be.



Elon Musk, left, and Donald Trump on the South Lawn of the White House on March 11.

Photographer: Samuel Corum/Sipa/Bloomberg

Blowback against Musk spurred Trump to arrange a parade of Teslas on the South Lawn of the White House on March 11. This week, Commerce Secretary Howard Lutnick went on Fox News and urged viewers to buy Tesla stock. “It’ll never be this cheap again,” Lutnick said, potentially violating ethics rules.

“There are times when there are rocky moments,” Musk told Tesla employees. “But what I’m here to tell you is that the future is incredibly bright and exciting, and we’re going to do things that no one has even dreamed of.”

Dan Ives, a Wedbush Securities analyst and longtime Tesla booster, said the meeting was a “first step for Musk to show he is going to lead Tesla through this tumultuous period.”

Ives earlier this week issued a rare rebuke of Musk, urging the billionaire to pull back from the Trump administration and refocus on Tesla. He warned that brand damage had escalated into a “tornado crisis moment for Musk and Tesla.”

Read More: [Why Tesla Is Losing Ground Around the World](#)



A protester holds a sign during a rally against Elon Musk's role in the Trump administration outside a Tesla showroom in Michigan on March 20.

Photographer: Emily Elconin/Bloomberg

Although Musk has rallied Tesla employees in the past – urging them to [curb spending](#) and [boost production](#) in 2020, for example – he's generally done so via internal emails. The company hasn't held a public all-hands in the past.

Musk spoke mostly off the cuff for roughly half an hour before taking 30 minutes' worth of questions. When asked by one employee whether he'd ever thought of making airplanes or trains, the CEO said he's considered the former.

"I'd actually love to make airplanes, especially, but I'm stretched pretty thin," Musk said. "I have, like, 17 jobs."

Musk then mused about making an electric, supersonic vertical take-off and landing jet. "Maybe, at some point, we'll do that," he said.

(Updates with regular trading in the fifth paragraph.)

To contact the reporter on this story:

Kara Carlson in Austin at kcarlson72@bloomberg.net

To contact the editors responsible for this story:

Shelly Banjo at sbanjo@bloomberg.net

Craig Trudell

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Tesla owners are trading in their EVs at record levels, Edmunds says

 [cnbc.com/2025/03/20/tesla-owners-are-trading-in-their-evs-at-record-levels-edmunds-says.html](https://www.cnbc.com/2025/03/20/tesla-owners-are-trading-in-their-evs-at-record-levels-edmunds-says.html)

Lora Kolodny

March 20, 2025

Key Points

- Data from Edmunds shows that Tesla owners have been trading in their vehicles at record levels since CEO Elon Musk joined Trump's White House.
- March represented "the highest ever share" Edmunds had seen for Tesla trade-ins toward new or used cars from brands sold at auto dealerships.
- "Shifts in Tesla consumer sentiment could create an opportunity for legacy automakers and EV startups to gain ground," Jessica Caldwell, head of insights at Edmunds, wrote in an email.

In this article

TSLA+10.68 (+4.52%)

A Tesla store in Alhambra, California on March 11, 2025.

Frederic J. Brown | AFP | Getty Images

As Elon Musk wraps up his second month in the White House, Tesla owners are trading in their electric vehicles at record levels, according to an analysis by national car shopping site Edmunds.

The data from Edmunds published on Thursday said that March represented "the highest ever share" it had seen for Tesla trade-ins toward new or used cars from dealerships selling other brands.

Since heading to Washington, D.C., in January as a central figure in the second Trump administration, Musk, who is CEO of Tesla, has been slashing the federal workforce and government spending, and has gained access to sensitive government computer systems and data, though his efforts have been repeatedly challenged in court.

Before assuming leadership of the so-called Department of Government Efficiency, or DOGE, Musk spent around \$290 million last year to help propel President Donald Trump back to the White House.

While investors snapped up Tesla shares after Trump's victory in November, they've been rushing for the exits of late, pushing the stock's price down by 42% this year. Waves of protests have targeted Tesla facilities in the U.S. and beyond. Other criminal acts of

vandalism and arson have targeted Tesla stores, vehicles and charging stations across the U.S.

In addition, Tesla is facing increased competition from EV makers. In January, S&P Global Mobility found Tesla sales declined about 11% year over year in the U.S., while Ford, Chevrolet and Volkswagen bolstered their sales of EVs, picking up market share.

“Shifts in Tesla consumer sentiment could create an opportunity for legacy automakers and EV startups to gain ground,” Jessica Caldwell, head of insights at Edmunds, wrote in an email. “As Tesla brand loyalty and interest wavers, those offering competitive pricing, new technology, or simply less controversy could capture defecting Tesla owners and first-time EV buyers.”

The Tesla brand, more than that of any other automaker, is tightly tied to its CEO. In August 2024, Edmunds surveys found that just 2% of car shoppers in the U.S. were unfamiliar with Musk.

Edmunds also said that shopping for new models of Tesla vehicles on its platform dropped to its lowest level last month since October 2022 after peaking as late as November.

Even before Musk began heading up DOGE, Tesla’s brand was suffering. Its brand value fell by 26%, or about \$15 billion, in 2024, a second straight annual decline, according to research and consulting firm Brand Finance.

Many car shoppers trade in their Tesla EVs for a newer model Tesla. Edmunds data didn’t account for those transactions.

Tesla didn’t immediately respond to a request for comment.

WATCH: Tesla’s core issues more detrimental than short-term political headwinds



Tesla’s core issues more detrimental than short-term political headwinds: Wells Fargo’s Langan



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GEAR MAR 20, 2025 12:12 PM

Nearly All Cybertrucks Have Been Recalled Because Tesla Used the Wrong Glue

Tesla says it will fix the sticky issue—
which could cause panels to detach
from trucks while driving—with a new
adhesive “not prone to
environmental embrittlement.”

March 20, 2025 at 10:43 AM Everybody can reply

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Supreme Court Limits Federal Prosecutions Over 'Misleading but True' Statements



law.com/nationallawjournal/2025/03/21/supreme-court-limits-federal-prosecutions-over-misleading-but-true-statements

Jimmy Hoover

A unanimous U.S. Supreme Court on Friday agreed with a former Chicago politician that a federal law prohibiting "false statements" to the Federal Deposit Insurance Corp. does not cover misleading, but otherwise true, statements.

The decision is a partial victory for the ex-alderman and lawyer convicted under the statute over statements he claims were not untrue.

Patrick Thompson, a grandson of former Chicago Mayor Richard J. Daley and nephew of ex-Mayor Richard M. Daley, is challenging his conviction for making allegedly "false statements" about his outstanding loan balance to the FDIC. The FDIC was seeking to collect the payments following the original bank's failure.

The high court agreed that the statute does not cover—as a lower court had held—statements that are misleading but not technically false.

"[A] statement that is misleading but true is by definition not a 'false statement,'" Chief Justice John Roberts Jr. wrote for the court.

"Section 1014 criminalizes 'knowingly mak[ing] any false statement or report,'" Roberts added. "It does not use the word 'misleading.' Yet false and misleading are two different things. A misleading statement can be true. And a true statement is obviously not false."

Roberts borrowed an example that Justice Elena Kagan had used at oral argument to highlight the distinction.

"If a doctor tells a patient, 'I've done a hundred of these surgeries,' when 99 of those patients died, the statement—even if true—would be misleading because it might lead people to think those surgeries were successful," Roberts wrote.

Notably, the court did not decide whether a "reasonable jury" would have found Thompson's representations to the FDIC to be false or merely misleading. The justices sent the case back to the U.S. Court of Appeals for the Seventh Circuit to answer that question.

According to prosecutors, Thompson took out loans totaling \$219,000 between 2011 and 2014 from Washington Federal Bank for Savings. The Chicago bank failed in 2017, and the FDIC was appointed receiver.

As the FDIC's contractors sought to collect his outstanding balance of \$269,120, Thompson "deliberately told FDIC collectors that he had borrowed less than half of that amount and asserted a nonexistent purpose for his borrowing," the federal government told the Supreme Court.

Calling the contractor's service line, Thompson allegedly said he "ha[d] no idea where the 269 number comes from" and insisted, "I mean, I borrowed the money, I owe the money—but I borrowed \$100. ... I think it was \$110,000 dollars."

To be sure, prosecutors acknowledge Thompson originally did borrow \$110,000 to make an equity contribution to a law firm he was joining but said that his statement was false in the context of disputing his total loan balance, which included several additional loans.

Despite the Supreme Court's ruling, Thompson still faces hurdles in throwing out his conviction under the statute.

Justice Ketanji Brown Jackson wrote in a concurrence that the jury was given the proper instruction as to the scope of Section 1014 and that therefore "there is little for the Seventh Circuit to do on remand but affirm the District Court's judgment upholding the jury's guilty verdict."

"On this record, I think that legal issue is not subject to reasonable debate," she wrote.

Justice Samuel Alito Jr. wrote a concurrence, as well, stating that "the applicable test on remand is whether, viewing the evidence in the light most favorable to the Government, any rational finder of fact could conclude beyond a reasonable doubt that petitioner's statements were false in context."

The decision appears to be part of a pattern at the court in recent years, where the justices have frequently admonished prosecutors for overly broad interpretations of criminal statutes in white-collar cases.

Last June, the court held in *Snyder v. United States* that a federal bribery law doesn't cover "gratuities" paid to government officials after an action, such as a contract award, has taken place. The Supreme Court previously rejected novel prosecutorial theories in the infamous "Bridgegate" case about the politically motivated closure of the George Washington Bridge and also set aside the conviction of former Virginia Gov. Bob McDonnell.

The court also recently held that prosecutors could not use a federal obstruction statute to charge a rioter who entered the U.S. Capitol during the Jan. 6, 2021, attack.

The Supreme Court rendered its decision Friday in *Patrick Thompson v. United States*, No. 23-1095.

What to Expect From the SEC During the Second Trump Administration: A Legal Perspective

 [law.com/thelegalintelligencer/2025/03/21/what-to-expect-from-the-sec-during-the-second-trump-administration-a-legal-perspective](https://www.law.com/thelegalintelligencer/2025/03/21/what-to-expect-from-the-sec-during-the-second-trump-administration-a-legal-perspective)

Allen C. Tucci

Allen C. Tucci with McNees Wallace & Nurick. Courtesy photo

Expert Opinion

The SEC plays a pivotal role in overseeing the securities markets and ensuring fair practices, transparency, and the protection of investors. President Donald Trump has consistently operated with a deregulatory stance during his first term. So far, in his second term, the level of deregulation has been explosive.

March 21, 2025 at 10:59 AM

Securities Litigation

By Allen C. Tucci



As the second term of President Donald Trump has gained significant momentum, establishing policies that impact virtually all of the agencies of the Executive Branch, one of the most closely scrutinized agencies under his administration will be the U.S. Securities and Exchange Commission (SEC). The SEC plays a pivotal role in overseeing the securities markets and ensuring fair practices, transparency, and the protection of investors. President Donald Trump has consistently operated with a deregulatory stance during his first term. So far, in his second term, the level of deregulation has been explosive.

Here, we explore the likely regulatory landscape and enforcement trends that we can expect from the SEC under Trump's continued leadership.

A Deregulatory Approach: The Theme Continues

During Trump's first term, the SEC, under Chairman Jay Clayton, followed a deregulatory agenda designed to reduce the compliance burdens on public companies and facilitate economic growth. As of early 2025, the SEC has signaled that it would continue with this deregulatory philosophy, favoring a more flexible approach to securities regulation.

The SEC's primary focus under this deregulatory approach will likely be on reducing the volume of compliance obligations for businesses, especially public companies. This may involve the easing of disclosure requirements and providing greater flexibility around

corporate governance rules, making it easier for businesses to operate without the fear of being bogged down by excessive regulation.

As Paul Atkins, a former commissioner of the SEC, continues his nomination hearings for SEC chairman, Acting Chairman Mark Uyeda has already adopted several measures to allow the SEC to “reset its regulatory agenda to focus on capital formation and innovation,” while the SEC is implementing large staff cuts.

Expect a continuation of efforts to simplify and streamline the financial reporting and disclosure process, particularly in areas historically seen as overly complex or burdensome by the corporate sector.

Less Aggressive Enforcement: Corporate Focus Over Individual Accountability

One of the most significant shifts under Trump’s first term was the SEC’s approach to enforcement. The first term, Trump-era SEC, demonstrated a marked preference for corporate settlements over aggressive enforcement actions, particularly when it comes to holding individual executives personally accountable. This trend will likely continue during the second term. Chairman Uyeda has already made several public statements accusing the agency of “weaponizing” its enforcement function. He has limited the ability of staff in the enforcement division to issue subpoenas—a measure that will substantially slow SEC investigations.

Instead of targeting individuals, the SEC will be more inclined to pursue fines and settlements against corporations, often emphasizing voluntary compliance rather than strict enforcement of the law. During 2025 and beyond, corporate defendants will likely continue to receive favorable treatment in terms of negotiated settlements as the SEC continues to favor resolving cases quickly through corporate self-reporting and remediation. The SEC will also likely decrease fines and penalties assessed to corporations over the remainder of Trump’s second term, as Mr. Atkins has made repeated public comments voicing his mistrust of the SEC’s process for investigating rule violations and claiming that corporate fines unfairly penalize shareholders.

Moreover, the focus on corporate wrongdoing is expected to persist, with the SEC emphasizing the need for companies to take corrective actions rather than focusing on prosecuting individual executives or directors.

Continued Support for Emerging Markets: Cryptocurrencies and SPACs

During Trump's first term, the SEC's approach to new and emerging markets was relatively relaxed, particularly in the cryptocurrency and special purpose acquisition company (SPAC) sectors. The administration seemed to take a "wait and see" approach, ensuring that regulations were clear but not overly burdensome, allowing these industries to grow.

Following up on his campaign pledges, Trump has taken unprecedented actions to support innovation and ease of regulation in the U.S. crypto industry, including both an executive order establishing a U.S. bitcoin strategic reserve and hosting a White House Cryptocurrency Summit on March 7, which brought together regulators, government officials, and influential leaders from the crypto industry. Trump's nomination of Atkins for SEC chairman also signals a more open approach to the crypto industry, as Atkins is a strong backer of cryptocurrencies. In advance of Atkins' appointment as chairman, Uyeda has already shrunk the SEC's crypto enforcement staff. Uyeda has also created a crypto task force to work with the crypto industry. The task force is led by Republican SEC Commissioner Hester Peirce. Peirce has been given the soubriquet "Crypto Mom" for her strong and unwavering support of the industry.

As a result, we should expect the SEC to continue its hands-off attitude toward cryptocurrencies and SPACs. The SEC is expected to maintain a flexible regulatory stance on digital assets, allowing the cryptocurrency industry to evolve without the heavy hand of regulation that has been seen in other jurisdictions. The SEC under Trump has already indicated that it would prefer to issue guidance on cryptocurrency and blockchain technology rather than pursue aggressive enforcement actions, which will likely continue under Atkins' chairmanship.

Similarly, SPACs—which exploded in popularity during Trump's presidency—will likely continue to thrive with minimal regulatory constraints. Although the SEC has issued additional guidance to ensure proper disclosures and transparency, aggressive enforcement against SPACs is unlikely, opening the possibility of a resurgence of SPAC activity.

ESG Regulation: A Hands-Off Approach

During the Biden administration, environmental, social, and governance (ESG) issues gained prominence in the global financial landscape. In contrast, the Trump administration has repeatedly voiced hostility to ESG issues. During his first term, Trump's SEC did not prioritize enforcing ESG-related disclosures. In his second term, his administration has taken significant steps to weaken ESG as an investment criterion.

On Feb. 11, Chairman Uyeda rolled back the climate disclosure rules adopted by the SEC in 2024. The SEC is also taking action to make it easier for companies to challenge shareholder resolutions, making it much more difficult for activist shareholders to engage with companies on ESG matters.

For the remainder of Trump's second term, we should expect that companies will still be required to disclose material risks, including those related to environmental impact. However, the SEC is unlikely to adopt the more aggressive stance seen under the Biden administration. In fact, under Trump's leadership, the SEC is more likely to focus on ensuring that ESG disclosures remain voluntary and free from excessive regulatory mandates, reinforcing a more business-friendly approach.

A Focus on National Security Concerns

While deregulation and business-friendly policies will remain the central focus of a second Trump administration, significant actions have been taken to enhance scrutiny in specific areas, such as foreign influence in U.S. capital markets. In recent years, the SEC has been increasingly concerned with foreign companies listing on U.S. exchanges, especially those from countries like China. During Trump's second administration, we anticipate that the SEC will likely see continued enforcement of policies designed to protect U.S. investors and prevent foreign interference in U.S. markets.

This could involve increased scrutiny of listings from foreign companies, particularly in the context of national security and the integrity of U.S. financial markets. However, this focus would likely be more pragmatic and less aggressive compared to other regulatory agencies focused on national security.

Streamlined and Efficient SEC Operations

The second Trump administration will likely continue the SEC's efforts to streamline its operations, including significant staff reductions and an increased reliance on automation. The SEC has shown an inclination toward using technology and innovation to improve its efficiency and reduce unnecessary regulatory burdens.

Expect the SEC to continue its efforts to modernize its systems, using automation and artificial intelligence to handle routine tasks and improve its investigative capabilities. This would likely result in quicker resolutions of enforcement actions and a more efficient process for companies seeking to comply with regulations.

Conclusion: A Continuation of Business-Friendly Policies

In summary, Trump's second term will likely mean a continuation of the policies established during his first term, with an emphasis on deregulation, corporate settlements, and a more hands-off approach to emerging markets like cryptocurrencies and SPACs. The SEC will

likely prioritize facilitating business growth and reducing compliance burdens while maintaining some level of oversight, particularly in areas where national security is a concern.

The agency is expected to remain less aggressive in pursuing individual accountability and continue its more business-friendly enforcement posture. This environment would offer companies more flexibility and less regulatory friction. However, it could also create challenges for investors and consumer advocates who are calling for greater protections and transparency in the financial markets.

As always, legal practitioners and businesses must remain vigilant, adapting to these ongoing shifts in SEC enforcement and regulatory priorities. The landscape under the second Trump administration will likely be one of reduced regulatory intervention but continued focus on high-level issues like national security and market integrity.

Allen C. Tucci is an attorney at McNees Wallace & Nurick, where he advises multinational corporations and emerging businesses on corporate transactions, mergers and acquisitions, securities law and international business matters. Known for his strategic counsel, Tucci helps clients navigate complex regulatory landscapes and achieve their business objectives. He can be reached at atucci@mcneeslaw.com or 484-329-8046.

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Litigation

March 21, 2025, 3:00AM PDT

Burford Met With Silence From Milei Over \$16 Billion Judgment

On paper, it was one of the most lucrative victories ever in the field of litigation financing. Burford Capital Ltd., a niche firm, hit the jackpot along with other creditors when a judge delivered a \$16.1 billion award on claims it acquired against the Argentine government for less than \$17 million.

Then **Javier Milei**, a pro-business candidate, won Argentina's presidential election, offering hope that Burford could reach a quick settlement with a government motivated to put the past behind it.

But any optimism for a settlement has long dissipated, more than a year after Milei took office. In his first public comments, the person Burford hired to facilitate talks with the government said he hasn't had a single meeting with Argentine officials.



Javier Milei has floated the idea of Argentina issuing a bond to pay Burford.

Photographer: Arthur Menescal/Bloomberg

"There have been no talks for now with the government," **Gerardo Mato** said in an interview Thursday at Bloomberg's offices in Buenos Aires, declining to speculate as to why. "We've contacted the authorities at the Economy Ministry and legal authorities. No type of negotiation has been established yet."

The ruling, a saga stemming from Argentina's nationalization of energy firm YPF SA more than a decade ago, risks impeding Milei's efforts to return to capital markets and attract foreign investment. And Mato argues that without a settlement, Argentina is only digging its financial hole deeper and threatening the progress the libertarian president has made in setting a course for economic recovery. Every day, \$2 million in interest is added to the total Argentina owes, which now surpasses \$17 billion, Mato said.

Argentina's Economy Ministry didn't respond to a request for comment on Mato's remarks.

The 61-year-old is a veteran Wall Street banker who's worked on Latin American bond deals for years, including the 2016 resolution of Argentina's [drawn-out battle](#) with hedge-fund billionaire Paul Singer over defaulted debt. In the interview, Mato emphasized the need to reach a fair deal for both sides, saying that Burford doesn't want the type of hostile talks Singer engaged in.

Milei has wooed Wall Street since he stormed to power 15 months ago on a crusade to free up Argentina's tightly controlled economy and end decades of malaise. But the libertarian president has said little about the ruling, issued in September 2023 by US District Judge Loretta Preska in New York. Soon after taking office, he told a local television station Argentina would be willing to [issue a bond](#) to pay Burford – which was entitled to \$6.2 billion of the total judgment – but there's been no progress since. Argentina appealed Preska's ruling.

Despite Mato's insistence that striking a deal would help Milei's campaign to improve perceptions of Argentina among global investors, the administration continues to [fight the case](#) tooth and nail.

"The most important thing to insert Argentina into the first world is to respect the rule of law," said Mato, an Argentine who lives in the US. "Any negotiation by the government in this case would be extremely valued."

But radio silence from Economy Minister **Luis Caputo** seems to suggest Milei's government doesn't share that assessment. Argentina is already attracting [big investment plans](#) in energy and mining through a program that provides [sweeping tax incentives](#) and legal loopholes. And Caputo is also exploring Argentina's return at the sovereign level to global debt markets.



Argentina faces a \$16 billion court judgment over its nationalization of oil company YPF.

Photographer: Lujan Agusti/Bloomberg

Some investors abroad are concerned about the case impacting Argentina's return to markets.

"Burford's judgment against Argentina has the potential to impede Argentina's ability to access international capital markets," **Jared Lou**, a portfolio manager on the emerging markets debt team at William Blair, said before Mato's interview. "It's possible Burford could enforce its claim against Argentina when the proceeds of a new bond are being held in a financial institution."

Mato said that even if Argentina moves forward by selling bonds without a settlement in the case, it could eventually be a problem. If Argentina fails to overturn the decision on appeal, it could get creative with its debt structure to avoid an embargo of accounts – a legal technicality that would likely turn off some investors.

"If we're in a situation where the final ruling is favorable for Burford, I think that complicates Argentina's return to international capital markets," Mato said. Once Argentina goes to bond markets, he warned that "if you can't do a plain vanilla structure, a standard structure, every wrinkle will cost."

A final decision in the courts, however, may take years. The next step in the case, now in a US appeals court, would be whether there's a hearing on technical issues before those judges make a decision. If the appeals court judges uphold Preska's ruling, Argentina's only legal option would be to appeal to the US Supreme Court.

Patience Required

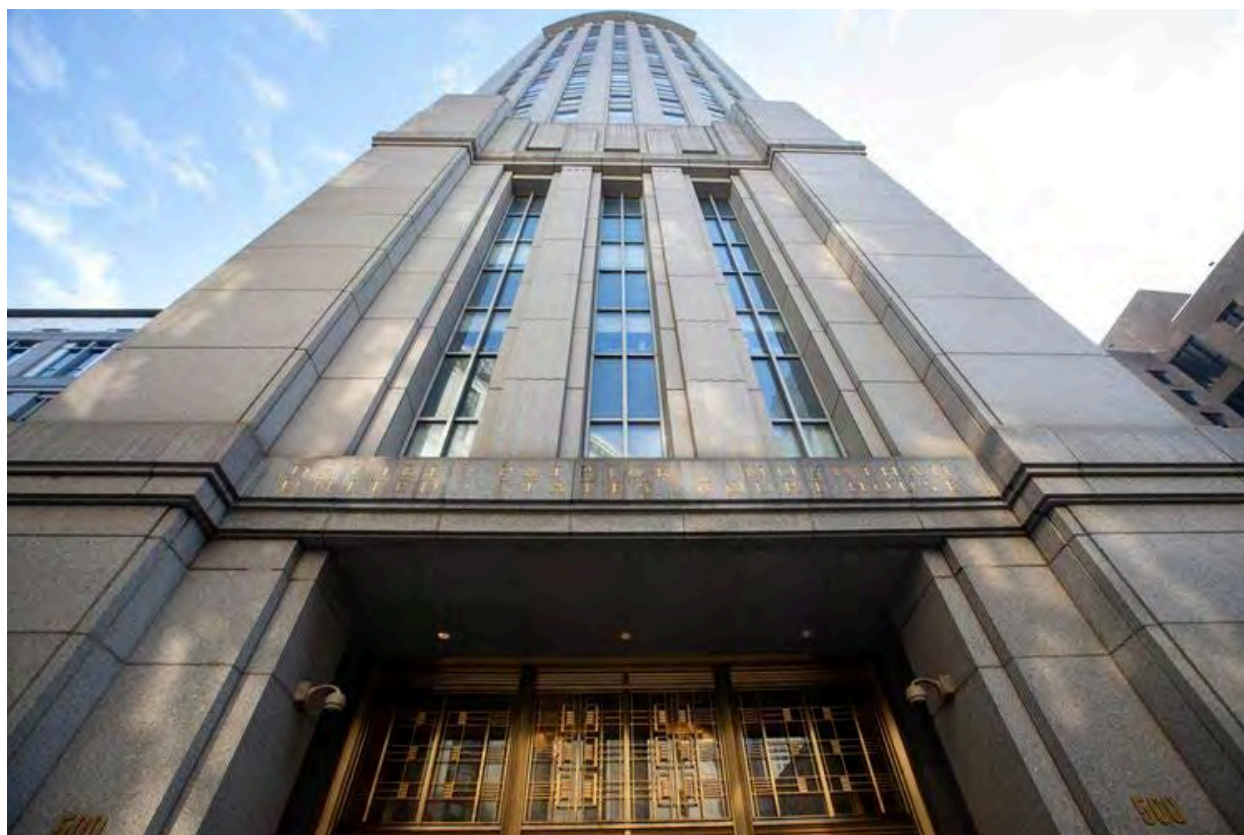
For now, Mato said, Burford doesn't plan to aggressively pursue Argentina's other assets. He added that Burford could accept a bond – or other securities with market structure – as a form of payment.

"The best tool that we have is patience. The tool is the judicial tool," says Mato. "We're waiting for the final resolution. Burford isn't in any rush on this issue. If we negotiate before, it'll benefit the government because it's going to have a discount on the debt. If it happens after, they're going to have to pay the totality of the suit."

Burford is perhaps the best-known of a cadre of investment funds that specialize in financing lawsuits. Launched in 2009 with backing from **Neil Woodford** and his former fund Invesco Ltd., Burford immediately made a splash with its founders' prestigious credentials.

Chief Executive Officer **Christopher Bogart** was previously general counsel for Time Warner Inc. and a litigator at elite law firm Cravath, Swaine & Moore. Co-founder Jonathan Molot is a one-time US Supreme Court clerk and Treasury Department adviser, and also a Georgetown University law professor.

The goal of firms like Burford is to identify undervalued legal claims, pay lawyers to successfully litigate them, and then take a percentage of the award.



A US District Court judge in New York ruled against Argentina in 2023.

Photographer: Michael Nagle/Bloomberg

In this case, which targets Argentina over its 2012 nationalization of YPF, Burford acquired the claims from the original shareholders for a little less than \$17 million in 2015. At the time of Preska's September 2023 judgment, the firm said it had paid around \$50 million in legal fees. It had also sold more than a third of its interest to other investors, mainly large hedge funds, for \$236 million.

But litigation funding has often worked better in theory than in practice.

Many of Burford's early competitors folded. Burford itself, listed in both New York and London, came under attack in 2019 by short-seller **Carson Block**, whose criticisms of its business practices knocked off almost two thirds of its share price at the time. Burford later made changes to its corporate structure to address investor concerns. Shares would rocket to as high as \$16.42 after Preska's award in the YPF case. Before the ruling, they were worth about \$7. The stock closed Thursday just above \$14.

Preska's ruling said the government's takeover of YPF violated company bylaws that required it to make a tender offer to all shareholders at a pre-determined price. At the time, the deputy economy minister who spearheaded the expropriation argued that the bylaws were a "bear trap," comments frequently cited by Burford in its case.

Argentina's stalemate with Burford comes at a crucial time for Milei. His negotiations for a new agreement with the International Monetary Fund are being closely monitored by investors and he is also trying to keep voters onside by crushing inflation before a crucial midterm election later this year.

--With assistance from **Anthony Lin**.

To contact the reporters on this story:

Jonathan Gilbert in Buenos Aires at jgilbert63@bloomberg.net;

Manuela Tobias in Buenos Aires at mtobias10@bloomberg.net;

Kevin Simauchi in Buenos Aires at ksimauchi1@bloomberg.net



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Sprinklr Execs Sued Over Revenue Projections, Biz Transition

By **Sydney Price**

Law360 (March 20, 2025, 1:33 PM EDT) -- Executives and directors of customer experience software company Sprinklr Inc. have been hit with a shareholder derivative suit alleging that they concealed issues the company was facing with scaling new service technology products.

According to the **complaint** filed Tuesday by shareholder Sara Beth Coffey, Sprinklr told the public that it was effectively transitioning to the contact center as a service, or CCaaS, market, which allows companies to outsource their contact center operations to fit customer demand.

The suit alleges, however, that Sprinklr's shift from established sources of growth to prioritizing scaling a new business venture with CCaaS produced artificially inflated growth in the short term, and Sprinklr's established sources of revenue were negatively impacted.

In addition to nominal defendant Sprinklr, its Chief Financial Officer Manish Sarin, former CEO Ragy Thomas and several directors are individual defendants in the suit.

The suit's relevant period begins on March 29, 2023, the day Thomas told Sprinklr investors on an earnings call that Sprinklr "will continue to innovate and win in social. It's where we started as a company, and that foundation has enabled us to build disruptive new opportunities like we are doing in CCaaS."

But Coffey claims that Thomas' statements on the call were false and that Sprinklr's executives knew the company was facing obstacles with its growth plan and execution.

"Due to the foregoing, the company's subscription revenue and total revenue slowed," the suit states. "Despite this, during the relevant period, the individual defendants concealed this reality, instead highlighting the effectiveness of the company's wider entrance into the CCaaS market and minimizing the risk Sprinklr faced with changing macroeconomic conditions."

The truth began to emerge, the complaint alleges, on Dec. 6, 2023, when Sprinklr revealed that the overall number of customers spending more than \$1 million had fallen, citing macroeconomic conditions. Sprinklr also announced that day it cut its growth forecast for the fourth quarter and full fiscal year from 16% growth to 10% growth, according to the complaint.

On this news, Sprinklr's shares fell by \$5.59 each, or about 33%, to close at \$11.11 per share on Dec. 7, 2023, the complaint states.

Several months later, on June 5, 2024, the defendants cut Sprinklr's growth forecast again, citing "withering customer retention and poor macroeconomic conditions" as reasons for the predicted 7% growth, according to the complaint.

On this news, Sprinklr's shares fell by \$1.64 each, or about 15%, to close at \$9.20 per share on June 6, 2024, the complaint states.

The individual defendants are accused of breaches of fiduciary duty, unjust enrichment and wasting corporate assets.

The suit also noted that the defendants are facing a securities class action over related alleged

misconduct in the same court.

Coffey is represented by Timothy Brown, Saadia Hashmi and Elizabeth Donohoe of The Brown Law Firm PC.

Counsel information for Sprinklr and the individual defendants was not immediately available Thursday.

The case is Coffey v. Thomas et al., case number 1:25-cv-02242, in the U.S. District Court for the Southern District of New York.

--Editing by Daniel King.

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3 Firms Win Lead Plaintiff Spot In Boeing Chancery Case

By **Jeff Montgomery**

Law360 (March 20, 2025, 9:27 PM EDT) -- Bleichmar Fonti & Auld LLP, Grant & Eisenhofer PA and Scott + Scott Attorneys at Law LLP got the nod Thursday to pursue potentially massive damages in a Delaware Court of Chancery derivative suit on behalf of The Boeing Co. arising from a string of plane crashes and oversight failures.

Vice Chancellor Morgan T. Zurn chose the group's complaint over one developed by attorneys Prickett Jones & Elliott PA, Hach Rose Schirripa & Cheverie LLP, Block & Leviton LLP and The Law Office of Kenneth T. Goldstein.

Moving forward are claims against 25 current or former company directors or officers in a 271-page suit focused on production issues, multiple safety breaches and oversight failures. The suit focuses on problems and accidents involving 737 Max, 777 and 787 commercial passenger jets, including an in-flight Alaska Airlines door-plug blowout on a 737 Max in January.

The plaintiffs' counsel selection settled a months-long competition for control of claims against Boeing's leadership that began with litigation in the U.S. District Court for the Eastern District of Virginia, initially by the Oklahoma Firefighters Pension and Retirement System.

Represented in the suit are the three pension fund stockholders: Ohio Public Employees Retirement System, State Teachers Retirement System of Ohio, and Oklahoma Firefighters Pension and Retirement System.

"This case arises from a board of directors that simply ignored its fiduciary obligations and acted in bad faith by pursuing profits over safety and failing to address Boeing's serious safety problems," the latest version of the suit filed by the team chosen Thursday said.

"During the relevant period, the directors of this heavily-regulated company knew that they were required to act in good faith to fix the safety problems in Boeing's manufacturing processes and to ensure strict compliance with the law. Instead, they did the opposite."

Boeing's directors, the complaint said, "drove Boeing to build unsafe airplanes by approving and reapproving an aggressive production schedule that they knew Boeing could not safely or legally meet."

The near-disastrous decompression on the Alaska Airlines flight in January followed a string of safety incidents over a multi-year period that occurred despite repeated probes, sanctions and scrutiny by regulators and Congress, attorneys for the stockholders said in a related action. Whistleblowers and concerned employees over the same time period were said to have faced threats and retaliation for flagging "the pursuit of profits" over safety.

Boeing did not immediately respond to a request for comment.

The pension funds are represented by Javier Bleichmar, Lesley E. Weaver, Derrick B. Farrell, Matthew L. Miller and Robert B. Lackey of Bleichmar Fonti & Auld LLP, Christine M. Mackintosh, Vivek Upadhy, Casimir O. Szustak and Jonathan C. Millis of Grant & Eisenhofer PA and Justin O. Reliford, Geoffrey M. Johnson, Donald A. Broggi, Jing-Li Yu, Maxwell R. Huffman and Ora L. Lupear of Scott + Scott Attorneys at Law LLP.

The Boeing Co. directors and officers are represented by Blake Rohrbacher, Kyle H. Lachmund, Kevin M. Kidwell and Spencer V. Crawford of Richards Layton & Finger PA and Sharon L. Nelles, David M.J. Rein and Leonid Traps of Sullivan & Cromwell LLP.

The case is In re: The Boeing Co. Derivative Litigation, case number 2024-1210-MTZ, in the Court of Chancery of the State of Delaware.

--Editing by Dave Trumbore.

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Musk Gets Summons In Tardy Twitter Stock Disclosure Row

By **Rae Ann Varona**

Law360 (March 20, 2025, 11:40 PM EDT) -- Elon Musk received a court summons last week for a U.S. Securities and Exchange Commission lawsuit accusing the billionaire of failing to timely disclose his purchases of Twitter stock ahead of his \$44 billion acquisition in 2022, according to a return of service filed Thursday in D.C. federal court.

The document states that a process server, on the afternoon of March 14, personally dropped off a civil summons to a security guard or person found in charge at Musk's SpaceX Starbase facility in southern Texas.

In a short description of the service, the process server said that upon arriving, he "stepped one foot past the gate" but was told by security to "step back and that I was trespassing."

"I then spoke to three different security guards who refused to accept," the server wrote. "I placed the documents on the ground then a security guard started taking pictures of me and my car as I departed."

The SEC **sued** Musk in mid-January, days before the end of the Biden administration, accusing him of violating Section 13(d) of the Securities Exchange Act of 1934 by failing to timely file a beneficial ownership report in 2022 as required for surpassing a 5% ownership stake threshold in social media platform Twitter Inc., which Musk renamed to X.

Musk waited 11 days after he was required to file a report informing the company and the investing public about his concentration of shares, allowing Musk to continue racking up stock while underpaying by at least \$150 million, the SEC alleged in its complaint.

Musk was required to file a report disclosing his Twitter holdings by March 24, 2022, the SEC said. Yet Musk waited until April 4, 2022, to finally publicly disclose that he acquired more than 9% of Twitter's outstanding common stock, the agency said, adding that Twitter's stock price jumped 27% over its previous day's closing price the same day.

"Musk underpaid Twitter investors by more than \$150 million for his purchases of Twitter common stock during this period," the SEC had asserted. "Investors who sold Twitter common stock during this period did so at artificially low prices and thus suffered substantial economic harm."

Musk is required to provide an answer in the suit by April 4, according to the case's docket.

Musk and Twitter agreed to terms on the **\$44 billion take-private acquisition** on April 25, 2022, three weeks after Musk's disclosure.

The SEC — which Musk has **beefed** with in recent years, including over a **tweet** he made about taking Tesla private at \$420 per share — had revealed in a May 2022 letter that it was **probing** Musk's delayed disclosure, indicating concern over his timing and intentions.

Musk had also been sued by an **investor** in New York federal court who alleged that the delayed disclosure allowed Musk to quietly build a big stake in Twitter and save \$143 million.

Musk could not immediately be reached for comment late Thursday. The SEC did not immediately

respond to a request for comment.

The SEC is represented in-house by Robin Andrews, Bernard B. Smyth and Melissa J. Armstrong.

Counsel information for Musk was not immediately available.

The case is U.S. Securities and Exchange Commission v. Musk, case number 1:25-cv-00105, in the U.S. District Court for the District of Columbia.

--Additional reporting by Lauren Berg, Jessica Corso, Tom Zanki, Rachel Graf and Hailey Konnath.
Editing by Jay Jackson Jr.

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Sequoia Capital Rallies For Musk's \$56B Tesla Pay Appeal

By **Lauren Berg**

Law360 (March 20, 2025, 10:16 PM EDT) -- Venture capital firm Sequoia Capital Operations on Tuesday asked the Delaware Supreme Court for permission to back Elon Musk's appeal aimed at a Court of Chancery decision that had short-circuited the electric car company's 10-year, \$55.6 billion compensation plan for the CEO.

The firm says in its **proposed amicus curiae brief** that the appellate court should reverse the Chancery Court's decision, arguing that Musk's compensation should have been subject to default business judgment deference, not heightened legal scrutiny.

"'Superstar CEO[s]' and 'visionary leader[s]' deliver tremendous value to the companies they lead and the investors who back them. Public policy should support such efforts, not discourage founder-led innovation," Sequoia said, noting that during the milestone period of Musk's challenged stock grant, the value of Tesla stock increased by \$600 billion.

Sequoia argued that a "motivated founder at the helm of a corporation" doesn't mean the founder has control of the company board, according to the brief. The firm noted that the appellate court has previously ruled against finding control based on a founder's importance to the company, pointing to [Dell Inc. v. Magnetar Global Event Driven Master Fund Ltd](#) .

The firm also raised a concern about the Chancery Court's decision to rescind the compensation package, despite it being twice "overwhelmingly" approved by stockholders, the brief states.

Musk and the other Tesla directors launched the appeal **earlier this month**, saying the Chancery Court applied the "onerous" fairness standard to the compensation plan, rather than the proper business judgment standard, because the court concluded that Musk controlled the board during the transaction.

"That was legal error," Musk and the directors said in their brief. "Musk owned less than a quarter of Tesla's stock, had no power to dictate terms to the board, and did nothing to dominate or coerce the directors during the transaction. Musk therefore does not qualify as a controlling stockholder."

The directors argued that the Chancery Court's control analysis contradicts the appellate court's precedent, which holds that the concept of control is rooted in majority voting power or something equivalent, according to the brief.

"Fundamentally, the court conflated Musk's influence — which arose from his successful performance and value to the company — with control justifying heightened judicial scrutiny of informed business decisions," the directors said.

The challenge to Musk's pay kicked off in 2018 with a derivative lawsuit from stockholder Richard J. Tornetta, who alleged Tesla's directors breached their fiduciary duty to shareholders by approving Musk's compensation package. He said the \$55 billion pay plan "was wholly unnecessary to properly incentivize Musk," given that he already had a reason to devote time and energy to the company based on his substantial equity stake.

The plan went to a weeklong trial in November 2022 after it was challenged by stockholders opposing the 10-year compensation scheme. It included 12 tranches or performance milestones that Musk had

to meet before qualifying for a portion of the total, once estimated at as much as \$56 billion.

In the end, Chancellor Kathaleen St. J. McCormick struck down the compensation plan last January, finding disclosure failures, murky terms, conflicted director architects and the effect of Musk's influence warranted voiding the package.

Tesla's board reacted, after moving the company's corporate charter to Texas, by putting the pay to a **second vote** after the fact. But the chancellor in December **refused to reinstate** Musk's proposed pay, rejecting the "creative" ratification argument.

"At bottom, defendants seek to introduce a new fact that they created for the purpose of flipping the outcome of the post-trial opinion," she wrote. "Defendants do not cite to a single case where a court has provided such relief."

Chancellor McCormick also rejected the plaintiff firms' bid for \$5.6 billion in freely tradeable Tesla shares — commenting in her decision, "In a case about excessive compensation, that was a bold ask" — but did approve a \$345 million attorney fee award.

The Washington Legal Foundation on Tuesday also filed an **amicus curiae brief** in support of the Tesla directors, urging the appellate court to reject the Chancery Court's ruling that "stockholders may not ratify a voidable transaction once a court has deemed it unfair."

The WLF noted that, in the second vote, 72% of Tesla's shareholders ratified Musk's 2018 compensation package, despite knowing about the current litigation, according to the brief. But the Chancery Court determined the shareholders' decision doesn't matter once a court finds the transaction to be unfair, the WLF said.

"If that decision stands, trial judges and plaintiffs' lawyers — not informed stockholders — will have the final say on what is in the best interests of Delaware corporations," the public-interest law firm and nonprofit said.

"That not only would undermine the 'highest and best form of corporate democracy' ... it would seriously jeopardize Delaware's status as a preferred state for incorporation and carry the Delaware judiciary far afield into policymaking — a role best suited to the General Assembly," it said.

Counsel for the parties and proposed amicus did not immediately respond to requests for comment Thursday.

Musk and the other Tesla directors are represented by Alex Spiro, Christopher D. Kercher and Michael A. Barlow of Quinn Emanuel Urquhart & Sullivan LLP, Daniel Slifkin and Vanessa A. Lavelly of Cravath Swaine & Moore LLP, and David E. Ross, Garrett B. Moritz and Thomas C. Mandracchia of Ross Aronstam & Moritz LLP.

Sequoia is represented by Stephen Blake of Simpson Thacher & Bartlett LLP and Michael L. Vild of Cross & Simon LLC.

Washington Legal Foundation is represented in-house by Cory L. Andrews and by Rebecca L. Butcher of Landis Rath & Cobb LLP.

Tornetta has been represented in the underlying matter by Jeroen van Kwawegen and Gregory V. Varallo of Bernstein Litowitz Berger & Grossmann LLP, Jeremy S. Friedman, Spencer M. Oster and David F.E. Tejtzel of Friedman Oster & Tejtzel PLLC and Peter B. Andrews, Craig J. Springer, David M. Sborz and Jackson E. Warren of Andrews & Springer LLC.

The case is In re: Tesla Inc. Derivative Litigation, case numbers 534-2024, 10-2025, 11-2025 and 12-2025, in the Supreme Court of the State of Delaware.

--Additional reporting by Jeff Montgomery. Editing by Michael Watanabe.

Opioid Orders Weigh Insurers' Role In Fighting Societal Harm

By **Jennifer Mandato**

Law360 (March 20, 2025, 10:06 PM EDT) -- Rulings barring supermarket chain Publix and drugmaker Mallinckrodt from obtaining coverage for underlying opioid claims have contributed to insurers' continued success in defining their obligations to these claims while raising the question of whether insurance is intended to help protect against widespread societal harm.



Insurance policies aren't designed to provide coverage for costs associated with generalized societal harm or alleged widespread societal harm, according to an attorney who represents insurers. (AP Photo/Mark Lennihan)

On March 10, a Missouri state court **determined** that a group of insurers had no coverage obligations under certain policies issued to Mallinckrodt, while a trust created from the company's first bankruptcy attempts to resolve underlying opioid claims with the help of insurance benefits.

Two days later, a Florida federal court **said** that insurers for Publix have no duty to defend or indemnify the company in dozens of public nuisance lawsuits related to the opioid crisis, following the grocery store chain's continued request for a final judgment so it could proceed with appeal.

"Insurance policies really are not designed to provide coverage for costs of generalized societal harm or widespread alleged societal harm," insurer attorney Michael Hamilton of Goldberg Segalla LLP told Law360. "Insurance policies are more designed for dealing with individualized harm, or culpability of individual defendants, and not as a funding mechanism for societal change."

Policyholder attorney Bernard Bell of Miller Friel PLLC countered that risk-spreading through insurance only performs its societal function when the risk is actually spread, "if those who have accepted the risk in return for premium don't turn around and deny the risk."

Even assuming that a carrier didn't contemplate or price for a societal risk because of the risk's novelty, Bell told Law360 that if insurers really want to combat what he refers to as "an extortion racket," they must stand by their policyholders and fight these events of widespread societal harm by providing a defense.

In an article shared on the Miller Friel PLLC website, Bell discussed concerns about the concept of "social inflation" as it pertains to opioid litigation.

"If insurers were truly concerned about the expansion of judge-made law and corresponding erosion of traditional notions of tort causation, they would honor their promises and stand with their customers to defeat these dangerous claims," Bell wrote.

How Publix and Mallinckrodt Add to the Opioid Litigation Landscape

The pair of rulings are reflective of the prevailing view in opioid coverage litigation, Hamilton said, which is that commercial general liability policies are not intended to respond to lawsuits generally pertaining to governmental state or local entities seeking reimbursement or "actually seeking to fund their response to the opioid crisis."

Specifically looking at the Publix decision, Hamilton said that the ruling reinforces the predominant understanding that those types of allegations do not even meet the standards outlined in a CGL policy's insuring agreement.

"I think there are a myriad of decisions over the last few years holding in similar ways and I don't see any reason why an appellate court in Florida would deviate from those recent rulings," he said.

Michael Steinlage of Larson King LLP, who represents insurers, agreed with the expectation that the appellate court will uphold the ruling, noting that the Eleventh Circuit has already established the precedent of siding with insurers on similar issues.

"I would see no reason for [the court] to change its approach to this," Steinlage told Law360.

In Mallinckrodt, Judge Richard M. Stewart rejected Opioid Master Disbursement Trust II's argument that the relevant "your products" exclusion didn't extend to underlying claims pertaining to the promotion of general opioid use. The exclusion barred coverage for injury claims arising from Mallinckrodt's products, according to court records.

Hamilton said he believed the court correctly found that the exclusion applied in that context and that the broad interpretation has appeared in other jurisdictions as well.

Steinlage shared this sentiment, telling Law360 that the court was correct to look at the exclusion from the perspective of what the actual product is.

"For instance, in the case of opioids, statements regarding efficacy — I think that is intrinsic to the product," he said. "So it's appropriate to view [those statements] as an element of or within the scope of the 'your product' exclusion."

Where Else Policyholders Might Turn for Coverage

Beyond the plain language of a CGL policy's insuring agreement, certain exclusions have also been quick to stop a policyholder's claim for coverage of opioid-related claims.

"Before these cases were decided, the insurance industry adapted to these risks of these public nuisance suits — starting around 2018 — by adding opioid exclusions to policies issued to insureds involved in the chain of distribution," Robert Tugander of Rivkin Radler LLP, who represents insurers, told Law360. These insureds can include manufacturers, wholesale distributors and pharmacies.

"So in terms of public nuisance opioid risks, the insurance industry has probably already done what is

needed to limit its exposure," Tugander said.

This notion, however, raises the question of where policyholders might turn for this type of coverage.

Steinlage told Law360 that he would assume that pharmaceutical companies have separate product liability coverage, and while that "may be at a very high level with high retentions, it feeds into the outcome of these cases, which is general liability was never intended to be the place for this risk to reside."

On March 11, The Travelers Companies Inc. announced a new product liability coverage specific to life sciences companies.

"We've seen the market respond that way, historically, to environmental pollution policies," Hamilton said of the new product. "When carriers put in absolute pollution exclusions in their CGL policies, it created a market for environmental-specific policies designed for particular environmental risks."

With respect to Travelers' announcement, he said there could be the potential for a specialty market for those companies that deal with opioid risks.

Tugander agreed that other insurers may introduce similar product liability policies if they view them as profitable.

"Generally, if insurers exclude certain types of risks from traditional liability policies, that may open up a market for specialized policies addressing those risks," he said. "New types of policies may become available to fill in the gaps."

Miller Friel's Bell told Law360 that the creation of new products in light of the adjudication of these types of claims is indicative of the nature of enterprising insurers in the market.

"Because the risk is, in their view, too large, [carriers] have discovered that they can carve it out and then sell a separate product for even more premium to cover that specific risk," Bell said. "If the market is there, somebody will find it."

Evaluating Other Mass Torts

In looking at other litigation involving mass torts such as PFAS and climate change claims, Hamilton said that such claims also present the challenge of questioning what the insurance industry's role is supposed to be.

"In mass tort litigation asserting a public nuisance theory of recovery, the plaintiffs generally allege the existence of widespread societal harms and seek a public funding mechanism to address the increased costs associated with such harms, as we have seen in cases involving the opioid epidemic, climate change, chemicals in drinking water, and other matters of general public health," Hamilton said.

He added that, as a result, he can understand where the pushback from the insurance industry is on those types of claims.

Presently, certain insurers are embattled in a coverage dispute with Meta Platforms Inc. over underlying multidistrict litigation accusing the social media conglomerate of deliberately designing its platforms to be addictive to children and adolescents, and concealing its harmful effects on them.

This litigation has drawn comparison to opioid claims, largely due to the public nuisance claims raised against Meta. Based on that, Hamilton told Law360 that he expects this case to play out similarly to what has occurred in these other mass tort cases.

Larson King's Steinlage told Law360 that he expects questions about individualized proof of bodily injury to arise and is interested to hear how the understanding and definition of what the product encompasses is explained.

Mallinckrodt specifically could inform that question, in terms of expanding the "product" beyond the interface of the app on a phone to all the elements of the way it's working, including the underlying algorithms, he speculated.

Still, Steinlage maintained that insurers needn't change the general liability approach to insuring companies involved in these types of claims.

"I think the policies say what they say and courts have interpreted them in a way that will generally make it difficult to obtain coverage," he said.

--Additional reporting by Hope Patti and Ganesh Setty. Editing by Bruce Goldman and Nick Petruncio.

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'Careless People' Author Can Testify In Meta Addiction MDL

By **Dorothy Atkins**

Law360 (March 20, 2025, 10:55 PM EDT) -- Meta Platforms Inc. on Thursday failed to block the deposition of the former executive behind the tell-all memoir "Careless People," with a California magistrate judge giving plaintiffs the green light to depose her in multidistrict litigation over social media platforms' allegedly addictive designs.

U.S. Magistrate Judge Peter H. Kang's ruling came during a three-hour hearing in San Francisco over the latest discovery disputes in the consolidated personal injury litigation **launched in 2022** against social media tech giants, including Meta, Snap Inc., TikTok Inc. and YouTube LLC.

The MDL involves hundreds of claims by parents of minors, school districts and dozens of state attorneys general who allege that the social media companies' platforms — such as Instagram and Facebook, which bring in billions of dollars annually in ad revenues — are designed to be addictive to the detriment of minors' mental health and livelihood.

During the hearing, the personal injury plaintiffs' counsel, Lexi J. Hazam of Lieff Cabraser Heimann & Bernstein LLP, asked Judge Kang for permission to take the depositions of three third parties, including former Meta director of global public policy Sarah Wynn-Williams, who last week released her tell-all memoir "Careless People: A Cautionary Tale of Power, Greed and Lost Idealism."

The book chronicles Wynn-Williams' seven-year stint at the fast-growing social media company from 2011 to 2017, where she worked alongside top Meta executives including CEO Mark Zuckerberg and former Chief Operating Officer Sheryl Sandberg.

The book makes wide-ranging allegations against the executives, claiming workplace misogyny and harassment, and describes Meta's alleged yearslong efforts to launch its apps in China with censorship tools to comply with the Chinese Communist Party government, among other allegations.

Meta has vigorously denied the allegations in the book and has tried to block its promotion, securing an **emergency ruling** last week blocking Wynn-Williams from promoting the book.

On Thursday, Hazam told Judge Kang that the plaintiffs' counsel learned of Wynn-Williams' and the two other third party witnesses' unique knowledge regarding Meta's practices late in discovery. Although discovery deadlines are looming, there are still other depositions taking place, so there's no prejudice to Meta to conduct the depositions, which won't take more than a day each, Hazam argued.

Hazam noted that the Wynn-Williams is not a Meta custodian and her examination will focus on a specific chapter in her book titled "Emotional Targeting," in which Wynn-Williams claims Meta "commercializes and exploits [its] youngest users" and uses teenage users' data "to target young people when they're vulnerable."

The alleged examples include work Meta purportedly did for a beauty products company allegedly tracking when teenage girls delete selfies so it can serve them a beauty ad at that moment. Wynn-Williams says Meta does not publicly acknowledge this sort of tracking, but instead "pretends the opposite" by "flat-out l[ying]" to the public, according to court documents.

The other witnesses the plaintiffs seek to depose are Josh Simons, a U.K. member of parliament who was a visiting research scientist with Meta's Responsible Artificial Intelligence Team, and Brian

Boland, a former vice president in charge of partnerships who wrote a blog post in January announcing he was deleting his Facebook account due to Meta's allegedly "consistently prioritiz[ing] its growth over public safety."

But Meta's counsel, Isaac D. Chaput of Covington & Burling LLP, argued that the witnesses' knowledge of Meta's practices aren't relevant to the personal injury claims at issue and that the plaintiffs waited too long to seek the discovery.

Chaput said the plaintiffs had been on notice of Boland's blog post for months and certain allegations in Wynn-Williams book were reported in news articles covering the events in real time. The personal injury plaintiffs should have made their discovery requests at the outset instead of waiting until now, he argued.

However, Judge Kang ruled from the bench and said the plaintiffs can take the witnesses' depositions as long as they don't object to being deposed.

The judge noted that these witnesses are third parties, so if they agree to being deposed, Meta likely doesn't have standing to make certain objections.

Aside from the third-party depositions, Meta's counsel also argued with Michael Ward of Baker Botts LLP — who is representing former Meta employees Vaishnavi Jayakumar, who served as the company's Head of Youth Policy from January 2020 to May 2023, and Arturo Beja, who worked at Meta from 2009 to 2015 and again from 2019 to 2021 — over whether Meta is entitled to subpoena their communications with other current and former Meta workers.

Judge Kang denied Meta's discovery demands as to the communications with Meta's current workers, agreeing with Ward that requiring current Meta workers to produce their personal communications would likely implicate the workers' First Amendment rights. However, the judge said he wouldn't outright bar Meta's request for the pair's communications with other former Meta workers.

Judge Kang also ruled from the bench on other discovery disputes, including one over whether Meta must search and produce certain internal data on users wishing minors on social media a happy birthday. The judge ordered the parties to meet and confer, but rejected Meta's arguments that it shouldn't have to respond to the "happy birthday" data discovery demand due to the production being overly burdensome.

The wave of discovery rulings comes as the parties near the close of fact discovery and after a series of rulings from U.S. District Court Judge Yvonne Gonzalez Rogers, who is overseeing the MDL, **denying in part** multiple bids to dismiss the claims against the tech giants, including **wrongful death allegations**.

The high-stakes MDL has sparked ongoing **insurance coverage litigation** between Meta and its insurers, as well as an appeal pending before the Ninth Circuit on behalf of state attorneys general seeking to block **discovery orders** requiring third-party state agencies to respond to Meta's discovery demands. The states have argued in a **mandamus petition** that the discovery ruling is "clearly erroneous" and "runs roughshod" over state's constitutional divisions of power.

The first bellwether trials in the MDL were **initially scheduled for October**, but they are now expected to occur sometime in early 2026.

The personal injury plaintiffs were represented during the hearing by Lexi J. Hazam of Lieff Cabraser Heimann & Bernstein LLP and Previn Warren of Motley Rice LLC.

The state of California was represented during the hearing by Joshua Olszewski-Jubelirer of the California Department of Justice.

The Meta entities were represented during the hearing by Isaac D. Chaput and Ashley Margaret Simonsen Covington & Burling LLP.

Third-parties Vaishnavi Jayakumar and Arturo Bejar were represented during the hearing by Michael Ward of Baker Botts LLP.

The MDL case is In re: Social Media Adolescent Addiction/Personal Injury Products Liability Litigation, case number 4:22-md-03047, in the U.S. District Court for the Northern District of California.

--Editing by Alanna Weissman.

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Meet The Attys In Meta's Fight For Social Media MDL Coverage

By **Abraham Gross**

Law360 (March 20, 2025, 9:00 PM EDT) -- Meta has assembled a team of seasoned insurance recovery and technology lawyers led by Covington & Burling LLP to fight its insurers' bid to deny coverage for thousands of suits alleging harm from social media platforms, including Facebook and Instagram.



Meta is squaring off with its insurers over coverage for underlying suits that generally claim the social media giant and other companies targeted their platforms to children and adolescents while concealing their harmful effects on health and mental well-being. (Photo by Klaudia Radecka/NurPhoto via AP)

The social media giant is locked in a multifront dispute with its insurers, including units of Hartford, Chubb and Zurich, over whether insurers have a duty to defend the company and its subsidiaries in suits alleging they and other social media companies intentionally designed their platforms to be addictive.

The **underlying suits**, which have been consolidated into multidistrict litigation in California, generally claim that Meta and other social media companies targeted their platforms to children and adolescents while concealing their harmful effects on health and mental well-being.

The coverage dispute **began in November**, when two Hartford units told a Delaware state court that they do not owe any defense to Meta and its subsidiaries for claims brought by government and school district plaintiffs. The insurers argued that those suits did not allege any covered bodily, personal or advertising injury.

Meta then asked a Delaware federal court in December to take over the case under diversity jurisdiction, arguing that Hartford had named other primary insurers as defendants to keep the suit in state court.

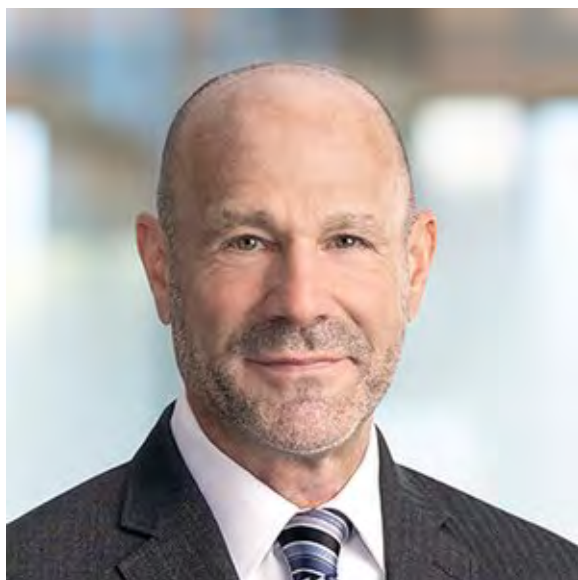
In January, the company requested that a California federal court **stay the coverage dispute** until the underlying MDL is resolved, asserting that the issues would overlap and could prejudice its defense.

The insurers have pushed back against Meta's arguments, telling the Delaware federal court that the social media giant's arguments were a ploy to delay the coverage case and urging the California court to **stay or dismiss** so that the coverage dispute can be resolved by Delaware's state courts, where they argue the case belongs.

As of March 20, both federal courts are currently briefing their respective motions to dismiss while the MDL is proceeding with discovery.

Here, Law360 takes a look at the attorneys helping Meta in its coverage disputes.

COVINGTON



Martin Myers

Covington & Burling LLP

A San Francisco-based partner, Myers draws on a deep background in insurance recovery litigation for media, entertainment and technology companies, including Adobe, Sony, Nvidia and Las Vegas Sands Corp.

In 2018, Myers assisted Disney in its successful bid to arbitrate a \$25 million coverage dispute over a settlement with a beef products company. The entertainment giant's insurer had sought to keep the dispute in California federal court.

The court **ruled in January 2018** that Disney's policy granted it the right to compel arbitration for itself or its insured, including subsidiary ABC, which had issued a news report describing the beef company's beef trimmings as "pink slime," leading to a subsequent suit against ABC and others.

Myers received his bachelor's degree from Miami University and his law degree from the University of Michigan Law School, according to his firm profile.



Heather Habes

Covington & Burling LLP

A partner based in Los Angeles, Habes has represented clients including The Aerospace Corp. and Whittaker Corp. in insurance recovery disputes, primarily centered in California. She received her bachelor's degree from the University of Washington and her law degree from the University of Southern California's Gould School of Law, the firm's website says.



Emilie J. Katz

Covington & Burling LLP

An associate for Covington, Katz has served as a law clerk for U.S. District Court for the District of Columbia and the Eleventh Circuit, and as an extern for the Southern District of Ohio. He received his bachelor's degree from Case Western Reserve University and his law degree from the University of California, Berkeley School of Law, according to his LinkedIn profile.



Regan J. Hines

Covington & Burling LLP

Hines, a Los Angeles-based associate, focuses on litigation and investigation. He earned his bachelor's degree from the University of Delaware and his law degree from the UCLA School of Law, his firm website states.

BERGER



David J. Baldwin

Berger McDermott LLP

A partner at the Wilmington, Delaware-based firm, Baldwin has represented clients including AMC, Caterpillar Inc. and AmTrust Financial Services Inc.

He represented Viacom in its recent **successful bid** to seek approximately \$55 million in coverage from its insurers for shareholder litigation related to the company's 2019 merger with CBS.

On March 6, the Delaware Superior Court ruled that Viacom could proceed with its claim, determining that the underlying suit did not relate to prior lawsuits against the company or its directors and officers.

Baldwin is also leading the team representing 3M and its subsidiary, Aearo Technologies, in their **ongoing dispute** before the Delaware Supreme Court over whether the parent company's payments of defense costs in multidistrict litigation related to Aearo's combat earplugs could satisfy the subsidiary's self-insured retention.

Baldwin received his bachelor's degree from the University of Massachusetts, his law degree from Georgetown University Law Center and his Master of Laws from Temple University School of Law, according to his firm profile.



Peter C. McGivney

Berger McDermott LLP

In his role as partner, McGivney has represented clients including CVS, Stillwater Mining Co., Jarden LLC and Syngenta Corp.

He successfully convinced a Delaware state court in November to **drop** Insys Therapeutics Inc. founder John N. Kapoor from a suit alleging state residents were harmed through the company's distribution of opioids. The court found that it could not exercise its jurisdiction over Kapoor because he lacked sufficient connections in the state.

He received his bachelor's degree from the University of Delaware and his law degree from Widener University Delaware Law School, his firm bio says.

The cases are Hartford Casualty Insurance Co. et al. v. Instagram LLC et al., case number 1:24-cv-01422, in the U.S. District Court for the District of Delaware, and Instagram LLC et al. v. Hartford Casualty Insurance Co. et al., case number 4:24-cv-09500, in the U.S. District Court for the Northern District of California.

--Additional reporting by Dave Simpson, Craig Clough, Hope Patti, Ganesh Setty, Elizabeth Daley and Jeff Montgomery. Editing by Abbie Sarfo and Nick Petruncio.



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4th Circ. Leery Of Reviving Class Claims In Lending Bias Suit

By **Hayley Fowler**

Law360 (March 20, 2025, 4:38 PM EDT) -- A group of borrowers faced an uphill battle Thursday trying to convince the Fourth Circuit to revive their class claims accusing Navy Federal Credit Union of discriminatory lending practices, with one judge chastising what he said were attempts to rewrite the complaint.

The borrowers, represented by Daniel Schwartz of DiCello Levitt LLP, said during oral argument that U.S. District Judge Leonie M. Brinkema in Virginia had struck their class allegations as being too varied. In doing so, Schwartz said, she essentially determined there was no set of circumstances under which those class claims could survive.

But Judge Julius N. Richardson said that's not what Judge Brinkema wrote in her decision.

"I understand that you want to rewrite your complaint," he chided. "But one thing we definitely can't do is rewrite the judge's order."

The comment was one of several Judge Richardson made suggesting the litigation's fatal flaw lay with how the borrowers presented their case and not with Judge Brinkema's opinion. The suit, **filed in December 2023**, specifically accuses Navy Federal of violating the Fair Housing Act and the Equal Credit Opportunity Act. It's based in part on a CNN report that found the bank had the largest disparity of loan approvals among the 50 largest U.S. lenders.

Judge Brinkema **struck the proposed class claims** last year, finding the circumstances of the plaintiffs' loan application processes were too varied. Instead, she said, it would be a better use of time to allow the suit's nine named plaintiffs to pursue their disparate impact claims on an individualized basis.

Schwartz argued Thursday that Judge Brinkema's opinion permanently closed the door on any future ability to plead class allegations in the litigation.

But Judge Richardson said the class claims were struck under Rule 23(d)(1)(D) of the Federal Rules of Civil Procedure, which he likened to a case management decision that can be amended down the road depending on how the record develops.

"Any time a district court judge makes case management decisions, those can have consequences, I totally acknowledge that," he said. "But that's why we give district court judges a great deal of discretion in the class action context and otherwise to run their own courtrooms and manage the process."

Schwartz countered that such rulings may prevent plaintiffs from eliciting the discovery they need to show class litigation is plausible.

"It could allow a district court to effectively eviscerate, take away, the ability of claimants to prove any Rule 23 cases if they think at the outset of a case that it is ultimately unlikely for a class to be certified down the road," he argued.

Schwartz accused Judge Brinkema of conducting her own fact-finding in determining the processes for applicants were too varied to support class allegations, calling it an "inappropriate evaluation."

But Judge Richardson noted it would be odd for Navy Federal to rely on a single algorithm for all of its different loan products, at which point Schwartz acknowledged there was likely a different credit evaluation process for each product.

Even so, he said, that's where the court has the discretion to break up the class into various subclasses instead of throwing out the class claims altogether. Judge Richardson, however, seemed bewildered by that statement.

"So we would reverse the district court because you could later create subclasses? I'm having trouble understanding that argument," the judge said.

U.S. District Judge Norman K. Moon, sitting by designation, later said the complaint indicates each of the plaintiffs suffered different types of injuries that would consequently produce different verdicts, which is seemingly why Judge Brinkema chose to strike the class allegations.

Schwartz then countered that they don't yet know whether the common underwriting process has a disparate impact across the class. But Judge Richardson said the borrowers can't seek discovery to make those allegations.

"You just keep saying you don't yet have the information," he said. "That's not an answer to a pleading failure."

In his answering argument, Daniel Volchok of WilmerHale, representing Navy Federal, said the borrowers were trying to bypass Rule 12 dismissal requirements without a plausible claim, and he said the decision to strike the class allegations should be reviewed *de novo*.

The comment elicited a brusque rebuke by Judge Richardson, who said, "You're just wrong."

The judge said that a Rule 23(d)(1)(D) order is always reviewed for an abuse of discretion, and he said he wasn't aware of another court that reviewed a Rule 23 decision *de novo*.

Volchok promptly conceded, saying, "I'm certainly not going to argue for a less deferential standard of review when I am defending the district court's decision." But he told the panel it should get to the same result either way, saying the complaint falls short of commonality requirements by alleging a variety of injuries.

He also said there is no single policy applied across the disparate class members, pointing to dozens of references in the complaint to plural practices and algorithms.

"We are not cherry-picking. We are not engaging in some sort of gotcha trap," Volchok said. "They are the masters of their complaint, but they did not allege a single policy."

Judge Julius N. Richardson, Judge Toby J. Heytens and U.S. District Judge Norman K. Moon sat on the panel for the Fourth Circuit.

The borrowers are represented by Daniel R. Schwartz and Adam J. Levitt of DiCello Levitt LLP, Hassan A. Zavareei and Glenn E. Chappell of Tycko & Zavareei LLP and Ben Crump of Ben Crump Law PLLC.

Navy Federal is represented by Daniel S. Volchok, Jonathan E. Paikin, Karin Dryhurst, Joseph M. Meyer and Lucyanna Burke of WilmerHale.

The case is Laquita Oliver v. Navy Federal Credit Union, case number 24-1656, in the U.S. Court of Appeals for the Fourth Circuit.

--Additional reporting by Sydney Price. Editing by Patrick Reagan.



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Atrium Health Escapes Privacy Suit Over Meta Data Sharing

By **Allison Grande**

Law360 (March 20, 2025, 10:52 PM EDT) -- A North Carolina federal judge on Thursday tossed a proposed class action accusing Atrium Health Inc. of unlawfully sharing patients' private information with Meta Platforms and Google through browser tracking tools, finding the allegations couldn't proceed in his court but leaving the door open for the plaintiffs to refile negligence, contract and other claims in state court.

Atrium Health, a major healthcare provider in North Carolina, South Carolina, Georgia and Alabama, had asked the district court to dismiss plaintiffs Julie Roberts and Judith Sigmon's claims that it violated the Electronic Communications Privacy Act and state common law by embedding "pixel" tracking tools on its website and patient portal that collected and divulged visitors' private health information without their permission to Meta and Google, which would then use this information for targeted advertising.

U.S. District Judge Kenneth D. Bell sided with this request Thursday, finding that the plaintiffs had failed to plausibly state a claim under ECPA and that, with the sole federal claim no longer in play and the majority of potential class members likely to reside in North Carolina, the court lacked jurisdiction over the remaining state law claims for breach of express contract, breach of implied duty of good faith and fair dealing, breach of implied contract, negligence, breach of fiduciary duty and unjust enrichment.

However, Judge Bell stressed that the dismissal of the state law claims were without prejudice "so that plaintiffs may refile them in the proper forum."

The plaintiffs first sued Atrium Health in April 2024, as part of **a wave of** recent lawsuits targeting healthcare providers that have installed pixel tracking tools on their websites that allegedly collect sensitive data about patients' interactions and medical conditions and furnish this information to third parties such as Meta and Google without consent.

In axing the ECPA claim brought against Atrium Health, Judge Bell found that there was no violation of the federal electronic privacy statute "based solely on the interception of a communication," given that Atrium Health was "a party to the communication, and [the plaintiffs have] not otherwise plausibly alleged facts that suggest Defendant intercepted their information."

The plaintiffs also failed to overcome ECPA's "one party consent" provision by advancing allegations that "support an inference" that the healthcare provider intercepted the communications "for the purpose of a tortious or criminal act that is independent from the intentional act of recording," according to the judge.

While the plaintiffs had argued that Atrium Health intercepted their data for the purpose of wrongfully disclosing it to Meta and Google in violation of the federal Health Insurance Portability and Accountability Act, Judge Bell found that the court "need not accept Plaintiffs' bare assertion, because the 'well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct.'"

"Even taking Plaintiffs' factual allegations as true, Defendant allegedly used lawfully obtained [personal health information] for advertising purposes or for commercial gain, but there are no alleged facts from which the Court could conclude that Defendant did so for the purpose of

committing a criminal or tortious act," Judge Bell found.

In support of his finding, the judge specifically pointed to a notice that was posted on Atrium Health website and that the plaintiffs submitted to the court as supplemental authority. This disclosure informed users that, between 2015 and 2019, "online tracking technologies collected and may have shared" an array of personal and treatment information with third-party vendors and stated that the purpose of using these tools on its website was to "help operate certain features of our Patient Portal and enhance the online experience for users."

This notice "suggests that Defendant's purpose was not to commit a crime or tort (or breach HIPAA)," but rather to enhance user experience, Judge Bell ruled.

With the sole federal claim dismissed, Judge Bell agreed with Atrium Health that the court could no longer exercise supplemental jurisdiction over the remaining state law claims.

"Courts typically have 'wide latitude in determining whether or not to retain jurisdiction over state claims when all federal claims have been extinguished,'" Judge Bell noted. "In making that determination the Court considers factors including 'convenience and fairness to the parties, the existing of underlying issues of federal policy, comity, and considerations of judicial economy.' After weighing these factors, the Court concludes that it will decline to exercise supplemental jurisdiction over Plaintiffs' state law claims in the absence of a viable federal question."

The judge also refused to retain jurisdiction under the Class Action Fairness Act, which allows district courts to hear civil disputes that involve more than \$5 million in damages and sweep up at least 100 potential class members.

Judge Bell found that this push failed under the "local controversy" exception to CAFA, which requires federal courts to decline jurisdictions when "two-thirds or more of the members of the proposed class in the aggregate and the primary defendants are citizens of the state in which the action was filed."

Because Atrium Health is based in North Carolina and, "based on its review of those who have established patient portal accounts (and are therefore most likely to have been impacted by the pixel technology), approximately 79% [of proposed class members] are citizens of North Carolina," the court "must decline jurisdiction under CAFA," Judge Bell ruled in dismissing all of the state law claims without prejudice to their refiling.

Counsel for the parties couldn't be reached for comment Thursday.

The plaintiffs are represented by David S. Almeida of Almeida Law Group LLC, David M. Wilkerson of The Van Winkle Law Firm and Brandon M. Wise and Andrew R. Tate of Peiffer Wolf Carr Kane Conway & Wise LLP.

Atrium Health is represented by Jonathan C. Krisko, Jordan T. DeJaco and Preetha Suresh Rini of Robinson Bradshaw & Hinson PA.

The case is Roberts et al. v. Atrium Health Inc., case number 3:24-cv-00382, in the U.S. District Court for the Western District of North Carolina.

--Editing by Emily Kokoll.



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Class In Bayer 'One A Day' Gummies Lawsuit Gets Judge's OK

By **Emily Field**

Law360 (March 20, 2025, 8:47 PM EDT) -- A New York federal judge on Wednesday certified a class of consumers who allege that the labeling on Bayer's "One A Day" vitamin gummies is misleading, finding that an expert's survey found that the consumers found that it was so.

U.S. District Judge Kenneth M. Karas said the plaintiff's expert, Robert L. Klein ran two market research surveys, using the second one to form his opinion about how many gummies respondents think are in a serving. The judge rejected Bayer's argument that his testimony was unambiguous since he used data from the first survey.

"Not so. An excerpt from the transcript is illustrative: 'Q: And you got the results for that survey, correct?'" Judge Karas said. "'A: Yes. Q: And you analyzed the results of that survey, right? A: We tabulated. Yes.'"

The judge certified a class of consumers who bought the gummy vitamins.

Judge Karas said that the habits of lead plaintiff, Tanysha Newman, don't make her unable to bring class claims against Bayer.

"On the contrary, it is eminently possible, if not likely, that many class members have bought other multivitamins and may have consumed them in accordance with or in contravention of the recommended serving size," the judge said.

The suit was filed in August 2022, alleging that the One A Day gummies are marketed so that people only need to take one, but really they have to take more than one to get the entire nutritional benefits.

"This means the bottles of Chewables purchased by consumers last half as long as advertised," the complaint said. "Plaintiff and class members are essentially paying full retail price for half the amount of supplements."

The complaint brought breach of warranty claims and violations of the New York business law, as well as fraud.

The judge also rejected Bayer's argument that Newman is an "unrepentant convicted felon" and can't be trusted to lead a class.

She said that her conviction for robbery in the second degree is her only one and that she didn't commit fraud, according to the opinion.

"Here, there is obviously no clear nexus between robbery in the second degree and alleged misrepresentation in the sale of multivitamins," the judge said. "Defendants have failed to show this nexus, which is unsurprising because they cannot, and so the court's inquiry stops there."

Counsel for the plaintiffs didn't immediately respond to requests for comment Thursday.

"Bayer respectfully disagrees with the court's decision to certify a class in this litigation and is considering its options for legal review. The company believes these claims are meritless and looks

forward to vigorously defending itself as the litigation proceeds," a company spokesman told Law360 on Thursday. "As evidenced by the plaintiffs' own survey expert, Bayer believes the evidence in this case will demonstrate that the overwhelming majority of consumers are not confused by the brand name 'One A Day.'"

The plaintiffs are represented by L. Timothy Fisher, Max Stuart Roberts and Caroline Cella Donovan of Bursor & Fisher PA.

Bayer is represented by Jonathan F. Cohn, Shannon Grammel, Jacob B. Richards, Katherine Yarger and Alexis Swartz of Lehotsky Keller Cohn LLP.

The case is Newman v. Bayer Corp. et al., case number 7:22-cv-07087 in the U.S. District Court for the Southern District of New York.

--Editing by Rich Mills.

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Judge OKs \$51.75M Clearview AI Deal Despite AG Objections

By **Hailey Konnath**

Law360 (March 20, 2025, 11:55 PM EDT) -- An Illinois federal judge Thursday granted final approval to Clearview AI's \$51.75 million settlement resolving multidistrict litigation challenging the company's practice of automatically collecting biometric facial data online, rejecting objections from 22 state attorneys general and the District of Columbia.

U.S. District Judge Sharon Johnson Coleman said the deal is fair, reasonable and adequate. It ends more than five years of litigation over Clearview AI Inc.'s collection, storage and use of data scraped from the internet without consent, and it involves up to 125,000 members, according to her order.

The D.C. and state attorneys general had argued that the settlement wouldn't provide meaningful injunctive relief and gave plaintiffs an unknown financial stake in the company. To that, Judge Coleman said the complaint only provided a basis for an injunction under the laws of several states though relief under Illinois' Biometric Information Privacy Act was the most certain.

"But even if plaintiffs succeeded in their BIPA claim, the statute does not expressly intend to operate extraterritorially such that it could be used as the basis for nationwide or state-specific injunctive relief," she said.

She added that the "settlement recognizes that any additional injunctive relief stemming from BIPA would be a null set that would leave the settlement class in largely the same position as they were before the settlement."

The objectors also questioned the 39% attorney fee award to lawyers with Loevy & Loevy.

"This argument is in opposite [sic] to Seventh Circuit case law, where courts have routinely provided fee awards of 30% or greater of a common fund," Judge Coleman said. "The fee award is also commensurate with the length and complexity of the case and the significant amount of time and effort lead class counsel expended in their representation of the settlement class."

The deal gives the class of consumers a 23% stake in the facial recognition technology company, as of its September 2023 capitalization, if it goes public or is sold. At current potential valuations, that would be about \$52 million, and the class could also decide to take 17% of the company's revenue through September 2027, according to a motion seeking the initial approval for the settlement.

James Thompson, one of the attorneys representing Clearview, said in a statement Thursday that the company "appreciates the court's ruling and believes this is the best outcome for all parties involved."

Counsel for the plaintiffs didn't immediately respond to a request for comment late Thursday. However, an attorney representing the class told Law360 last year that a **creative solution** was necessary in the litigation because Clearview did not have "anywhere near" the cash needed to pay fair compensation to class members. The proposed deal allows class members to recapture the ownership of their biometrics to some extent, he said.

Still, the opposing states and Washington, D.C., said there's no evidence that an initial public offering or acquisition is imminent or likely to occur in the future, and there's no support for the assertion that Clearview lacks sufficient funds to pay those it harmed. There are no financial statements or

documents showing the firm's current or predicted financial position, or declarations from witnesses, such as an independent accountant, they said.

Judge Coleman allowed the states to file briefs opposing the settlement **last December**.

The settlement includes a nationwide class as well as four state subclasses including members in Illinois, California, New York and Virginia. The classes include individuals whose "facial images, facial vector data and/or biometric data are or were contained in the biometric database" between July 2017 and when the deal was preliminarily approved last June.

Judge Coleman noted Thursday that the settlement classes could total anywhere from 65,000 to 125,000 members.

As for the nationwide class members' objections, Judge Coleman said that "while some members of the nationwide class may have a strong interest in receiving injunctive relief under the settlement, that possibility is foreclosed by the fact that the complaint provides no basis for such relief."

The same is true for the distribution of shares across each subclass, which they had also flagged. That's not the "product of shady, backroom negotiations between plaintiffs and defendants," Judge Coleman said. Instead, it "reflects the strength and viability of the respective Illinois, California, Virginia, New York and nationwide claims."

Three individuals also opposed the plan for notifying class members, according to the order. That plan involves digital advertising, sponsored search listings, informational releases, plus the establishment of a dedicated settlement website, a toll-free telephone number and a mailing address.

But Judge Coleman held that none of those objections "support a finding that the notice plan was insufficient."

"To accept the contention that it is impossible to provide meaningful notice to nationwide classes would be to foreclose class action as a method of litigation despite the increasing interconnection of our digital society," the judge said. "Nor would direct notice to every US address been practicable under the circumstances given the size of the class and the fact that Clearview did not possess address information for the face images in its database."

A few class members also took issue with the deal, arguing that the interests of the nationwide class were at odds with the interests of the state subclasses.

"General concerns, unsupported by evidence, do not a conflict of interest make," Judge Coleman said Thursday.

The class is represented by Jon Loevy, Michael Kanovitz and Thomas Hanson of Loevy & Loevy.

Clearview is represented by Daniel Lynch and James Thompson of Lynch Thompson LLP and Joel Kurtzberg, Floyd Abrams, John MacGregor, Jason Rozbruch and Britney R. Foerter of Cahill Gordon & Reindel LLP.

The case is In re: Clearview AI Inc. Consumer Privacy Litigation, case number 1:21-cv-00135, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Lauraann Wood and Celeste Bott. Editing by Kristen Becker.



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Walgreens Can't Dodge Wash. Law In 'Non-Drowsy' Label Suit

By **Greg Lamm**

Law360 (March 20, 2025, 7:52 PM EDT) -- The Washington Supreme Court said Thursday that Walgreens could not avoid claims under the state's consumer protection law alleging its "non-drowsy" cough medicine label was deceptive, rejecting the retailer's contention that the law's safe harbor provision shielded it from a proposed class action in Illinois federal court.

In siding with consumer Tracy Hall, Washington justices said the U.S. Food and Drug Administration has said Walgreens' over-the-counter medicine containing dextromethorphan hydrobromide (DXM) could be sold without labels warning it could cause drowsiness.

But, the justices said, the FDA had not specifically allowed those medicines to be labeled as non-drowsy. Therefore, Walgreens was not protected by the Washington Consumer Protection Act's exemption, justices said in answering a certified question from an Illinois federal judge.

"We conclude that an action must be specifically and actively permitted by an agency to fall within the relevant statutory safe harbor," said Justice Steven C. González, **writing for the majority**. "As the FDA has not specifically permitted labeling these over-the-counter drugs non-drowsy, that activity falls outside the statutory safe harbor."

Justice González was joined by Justices Sheryl Gordon McCloud, Raquel Montoya-Lewis and Mary I. Yu and Judge Rich Melnick, a former Washington State Court of Appeals judge serving as a judge pro tempore on the Supreme Court.

In a concurring opinion, Justice Barbara Madsen said she agreed with the majority that affixing "non-drowsy" labels on over-the-counter cough medicine with DXM does not fall within the state Consumer Protection Act's statutory safe harbor exemption.

"In this case, because the FDA monograph that was prepared for the over-the-counter antitussives noted the lack of sufficient data to evaluate claims of DXM being used as sleep aids, it is not reasonable to infer that a 'non-drowsy' label is permitted," Justice Madsen wrote. "Therefore, I concur that the answer to the certified question is no."

But Justice Madsen said she disagreed that the safe harbor provision in the Washington law only applied to actions specifically or expressly permitted by the FDA. Justice Madsen said the FDA outlines what warning labels are required, but the agency does not list all permissible labels that can be used to advertise a product.

"Whether an action is permitted may be inferred if the resulting FDA monograph can be read to implicitly permit some labels," Justice Madsen said.

Justice Madsen was joined by Chief Justice Debra L. Stephens and Justices G. Helen Whitener and Charles W. Johnson.

During **oral arguments** before the Washington high court in September, an attorney for Walgreens said the Washington law's exemption protected Walgreens because the FDA specifically considered whether cough medicine containing DXM should require a drowsiness warning, and the regulatory agency said no.

But justices said they were skeptical that not having to label the medicine "drowsy" was the same as being able to label it "non-drowsy."

Hall sued Walgreens Boots Alliance Inc. and its subsidiary Walgreen Co. in federal court in Illinois, claiming the retailer misleadingly labeled an over-the-counter antitussive cough medicine as non-drowsy in violation of Washington's consumer law.

An Illinois federal judge asked the Washington Supreme Court to determine if labeling cough medicines non-drowsy fell within the statutory safe harbor of the Washington Consumer Protection Act.

The Illinois case had been paused, while the judge awaited the Washington high court's answer.

Walgreens declined to comment Thursday.

Gabriel Doble of Dovel & Luner LLP, representing Hall, told Law360 that they were pleased that the justices agreed with their statutory interpretation arguments.

"The decision rightly interprets the statute to provide broad protection to consumers, and corrects some statements in prior case law that did not align with the statute's text," Doble said Thursday.

Walgreens Boots Alliance Inc. and Walgreen Co. are represented by Emily Marie Weissenberger of Faegre Drinker Biddle & Reath LLP and Steven W. Rich of Shook Hardy & Bacon LLP.

Hall is represented by Gabriel Doble, Jonas Jacobson and Simon Franzini of Dovel & Luner LLP.

The case is Walgreens Boots Alliance Inc. et al. v. Tracy Hall et al., case number 1028296, in the Washington State Supreme Court. The underlying case is Tracy Hall v. Walgreens Boots Alliance Inc. et al., case number 1:22-cv-00024, in the U.S. District Court for the Northern District of Illinois.

--Editing by Janice Carter Brown.



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SEC Steps Back From Crypto Mining In Staff Statement

By **Aislinn Keely**

Law360 (March 20, 2025, 10:16 PM EDT) -- The U.S. Securities and Exchange Commission's Division of Corporation Finance said Thursday that certain crypto mining activities are beyond the agency's purview, but the commission's lone Democrat warned against interpreting the statement as a "wholesale exemption for mining."

The division issued non-binding, staff-level guidance declaring that proof-of-work crypto mining for the purpose of securing public, permissionless networks doesn't involve the offer and sale of securities. The determination that some mining arrangements are outside of the agency's jurisdiction comes amid a wider policy effort to give the market more clarity on how securities laws apply to crypto assets.

The analysis applies to both those who mine crypto assets on their own and those who combine their computational resources with others in a so-called mining pool, according to the statement.

"Accordingly, it is the Division's view that participants in Mining Activities do not need to register transactions with the Commission under the Securities Act or fall within one of the Securities Act's exemptions from registration in connection with these Mining Activities," said the statement.

Proof-of-work crypto mining is a means of securing a blockchain network and verifying its transactions for a reward. Network participants use high-powered computers that compete to solve mathematical equations that confirm a batch of transactions, with the winner adding their block to the network and receiving newly created crypto assets in return. The proof-of-work process often relies on energy-intensive computing power as opposed to other kinds of so-called consensus mechanisms.

According to the staff, proof-of-work mining to maintain permissionless networks doesn't satisfy the characteristics of the U.S. Supreme Court precedent known as the *Howey* test, which defines an investment contract as an investment of money in a common enterprise made with an expectation of profits to be realized through the efforts of others.

Crypto users don't appear to take up mining with a reasonable expectation of profits that would come from the efforts of others, the statement said. Instead, the financial reward comes from the user's own efforts of mining the token.

"As such, Rewards are payments to the miner in exchange for services it provides to the network rather than profits derived from the entrepreneurial or managerial efforts of others," said the staff statement.

The same goes when miners combine their computational resources in a mining pool, according to the statement. To increase their odds of cracking the code and winning the payout, some miners coordinate their computational resources and share the rewards, usually in proportion to each member's contribution of resources. They may also collaborate under the guidance of a pool operator, which handles the coordination and protects the hardware and cybersecurity of the group in exchange for a cut of the group's rewards.

The staff said that combining resources in this way doesn't change the fact that a miner still wouldn't have an expectation of profits derived from the efforts of another.

"Moreover, whether a miner self (or solo) mines or mines as a member of a mining pool does not alter the nature of Protocol Mining for purposes of the Howey analysis," said the statement. "In either case, Protocol Mining, as described in this statement, remains an administrative or ministerial activity."

While a pool operator may benefit the group, the work doesn't rise to the level of a third party bringing about profits since miners are primarily relying on their computational resources to earn the rewards.

"To this end, a miner does not join a mining pool based on the ability to earn profits passively from the activities of the pool operator," said the statement.

But lone Democrat Commissioner Caroline Crenshaw blasted the statement as "yet another non-binding interpretation" issued at the direction of the office of Acting Chairman Mark Uyeda that delivers "neither progress nor clarity."

Her dissent warned that the statement's footnotes make clear the agency will continue to weigh the facts and circumstances of an arrangement against Howey.

Those footnotes acknowledge that the "Division's view is not dispositive" as to whether any specific mining activity involves securities, and a definitive determination would involve scrutinizing the way pool members are compensated, how miners participate in pools or other pool operator activities, among other factors.

"In short, the statement leaves us exactly where we started: with a facts and circumstances application of Howey," said Crenshaw. "For the sake of investors, other market participants, and the markets themselves, I hope that readers do not mistake it for something more than it is."

She also argued that the staff's analysis wrongly began with the presumption that mining isn't undertaken with the expectation of profits based on the efforts of others in order to reach its conclusion that many mining arrangements don't create investment contracts.

Crenshaw compared Thursday's statement on mining to the Division's **recent statement on meme coins**, which broadly described the characteristics of the asset class and why it didn't appear to create securities transactions. According to Crenshaw, the meme coin statement led the public to interpret the statement as a "wholesale exemption for meme coins" and headlines appeared to miss "cautionary footnotes" similar to those included in the mining statement.

Crenshaw said she hopes the message in this latest staff statement "is more accurately understood for what it is and is not."

"Beware of any headlines that herald a wholesale exemption for mining," she said. "And mine the fine print."

--Editing by Dave Trumbore.



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Whistleblower Atty Leaves Motley Rice, Launches New Firm

By **Daniel Connolly**

Law360 (March 20, 2025, 4:05 PM EDT) -- Longtime securities and whistleblower attorney Rebecca M. Katz has left plaintiffs litigation firm Motley Rice LLC and has launched her own small firm, Katz Whistleblower Law LLC.

The firm will specialize in representing whistleblowers who bring fraud complaints to the U.S. Securities and Exchange Commission and other government agencies, Katz told Law360 Pulse on Thursday.

She said she has focused solely on whistleblower representation since 2015, following decades of work that included working for the SEC's enforcement division and representing plaintiffs in securities and other lawsuits.



Rebecca M. Katz

Government whistleblower programs allow individuals who report fraud to collect a money award, and Katz said that collectively, the people she has represented in recent years have won about \$160 million.

Katz said many of her clients are anonymous, but one whistleblower client has agreed to have her name published. The client is former Meta executive Sarah Wynn-Williams, who recently published a memoir about her time with the company called "Careless People: A Cautionary Tale of Power, Greed and Lost Idealism."

Katz said Wynn-Williams filed a complaint to the SEC last year related to the company's alleged conduct with the Chinese government. That complaint is still pending, and Wynn-Williams this month filed a supplemental complaint with the SEC and with the U.S. Department of Justice, Katz said.

Meta has pushed back against Wynn-Williams, calling the book "false and defamatory," and last week an international arbitrator **blocked her from promoting the book**.

Katz earned a law degree in 1990 from what is now Hofstra University's Maurice A. Deane School of Law.

Her first job out of law school was working for the SEC enforcement division in its New York office.

She had also spent more than 11 years with securities litigation firm Bernstein Liebhard LLP.

She **joined South Carolina-based plaintiffs' litigation firm Motley Rice in 2012**, left the firm in 2015 to run a solo practice and act in an of counsel role with Kessler Topaz Meltzer & Check LLP, and then returned to Motley Rice in 2019 to run its whistleblower practice.

With 116 attorneys in the U.S., Motley Rice ranks 375th on the Law360 list of the nation's largest law firms.

Katz said Motley Rice is an excellent firm that's handling important plaintiffs' cases involving opioids, tobacco and more. "They're a great firm, but, you know, I'm just a little piece of that," she said, referring to whistleblower practice. "So I thought it made sense to take that piece, bring it out, and

grow it."

Katz has spent much of her career in New York. She said she moved to South Carolina in 2020 to be closer to the Motley Rice headquarters in Mount Pleasant, near Charleston, and closer to family members in Florida.

Katz's new firm will be headquartered in Mount Pleasant.

The new firm will additionally have a New York office led by another attorney, Katz told Law360 Pulse on Thursday. "I'm going to be bringing in another very experienced senior attorney who was a securities partner at a big law firm," Katz said. "That person will be joining me in the near future."

She said she's interested in expanding the firm even more.

--Additional reporting by Carolina Bolado and Dorothy Atkins. Editing by Rich Mills.

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