Securities Law
March 27, 2025, 9:11 AM PDT

EV Maker Mullen Auto Sued by Investors Over Reverse Stock Splits

- **COURT: C.D. Cal.**
- **TRACK DOCKET: No. 2:25-cv-02620 (Bloomberg Law subscription)**

Mullen Automotive Inc. misled investors ahead of reverse stock splits to keep the struggling electric vehicle maker's share prices afloat, a proposed class action said.

Mullen and executives overstated its battery technology capabilities and business deals before consolidating its stock into fewer, higher-priced shares several times over the past few years, investors told the US District Court for the Central District of California on Wednesday. The EV maker performed five reverse splits since May 2023, with the most recent this February, said Cayden Crume, James LeGrand, Todd Holton's complaint.

Less than a month before its May 2023 reverse split, Mullen announced a joint venture for advance energy management technologies—only to end its agreement a few months later for alleged breaches by its business partner who was embroiled in scandal, the investors said. They accused Mullen of lying about not performing a reverse split when a new one was imminent.

Starting in 2022, Mullen exaggerated "its solid-state battery power range being in the 600-mile range when, in fact, it only achieved a roughly 200-mile range," the investors said. They cited a 2022 Hindenburg Research report in which they said the short-seller accused Mullen of misrepresenting "manufacturing capabilities, solid-state battery technology, questionable background, and past securities dealings."

"Mullen's share price fell 99% between April 2023 and April 2024," the complaint said.

Mullen and its leaders have faced other securities-related suits since its 2021 reverse merger. The manufacturer agreed to pay $7.25 million to resolve investor claims citing the Hindenburg report last year. Certain leaders settled a related shareholder derivative lawsuit, garnering court approval for the agreement in January.

Mullen closed at 20 cents a share on Wednesday, according to data compiled by Bloomberg. On Thursday, Mullen announced cost-cutting measures, including layoffs and facility closures.

Devlin Law Firm LLC represents the investors. They seek damages from the company, its chief executive officer David Michery, CFO Jonathan New, and a pre-merger executive for alleged Securities Exchange Act of 1934 violations.

Mullen didn't immediately respond to a request for comment on its media forum.

The case is Crume v. Mullen Auto., Inc. , C.D. Cal., No. 2:25-cv-02620, complaint filed 3/26/25 .

Securities Law News

March 26, 2025, 6:52 AM PDT

Alerus Dodges Breach of Fiduciary Duty Claims by Plan Members

- **Allegedly didn't stop company's below fair market value sale**
- **Sufficient facts to state breach of duty claim not pleaded**

Participants in an employee stock ownership plan failed to allege sufficient facts that trustee Alerus Financial NA, breached its duty when it approved the sale of their employer under fair market value, a federal court said.

The plaintiffs' complaint didn't identify what duty Alerus allegedly owed to the plan or what fiduciary duty was breached when its shares were redeemed, Judge Daniel J. Calabretta said Tuesday for the US District Court for the Eastern District of California. But the plaintiffs may amend their complaint, he said.

The plaintiffs worked for OC Communications and participated in the plan that purchased OCC shares in 2011 for $11.5 million, or $3.45 per share. The plaintiffs were notified in December 2018 that each of their shares was worth $2.21, Calabretta said.

OCC sold almost all of its operating assets in May 2019 to TAK Communications CA Inc. for $7.2 million, a value of $0.72 per share, Calabretta said. OCC's appraised value at the end of 2018 was $24 million and there allegedly weren't any transactions that would have caused the large discrepancy in value, he said.

OCC redeemed the plan's allocated shares in December 2020 for $750,000, or $0.32 per share, Calabretta said. The plaintiffs sued Alerus and others involved in the sale under the Employee Retirement Income Security Act for breach of fiduciary duty and breach of co-fiduciary, among other claims, he said.

The plaintiffs' complaint alleged that Alerus acted imprudently when it approved the sale of OCC to TAK, that it had fiduciary duties to the plan, that it knew the sale price wasn't fair, and it failed to protect the plan's interests.

Even taking the plaintiffs' factual allegations as true, they don't connect the sale transaction "to any specific failed fiduciary duty owed by" Alerus, Calabretta said. The plaintiffs also failed to specify what fiduciary duties Alerus breached when redeeming the plan's shares, he said.

The complaint also isn't clear whether the fiduciary duties outlined in the plan document or those outlined in a later independent trustee engagement agreement are applicable, Calabretta said.

To make out a claim for breach of co-fiduciary duty, the plaintiffs had to plead that Alerus knowingly participated in or concealed an act or omission by another fiduciary, Calabretta said. But the plaintiffs didn't allege facts establishing that Alerus had knowledge of the breach of another fiduciary, or failed to take reasonable steps to remedy the breach of another fiduciary, he said. "All allegations regarding these components are conclusory without factual support," he said.

Schneider Wallace Cottrell Konecky LLP represented the plaintiffs. Groom Law Group Chtd. and Foundation Law Group LLP represented Alerus.

The case is Dalton v. Freeman , 2025 BL 99186, E.D. Cal., No. 2:22-CV-00847-DJC-DB, 3/24/25 .

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Securities Law News
March 26, 2025, 10:43 AM PDT

Dfinity Beats Investor Suit Over Initial Crypto Token Offering

- **Judge said some claims against blockchain platform time-barred**
- **Investors' didn't sufficiently plead Dfinity misled before ICO**

Dfinity USA Research LLC and its Swiss parent foundation defeated allegations it misled investors ahead of a 2021 initial cryptocurrency coin offering, a federal judge ruled.

Investors neither sufficiently alleged the reliability of sources accusing Dfinity employees of selling tokens nor the level of intent to commit securities fraud with enough detail to meet heightened pleading standards, said Judge James Donato on Tuesday. And since Dfinity started offering ICP tokens four years before investors sued, their non-fraud Securities Act of 1933 claims were time-barred, as 2017 would fall outside the three-year window, the US District Court for the Northern District of California judge said.

Donato dismissed investors' second amended complaint, but is allowing them to replead one last time by April 8.

The lawsuit, originally filed in August 2021, accused Dfinity of selling unregistered securities in violation of federal law while perpetuating a pump-and-dump scheme with its Internet Computer blockchain's tokens, called ICP. Lead plaintiff Henry Rodriguez and named plaintiff Daniel Valenti said that Dfinity misled investors about the extent of lock-up restrictions on ICP held by insiders, artificially raising its price.

"When the truth about Defendants' coordinated dumping scheme was revealed, and ICP's price predictably cratered, Plaintiffs and other investors were left holding the bag," the most recent proposed class action complaint said.

Dominic Williams, Dfinity president and chief scientist, announced the foundation would fund raise for the development of its blockchain in 2017, the complaint said. Plaintiffs claimed that no coins were actually sold more than three years before the suit was filed.

"That may be," Donato said, "but they offer no response to defendants' argument that even under plaintiffs' own allegations in the SAC, ICP was genuinely offered to the public in February 2017."

The dismissal comes as the Securities and Exchange Commission and federal lawmakers weigh a regulatory pathway for crypto. Courts have split over if or when types of digital assets are securities under US law.

Selendy Gay Elsberg PLLC and Erickson Kramer Osborne LLP represent the investors. Quinn Emanuel Urquhart & Sullivan LLP and Cravath, Swaine & Moore LLP represent Dfinity USA, the foundation, and Williams. None of these firms immediately responded to emails seeking comment.

The case is Valenti v. Dfinity USA Rsch. LLC , N.D. Cal., No. 3:21-cv-06118, 3/25/25 .

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Securities Law News
March 26, 2025, 9:46 AM PDT

SmartFi Head Must Face Token Buyers' Suit Over Buyback Guarantee

- **Investors say they put up $1.9 million for lending project**
- **Court adopts recommendation to allow lawsuit to proceed**

Four investors who purchased SmartFi tokens to fund the cryptocurrency company's lending business can proceed with federal and state securities claims against its founder and CEO, a federal court ruled.

The investors adequately alleged Aaron Tilton's fraudulent intent, Judge W. Scott Hardy said Tuesday for the US District Court for the Western District of Pennsylvania. And two legal defenses fail to knock out claims involving Power Block Coin LLC, which does business as SmartFi, at this stage of the case, Hardy said.

The opinion adopts the recommendation of a magistrate judge who analyzed Tilton's request for dismissal in November.

The plaintiffs say they collectively invested about $1.9 million in SmartFi to fund its loans to borrowers who put up cryptocurrency as collateral. They themselves received SmartFi-issued SMTF tokens in return, they say. They allegedly made the investment after Tilton repeatedly promised that in a year they would be able to get a refund of the value of the SMTF tokens and reassured them about the safety of the investment.

SmartFi and Tilton ignored or refused their request to redeem the tokens after a year had passed, the suit says.

The investors—crypto software developers Jason Brown and Daniel Stadelmann, along with Brown's parents—brought federal and state securities law claims, as well as common law claims, against Tilton and SmartFi. Their claims against SmartFi are paused while it's in bankruptcy proceedings.

Hardy rejected Tilton's objections to the magistrate's recommendation. Tilton focused on two guidelines—the "gist of the action" and "economic loss" doctrines—that Pennsylvania courts use to determine whether tort claims like fraud can proceed alongside contract claims, Hardy said.

"There is a danger in applying the gist of the action and economic loss doctrines at pleadings, before validity of, and obligations under, a contract are clear," Hardy said. Further, the timing of Tilton's alleged misrepresentations, occurring before the token-purchase agreement, weigh against applying the doctrines, he said.

Tilton also attacked the investors' use of depositions from a related arbitration and said the investors failed to show his intent, or scienter.

But "Tilton does not cite, and the Court is not aware of, any rule that would make it inappropriate" for plaintiffs to use depositions from arbitration, Hardy said.

The investors adequately showed scienter by alleging that Tilton "used significant customer funds on a personal hobby despite representing, for instance, that SmartFi was 'always sitting on cash' and therefore SmartFi could honor its buyback guarantees," he said.

Eckert Seamans Cherin & Mellott LLC represents the plaintiffs. Buchanan Ingersoll & Rooney PC and Parsons Behle & Latimer PC represent SmartFi.

The case is Brown v. Power Block Coin, LLC , 2025 BL 98764, W.D. Pa., No. 23-554, 3/25/25 .

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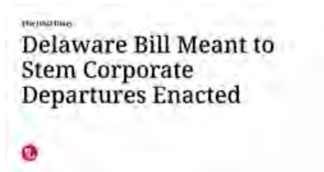
Delaware Bill Meant to Stem Corporate Departures Enacted

dandodiary.com/2025/03/articles/director-and-officer-liability/delaware-house-passes-bill-meant-to-stem-corporate-departures

Kevin LaCroix March 26, 2025



Posted in Director and Officer Liability

On Tuesday, March 25, 2025, the Delaware House of Representatives passed S.B. 21, the legislation designed to try to fight back against the move by some Delaware companies to reincorporate elsewhere, particularly in Texas or Nevada. The Delaware Senate previously passed the bill, which has been called the "most significant single-year revision of Delaware's corporate code since at least 1967.   Delaware Governor Matt quickly signed the legislation the same day as the House passed the bill. While the legislation is primarily intended to try to stem the departures of Delaware companies to other states, it could also have a significant impact on future litigation in the state, as discussed below.

S.B. 21 does introduces a number of changes to Title 8 of the Delaware Code. It does basically four things:

1. **Safe Harbor Procedures**: The bill provides safe harbor procedures for acts or transactions involving directors, officers, controlling stockholders, or control groups with potential conflicts of interest. These acts or transactions will be protected if approved by a majority of disinterested directors or stockholders.
2. **Controlling Stockholder Transactions**: It defines what constitutes a controlling stockholder or control group and outlines safe harbor procedures for transactions that benefit these parties. Different procedures apply depending on whether the transaction is a "going private transaction".
3. **Independence and Disinterestedness**: The bill sets criteria for determining the independence and disinterestedness of directors and stockholders. It also provides that controlling stockholders and control groups cannot be liable for monetary damages for breaches of the duty of care.

4. **Stockholder Inspection Rights**: Amendments to § 220 define the materials a stockholder may demand to inspect and set conditions for making such inspections. The materials subject to inspection are significantly restricted compared to pre-amendment inspection rights.

Readers interested in the reasons why Delaware's legislators felt compelled to act, the Delaware case law that could be affected by the legislation, concerns about the bill and its possible impact, will want to refer to the Powerpoint presentation prepared by Columbia Law School Professor Eric Talley, which is attached to his recent LinkedIn post, here. I highly recommend Professor Talley's slides to anyone wanting to get the key background on this legislation.

While S.B. 21 basically sailed through the Delaware General Assembly, the legislation was not without its critics, some of them quite vociferous. Among other things, some critics worried that the bill will undermine the authority of Delaware's courts; provides too much protection for corporate controllers; was introduced (and ultimately passed) in haste and without the usual scrutiny and multi-stakeholder participation that usually attends Delaware corporate law legislation; and could undermine corporate governance and accountability. These and other concerns got plenty of airtime on social media – but they did not slow down the Delaware legislature, which is obviously keenly interested in protecting Delaware's turf as the favored jurisdiction for company incorporations. There were in fact a number of amendments to the legislation proposed for the House's consideration, but all of the proposed amendments ultimately were shot down.

Readers may recall that the so-called DExit phenomenon picked up significant momentum following the decisions of the Delaware courts to block Elon Musk's ginormous Tesla pay package. Musk publicly called for Delaware companies to flee the state, and he put his money where is his mouth is by orchestrating Tesla's move to Texas. The court's decision in the Musk executive pay lawsuit is one of several decisions involving so-called "controllers" – that is, individuals whose share ownership gives them control of companies.

Given that background, much of the legislation has to do with corporate transactions involving controllers, or conflicted directors and officers. The legislation lays out safe harbor procedures for these kinds of transactions, giving corporate boards and advisors a roadmap to follow, which, if they follow, should reduce potential liabilities, and, as a practical matter make litigation less likely. This aspect of the bill will have less impact on the majority of companies that do not have a controller – though, to be sure, in recent years, there has been a ton of Delaware litigation involving controller transactions, and less of this type of litigation undoubtedly will be a good thing overall for many Delaware corporations. There also likely will be fewer lawsuits based on or alleging conflicts of interest given the new standards on director independence and safe harbor procedures.

The books and records amendments could have a much greater impact. As UCLA Law Professor Stephen Bainbridge pointed out on his *ProfessorBainbridge.com* blog, the legislation adopts a much narrower definition of the corporate books and records that are subject to inspection. The bill's revised definition of books and records largely limits the materials a shareholder may inspect to board-level materials. Emails and other correspondence between managers, contracts, and similar materials seemingly are not subject to inspection under the new provisions.

The greatly reduced scope of the books and records inspection rights potentially could have a significant impact on Delaware shareholder litigation. In recent years, prospective claimants (acting on directions that the Delaware courts had advised litigants to follow) have been using the inspection rights to in effect conduct pre-litigation discovery that substantially filled out the claims that the litigants hoped to assert.

The ability to inspect books and records has been an important factor for many high-profile Delaware cases in recent years. For example, many of the recent duty of oversight cases were built on information derived from books and records inspections. The Boeing Duty of Oversight case, which ultimately settled for $235 million, was built on details gleaned from a books and records inspection.

In light of the narrower range of materials subject to inspection, there are not only likelier to be fewer books and records requests, but there likely will be fewer merits cases filed as well – or more cases dismissed because they are built on less substantial factual allegations.

In other words, the hastily enacted Delaware legislation may or may not stop companies from fleeing Delaware, but it seems likely to have an impact on Delaware corporate litigation.

While Delaware has now taken active steps to try to preserve its preferred position for company incorporations, the competition is not simply standing pat. The same week as Delaware's Senate passed SB 21, a committee in the Texas legislature was meeting to discuss potential changes to the state's Business Organization's Code, as discussed here. The changes under consideration include: codifying the business judgment rule; requiring a minimum ownership percentage for shareholders who seek to bring derivative lawsuits; prohibiting the award of attorney fees when derivative suits result in a "disclosure-only" settlement; and permitting companies "to seek an upfront determination from a judge regarding the independence of directors serving on special committees before those directors are called into question as part of a derivative claim."

A prior bill introduced in February by a Texas legislator (S.B. 29) would, among other changes proposed to the Texas Code, enable parties to a transaction to seek advisory court opinions from the state's newly constituted business courts, allowing the courts to provide advance clarity to corporations, controlling shareholders, and corporate directors.

In a March 7, 2025 post on the *Harvard Law School Forum on Corporate Governance* (here), Yale Law Professors Jonathan Macey and Roberta Romano praised Texas for being both disruptive and innovative.

Meanwhile, Nevada, the other state frequently mentioned as an alternative to Delaware for company incorporation, is paying attention. In a March 18, 2025, *Financial Times* op-ed piece (here) by University of Nevada Law Professor Benjamin Edwards notes that the Nevada legislature is currently considering a proposed constitutional amendment to set up its own dedicated business court, but observes that "Nevada must upgrade its legal infrastructure to continue to compete." In other words, we can expect Nevada to pursue its own program to try to attract more company incorporations.

The new Delaware legislation has only just been passed, but I am already fielding questions about what the impact of the amendments will be on D&O insurance. Will the changes, the question goes, encourage D&O insurers to lower their premiums?

There are a lot of assumptions behind these questions about D&O insurance premiums. First and foremost, the question assumes that the new statutory provisions will affect Delaware corporate litigation sufficiently to reduce insurers' anticipated loss costs. While I certainly expect the new amendments to have a positive impact on Delaware litigation (positive, that is, from the perspective of corporate defendants and their insurers), no insurer is going to cut its premiums based solely on possible future changes; the insurers will want time and experience to be able to see whether and to what extent the changed litigation environment will actually result in less litigation and better outcomes. It will be some time (in my view, more than just one year) for insurers to be sure of the benefits and to be able to quantify the benefits. I don't see the insurers cutting their rates just because of the Delaware legislation before that.

There is another important reason insurers might hesitate to cut prices because of possible Delaware litigation benefits. That is, none of these various legislative changes under consideration have anything to do with securities class action litigation. Securities suits represent the largest severity exposure related to public company D&O insurance. This exposure is not going away. Given the anticipated securities litigation loss costs, the D&O insurers are likely to try to resist price reductions, even if there turns out to be an improvement in loss costs resulting from Delaware litigation.

There is yet another reason why D&O insurers likely will push back on pricing cuts due to the Delaware legislation, and that is the fact that the D&O insurance world is already in the fourth year of a soft market for D&O insurance. Premiums have already fallen compared to prices at the start of the period. The insurers are already trying to push back on further decreases, and the promise of improved future loss experience in Delaware litigation may not be enough to motivate them to make further pricing cuts.

Of course, all of that said, competition will be decisive here. If there is or are a player or players that convinces itself/themselves that their overall future loss experience is about to improve because of the Delaware legislative changes, that could drive the marketplace and could indeed result in a price decrease.

In any event, insurers should prepare themselves. They are going to start to hear from companies and brokers that the risks have changed, and prices should be going down.

Just like what is going to be happening in the Delaware courts, so with what is going to happen in the D&O insurance arena – it is going to be interesting to watch.

'You're Undermining My Authority': Federal Judge in Hair Relaxer MDL Goes on the Defense

law.com/2025/03/26/youre-undermining-my-authority-federal-judge-in-hair-relaxer-mdl-goes-on-the-defense

Amanda Bronstad March 27, 2025

What You Need to Know

- "I don't negotiate," the judge said. "And right now, Article III judges, we're very protective of our authority."
- The exchange reflects rising concerns among the bench about judicial attacks and intimidation spurred primarily by President Donald Trump, special adviser Elon Musk and others.
- In the hair relaxer multidistrict litigation, Rowland gave lawyers until April 30 to pick bellwether cases from the nearly 10,000 lawsuits on the docket.

In a contentious debate about how to select bellwether trials in the multidistrict litigation over hair relaxers, defense lawyers threw out a proposal that would allow them to strike certain cases after eight months of discovery.

Then they added a footnote to their brief that made the judge mad: they suggested that, should the judge accept their proposal over that of plaintiffs' counsel, they would waive their right to have all the cases tried in their original courts.

"Do you understand that we're not negotiating?" U.S. District Judge Mary Rowland asked defense attorney Barry Thompson, according to a transcript of the Feb. 13 hearing.

"No, I understand," Thompson, a Los Angeles partner at Baker McKenzie, replied.

"I mean, I don't negotiate," said Rowland, a former federal public defender whom President Donald Trump appointed to the U.S. District Court for the Northern District of Illinois in 2019. "I mean, I've negotiated for a long time. But then this guy nominated me, and then the Senate confirmed me, and so far we still have that system. I don't know about next month. But so far, I still have that commission on my wall. I don't hang mine for a lot of reasons. But I'm just—do you understand? You're undermining my authority. And right now, Article III judges, we're very protective of our authority."

The exchange reflects rising concerns among the bench about judicial attacks and intimidation spurred primarily by President Donald Trump, Elon Musk and others. The topic came up at the Western Alliance Bank's annual Class Action Law Forum last week on a

panel titled "Mass Tort Ethical Conundrums," in which Motley Rice's Fidelma Fitzpatrick, who is co-lead plaintiffs' counsel in the hair relaxer multidistrict litigation, referenced last month's hearing.
"She was so offended by this concept, and very understandably, with the idea that judges were negotiating with the parties for something," Fitzpatrick said at the March 18 panel about Rowland. "Judges are living in an era right now of judicial intimidation, where they see their jobs being criticized and being challenged."

Rowland isn't alone. At a March 20 panel at the Class Action Law Forum, four federal judges in California called on the bar to educate the public and defend judicial integrity in light of the impeachment threats facing their colleagues who have ruled against the Trump administration.

Neither Fitzpatrick nor Thompson responded to requests for comment.

'I Have Raised Teenagers'

In the hair relaxer multidistrict litigation, Rowland gave lawyers until April 30 to pick bellwether cases from the nearly 10,000 lawsuits on the docket. Attorneys for more than a dozen defendants, which include L'Oréal USA Inc. and Sally Beauty Supply LLC, are concerned that "outliers," which would not be representative of the entire docket, would show up in the bellwether process unless more details come out in discovery. But lead plaintiffs' counsel countered that the defense's method was "highly inappropriate and irregular."

At last month's hearing, Rowland insisted that, despite the disagreements among the lawyers, the first bellwether trial would be in 2027.

"I have raised teenagers," she told the lawyers, according to the transcript. "I know how to expect the unexpected. OK? So not only have I tried criminal trials, I have raised two teenagers, and they were hell on wheels. And they are great kids and they are doing fine now, but it was rough."

"We will try not to be teenagers," Thompson, who represents Namasté Laboratories LLC, replied.

"So I am not afraid of you," she said.

Diandra "Fu" Debrosse of DiCello
Levitt. Courtesy photo

At last month's hearing, Rowland also flagged a motion Revlon Inc. filed to compel document production against the National Institutes of Health, which is part of the U.S. Department of Health and Human Services. The National Institute of Environmental Health Sciences, a

research arm of the National Institute of Health, published a 2022 study concluding that women who used hair relaxers more than four times a year, predominantly Black women, were more than twice as likely to develop uterine cancer.
Rowland asked whether materials related to that report, which prompted the filing of the hair relaxer lawsuits, were being preserved after one of the co-lead plaintiffs' counsel, Diandra "Fu" Debrosse of DiCello Levitt in Birmingham, Alabama, brought up the impact of Trump's executive orders.

"I am concerned that this information be maintained," Rowland said, according to the transcript. "And I don't think anybody is destroying information. I just think that things are coming down off of websites. But I don't—honestly, I don't know. I mean, how would I?"

Debrosse responded, "You know, we're all watching as it develops every day."

"We are," Rowland replied. "We are. Including articles of impeachment, apparently."

Vistra hit with new suit over Moss Landing explosion

Environmental & Energy

Mar. 27, 2025

A new federal lawsuit claims Vistra Corp.'s negligence led to a massive battery fire and explosion at the Moss Landing Power Plant that released toxic smoke and heavy metals, contaminating 20 acres of Monterey County. The company denies any public health threat, even as litigation mounts.

Caroline Yuen

A group of Monterey County residents has filed a federal lawsuit against Vistra Corp., alleging that the energy giant's negligence caused a massive battery fire and explosion at the Moss Landing Power Plant in January, releasing toxic heavy metals into surrounding neighborhoods and contaminating at least 20 acres of land.

"Prior to the Vistra Fire, two separate smoke related events took place at the Vistra battery energy storage system," the complaint stated. "Defendants knew or should have known that nickel-cobalt-magnesium lithium-ion batteries are prone to overheating, and when overheating occurs, that can cause the batteries to catch fire and explode, causing thermal runaway and the leaching of hazardous metals into the air via plumes of toxic smoke, depositing those metals into the ground, water, and soil."

This is the fourth lawsuit to be filed over the Moss Landing explosion. Vistra's media relations office said Wednesday that testing around the area shows no public health risk. The cause of the fire has not been determined.

The lawsuit, filed Tuesday in federal court in San Jose, accuses the company of negligently designing the facility to hold lithium batteries that led to a "thermal runaway" event after they caught fire in the early hours of Jan. 16. The plaintiffs claim their property is now contaminated by heavy metals that spread as a result of the explosion.

Vistra and its subsidiaries are defending three lawsuits, two in federal court and one in Alameda County, that have been filed since February.

"Our focus remains on the safety of our personnel and the community and our ongoing work at the site," the company's media relations statement read. "Air quality monitoring and sampling, which has been ongoing since the start of the fire and continues today, has been conducted by the U.S. EPA, Monterey Bay Air Resources District, and others and has not detected risks to public health at any time."

Attorneys for the latest plaintiffs - Caroline A. Yuen, a Cotchett, Pitre & McCarthy LLP associate from Burlingame and sole practitioner Molly E. Erickson of Monterey - signed the complaint claiming Vistra ignored warning signs that could have prevented the Jan. 16 explosion. *Kloeppel et al. v. Vistra Corp.*, 5:25-cv-02800 (N.D.Cal. filed March 25, 2025).

The plant is the world's largest battery storage facility and housed two facilities on its campus: the Vistra Battery Energy Storage Facility and the Elkhorn Battery Facility, owned by Pacific Gas & Electric.

The three other lawsuits are: *Schmidt et al. V. Moss Landing Power Company et al.*, 25CV109594 (Alameda Super. Ct., filed Feb. 4, 2025); *Solano et al. v. Vistra Corp. et al.*, 5:25-cv-02073 (N.D. Cal. filed Feb. 27, 2025); *Vitale et al. v. Vistra Corp. et al.*, 5:25-cv-02489 (N.D. Cal. filed March 12, 2025).

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New Wave of Roundup Trials Shifts Focus Out of Former Hotspot

law.com/litigationdaily/2025/03/27/new-wave-of-roundup-trials-shifts-focus-out-of-former-hotspot

Aleeza Furman March 27, 2025

Roundup weedkiller on shelves at Walmart in Baltimore, MD. March 14, 2020.

Analysis
After about a year of regularly turning out verdicts, the Roundup mass tort in the Philadelphia Court of Common Pleas hit the end of its scheduled trial lineup with no new dates on the horizon. But elsewhere, litigation over Monsanto's weedkiller has been far from quiet.

Litigation
The hotspots for litigation over Monsanto's Roundup weedkiller seem to be shifting.

After about a year of regularly turning out verdicts, Roundup mass tort in the Philadelphia Court of Common Pleas hit the end of its scheduled trial lineup in November with no new dates on the horizon.

But elsewhere, litigation over Monsanto's weedkiller has been far from quiet.

Roundup trials have been brewing in state courts across the country, with many of those cases helmed by the same plaintiffs firm duo behind Monsanto's biggest losses in Philadelphia.

Just last week, Philadelphia-based **Kline & Specter** and Houston-based **Arnold & Itkin** scored a $2 billion verdict in the first Roundup trial to be held in Georgia state court.

The same team had also been scheduled to begin two more trials in late March or early April —a six-plaintiff consolidated case in Chicago and what was slated to be the first New York state court Roundup trial in Nassau County. But those cases reached confidential settlements around the same time last week's Georgia verdict came down, according to Kline & Specter's **Thomas Kline**.

"Over the past few days, we've had what I would call a reset in the trial listings, which gives everybody a little bit of breathing room and space in what was otherwise a very crowded trial docket," Kline said.

As of right now, trials are slated to pick up again in the late spring, with one case scheduled to go before a St. Louis jury in May and another multi-plaintiff Chicago case set for June.

Kline voiced optimism about the plaintiffs' odds for those trials to come. "We're at a pause right now, and we have four very big wins under our collective belt in what has been the presentation of largely the same trial against Monsanto," he said, referring to his team's most recent win in Georgia and three prior verdicts they scored in Philadelphia. Although there have been plenty of defense verdicts in the national Roundup litigation, none of those have been in cases led by Arnold & Itkin and Kline & Specter.

In a statement about the Georgia verdict, a spokesperson for Monsanto said, "The company remains committed to trying cases."

"Our track record demonstrates that we win when plaintiffs' attorneys and their experts are not allowed to misrepresent the worldwide regulatory and scientific assessments that continue to support the products' safety," the spokesperson said.

Kline said the Arnold & Itkin/Kline & Specter team currently has potential trial dates on the horizon in five or six different venues—the majority of upcoming trials scheduled in the national Roundup litigation.

Of the various courts with potential Roundup trials coming up, Kline said the Cook County Circuit Court in Illinois has been a focal point for his team. He said the plaintiffs' success in moving forward with trial dates there has kept them busy even as Philadelphia Roundup trials are on a pause.

"We're always interested in moving the case forward in trials, but there are a lot of irons in a lot of fires in a few venues," Kline said.

While Kline said his team has shifted its focus to other courts, he added that Philadelphia continues to be "an important fulcrum of this litigation."

Most of the Roundup verdicts awarded last year came out of the Philadelphia Court of Common Pleas, which has held more trials over the weedkiller than any other single court in the country.

The Philadelphia Court of Common Pleas kicked off its first Roundup trial in late 2023, at which time Monsanto's home county of St. Louis had been the biggest hub for the litigation. Monsanto won three of the seven cases to go to trial in Philadelphia so far, and plaintiffs won four, with verdicts of $175 million, $3.5 million, $2.25 billion (later reduced to $404 million) and $78 million.

But since the last Philadelphia Roundup verdict landed in November, the court has yet to schedule any more trials.

According to the court's website, the Philadelphia Roundup mass tort comprises about 430 cases.

Kline said a tranche of cases had been designated to be worked up for trial, three of which remain pending and awaiting trial dates. He said he expects the parties will discuss trial scheduling when they convene for a status conference in early April.

However, it is difficult to say how far off any more Philadelphia trials might be.

Kline said the plaintiffs are generally in favor of getting their cases before a jury as soon as possible. But at the same time, he said, the trial court is likely to take into account the fact that most of the Philadelphia Roundup verdicts are currently on appeal.

A Pennsylvania appeals court has yet to rule on any of the pending verdict challenges, but the appeals deal with a host of issues that stand to impact other Roundup cases going forward, including a hotly litigated question of whether federal law preempts the plaintiff's state-based failure to warn claims.

Kline contended that appellate guidance would be helpful, though not necessary, for more trials to be scheduled in Philadelphia in the near future.

"My personal view is that we don't need to wait to continue to have trials," he said, "but I do believe that when we do have appellate review, then we should be in a position to just go full steam ahead."

Law Firms Mentioned

Kline & Specter

Class Action

March 27, 2025, 8:40 AM PDT

Court Dismisses PFAS Takings Case New Mexico Residents Filed

Harms estimated at nearly $400 million by residents and dairies in New Mexico don't qualify as Fifth Amendment takings claims, the US Court of Federal Claims said in a judgment rendered on Wednesday.

The court's opinion cited three related reasons for dismissing the case.

Several claims filed in the court also are being litigated in a federal district court and are thus barred, the opinion said. Similarly, the court lacks jurisdiction over unripe claims, and "the entirety of the complaint sounds in tort and fails to allege a cognizable Fifth Amendment takings claim," Judge Armando O. Bonilla wrote.

The case is Schaap v. USA , Fed. Cl., No. 24-01300, opinion filed 3/26/25 .

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Securities Law News

March 27, 2025, 1:30 AM PDT

Standing Up to Trump Is Good for Big Law's Business. No, Really

Albany Law professor Ray Brescia says Paul Weiss's agreement with President Donald Trump may send a message that the law firm won't zealously advocate for their clients against the US government.

Critics inside and out of the legal profession have derided Paul Weiss' decision to reach an agreement so President Donald Trump would revoke an executive order punishing the firm for its past political actions and hobbling its ability to represent clients.

Some begrudgingly have accepted the firm's justification—that the potential to lose business was far too great. But no one should welcome a situation in which lawyers can be cowed by the US government. In fact, a client should seek out lawyers who will fight for their interests and rights without fear that doing so could anger the government.

There are certainly instances when having a good working relationship with one's adversary can make aspects of litigation or negotiations easier. There may be less bluster, a greater willingness to "get to yes." It also can mean more pleasant working conditions and more give-and-take, allowing lawyers to work out differences along the edges of disputes, helping focus on the core issues, and addressing them effectively and professionally.

In the high-priced world of Big Law, lawyers often are recruited from government agencies precisely because of their relationships with the government lawyers who might appear on the other side of client disputes. This can take the form of a white-collar criminal defense case before the Department of Justice, an application for a business merger before the Federal Trade Commission, or an energy company looking for regulatory approval for a new power plant from the Environmental Protection Agency.

Clients want lawyers who can handle such cases competently and probably would prefer those who have effective relationships with regulators on the other side of the table.

But no client should want a lawyer whose very claim to fame is that they will capitulate to this administration—or any administration—when the chips are down.

If a government adversary knows the law firm on the other side of the table is more concerned about maintaining its reputation for having a good relationship with the government than winning, what won't the other side ask for? When will the demands imposed on those lawyers' clients end? What negotiating power will a lawyer with such a reputation, and for maintaining that reputation, have?

In any negotiation, a lawyer always must present at least a credible threat that they will turn down an offer, go to the mat for a client, take a case to trial, or break off the negotiations. A lawyer who wants to stay in the good graces of the government can't mount such a credible threat.

It's fine for a lawyer to have a reputation as an honest broker or a straight shooter. But an advocate who cares more about their reputation and relationships with the powerful than representing their client is antithetical to our adversarial system and inconsistent with legal professional values.

A go-along-to-get-along attitude won't serve many—if any—clients well. And when push comes to shove, a lawyer concerned with maintaining a reputation as an administration-cowing lawyer isn't likely to fight for a client's interests.

We have an adversarial system for a reason. We don't rely on a centralized power to dictate winners and losers. That isn't just anathema to democracy—it's inconsistent with a robust and vibrant market economy where businesses know the rules and can seek recourse in a predictable legal system in which those rules are enforced even-handedly.

When disputes arise, parties need to know that fair procedures and the rule of law will determine their rights and responsibilities. This predictable, rules-based system allows zealous advocates to advance their clients' interests before an impartial adjudicator. It allows businesses and individuals to operate with an understanding that their conduct will be assessed consistently and fairly.

Our legal system, in which well-heeled parties sometimes game the system, isn't perfect by any stretch. But it's far superior to one in which our conduct depends on staying on the right side of government actors. Those lawyers who attempt to explain away their willingness to capitulate to such whims don't understand that it sends a clear signal: that they're unlikely to stand up to government actors when fighting the government's overreaching, aggressive, and even abusive conduct toward their clients.

It is for this reason that any firm trying to justify capitulation to the government pressure over possibly losing clients should ring so hollow. Knowing what's at stake, informed consumers of legal services should recognize the risks associated with capitulating to governmental overreach, even in the business context, far outweigh their perceived benefits.

Clients should send market signals of their own, showing they prefer lawyers who will fight for them when they need them to, and not care more about remaining in the good graces of the government.

Not many private lawyers or advocates would look forward to having Paul Weiss attorneys on the other side of the negotiating table. But for the first time in its 150-year history, lawyers for the federal government might be all too happy to sit down with them.

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

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Why target these law firms? For Trump, it's personal

reuters.com/world/us/why-target-these-law-firms-trump-its-personal-2025-03-26

Mike Scarcella March 26, 2025

U.S. President Donald Trump sits in the Oval Office of the White House in Washington, D.C., U.S., March 7, 2025. REUTERS/Leah Millis/File Photo Purchase Licensing Rights, opens new tab

- Trump cites his antagonists in law firm executive orders
- Republican president vows more firms will be targeted
- Critics call Trump orders a threat to US justice system

WASHINGTON, March 26 (Reuters) - President Donald Trump's executive orders targeting elite U.S. law firms have shared a common theme: his perceived grievance that an attorney linked to the firm has personally done him wrong.
The Republican president's latest order took aim at Jenner & Block and one of its former partners, Andrew Weissmann, who served as a lead prosecutor for former Special Counsel Robert Mueller's team that detailed contacts between Trump's campaign and Russians before the 2016 U.S. election.

"He's a bad guy," Trump said of Weissmann just before signing the order at the White House on Tuesday.

Trump's order against Paul Weiss, which has since been withdrawn as part of a deal with the firm, cited its employment of one-time Manhattan prosecutor Mark Pomerantz, a former Paul Weiss partner who has investigated Trump and his business practices.
An earlier order against Perkins Coie included a laundry list of Trump grievances, in particular related to the firm's work for the campaign of Democrat Hillary Clinton, his 2016 election rival, that involved research firm Fusion GPS. Fusion paid a former British spy's company to assemble a dossier outlining alleged Russian financial and personal links to Trump's campaign.
"He keeps bringing it up. It's like he doesn't want any of us to forget Fusion GPS," U.S. District Judge Beryl Howell said at a March 12 hearing in Perkins Coie's lawsuit seeking to overturn the order. "He really has a bee in his bonnet about it."
Democratic attorneys general from 20 states on Wednesday denounced Trump's attacks on law firms as a "clear threat to our system of justice and our profession." They wrote in an open letter to the American legal community that Trump had "singled out individual attorneys for condemnation because they represented clients who challenged his actions."
The attorneys general said the acquiescence of Paul Weiss illustrated the "chilling effect" of Trump's orders on the legal profession.

Pomerantz said in a statement that his efforts to prosecute Trump were entirely lawful.

"What matters is not what the president is saying about me, but what he is doing to crush opposition from anyone who disagrees with him about anything," Pomerantz said.

Weissmann did not immediately respond to a request for comment.

Jenner & Block said on Tuesday that it "will pursue all appropriate remedies" to challenge Trump's order.

The orders against Jenner & Block, Paul Weiss and Perkins Coie suspended security clearances for their lawyers, restricted their access to government buildings and officials and threatened to cancel federal contracts held by their clients.

"President Trump is Making Big Law Great Again!" White House spokesperson Harrison Fields wrote in emailed comments to Reuters, a variation on Trump's "Make America Great Again" slogan.

Fields also accused major law firms of using their power and influence "to make our country dangerous and less free."

Trump has said law firms "weaponized" the justice system against him and his allies during his first term in office and during Democratic President Joe Biden's administration. Trump said in a March 9 interview with the Fox News program "Sunday Morning Futures" that his administration has "a lot of law firms that we're going to be going after."
Trump in a memorandum last week took a broader swipe at lawyers and law firms, directing the Justice Department to investigate firms that brought cases against the federal government over the past eight years.
The memorandum singled out Marc Elias, a longtime lawyer for Democratic politicians and a former Perkins Coie partner, accusing him of "grossly unethical misconduct" in connection with the creation of the Trump-Russia dossier.

Elias did not immediately respond to a request for comment on Wednesday. In a post on social media on Tuesday, Elias said Trump's attacks on lawyers were part of an intimidation campaign.

"I wear his scorn like a badge of honor," Elias wrote.

Covington & Burling was hit with a narrower order last month that cited the firm's representation of Jack Smith, the special counsel who brought two federal criminal cases accusing Trump of mishandling classified documents and taking unlawful actions to try to overturn his 2020 election loss to Biden.

Other firms are on high alert, according to a senior partner at a large firm with knowledge of discussions among firm leaders. Lawyers who have worked on Trump prosecutions are scattered across many law firms, as are attorneys who twice helped build articles of impeachment against the Republican president in the House of Representatives.

Mueller, a former FBI director who was appointed in 2017 by Republican Justice Department leadership during Trump's first term to oversee the Russian election interference investigation, was a longtime lawyer in Washington at WilmerHale.
Attempts to reach Mueller, who has retired from the practice of law, were unsuccessful. A spokesperson for WilmerHale did not immediately respond to a request for comment.

Jenner & Block, Perkins Coie, Covington and WilmerHale are among more than a dozen prominent law firms that are representing clients in lawsuits challenging key Trump administration policies.

Trump's order aimed at Jenner & Block criticized its legal work supporting the protection of rights for transgender people and immigrants. The order accused the firm of pursuing "partisan goals."

Richard Primus, a University of Michigan constitutional law professor who formerly worked at Jenner & Block, said Trump's orders seek to demonstrate that lawyers will suffer if they oppose the president's interests.

"They are a revenge program, in part," Primus said. "The administration is going after law firms that the president perceives as having been hostile to him personally."

Trump values his own power and interests "and not the healthy functioning of the larger system," Primus added.

"He doesn't recognize the category of legitimate opposition," Primus said. "If you are opposed to me, your actions are illegitimate, and you should be shunned, punished and criminalized."

Reporting by Mike Scarcella in Washington and David Thomas in Chicago; Editing by David Bario and Will Dunham

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Indicted SCOTUSblog founder Goldstein poses 'economic danger,' judge says in rejecting latest requests

abajournal.com/web/article/indicted-scotusblog-co-founder-tom-goldstein-poses-economic-danger-judge-says-in-rejecting-latest-requests

By Debra Cassens Weiss

Criminal Justice

March 27, 2025, 12:16 pm CDT

A Maryland federal judge has ruled that SCOTUSblog co-founder Tom Goldstein isn't entitled to see grand jury testimony in the tax fraud case against him and must continue to submit to monitoring of his electronic devices while he is on pretrial release. (Photo by Alex Brandon/The Associated Press)

SCOTUSblog co-founder Tom Goldstein isn't entitled to see grand jury testimony in the tax fraud case against him and must continue to submit to monitoring of his electronic devices while he is on pretrial release, a federal judge has ruled.

U.S. District Judge Lydia Kay Griggsby of the District of Maryland denied Goldstein's motions in a March 27 opinion.

Goldstein, a former high-stakes poker player and a U.S. Supreme Court litigator, has been accused in a Jan. 16 federal indictment of hiding millions of dollars in income and cryptocurrency transactions on tax returns. He was also accused of lying on mortgage loan applications.

Goldstein had sought to obtain grand jury testimony from an office manager in a court filing alleging that prosecutors "seriously misled the court" by characterizing his offer of compensation to the departing employee as a likely bribe attempt.

Another explanation for the compensation offer, Goldstein said, was that he wanted to retain the manager to assist his law firm in gathering materials responsive to government subpoenas.

Goldstein also argued that electronic monitoring should be lifted because of the possibility that attorney-client communications will be exposed.

Griggsby resolved the issues without considering disputed allegations that Goldstein tampered with the witness or that he concealed from the court two cryptocurrency wallets that are not hosted at any exchanges. The owners and users of such unhosted wallets are difficult to ascertain.

Griggsby said grand jury testimony is presumptively secret but did not provide further explanation for her decision, pointing to reasons that she stated at a March 25 hearing.

Turning to monitoring of Goldstein's devices, Griggsby said the condition of pretrial release is needed because of his above-average ability to flee and the "economic danger" that he poses to the public.

Goldstein's "significant international travel and contacts" with gamblers and other wealthy people in foreign countries could "make it easier for him to flee than the average person," Griggsby said.

As for economic danger, Griggsby pointed to indictment allegations that he "owes millions of dollars to the federal government and private individuals, who would be harmed should the defendant flee." Goldstein's ability to engage in cryptocurrency transactions and to gamble online also pose a danger, she said.

Although pretrial services personnel monitoring Goldstein's devices might see Goldstein's communications with his lawyers, they would not be disclosed to the government, Griggsby added.

Hat tip to PokerNews, Law360 and Bloomberg Law, which covered Griggsby's decision.

Write a letter to the editor, share a story tip or update, or report an error.

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Litigation

March 26, 2025, 3:00 AM PDT

Litigation Finance's New Money Fades in 'Tight' Capital Market

- **New litigation finance deal commitments were down 30% over two years**
- **Funders' total assets under management held steady at $16.1 billion**

New litigation funding deals dipped last year to the lowest point in at least half a decade, thanks to a tight fundraising environment and concerns about risk.

Funders committed $2.3 billion to new litigation finance deals last year, down 16% from 2023, according to consultant Westfleet Advisors. The total was down 30% from 2022, Westfleet said in a Wednesday report.

"For a variety of reasons, funders continued to ration their limited capital, resulting in an environment in which litigation financing was much more difficult to secure compared with prior years," Westfleet said. "These tendencies are examples of factors that are driving tight market conditions—tighter than we have observed in at least the last five years," the report said.

Investors generally were hampered by high interest rates, inflation, and cash tied up longer than expected over the year. Some litigation funders entered harvest mode after struggling to raise capital, while others took a more cautious approach to new deals.

LexShares last year ditched its plans to launch a new fund—slashing its payroll and shifting its focus to managing its current portfolio—citing lingering effects of the pandemic on the funder's case pipeline. New funders have been particularly concerned about avoiding risk, according to Westfleet, limiting the types of deals they seek.

Westfleet collected data from commercial litigation funders in the US. The data doesn't include funders specializing in mass tort law firm financing or consumer litigation.

The overall size of the market stayed mostly unchanged: 42 active funders held a combined $16.1 billion in assets under management.

The average litigation finance deal size ticked up to $8 million last year up from $7.8 million in 2023. The average single-matter deal was $6.6 million, while portfolio deals averaged $16.5 million. Portfolios accounted for the majority of deals—67%—holding steady from the previous year.

Patent litigation continued to be the largest category for funded matters, increasing from 19% of all capital commitments to 32%.

"The uptick is driven basically entirely by portfolios," Charles Agee, CEO of Westfleet, said in an interview. "It's a very difficult market for single matter patent litigation funding."

Fortress Investment Group, an investment manager that is a major player in the patent space, committed $2.9 billion to intellectual property as of last year. Hedge fund Davidson Kempner was revealed in court filings as the backer of a patent cases against Audible Inc.

Westfleet for the first time gathered data on the role of insurance in new funding deals. About 19% of capital commitments were either fully or partially insured, according to the report. Insurers have become a major part of the litigation finance space, with funders using policies to insure principals or as collateral for loans from capital providers.

Big Lawcontinued to utilize litigation finance, accounting for more than a third (37%) of new commitments over the year. Large law firms' total new commitments were down more than 11% to $850 million in 2024. The majority of those new commitments went to single matters, rather than portfolios.

The report says that industry participants feel that the tight capital conditions will loosen as soon as flows of capital increase.

“When something is down because of tight capital conditions that could be the time to buy,” Agee said.

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Navigating Mass Settlements With GenAI

law.com/legaltechnews/2025/03/27/navigating-mass-settlements-with-genai

Allen Waxman and Simeon Poles and Joe Kendall March 27, 2025

Introduction

With the rapid development of artificial intelligence, new opportunities for managing and resolving mass claims litigation—whether it be based on products liability, environmental torts or employment claims—are emerging. These litigations present numerous factual, legal, and logistical challenges, including the extensive data they generate about the claimants and their claims. That data has always been replete with insights to be harnessed. Generative AI (or GenAI) now offers the prospect of harvesting those insights efficiently and effectively, while offering ways to better manage and resolve the claims. In this article, we discuss how AI can assist with the management of mass claims based on our experiences in developing and using AI-powered solutions at our firm. In a subsequent piece, we will focus on how GenAI can generate approaches for resolution.

Approaching the Mass Claims Challenge

Imagine you represent Acme Corp., and thousands of liver cancer victims blame Acme's newest detergent for their illnesses. A recent publication reported on an observational epidemiological study that found an association between liver cancer and exposure to the detergent for over six months in women 40 years or older. Based on that study, Acme added a warning to its bottles of detergent. Thousands of claims followed. Cases were consolidated for discovery. Then came the short-form complaints, plaintiff fact sheets, medical records and other documents as well as additional discovery. This treasure trove of information/data now resides in your document management system. Acme is in the middle of a significant transaction and wants prompt guidance on how to proceed with the litigation. What to do?

Like with most mass claims, you and your client want to understand what exposure you are confronting. This begins with differentiating claims; separating the stronger from the weaker. GenAI doesn't change that imperative. It just may make doing so more feasible.

Consider these factors:

- *Who has a cognizable claim?* Weed out bogus or weak claims that have no link to the product or no real harm. Who was exposed to the product for at least six months or at all? Who was over forty at the time of exposure?

- *What makes a claim worth more or less?* Claims that arose before the warning was added to the detergent's labeling will pose more risk of exposure than those after. Injury severity also matters, and so do other factors. How long after exposure did the plaintiff become sick? How long will the plaintiff live and need care? Are there other factors that could cause the harm?
- *What else might impact the value of the case if it goes to trial?* Who is on the other side? A savvy mass tort lawyer with deep pockets and a track record of big wins may pose more risk for Acme than would an inexperienced lawyer with little track record. Where will the case be tried? Some jurisdictions pose more risk for large verdicts than others depending on the judge, the juries, local specific laws, and evidentiary rulings.
- *What is the best pathway forward?* Based on these factors and the status of the litigation, it now may become clearer which cases to try, which cases to resolve, and which steps are necessary to unlock the potential for resolution—including motions practice, key additional discovery, and bellwether cases to be tried. You also may want to use this information to begin outlining a matrix that can assign values to be negotiated for resolution.

How GenAI Can Help

Before GenAI, traditional methods for analyzing the data collected in mass claims litigation—like manual reviews, keyword searches, or statistical sampling—could be slow, costly, incomplete, or inaccurate. We have found GenAI to unlock new opportunities for evaluating and understanding this type of litigation. Indeed, it can power tools that ingest data from various sources and extract and normalize curated information relevant to case management. This is not just cutting and pasting from the complaints, fact sheets, or medical records. It's synthesizing information from different parts of those documents and organizing the data for better assessment. The result is a near real-time leveraging of insights that the data can provide.

Large language models, natural language processing, and advanced document processing can help mass claims lawyers:

- **Find Needles in Haystacks:** Quickly read and sort large sets of medical records, spotting diagnoses, treatments, and prognoses, flagging key findings and patterns.
- **Show the Big Picture:** Turn data into dashboards, charts, or graphs to compare different groups or categories of claimants and uncover insights or anomalies.
- **Group, Grade, and Rank Cases:** Aggregate and provide qualitative assessments and benchmark cases within a firm's portfolio and across the entire litigation.

- **Explore Information at Scale**: Sift through documents from thousands of claimants, covering millions of pages, at a speed and quality otherwise requiring armies of reviewers.

With GenAI at your disposal, Acme's request that you quickly and accurately assess the docket of claims now becomes far more realistic. You can promptly determine which claimants had exposure that was shorter or longer than six months, which claims arose before the warnings were added versus after, and which claims are in particular jurisdictions, along with the different judges and lawyers in each one.

Potential Pitfalls of Using GenAI to Manage Mass Claims

Hallucination and Errors. GenAI is not a panacea. There will be errors. It still requires a "human in the loop" to help identify and address anomalies. Both verification and validation are critically important. Given the scale of mass claims data, human verification of every result would defeat the efficiency purposes AI tools seek to offer. That is why it is important to determine if the AI tools themselves can help validate at scale by using multiple methods to check on one another. We have found the way results are validated makes all the difference. Your analysis and strategy will only be as good as the data you have. Just like with human-powered data collection, there will still be mistakes that the lawyer will need to backstop, and GenAI can help limit those mistakes and help focus that backstop on the most critical pieces of information.

Data Management. Using medical records and sensitive personal information raises significant privacy risks, which mass claims magnify because they involve so many potential plaintiffs. Threat actors could steal and expose the data you've collected unless it is well-guarded. Even putting aside the risk of hacking, it is also important that safeguards and automated guardrails exist to respect intellectual property and confidentiality concerns that arise from using the dataset. With the pace of change in the GenAI space, we have found that it's even more important to identify systems and partners that account for and incorporate the additional challenges of legal data management.

Ethical Considerations. GenAI is trained on human-generated data, which may include biases. Depending upon the particular use cases for the AI, it is worth being on the alert and testing for biases (race, gender, class) that may taint the way information is extracted and synthesized.

Best Practices for Using GenAI to Manage Mass Claims

Trust and verify. To develop trust in the outputs, you must be able to measure and explain the results, using the right methods and metrics for each task and domain. As noted above, it is also important to show how results are being verified—through the technology and through human spot-checking. Use GenAI responsibly to augment human capabilities, rather than replace them. (Think “cyborg” not “robot”). In addition, question and cross-check any strange or incomplete outputs generated by GenAI and avoid systemic issues by stacking independent GenAI technologies. If GenAI is to generate a structured database, for example, comparing it to objective criteria will be important to ensure its accuracy. These approaches will also help ameliorate the ethical concerns raised above.

Collect the right data. Use both AI and traditional tools and techniques that can cope with the dataset’s size and diversity, as well as spot and fix the glitches and gaps. That requires using standards and protocols that can ensure the data is in good shape, like using metadata, schemas and ontologies that ensure consistency across the set. As mentioned above, large language models make errors, and pairing traditional software approaches with LLMs helps prevent those errors. And pairing subject matter experts with the AI tools also ensures that any nuances in the source documents are properly reflected in the data.

Protect and manage data properly. Implement policies and practices to secure data and respect privacy rights. Use technologies like encryption, authentication, and authorization to guard data at every stage, and ensure contracts and agreements with vendors clearly define their duties to do the same. Identify and monitor where your data is stored and how it moves through vendor systems. Also ensure that your data management policies protect intellectual property and other confidentiality concerns that could lurk within the set, all while using the most effective technologies for the task.

Conclusion

GenAI’s capabilities unlock entirely new possibilities for managing and resolving mass claims. Like with all AI solutions, they must be managed properly and wisely. Doing so will enable new strategies for addressing mass claims while also returning tremendous value.

Allen Waxman *is of counsel in DLA Piper’s AI and data analytics practice.* **Simeon Poles** *is an associate in the firm’s products liability, mass torts & class actions practice group and* **Joe Kendall** *is the AI director of product management at the firm.*

'Here to Stay': Judges at Legalweek Panel Say AI Is Not Going Anywhere, But Lawyers Need to Manage Risk

law.com/therecorder/2025/03/26/here-to-stay-judges-at-legalweek-panel-say-ai-is-not-going-anywhere-but-lawyers-need-to-manage-risk

Emily Saul March 26, 2025

A group of active and retired federal judges on Wednesday agreed on one thing when it comes to navigating discovery in a world that has embraced artificial intelligence and its risks: the technology isn't going anywhere.

“AI is here, it’s here to stay,” former U.S. Magistrate Judge Kimberly Priest Johnson in the Eastern District of Texas, now with Shook, Hardy & Bacon said during a panel at Legalweek 2025. “You’ve got to use AI to make yourself more proficient as a lawyer.”

Called “View from the Bench: Decoding the Ethics and Discovery Rules in the World of AI, Cybersecurity, and the Date Deluge,” the panel covered a variety of topics, including ESI protocols and the importance of modification clauses.

Participants also included non-human panelists ChatGPT, Claude, and other software that responded to the same prompts given to the judges.

Are Hyperlinks Documents?

Chief Magistrate Judge Willi Epps in the Western District of Missouri said a handful of cases in recent years have explored the issue, marking a shift in document-sharing practices.

Epps discussed *In re StubHub Refund Litigation*, StubHub agreed to produce hyperlinked materials in litigation, only realizing later that not all of the links worked, making it impossible to comply with an ESI production order.

Plaintiffs moved for sanctions, but the judge declined to grant the request, instead saying the lack of production was due to a “foolish decision to stipulate” as opposed to bad faith.

Asked to provide case law, ChatGPT produced answers that moderator and Shook, Hardy & Bacon partner Patrick Oot noted were, in some cases, 4 years old, while the seminal cases had been in the past 18 months.

“Be careful,” DLA Piper senior counsel and former U.S. Magistrate Judge Andrew Peck of the Southern District of New York advised, adding that what judges did even two years ago could be outdated.

Electronically Stored Information (ESI) Discovery

As orders and agreements governing ESI discovery become more commonplace, the judges advised against finding yourself hemmed in by a court order governing the disclosure.

One common problem is parties agreeing to things in the ESI protocol and then only realizing later that their client is unable to comply.

Peck said it was essential to include a provision to modify the agreement or court order with a good cause showing, to prevent problems from popping up down the line.

Litigants need to figure out what they're able to do before entering into an agreement, the judges agreed.

While this sort of work can often be left to younger associates—especially if there's a concern a senior attorney may not understand the tech—it's important to have a senior attorney work alongside more junior associates to avoid problems.

"The senior attorney may not even know how to send their own email," Epps said. "But they have the experience to know what's worth fighting about and what's worth compromising."

As for orders, Johnson said she doesn't understand why parties are seeking orders anyway governing ESI, as it could create the possibility of sanctions.

Peck said he felt that doing sequential ESI protocols is useful.

Should Courts Permit a Litigant to Redact Documents for Relevancy?

Magistrate Judge Katharine Parker of the Southern District of New York kicked off this issue in 2023, Johnson said, by finding redactions are permitted so long as the party that wants to make the redactions covered the cost and it didn't hold up production.

"I think the courts have decided, 'So long as it's not too much,'" she said of redactions, adding she's not exactly sure what that means.

U.S. District Court Judge Allison Goddard of the Southern District of California said the problem with redactions is that adverse parties become suspicious.

"It's hard to make this argument without looking like you're trying to hide the ball, you need to make the argument in a really targeted way," Goddard explained.

U.S. District Court Judge Rukhsanah Singh said she'd found spats about this issue were causing practical concerns that can spin out of control.

"Redactions cause distrust in a way that can delay the litigation," she said. "I call them satellite discovery dispute."

What is an Efficient Methodology for Managing Privilege Disputes?

In spats over privilege, Epps called it a “complete nightmare” to have unsophisticated parties come in and try to handle the disputes, as it can overburden chambers and staff.

“The reality is, foolish decisions are what gets us involved,” Goddard said. Privilege logs are often an afterthought, and it should be one of the first things you think about, if you’re planning to litigate.”

“The worst thing you can do is force me to look at [the documents],” she said.

Peck advised having a waiver that protects you from inadvertent disclosure of privileged materials that allows you to claw back documents.

Generally, he said the issue remained who was doing the reviews for privacy, and it was safe to expect that AI would be doing a first pass in the future.

Peck said the Eastern and Southern Districts of New York had amended the local rules to say metadata logs are acceptable in these disputes.

Production of Translated Documents

More and more frequently, the judges said they’re seeing disputes over translated documents as more people work remotely abroad and documents can be translated within entities.

“The rub becomes, a producing party is not required to produce documents that don’t exist,” Singh said. “But also under ESI parties are supposed to produce usable documents, and if it’s not translated it is not really usable.”

The judges raised numerous questions themselves, with Peck questioning if internal translations could be considered work products, or if a party could be required to produce translations made down the line.

Wouldn’t the documents eventually be translated anyway, “if you're in a U.S. Court, with the documents being produced to Americans who speak English,” Johnson posited.

Peck said the answer to this was the same as many legal questions: “It all depends.”

Risks in Using AI

Goddard said she sometimes uses generative AI as a thought partner, but was extraordinarily careful about hallucinations.

She mentioned a recent hallucination in a submission from an expert witness, adding, “I am not going to be the first judge to do that.”

“We all need to be checking our work,” she added. “I think as the tools get better, we might get more complacent.”

For her judicial use, Goddard said she doesn’t use commercially available tools and does not input information that is not public.

She also only uses tools that say they do not use input or output data for training purposes.

Goddard reminded attendees that judges all have their own rules about AI use and disclosures, and that attorneys needed to be aware of those.

“Proceed with caution,” she warned.

Ohio lawmakers strike down extension of massive coal bailout, funded via electric bills

cleveland.com/open/2025/03/ohio-lawmakers-strike-down-extension-of-massive-coal-bailout-funded-via-electric-bills.html

By Jake Zuckerman, jzuckerman@cleveland.com March 26, 2025

The Ohio Statehouse is seen in downtown Columbus, Ohio on Jan. 25, 2006. (AP Photo/Kiichiro Sato, File)ASSOCIATED PRESS

COLUMBUS, Ohio – In a vote that split House Republicans, a bipartisan majority on a legislative committee rejected a last-ditch effort to delay the death of a coal subsidy that cost Ohio electric customers $174 million last year alone.

From there, the sweeping energy legislation passed on a near unanimous basis through both the committee and on the House floor. Should the House and Senate manage to agree on competing versions of their similar bills, the legislation would go to Gov. Mike DeWine for his signature.

Under the bill, the subsidy would end 90 days after the governor approves it.

The vote Wednesday dealt a major blow to the utility companies that have collected $679 million through customers' electric bills since 2016 – companies that were, but perhaps are no longer, a dominant force in Statehouse politics. It could also mark the end of a major provision within 2019 legislation at the epicenter of what federal prosecutors called the biggest public corruption scandal in state history.

Both chambers of the Ohio General Assembly have advanced dueling, though substantively similar, pieces of legislation to fundamentally reshape Ohio's electricity markets.

Both bills call for repeals of subsidies to the two coal plants (one of which is in Indiana) owned by the Ohio Valley Electric Corp. Under current law, the subsidies are set to run through 2030.

While state utility regulators had previously allowed the subsidies on a more limited basis, legislation passed in 2019 codified the payments in state law, broadened the base of who pays them, and extended their life by several years. That 2019 legislation now sits in the middle of a slow-burning corruption scandal that has yielded a 20-year prison sentence for the then-House Speaker and indictments of the former chief executive and top lobbyist of FirstEnergy Corp., a Fortune 500 utility company based in Akron.

Residential customers' payments to OVEC are capped at $1.50 per month. Despite the small dollar figure on a per-customer basis, the subsidies add up to hundreds of millions of dollars transferred from electric customers to their utilities.

A surprise amendment Wednesday morning would have continued the subsidies to the Ohio utility companies that own OVEC – American Electric Power (with a 44% equity stake), Duke Energy (9%), and AES Ohio (5%) – through the end of 2026. State Rep. Monica Robb Blasdel, a Columbiana County Republican who offered the amendment, described it as a “reasonable and responsible course of action preserving Ohio’s reputation as a trustworthy and stable place to do business.”

State Rep. Andrea White, a Dayton area Republican, called the amendment an “off ramp” for the utility companies to adjust their businesses accordingly. For an individual, she said in aggregate it’s just a $27 difference per customer through the end of 2026, and it will signal to the business community and investors that the state won’t just “pull the rug out from under you.”

Plus, the sudden removal of the support risks a downgrade in the companies’ credit rating, which could lead to higher electric rates, she argued.

House Energy Chairman Adam Holmes told reporters the OVEC amendment emerged only “recently.” He said the subsidies violated basic principles of free market economics; delivered no added benefit to ratepayers; and the money flowed to plants that face no imminent risks of closure without the financial support. And that’s to say nothing of the “dark past” of utility politics in Ohio.

And $27, he said, means a lot to some people.

“That money is not spent on improving the OVEC plants, it goes to the bottom line of the companies for their multi-state business,” said the Muskingum County Republican.

Parma Democratic state Rep. Sean Brennan has pushed for years to end the bailouts. The effort has only recently started to bear fruit. He said he learned Wednesday morning that an OVEC extension amendment would emerge. He’s glad to see people come around to what he calls the “cost of corruption” and that this is the first time he’s been on the winning side of a controversial vote.

“This is what we all ran on, that we were going to do what we could for consumers who are hurting out there right now,” he said. “And $27 might not sound a lot to someone who’s living kind of comfortably, but when you talk to residents who live in the Educator apartments in Parma Heights, whose rents just went up and that’s one of the lower rents in my district and their next option is potential homelessness, $27 could make or break somebody.”

Americans for Prosperity, a free market think tank founded by heirs of the Koch family and its oil refinery enterprise, opposed House Bill 6 in 2019 and later joined the lobbying push against the bailout. To state director Donovan O’Neill, Wednesday’s vote captured the end of an era.

“I think the vote this morning is a key indicator of change,” he said in an interview. “That page is turning here in the state. They’ve been trying to eliminate OVEC since [ex-Ohio House Speaker] Larry Householder was indicted.”

State Rep. Tristan Rader, a Lakewood Democrat in his first term, wasn’t serving when House Bill 6 passed in 2019. That loosened political grip from utilities is probably why the recent energy bills have managed to pass in the first place, he said.

“Because of the House Bill 6 scandal that happened, FirstEnergy noticeably wasn’t here, were they?” he said. “They didn’t show up to testify on this bill because they know they have such a negative reputation here, still. So when you see that utilities don’t carry that kind of sway, especially with new members, since then.”

Despite the sweeping nature of the bill, most of the debate on the House floor was limited to the OVEC subsidies and how long to let them run.

A few supporters framed support for the subsidies as support for coal. State Rep. Don Jones, a Harrison County Republican, said he voted against the bill because he couldn’t go home and face the miners who extract the coal that powers the plants. State Rep. Jason Stephens, a Lawrence County Republican who has one of the plants in his district, invoked the plants’ history in powering a uranium enrichment facility during the Cold War for the federal government.

State Rep. Brian Stewart, a de facto member of Republican leadership, said he has spent his entire legislative career living in the shadow of 2019’s House Bill 6. It’s time, he said, to put “this entire ridiculous episode” behind us.

“A tax on Ohioans to bail out a utility company is still a tax,” he said.

Jeremy Pelzer contributed reporting.

Stories by Jake Zuckerman

Jake Zuckerman covers state politics and policy for Cleveland.com and The Plain Dealer.

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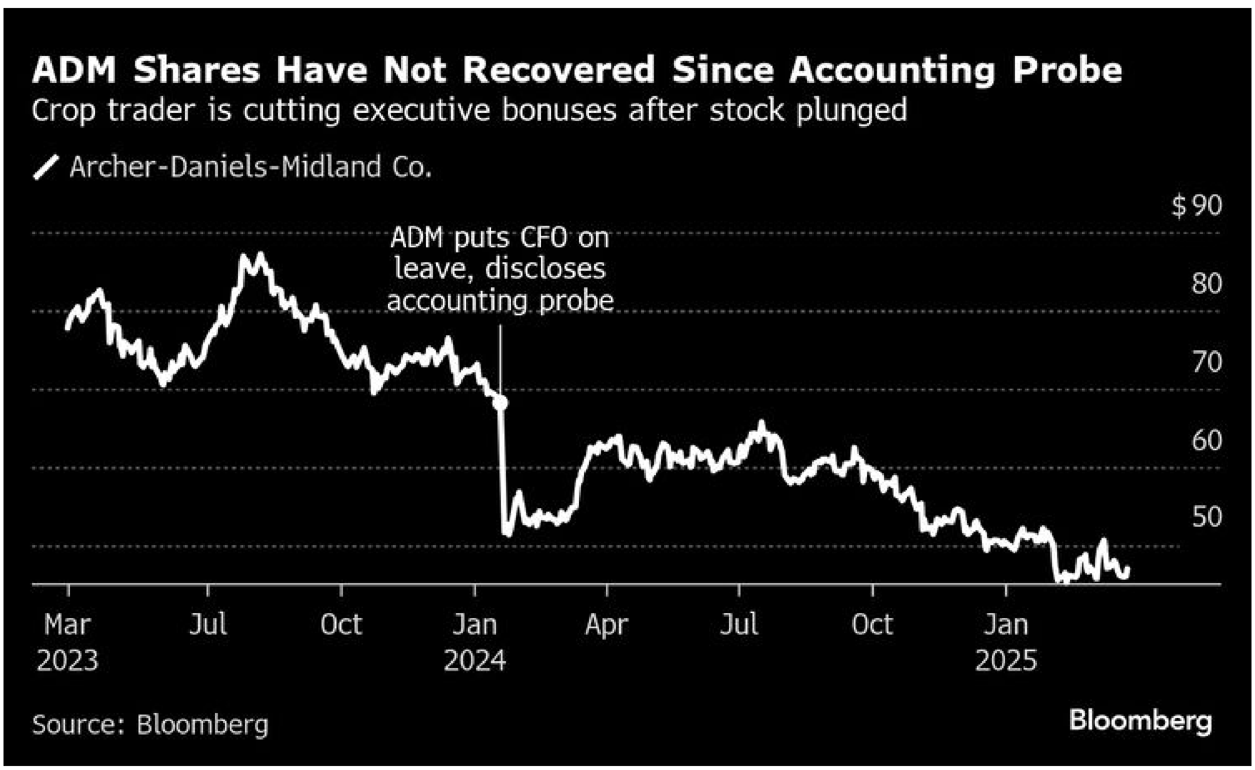
Securities Law News
March 26, 2025, 11:35 AM PDT

ADM to Cut CEO's Bonus After Accounting Scandal Hit Shares

Archer-Daniels-Midland Co. plans to slash Chief Executive Officer **Juan Luciano**'s annual cash bonus and laid out a new policy to claw back long-term awards in a bid to "ensure accountability" more than a year after an accounting scandal sent the commodity-trading giant's shares tumbling.

Luciano is due to receive a 2024 bonus of about $1.2 million, less than half of his target of nearly $3 million, according to a securities filing. That brings his total compensation to roughly $21.6 million, down from $24.4 million in the previous year.

The move comes after ADM adjusted years of financial results due to errors in the way it reported transactions between business units. When the company announced the accounting problems in January 2024, the news erased more than $8.8 billion in market value.



ADM's board determined that it was appropriate to exercise "negative discretion" to shrink the payout percentage for cash incentive awards, the filing stated. The discretion was applied to the company executives "who were in relevant leadership positions during the applicable period." That's despite ADM's conclusion that no executive was found to be engaged in improper conduct.

Vikram Luthar, the former chief financial officer, will receive zero cash bonus. He resigned in September, before the end of the fiscal year.

In addition, the company laid out a new policy for recouping or forfeiting equity incentive awards, saying it could claw back stock awards if an individual engages in any prohibited conduct, even if his or her employment is not terminated. "Our approach to recoupment of long-term incentive compensation reflects the company's commitment to protecting stockholder value," ADM said.

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Securities Law

March 27, 2025, 8:58 AM PDT; Updated: March 27, 2025, 9:31 AM PDT

SEC Nominee Says Fate of US Audit Board Rests With Congress (1)

- **Atkins tells Congress audit oversight work 'needs to be done'**
- **The board has been targeted for elimination by Republicans**

President Donald Trump's nominee to lead the SEC said it's up to Congress whether to abolish the board established to oversee US auditors in the wake of the Enron and WorldCom accounting scandals.

"It's not in my power—it's up to you all," Paul Atkins told lawmakers Thursday during his Senate confirmation hearing to lead the Securities and Exchange Commission.

He added that it's important the Public Company Accounting Oversight Board's function is maintained, whether or not lawmakers leave the board itself intact. He also said the PCAOB's role in overseeing the work of auditors for China-based companies under the Holding Foreign Companies Accountable Act is "crucial."

The board's oversight work "needs to be done" even if it is folded back into the SEC, Atkins told senators on the Banking, Housing, and Urban Affairs committee.

Congress created the PCAOB in 2002 to restore investor trust in corporate reporting following a series of accounting scandals that toppled Enron Corp. and WorldCom Inc. The SEC oversees the five-person board and has the authority to replace its members. Atkins is expected to name his own PCAOB chair, setting a new agenda for the small regulator.

During his previous tenure on the commission, Atkins advocated for keeping PCAOB's funding and rule-writing in check.

PCAOB Chair Erica Williams has taken a more muscular approach to oversight taking the helm in 2022, inspecting more audits, bringing record penalties for violations, and doling out tougher audit standards.

Sen. Chris Van Hollen (D-Md.) pushed Atkins on his plans for the audit board that has previously been a target of Republicans. The first Trump administration proposed eliminating the PCAOB and reassigning its duties to the SEC.

The PCAOB is "charged with making sure that Chinese companies play by the same rules," Van Hollen said.

Williams, who was reappointed last year to a five-year term ending in 2029, oversaw the launch of the PCAOB's first-ever inspections of audit firms in China and Hong Kong and the issuing of sanctions for violations under a law Trump signed during his first term in office.

She also has tangled with auditors who have challenged her rule-writing agenda, arguing that the board rushed out rules before they were ready and would impose onerous requirements on firms without benefiting audit quality.

Trump's re-election and choice of Atkins to lead the SEC have already taken a toll on the board's agenda. In February, Williams withdrew a pair of rules awaiting commission approval. The board opted not to finalize a separate project, pausing its work just days after the November election.

(Updated with additional background throughout.)

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GameStop shares tumble as investors question bitcoin pivot

reuters.com/technology/gamestop-shares-tumble-investors-question-bitcoin-pivot-2025-03-27

Lisa Mattackal March 27, 2025

A screen displays GameStop stock trading information on the floor at the New York Stock Exchange (NYSE) in New York City, U.S., June 3, 2024. REUTERS/Brendan McDermid/File Photo Purchase Licensing Rights, opens new tab

March 27 (Reuters) - Shares of GameStop fell more than 15% on Thursday after the company's plan to finance its bitcoin pivot raised questions about the timing of its move and its strategy to turn around its struggling retail business.

The video game retailer's shares (GME.N), opens new tab also gave up all their gains from a day earlier and were on track for their biggest one-day fall since last June, after the company said it was offering $1.3 billion in 0% 2030 convertible bonds to amass the cryptocurrency.
The company's announcement that it would buy bitcoin to hold as a treasury reserve asset had created a mini euphoria among retail traders, who keenly track the so-called "meme stock."
However, GameStop also announced the closing of a "significant number" of additional stores this year, signalling that its retail business continued to flounder despite attempts to turn it around.

"Investors are not necessarily optimistic on the underlying business," said Bret Kenwell, U.S. investment analyst at eToro.

"There are question marks with GameStop's model. If bitcoin is going to be the pivot, where does that leave everything else?"

The timing of GameStop's decision to buy bitcoin is also in focus as the cryptocurrency's price has gained nearly 27% since November's presidential election, though they are sharply down from record highs due to uncertain economic conditions.

"Why did (GameStop) wait so long if they were going to go down this road? Six months ago, nine months ago would have made a lot more sense," Kenwell said.

The debt offering to fund bitcoin purchases mimics the playbook of Strategy (MSTR.O), opens new tab, one of the largest individual holders of bitcoin that is widely seen as a bitcoin proxy.

The overall outlook for crypto markets was also contributing to declines as GameStop's move has "failed to meaningfully boost market confidence," said Agne Linge, head of growth at decentralized bank WeFi.

With the day's losses, GameStop shares have dropped more than 23% this year.

Reporting by Anil D'Silva

- Suggested Topics:
- Technology

https://www.wsj.com/finance/investing/investing-private-companies-equityzen-forge-global-d2713c5c

EXCLUSIVE INVESTING Follow

Want to Invest in a Private Company? All It Takes Is $5,000

Two marketplaces for trading shares in high-risk, high-reward companies are lowering investment minimums

By *Imani Moise* Follow

Updated March 25, 2025 1:22 pm ET

Forge recently valued CoreWeave at $29 billion despite the company's recent pre-IPO filings signaling a valuation north of $30 billion. PHOTO: GETTY IMAGES

Key Points

What's This?

- EquityZen and Forge Global are lowering the minimum investment in private companies to $5,000, making it easier for individual investors to access high-risk, high-reward opportunities.
- A partnership with Yahoo Finance provides retail investors with data on roughly 100 pre-IPO companies, increasing transparency in the private markets.
- Despite the lower investment threshold, experts caution that private markets are complex and illiquid, and investors should consult a financial adviser before investing.

It is getting easier to invest in high-risk, high-reward private companies.

Now, all it takes is $5,000 to buy a stake in a firm like artificial intelligence platform Glean or crypto exchange Kraken. EquityZen and Forge Global, which are marketplaces for trading shares of private companies, are lowering the minimum investment from tens of thousands of dollars, the companies said.

The two marketplaces are also launching a partnership Tuesday with Yahoo Finance, in which they share their data on roughly 100 pre-IPO companies on the website.

This is the investment industry's latest play to put nonpublic companies in the hands of individual investors. Until recently, investing in private companies was the domain of institutional investors and ultrawealthy with the capital and connections to participate in fundraising rounds. Those often require seven-figure minimum investments and decadelong lockups.

Private-equity firms also are trying to attract some of the estimated $30 trillion held by U.S. individual investors.

Many nonpublic companies grow faster than publicly listed ones, which can mean higher returns. They also have limited transparency and less liquidity. They can have less stringent financial reporting requirements.

They are "secretive and opaque," said Jeff Hooke, a senior lecturer at Johns Hopkins University's Carey Business School, a critic of private markets.

How it works

Employees and early investors in startups are often looking to cash out, but they can't just turn around and sell their shares into an open market. Firms like EquityZen and Forge have built marketplaces that find individual investors to buy these shares.

The shares are often illiquid, and individual investors often expect to quickly trade in and out of investments. To address this, companies like EquityZen and Forge have created single-company funds that investors can buy into at smaller amounts.

Still, the process isn't as seamless as trading ETFs on apps like Robinhood. Trades can take days to finalize, and buyers are generally required to hold their stake for a minimum of six months. Forge and EquityZen charge commissions between 2% and 5% on each transaction.

Most data on how valuable private companies are is incomplete because it relies on fundraising data that can be years old. Forge says it has compiled bid-ask data from across its platform to calculate a daily price that reflects what firms are actually worth.

For example, Forge recently valued CoreWeave at $29 billion despite the company's recent pre-IPO filings signaling a valuation north of $30 billion.

Originally, Forge sold this data as part of a subscription. Chief Executive Kelly Rodriques said partnering with Yahoo to put some of it in front of the website's 100 million users adds more value to private markets than keeping it behind its own paywall.

"We're at a tipping point right now," he said. "Increased participation leads to greater liquidity."

The companies declined to comment on the financial structure of the partnership.

Opportunity versus suitability

As companies remain private for longer in the moribund IPO market, more investors are worried about leaving potential returns on the table. The average company goes public today at 10.7 years old, compared with 6.9 years in 2015, according to Morningstar.

"A lot of the risk-return opportunity has been pushed into the private markets," said Christian Chan, chief investment officer of AssetMark, a technology platform for independent financial advisers.

Investing in private markets isn't always what it is cracked up to be. Private-equity investments underperformed public markets last year for the third time in four years, according to a McKinsey report.

Investors must be "accredited" to participate in private-market deals such as through EquityZen and Forge, per Securities and Exchange Commission requirements. That means earning $200,000 annually (or $300,000 for couples) or having a net worth over $1 million, excluding a primary residence. Those thresholds haven't changed since the 1980s, so today roughly one in five U.S. households qualifies—up from 1.8% in 1983, according to an SEC report.

Though the $5,000 minimum investment represents a new low for a stake in private companies, EquityZen Chief Executive Atish Davda said he would like to see it go even lower—but not too low.

"Just because you can, doesn't mean you should," he said. "If I only have $50 to invest, am I better off taking my $50 and going on FanDuel or something?" he added, referring to the sports-betting company.

Write to Imani Moise at imani.moise@wsj.com

Corrections & Amplifications

EquityZen and Forge Global are lowering their investment minimums to $5,000, the companies said. An earlier version of this article incorrectly said the lowered minimums were part of a planned announcement on Tuesday. (Corrected on March 25.)

Appeared in the March 26, 2025, print edition as 'Small Investors Get Access to Pre-IPO Shares'.

Videos

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7 Firms Compete To Lead Novo Nordisk Securities Suit

By **Carla Baranauckas**

Law360 (March 26, 2025, 9:53 PM EDT) -- Levi & Korsinsky LLP, Pomerantz LLP and the Rosen Law Firm PA are among seven law firms vying to lead proposed class claims accusing Novo Nordisk A/S of misleading investors about a clinical trial for an obesity drug.

Also looking to steer the litigation centered on the Danish company's statements about the drug CagriSema are Bernstein Litowitz Berger & Grossmann LLP, Robbins Geller Rudman & Dowd LLP and a joint effort by Scott + Scott Attorneys at Law LLP and The Schall Law Firm. The seven firms were named in motions filed Tuesday in New Jersey federal court, all touting their clients' stake in the lawsuit. The investors allege Novo Nordisk failed to disclose that obesity patients were taking different dosages in a clinical study, which allegedly skewed results.

Having "the largest financial interest in the relief sought by the class'' is among the criteria set forth in the Private Securities Litigation Reform Act for being named a lead plaintiff.

Levi & Korsinsky's client, John Marraffa, allegedly lost about $82,000 after purchasing Novo Nordisk shares at "artificially inflated prices," according to court documents filed by the firm.

Scott + Scott's client, Philip Topinko, lost about $196,000, while Michael Kopanic and Daniel Blackman, represented by Pomerantz, incurred about $11,860 in losses during the class period, according to the firms' court filings. Scott + Scott is looking to serve jointly with The Schall Law Firm as lead counsel.

Carella Byrne Cecchi Brody & Agnello PC, liaison counsel for the City of Pinellas Park Police Officers' Pension Fund and the City of Pinellas Park Firefighters' Pension Fund and proposed liaison counsel for the class, said the two funds suffered losses of about $237,000 during the class period.

"The Pinellas Park Funds — a pair of sister funds representing police officers and firefighters from the same city in Florida — have a relationship that predates the filing of this motion, and have experience collaborating on investment and other business matters," the memorandum said. "The plain text of the PSLRA expressly permits the appointment of a group of class members to serve as lead plaintiff."

The funds are proposing Bernstein Litowitz as lead counsel for the class

The Rosen Law Firm's client, Brian Jackson, claimed losses of about $25,445 in his filing.

Meanwhile, Seeger Weiss LLP's clients, the New York Hotel Trades Council and Hotel Association of New York City Inc. Pension Fund, the Pavers and Road Builders District Council Pension Fund, and the City of Kissimmee General Employees' Retirement Plan, simply said they had significant losses and that they wanted Robbins Geller as lead counsel with Seeger Weiss as their liaison counsel.

The **proposed class action** was filed in January by investor Changyeon Moon, who alleged that Novo Nordisk misled investors by failing to disclose the dosages patients took of its new weight loss drug CagriSema during a clinical trial study, "Redefine-1," which the company first announced in November 2022.

The company and its top executives made a series of public statements at the time on an earnings call and in financial filings that claimed Novo Nordisk expected the study would show obesity and diabetes patients treated with CagriSema would have a 25% average weight loss, the complaint said.

Novo Nordisk and its executives initially provided "overwhelmingly positive statements" to investors and claimed the study reflected "significant confidence" in the new drug's weight-loss expectations, and they continued to make similar statements through 2023, the suit said.

The statements "misled plaintiff and other shareholders about the study's risks and prospects for success and, in turn, caused them to purchase Novo's securities at artificially inflated prices," the complaint said.

The company failed to disclose that patients had a flexible dosing protocol, which allowed patients to modify their doses throughout the trial, which could lead to lower weight loss results.

In December 2024, the company revealed CagriSema had achieved a weight loss average of only 22.7% after 68 weeks partly because of the purportedly previously undisclosed "flexible" nature of the dosage protocol, according to the complaint.

After that news, Novo's stock price dropped to $85 per share on Dec. 20 from $103.44 per share on Dec. 19, a decline of more than 17% in a single day, the complaint said.

Novo Nordisk said in a statement in January that it believes the claims are without merit.

Changyeon Moon and John Marraffa are represented by Adam M. Apton of Levi & Korsinsky LLP.

Philip Topinko is represented by Jonathan M. Zimmerman, Thomas L. Laughlin and Nicholas S. Bruno of Scott + Scott Attorneys at Law LLP and Brian J. Schall and Andrew Brown of The Schall Law Firm.

Michael Kopanic and Daniel Blackman are represented by Thomas H. Przybylowski, Jeremy A. Lieberman and J. Alexander Hood II of Pomerantz LLP and Peretz Bronstein of Bronstein Gewirtz & Grossman LLC.

The City of Pinellas Park Police Officers' Pension Fund and the City of Pinellas Park Firefighters' Pension Fund are represented by James E. Cecchi of Carella Byrne Cecchi Brody & Agnello PC; Hannah Ross, Avi Josefson and Scott R. Foglietta of Bernstein Litowitz Berger & Grossmann LLP; and Robert D. Klausner and Stuart A. Kaufman of Klausner Kaufman Jensen & Levinson PPA.

Brian Jackson is represented by Laurence M. Rosen of The Rosen Law Firm PA.

The New York Hotel Trades Council and Hotel Association of New York City Inc. Pension Fund, the Pavers and Road Builders District Council Pension Fund, and the City of Kissimmee General Employees' Retirement Plan are represented by Christopher A. Seeger and Christopher L. Ayers of Seeger Weiss LLP; Danielle S. Myers, Michael Albert and Kenneth P. Dolitsky of Robbins Geller Rudman & Dowd LLP; Robert D. Klausner and Sean Sendra of Klausner Kaufman Jensen & Levinson PPA; and Vincent F. Pitta of Pitta LLP.

Novo Nordisk and its executives are represented by Samuel Isaac Portnoy of Gibbons PC.

The case is Changyeon Moon v. Novo Nordisk A/S et al., case number 3:25-cv-00713, in the U.S. District Court for the District of New Jersey.

--Additional reporting by Dorothy Atkins and Lauren Berg. Editing by Emily Kokoll.

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Del. Justices Back Axing Suit Over $3B AstraZeneca Viela Sale

By **Lauren Berg**

Law360 (March 26, 2025, 5:54 PM EDT) -- The Delaware Supreme Court on Wednesday upheld without elaboration the dismissal of a Court of Chancery lawsuit accusing AstraZeneca PLC of lining up a conflicted, underpriced $3 billion sale of clinical stage biopharmaceutical venture Viela Bio Inc.

In a brief **order** that follows a hearing earlier this month, the state's high court affirmed Vice Chancellor Paul A. Fioravanti's **decision to dismiss** the proposed stockholder class challenge to the sale, but did not elaborate its reasoning beyond the lower court's opinion.

"After careful consideration of the parties' briefs and the record below, and following oral argument, we find it evident that the judgment of the Court of Chancery should be affirmed on the basis of and for the reasons stated in the memorandum opinion dated July 8, 2024," the five-member court said.

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

In his lengthy July opinion, Vice Chancellor Fioravanti determined that AstraZeneca's actions were entitled to business judgment protection because, as a 26.7% owner of Viela Bio's stock, it did not control Viela Bio at the time of the sale in 2021, scuttling breach of fiduciary duty claims.

He also rejected allegations in the complaint, filed in February 2023, that AstraZeneca issued materially misleading or incomplete facts about the deal, as well as four counts alleging breaches of the duty of loyalty against eight Viela Bio directors, including two current or former AstraZeneca directors and an AstraZeneca executive.

The vice chancellor found that despite a Viela Bio supermajority voting requirement that gave AstraZeneca and its 26.72% share voting block veto power over limited Viela Bio corporate actions, the percentage "did not give AstraZeneca power to wield control" over Viela's board or to "operate the decision-making machinery" of Viela Bio.

AstraZeneca CEO Pascal Soirot, who was also a director of Viela, likewise never exercised the blocking rights AstraZeneca had, the vice chancellor observed.

According to the complaint, Viela was created as a spinoff AstraZeneca subsidiary in 2018 but remained heavily dependent on its parent for manufacturing resources, intellectual property and finances. Nevertheless, it developed a promising and potentially lucrative drug, Uplizna, which is used to treat autoimmune diseases.

Viela Bio's future prospects, however, allegedly collided with AstraZeneca's interest in acquiring a far larger biomedical company, Alexion Pharmaceuticals, that had market and business overlaps with Viela's business sufficient to trigger antitrust hurdles and potential divestiture demands on the buyer.

Ultimately clearing the way for the Alexion deal was a Viela Bio agreement to sell itself to Horizon Therapeutics PLC for $53 per share in 2021, after start-and-stop talks. Although the stockholder suit alleged that Viela Bio cut its financial projections to justify the merger price, the vice chancellor found that the suit failed to support allegations that the sale to Horizon failed to reflect Viela's "best estimates of future cash flows."

At **oral argument** before the state supreme court on March 12, the stockholders argued that Vice

Chancellor Fioravanti never addressed the allegations of undisclosed conflicts.

They also told the justices that the Chancery decision failed to analyze allegations that AstraZeneca exercised controlling stockholder influence and whether the decision was approved by a fully informed, disinterested and uncoerced stockholder vote under the Chancery's 2015 decision in Corwin v. KKR Financial Holdings LLC.

But mostly, they said, the analysis failed to assess whether an executive director on AstraZeneca's corporate development group faced a conflict when serving on Viela's board.

During the arguments, Chief Justice Collins J. Seitz said, "Assuming the potential to control based on all these things, we said recently in 'Oracle' the potential control is not enough, unless you have hard control." He referred to a decision in January affirming the Chancery Court's toss last year of a challenge to Oracle Corp.'s $9.3 billion acquisition of NetSuite Corp. in 2016.

At the time, the justices found that the Chancery did not err in finding that the transaction was untainted from influence by Oracle's management or its founder and top shareholder.

AstraZeneca told the court that the company owed no fiduciary duties and was not a controlling shareholder. It added that the lower court did not make any findings of disputed facts.

The stockholders are represented by Kimberly A. Evans, Lindsay K. Faccenda and Robert Erikson of Block & Leviton LLP, Randall J. Baron, David A. Knotts, Christopher H. Lyons and Tayler D. Bolton of Robbins Geller Rudman & Dowd LLP and Brett M. Middleton of Johnson Fistel LLP.

The AstraZeneca parties are represented by Daniel M. Silver, Benjamin A. Smyth and Sarah E. Delia of McCarter & English LLP and Meredith Kotler, Mary Eaton and Nicholas Caselli of Freshfields LLP.

The Viela directors are represented by Kevin M. Gallagher and Nicole M. Henry of Richards Layton & Finger PA and John F. Sylvia, Kerime S. Akoglu and Caroline Enright of Mintz Levin Cohn Ferris Glovsky and Popeo PC.

The case is Stephen M. Sciannella v. AstraZeneca UK Ltd. et al., case number 303,2024, in the Supreme Court of the State of Delaware.

--Additional reporting by Jeff Montgomery. Editing by Vaqas Asghar.

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Del. Justices Seek Reasons To Revive Raytheon Incentive Suit

By **Jeff Montgomery**

Law360 (March 26, 2025, 4:53 PM EDT) -- Delaware's chief justice pressed a stockholder attorney Wednesday to provide more justification for resurrecting a Chancery Court suit claiming the company didn't seek stockholder approval for allegedly unfair changes to a multimillion-dollar RTX Corp. incentive plan.

Benjamin I. Sachs-Michaels of Glancy Prongay & Murray LLP, counsel to RTX stockholder Vladimir Gusinsky Revocable Trust, argued that the company's board wrongly delegated authority to a special committee to amend two long-term incentive plans without seeking a stockholder vote.

The equity awards at issue were issued by United Technologies Corp. before it merged with Raytheon Technologies Corp., under plans covering thousands of employees in 2014 and 2018. Those changes in turn produced a contested post-merger windfall for Raytheon executives, attorneys for the trust alleged.

Vice Chancellor Morgan T. Zurn rejected claims that the company's board failed to justify delegating its incentives decisions to an independent special committee. Sachs-Michaels argued that "the allegation is that the board granted more power than it had" to approve the incentives, "and the special committee went ahead and executed that power" without a stockholder vote.

"You've got to climb over the hill of intentional conduct. Maybe you ought to restate your best case for pleading an inference that there was intentional wrongdoing," Chief Justice Collins J. Seitz Jr. said Wednesday.

Justice Karen L. Valihura told Sachs-Michaels later that "you still have to show a clear and unambiguous violation of the plan" on appeal.

"There is ample motive to do this in the way they did it. It would have been very difficult to convince the committee and proxy advisers why they should grant these already highly paid executives at a company that's firing employees" in huge numbers early in the COVID pandemic, Sachs-Michaels said.

The plans, which included stock options and stock appreciation rights, were administered by the UTC board and could only be modified with approval from UTC stockholders, except in the case of a spinoff, the opinion said.

The awards were amended in April 2020 during a company restructuring, when UTC spun off two of its business units into what are now known as Carrier Global Corp. and Otis Worldwide Corp. As part of the spinoff, UTC also merged its remaining aerospace business with Raytheon Co., forming what is now Raytheon Technologies.

The trust's suit, filed in December 2022, challenged amendments made by a special committee of three independent directors in May 2020, shortly after the spinoffs and merger closed.

William Savitt of Wachtell Lipton Rosen & Katz, counsel to RTX and its directors and officers, told the justices that the appeal failed to apply the most recent precedential test for shareholder derivative suits asserting it would be futile to seek board member intervention: the 2020 Chancery Court case of United Food and Commercial Workers Union v. Zuckerberg .

That case obliges stockholder attorneys to show specific claims that directors face a substantial likelihood of an inexcusable liability, including acting in bad faith.

"They don't even cite the Zuckerberg case, let alone how it's been satisfied," Savitt said, noting that the appeal did not focus on the three members of the board special committee.

"Plaintiff instead funneled their case down to the seven independent directors on the board, who were not on the special committee," he said, adding that they made up the majority of the board to which a litigation demand had been made.

"Nor is it alleged anywhere that any of these seven directors that are impugned in this case benefited from any of the challenge transactions," Savitt said. "What we have here is an objection to a delegation, not an objection to the taking of action."

Vice Chancellor Zurn found nothing to indicate that the directors engaged in intentional wrongdoing, Savitt said, or that the seven independent directors knowingly committed bad faith breach of fiduciary duty by empaneling the independent committee.

"Do we even have to agree that the phrase 'providing final approval' means procuring a stockholder vote? Is that something we have to resolve, or can we look at the alternative basis for a ruling?" Justice Valihura asked.

Sachs-Michaels said the claim is that the board granted more power than it had to the special committee, "not that the board coerced the special committee."

Vladimir Gusinsky Revocable Trust is represented by Benjamin I. Sachs-Michaels, Pavithra Rajesh and Robert V. Prongay of Glancy Prongay & Murray LLP, Richard Maniskas of RM Law PC and Blake A. Bennett of Cooch & Taylor PA.

Raytheon and the director defendants are represented by William Savitt, Graham W. Meli and Sunny S. Jeon of Wachtell Lipton Rosen & Katz and John L. Reed, Ronald N. Brown III and Peter H. Kyle of DLA Piper.

The case is Vladimir Gusinsky Revocable Trust v. Hayes et al., case number 347,2024, in the Supreme Court of the State of Delaware.

--Editing by Adam LoBelia.

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Drugmaker Execs Hid Approval Process Roadblocks, Suit Says

By **Gina Kim**

Law360 (March 26, 2025, 7:25 PM EDT) -- A Sage Therapeutics Inc. investor sued the company's executives in New York federal court Wednesday alleging they hid significant setbacks affecting the regulatory approval for its drug candidates intended to treat mood disorders and other conditions including Parkinson's and Alzheimer's diseases.

Investor Qingping Zhu filed a **shareholder derivative complaint** alleging current and former executives and directors of Sage Therapeutics breached their fiduciary duties when they issued misleading statements from April 2021 to July 2024 regarding the safety, durability, efficacy and clinical results related to three of the company's drugs.

Massachusetts-based Sage Therapeutics is named as a nominal defendant.

According to the suit, Sage Therapeutics' flagship drug Zuranolone was designed to treat major depressive disorder and postpartum depression, and Sage-718 was meant to treat various cognitive disorders including Parkinson's disease, Huntington's disease and Alzheimer's disease. Sage-324 was meant to treat essential tremors, according to the suit.

During the relevant time period, Sage Therapeutics' top brass overhyped the commercial prospects, durability, efficacy and safety of three drug candidates, Zhu alleged. The individual defendants are also accused of omitting problems with the methodology used in the company's clinical trials and overstating the probability of securing U.S. Food and Drug Administration approval for the drug candidates, the investor said.

"At the end of the relevant period, the public would learn that the FDA had denied approval for zuranolone for use in the treatment of [major depressive disorder] because it lacked long-term efficacy and had significant safety concerns," Zhu said. "While the FDA did approve zuranolone for use in the treatment of [postpartum depression], the company had consistently represented throughout the relevant period that [major depressive disorder] constituted the largest market and the most lucrative opportunity for zuranolone. Accordingly, the market reacted negatively to the FDA denial."

Zhu further accused the defendants of concealing that another company, Axsome Therapeutics, developed Auvelity, a drug to compete with Sage Therapeutics' zuranolone. Auvelity received FDA approval in August 2022 to treat major depressive disorder. Sage Therapeutics directors had to have been aware the FDA wouldn't likely approve any other drug for the same treatment unless that drug demonstrated a higher or at least comparable durability and safety to Auvelity, Zhu alleged.

"Specifically, the individual defendants failed to disclose that Auvelity's proven durability and safety would significantly impact both zuranolone's commercial prospects and its likelihood of securing FDA approval," the complaint says.

According to the suit, Sage Therapeutics partnered with Biogen Inc. to develop zuranolone in 2020. The parties also agreed to develop Sage-324, which was for essential tremor treatment.

Maintaining a stronghold on Sage Therapeutics' stock prices was crucial for the company's business, the complaint says, which provided a motive for the pharmaceutical's leadership to allegedly issue misleading statements to keep the stock prices artificially inflated.

Throughout the relevant three-year time period, Zhu alleged, the defendants made false or misleading statements in press releases, proxy statements or in analyst calls regarding its three drugs.

"Director defendants either knew or should have known of the false and misleading statements that were issued on the company's behalf and took no steps in a good faith effort to prevent or remedy that situation," Zhu said.

For example, the defendants overstated the safety of zuranolone by reporting only the minor side effects, like dizziness, tremors and sedation, when the use of the drug — like other antidepressant medications — was linked to some degree of suicidal ideation and self-harming behavior, the investor alleged.

Pharmaceutical companies were aware — and the FDA told Sage Therapeutics — that short-term major depressive disorder treatment drugs wouldn't get approval and would have to show long-running durability and efficacy, according to the suit.

"In approving zuranolone for the treatment of [postpartum depression], the FDA further revealed a correlation between zuranolone and an increased incidence of suicidal ideation in [major depressive disorder] patients during clinical trials, a correlation which was not present in [postpartum depression] patients," the investor said.

In 2023, Sage Therapeutics announced the FDA had declined to approve zuranolone to treat major depressive disorder, questioning the drug's safety and efficacy, but the agency approved the drug to only treat PPD, Zhu alleged.

"On this news, the price of Sage stock declined precipitously," Zhu said. "Further, in connection with the news, Sage announced that it would be forced to undergo a 'strategic reorganization,' which included a 40% reduction in the company's workforce. Over the course of the next year, the company would reveal that its other two drugs in development were also suffering significant setbacks."

In the spring of 2024, Sage Therapeutics revealed the study results for Sage-718 were showing the drug wasn't any more effective than a placebo, and the company said it planned to stop the drug's development to use for treating Parkinson's disease, Zhu said.

Sage Therapeutics also revealed that its Sage-324 drug for treating essential tremor similarly wasn't more effective than a placebo.

The pharmaceutical company subsequently revealed last summer it wouldn't be conducting any further clinical development of Sage-324, according to the complaint. At the news, Sage Therapeutics stock prices fell more than 20% from a close of $13.08 per share on July 23, 2024, to close at $10.38 per share the following day, Zhu alleged.

By September 2024, the company announced it was ending its partnership with Biogen for Sage-324's development. The following month, it announced another strategic reorganization plan to cut a third of its total workforce, including more than half of its research and development personnel, the suit says.

Zhu has asserted several causes of action against the defendants including violations of Section 14(a) of the Exchange Act, breaches of fiduciary duties, aiding and abetting fiduciary duty breaches, unjust enrichment, and waste of corporate assets.

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

Zhu is represented by Gina M. Serra, Timothy J. MacFall and Samir Aougab of Rigrodsky Law PA, and Joshua H. Grabar of Grabar Law Office.

Counsel information for the defendants was not available Wednesday.

The case is Qingping Zhu v. Barry E. Greene et al., case number 1:25-cv-02498, in the U.S. District

Court for the Southern District of New York.

--Editing by Lakshna Mehta.

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Standard General's $4.6B Bally's Buy Draws Del. Court Suit

By **Bonnie Eslinger**

Law360 (March 26, 2025, 9:15 PM EDT) -- Hedge fund Standard General LP and its founder Soohyung Kim pulled the strings on Bally's Corp.'s $4.6 billion sale, grabbed control of the post-transaction entity and ultimately hurt stockholders, investors claim in a proposed class action filed Monday in Delaware Chancery Court.

Filed by a pension fund and an individual investor, the derivative action names Standard General and Kim — who has served as the chairperson of Bally's Board since December 2019 and a director since 2016 — as defendants, along with five other Bally's board directors, three of whom were on a special committee that oversaw the deal. The lawsuit lodges claims for breach of fiduciary duty and seeks damages, attorney fees and the appointment of new board directors, among other relief.

The sale was the result of an "unfair process led by a conflicted special committee and resulted in an unfair price for Bally's and its minority stockholders," according to the complaint.

Under the deal, Bally's Corp merged with Standard General-owned The Queen Casino & Entertainment Inc. When the transaction was completed, Kim and Standard General's ownership interest in Bally's "soared from 26.1% to an astounding 73.8%," the investors say.

But even before the sale, Standard General had significant influence over Bally's, the investors say.

Kim and Standard General put in place a deal that "massively underpaid Bally's and its minority stockholders," according to the complaint. As part of the scheme, Kim and Standard General secured voting and rollover commitments from two major stockholders: entrepreneur Noel Hayden, the company's second-largest stockholder and Sinclair Broadcast Group, Inc. through its affiliate SBG Gaming, LCC.

Kim and Standard General beneficially owned 26.1% of the pre-transaction outstanding shares, according to the complaint. With SBG and Hayden, the group controlled over 53% of Bally's shares, according to the complaint. That allowed them to exercise control over Bally's and the transaction, the minority investors contend.

Under the terms of the agreement, company stockholders could rollover their shares and Standard General bought up the remaining for $18.25 apiece.

"Following the transaction, Standard General and its affiliates gained clear control, owning 73.8% of the outstanding Bally's common stock," the complaint states, adding, "The consideration paid by Kim and Standard General through the multistep deal structure was fundamentally unfair."

Pre-transaction, Bally's common stock was worth far more than the $18.25 per share that Standard General paid, the investors say.

"The $18.25 transaction cash out price substantially undervalued Bally's and was unfair," the complaint states.

In addition, the common stock given to the rollover stockholders was worth far less than what they exchanged, according to the complaint, because "post-transaction Bally's had a completely different asset mix, was highly leveraged, and had a clear numerical controller."

Kim and the Board sought to create the impression that the deal was crafted under the oversight of an independent special committee and approved by an informed stockholder vote — but that was not true, according to the investors who sued.

"In reality, Bally's empaneled a three-member, conflicted special committee with strong ties to Kim, including lucrative job offers and special directorship payments, in addition to personal interests in the rolled over stock," the complaint states.

The special committee also delayed and discouraged efforts to bring other potential buyers into the mix, according to the complaint.

As a result, the special committee "tilted the process" toward Kim and Standard General.

Notably, two years before the transaction, Standard General in January 2022 made a public proposal to purchase all outstanding shares of Bally's common stock at $38.00 per share. A Bally's board committee determined the offer was too low, the complaint underscores.

In addition to Kim, the individual defendants are Terrence Downey, Tracy S. Harris, Jaymin Patel, Jeffrey Rollins and Wanda Young Wilson. Patel, Rollins, and Wilson served on the special committee, according to the complaint and received hundreds of thousands of dollars in compensation for their work, along with special grants and other assignments that came with additional pay.

Plaintiff Miami Police Relief and Pension Fund took the cash offered as part of the deal for its shares of Bally's common stock. The second plaintiff, John Samuel Di Dio, elected to roll over his shares into the new company.

Some Bally's investors also came out last April **in opposition** to Standard General's initial offer, saying it "woefully" undervalued the company.

Representatives for the parties did not immediately respond to requests for comment on Wednesday.

The plaintiffs are represented by Christopher J. Orrico, Daniel E. Meyer and Lauren M. Cruz of Bernstein Litowitz Berger & Grossmann LLP, Jeremy S. Friedman, David F.E. Tejtel and Alexander M. Krischik of Friedman Oster & Tejtel PLLC, Ned Weinberger, Brendan W. Sullivan and John Vielandi of Labaton Keller Sucharow LLP, and D. Seamus Kaskela and Adrienne Bell of Kaskela Law LLC.

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

The case is Miami Police Relief & Pension Fund et al. v. Soohyung Kim et al., case number 2025-0306-NAC, in the Court of Chancery of the State of Delaware.

--Additional reporting by Jade Martinez-Pogue and Elaine Briseño. Editing by Vaqas Asghar.

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Crypto Firm Dfinity Gets Investor Suit Tossed Over Timeliness

By **Katryna Perera**

Law360 (March 26, 2025, 8:25 PM EDT) -- A California federal judge has tossed a shareholder suit against cryptocurrency firm Dfinity, siding with the firm's argument that claims it sold unregistered securities were too dated to proceed.

U.S. District Judge James Donato issued an **order** Tuesday saying lead plaintiff Henry Rodriguez's claims are time-barred under the Securities Exchange Act of 1934's three-year statute of repose.

Dfinity argued that the three-year period begins when the challenged asset is first "bona fide offered" and pointed to the fact that it first offered its ICP tokens to the public in early 2017, outside the three-year period since the plaintiffs didn't file suit until August 2021.

According to the order, the plaintiffs argued that no ICP tokens were issued or made available for trading more than three years before they filed the action.

"That may be, but [plaintiffs] offer no response to defendants' argument that even under plaintiffs' own allegations in the [second amended complaint], ICP was genuinely offered to the public in February 2017," the judge said. "On the current state of the pleadings and motion to dismiss briefing, dismissal of plaintiffs' … claims as time-barred is consequently warranted."

The judge also found that the operative complaint fails to plead falsity and scienter, or knowledge of wrongdoing, saying that, among other things, the suit's scienter claims are "impermissibly conclusory."

"[Plaintiffs' scienter pleadings] lead with the assertion that '[a]s the founder and chief scientist of the foundation and CEO of Dfinity USA, [Dominic Williams] necessarily had knowledge of Dfinity's decisions regarding the issuance and sale of billions of dollars in ICP, as well as any lock-up or vesting restrictions applicable to ICP tokens,'" the order said. "Plaintiffs' conclusory, 'he must have known' allegations are insufficient to meet their burden under the PSLRA to 'state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind.'"

Judge Donato's Tuesday order ends a case that experienced months of issues with plaintiffs' counsel after a partner with a law firm that represented the plaintiffs at the time **was allegedly recorded boasting** of using litigation to get confidential information on another cryptocurrency company's rivals.

Eventually, a different firm, Selendy Gay PLLC, was hired by the lead plaintiff and approved by the court to lead the class action.

Representatives for the parties did not immediately respond to requests for comment on Wednesday.

The investors are represented by Jordan A. Goldstein and Oscar Shine of Selendy Gay PLLC and Elizabeth A. Kramer and Kevin M. Osborne of Erickson Kramer Osborne LLP.

Dfinity is represented by Michael E. Liftik, Sarah Heaton Concannon, Emily C. Kapur and Brenna D. Nelinson of Quinn Emanuel Urquhart & Sullivan LLP and Antony L. Ryan, Kevin J. Orsini and Lauren M. Rosenberg of Cravath Swaine & Moore LLP.

The case is Valenti v. Dfinity USA Research LLC et al., case number 3:21-cv-06118, in the U.S. District Court for the Northern District of California.

--Additional reporting by Gina Kim and Bonnie Eslinger. Editing by Rich Mills.

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BCBS Settlement Opt-Outs Ordered To Disclose Funding Deals

By **Ryan Boysen**

Law360 (March 26, 2025, 4:43 PM EDT) -- Four law firms representing hospitals that opted out of the landmark $2.8 billion Blue Cross Blue Shield antitrust settlement must disclose whether their clients were motivated by a "quick payment" from litigation funders, an Alabama federal judge ordered Tuesday.

U.S. District Judge R. David Proctor's ruling said that in order to gauge the settlement's fairness, adequacy and reasonableness, he needs to know whether litigation funders are financing the opt-out lawsuits being handled by Paul Hastings LLP, K&L Gates LLP, McKool Smith PC and Bartko Pavia LLP.

"This information may enable the court to better evaluate the effect of class members opting out of the settlement and whether a class member opting out was motivated by something other than the actual fairness of the settlement," Judge Proctor said.

"Given the court's current understanding that certain opt outs may have been offered money up front to opt out and file separate lawsuits with third-party help, this appears all the more to be a common sense, reasonable inquiry," he added in a footnote.

Tuesday's ruling told the four firms to provide the information by April 9 and be ready to discuss it at an April 16 hearing.

The BCBS deal has drawn **intense interest** from litigation funders because of the potential for multibillion-dollar payouts for hospitals that opt out of the settlement and sue BCBS on their own.

Whatley Kallas, class counsel in the MDL, previously sparred with several other law firms it accused of soliciting clients to opt out of the settlement.

Judge Proctor's own rulings in the MDL that led to the settlement have greased the wheels for that outcome, though it is by no means a foregone conclusion. BCBS has vowed to fight any opt-out litigation with everything it's got, just as it's litigated for the past 12 years in the MDL with Cravath Swaine & Moore LLP, its primary defense counsel.

If too many hospitals opt out, it could cause the settlement to fall apart or at least be renegotiated. It's still unclear if that's in any danger of happening.

The opt-out deadline was March 4, and about 15,450 healthcare providers opted out of the settlement, Tuesday's ruling said.

About 70% of those hospitals are represented by the four firms mentioned in the ruling. They have filed eight lawsuits in state and federal courts across the country.

Most of the remaining 30% are not expected to file their own opt-out suits, Judge Proctor said.

"Whether class members who have opted out of the settlement were motivated by something other than the fairness of the settlement, such as having exchanged a financial interest in their claims in this litigation to another party in return for a non-recourse quick payment, is directly relevant to the court's evaluation of the 'substance and amount of opposition to the settlement,'" Judge Proctor said.

The antitrust litigation was filed in 2012 and accuses the Blue Cross Blue Shield Association and its 33 independent member insurers of illegally carving up the country into exclusive geographical blocks to stifle competition and drive up profits. That arrangement came at the expense of both subscribers to those health insurance plans and the healthcare providers paid by them, the class says.

Commercial and individual subscribers struck a $2.7 billion deal with Blue Cross in 2020, which was held up on appeal until last year, when the U.S. Supreme Court **declined to take up** a challenge by Home Depot.

Providers, meanwhile, continued to litigate until a separate $2.8 billion settlement was reached last October. That deal received **preliminary approval** from Judge Proctor in December.

Taken together, the two deals make up one of the largest-ever settlements in an antitrust case, according to Kallas.

None of the firms involved responded Wednesday to a request for comment.

The providers are represented by Whatley Kallas LLP, Dominick Feld Hyde PC, Hayes Hunter PC, Wood Law Firm LLC, Wiggins Childs Pantazis Fisher Goldfarb, Podhurst Orseck PA, Reich & Binstock LLP, U.W. Clemon LLC, Eyster Key Tubb Roth Middleton & Adams LLP, White Arnold & Dowd PC, the Law Offices of David A. Balto, Bonnett Fairbourn Friedman & Balint PC, Bunch & James, Axelrod LLP, the Frankowski Firm LLC, Beasley Allen Crow Methvin Portis & Miles PC, the Law Office of John C. Davis, Glast Phillips & Murray PC, Gray & White, Michael E. Gurley Jr., the Law Office of Stephen M. Hansen, Jinks Crow PC, Kozyak Tropin & Throckmorton PA, Penn & Seaborn LLC, the Pittman Firm PA, Strom Law Firm LLC, Shelby Roden LLC, Horn Aylward & Bandy LLC, Whitfield Bryson & Mason LLP, Cusimano Roberts & Mills LLC, Bailey Glasser LLP, Wojtalewicz Law Firm Ltd., Sears & Swanson PC, Archie Lamb & Associates LLC, Dillon & Findley PC, Lundberg Law PLC, Heidman Law Firm PLLC and Simons & Associates Law PA.

The defendants are represented by Hogan Lovells, Kirkland & Ellis LLP, White & Case LLP, Wallace Jordan Ratliff & Brandt LLC, Balch & Bingham LLP, Maynard Nexsen PC, Hill Hill Carter Franco Cole & Black PC, Nelson Mullins Riley & Scarborough LLP, Kilpatrick Townsend & Stockton LLP, Wallace Ellis Fowler Head & Justice, Shearman & Sterling LLP, Armbrecht Jackson LLP, Redgrave LLP, Allen Overy Shearman Sterling LLP, Bodman PLC, Shamoun & Norman LLP, Campbell Partners LLC, Axinn Veltrop & Harkrider LLP, Reichard & Escalera LLC, Richardson Clement PC, Adams and Reese LLP, Brunini Grantham Grower & Hewes PLLC, Phillips Lytle LLP, Baker Donelson Bearman Caldwell & Berkowitz PC, Lightfoot Franklin & White LLC, Foley & Lardner LLP, Spotswood Sansom & Sansbury LLC, Cravath Swaine & Moore LLP, Riley & Jackson PC and Crowell & Moring LLP.

The case is In re: Blue Cross Blue Shield Antitrust Litigation, case number 2:13-cv-20000, in the U.S. District Court for the Northern District of Alabama.

--Editing by Brian Baresch.