

Novo Nordisk investors spar over lead plaintiff role in obesity drug suit | Secondary Sources | National

(March 27, 2025) - Novo Nordisk A/S investors are vying for lead plaintiff status in a proposed class-action lawsuit alleging the pharmaceutical company misled investors about the expected outcomes of a trial for a new weight-loss drug.

Moon v. Novo Nordisk A/S et al., No. 25-cv-713, *motions filed* (D.N.J. Mar. 25, 2025).

In a March 25 brief, three pension funds assert that they have a "substantial financial interest" in the litigation, having suffered \$832,000 in combined losses because of the defendants' alleged misconduct.

The funds are New York Hotel Trades Council & Hotel Association of New York City Inc. Pension Fund, Pavers & Road Builders District Council Pension Fund and City of Kissimmee General Employees' Retirement Plan.

Represented on the motion by Christopher A. Seeger of Seeger Weiss LLP, the funds seek to appoint law firm Robbins Geller Rudman & Dowd LLP as their lead counsel.

However, City of Pinellas Park Police Officers' Pension Fund and City of Pinellas Park Firefighters Pension Fund also assert that they have the largest financial interest in the relief sought by the class with approximately \$237,000 in losses, according to their March 25 motion seeking lead plaintiff status.

The Pinellas Park funds, represented on the motion by James E. Cecchi of Carella, Byrne, Cecchi, Brody & Agnello PC, seek to appoint Bernstein Litowitz Berger & Grossman LLP as lead counsel.

The case, filed by Novo Nordisk shareholder Changyeon Moon on Jan. 24, is pending before U.S. District Judge Robert Kirsch of the District of New Jersey.

Securities suit

According to Moon's complaint, Novo Nordisk and two of its top executives made misleading statements that led to financial losses for investors when the actual trial results for its drug CagriSema were disclosed, showing lower-than-expected weight-loss outcomes.

The complaint names as defendants CEO Lars Fruergaard Jorgensen and Executive Vice President of Development Martin Holst Lange.

Novo Nordisk's stock dropped 17.83% from \$103.44 to \$85 on Dec. 20 after the company disclosed the trial results, the suit says.

The defendants violated Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C.A. § 78j(b), and SEC Rule 10b-5, 17 C.F.R. § 240.10b-5, by hiding important details about the flexible dosing protocol that affected the trial's results, according to the complaint.

Lead plaintiff candidates

Four other plaintiffs filed motions March 25 for lead plaintiff appointment, including two individual shareholders: Philip Topinko, who is seeking to appoint as class counsel Scott+Scott Attorneys at Law LLP and the Schall Law Firm, and Brian Jackson, who is requesting that the Rosen Law Firm PA represent the class.

In separate memos, all seven candidates have argued that they are the "most adequate plaintiff" under the Private Securities Litigation Reform Act of 1995, 15 U.S.C.A. § 78u-4, claiming to have the largest financial losses and meeting the "typicality" and "adequacy" requirements of Federal Rule of Civil Procedure 23(a).

Topinko contends that he suffered losses of \$196,000, and Jackson claims about \$25,500 in losses due to the defendants' misconduct.

'Sophisticated institutional investors'

New York Hotel & Trades and its proposed co-lead plaintiffs argue that their significant financial interest in the case "ensures that they will vigorously represent the class."

Further, they assert that they are "precisely the type of movant" whose participation in securities class actions Congress sought to encourage through enactment of the PSLRA.

The Pinellas funds counter that they are the "paradigmatic lead plaintiff envisioned by Congress" under the PSLRA as "sophisticated institutional investors with a substantial financial interest in the litigation."

By Douglas Mentis

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Article: Novo Nordisk harmed investors with overpromises of weight loss drug's efficacy, suit says 2025 CORPGDBRF 0337

Date: January 28, 2025

Novo Nordisk A/S misled investors about the expected outcomes of a trial for the company's new obesity drug, a shareholder says in a New Jersey federal court complaint.

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Litigation

March 28, 2025, 5:46 AM PDT; Updated: March 28, 2025, 6:59 AM PDT

Adobe Beats Investor Suit Over Proposed Figma Deal for Now (1)

- Judge says competitive aspirations mere corporate optimism
- Lets investors ask to replead claims over Figma merger

Adobe Inc. won't face allegations that the creative-cloud company misled investors about its competitiveness ahead of a now-abandoned acquisition before the stock's biggest selloff in more than a decade, a federal judge ruled.

Projections about Adobe and its design tool's prowess compared to Figma Inc. and other competitors amounted to corporate puffery, not actionable misstatements, Judge John G. Koeltl said for the US District Court for the Southern District of New York Thursday while dismissing the investors' complaint.

The lead plaintiffs didn't allege any misrepresentations downplaying Figma Design's direct competition with Adobe XD, its web design tool—in fact, Adobe acknowledged the competitor in a 2021 third-quarter federal filing, Koeltl said.

Nor did shareholders identify any tangible harm to Adobe from increased competition to its product suite, Koeltl said, so "it was not misleading or false for the defendants to characterize Adobe as a 'market leader' or to contend that any increased competition in the market 'validate[s] the explosiveness of the markets' in which Adobe competes."

And while Adobe "endorsed organic growth, they declined to rule out M&A activity," Koeltl said, dismissing investors' claim that the software company misled them about their merger plans.

The lead plaintiffs said that Adobe's proposal to buy Figma for \$20 billion in 2022 demonstrated that the software company considered the competitor a threat. Before this, Adobe downplayed competition concerns, deprioritized Adobe XD in light of Figma's tool, and misrepresented merger plans, misleading investors, they alleged.

Koeltl disagreed, adding that stock sales and one executive's purported career aspirations weren't sufficient allegations to infer the level of intent or recklessness to plead securities fraud claims. But he said the lead plaintiffs—Menora Mivtachim Insurance Ltd., Menora Mivtachim Pensions & Gemel Ltd., and Stichting Philips Pensioenfondsen—can ask to file a second amended complaint.

Adobe's share prices fell nearly 17% after it announced the proposed merger in September 2022—its biggest drop at that point since 2010, according to data compiled by Bloomberg. Investors' most recent complaint described the proposed deal as "the highest price ever paid in a deal of its kind."

Adobe abandoned the deal to acquire Figma in 2023 under regulators' scrutiny. Investors originally sued in 2023, before the companies officially announced they'd abandoned the transaction.

Pomerantz LLP and Robbins Geller Rudman & Dowd LLP are co-lead counsel for the proposed class, which would cover those who got Adobe stock from July 23, 2021, through Sept. 22, 2022. Latham & Watkins LLP represents Adobe and certain current and former leaders. None of these firms immediately responded to emails seeking comment.

The case is *In re Adobe Inc. Sec. Litig.*, S.D.N.Y., No. 23-cv-9260, dismissed 3/27/25 .

(Updates with more case context throughout.)

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Shareholders claim Edison misled on wildfire risks

LA Fires,

Civil Litigation

Mar. 28, 2025

Edison shareholders sue, alleging neglected equipment and misleading claims led to the Eaton Fire, as the utility faces over 130 lawsuits for the deadly January blaze in Eaton Canyon.



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Investors in Southern California Edison's parent company allege that the utility failed to inspect and maintain its equipment in Eaton Canyon, and then issued materially false statements about what happened after the area went up in flames.

The case appears to be the first shareholder derivative action stemming from the deadly Eaton Fire to be filed in Los Angeles County Superior Court. A putative federal class action was filed in California's Central District in February.

The complaint in state court claims that Edison was aware that Southern California is prone to wildfires and has the history to prove it. But despite being implicated in other wildfires, the lawsuit says, the company failed to maintain its power lines and poles, and failed to mitigate risks when high winds blew through the area, which ignited on Jan. 7.

"While investigations continue, it has become increasingly apparent that Edison's and SCE's power lines were at least partially responsible for the fire," Brian J. Robbins of Robbins LLP wrote in the complaint.

"In addition to the dry brush that surrounded the power lines, the power lines were not de-energized during the high winds. Several reports, including surveillance video, photos, and witness accounts indicate that the Eaton Canyon Fire began near the company's power lines," Robbins continued.

His filing accused Edison CEO Pedro Pizarro and other officials of issuing a materially false and misleading press release the day after the fire began that stated the company's "distribution lines immediately to the west of Eaton Canyon were de-energized well before the reported start time of the fire, as part of SCE's Public Safety Power Shutoff program."

The company on Jan. 12 said there were "no interruptions or operational/electrical anomalies in the 12 hours prior to the fire's reported start time until more than one hour after the reported start time of the fire," and on Jan. 27 informed the California Public Utilities Commission that there was a fault in its transmission lines in Eaton Canyon around the time the fire began.

"The company has had an unfortunate long history of overloading poles and failing to properly inspect and maintain its poles and facilities, and previous SCE-related disasters should have caused the company to remediate its crumbling infrastructure and poor upkeep," Robbins wrote. *Clem Family Trust, Derivatively on Behalf of Edison International v. Pedro J. Pizarro, et al.*, 25NNCV01943 (L.A. Super. Ct., filed March 21, 2025).

Edison faces over 130 individual lawsuits and one lawsuit with more than 100 insurance companies over the Eaton Fire. Hueston Hennigan LLP represents the utility in those actions.

Edison's spokeswoman Diane L. Castro said, "We take all legal matters seriously. We will review this lawsuit and will respond through the appropriate legal channels."

The putative class of investors in the federal action claims the company artificially inflated its stock price and caused them significant losses by making misleading statements about its Los Angeles County wildfire mitigation processes. Laurence M. Rosen, founder of The Rosen Law Firm PA, represents the individual plaintiff and putative investors who claim they purchased

securities from Edison International - the parent company of Southern California Edison from Feb. 25, 2021, through Feb. 6, 2025. Rosen filed a notice of dismissal on Feb. 18 and filed a similar complaint on behalf of a different plaintiff on Feb. 19. *Douglas Elliott v. Edison International et al.*, 2:25-cv-01383-SB-DFM (C.D. Cal., filed Feb. 19, 2025). Munger Tolles and Olson LLP represents Edison in the federal action.

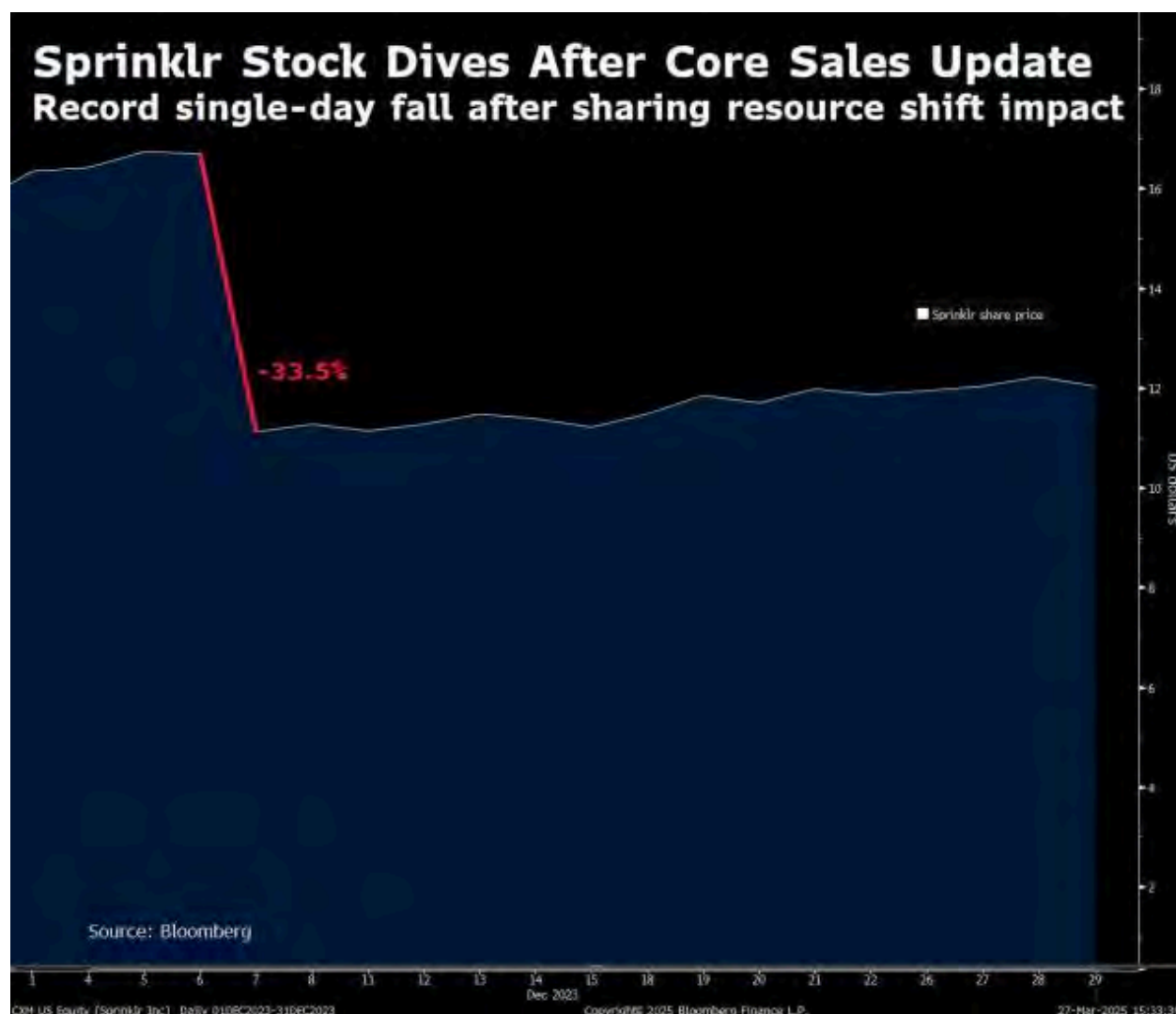
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Shareholder Sues Software Company Sprinklr Over Product Focus

- **COURT:** S.D.N.Y.
- **TRACK DOCKET:** [1:25-cv-02513](#) (Bloomberg Law subscription)

Sprinklr Inc. management concealed shifting resources away from its main line of business, exposing the customer communication software company to a record stock selloff and financial headwinds, a shareholder derivative action said.

Share prices plummeted more than 33% the day after executives revealed that moving resources and manpower to its cloud-based customer service offering hurt sales and renewals of its core set of products, Ray Figurella said in a complaint filed Wednesday in the US District Court for the Southern District of New York. The day after this disclosure, Dec. 7, 2023, was the stock's most significant single-day drop since Sprinklr's initial public offering, according to data compiled by Bloomberg.



Sprinklr also lowered its 2025 fiscal second quarter and full-year revenue guidance, with executives citing higher churn for its core products. Share prices fell around 15% on June 6, the day after the financial revision—a record tumble since the Dec. 7 selloff, per Bloomberg data.

Sprinklr has two main lines of business that Figurella described. The first is a core suite that lets companies analyze and manage social media content and create personalized customer interactions. The second is a cloud-based customer communications service offering.

Current and former board members harmed Sprinklr's reputation and finances by causing it to issue misleading statements about the success of both business lines, which exposed the company to potentially-costly litigation, Figurella said. The defendants also caused Sprinklr to spend over \$170,000 to buy back its own artificially inflated shares, he said.

"As this matter pertains to ongoing litigation, we are constrained in the specifics we can share," a Sprinklr spokesperson said in an email. "However, we remain confident in the integrity of our actions and stand firmly by every public filing and disclosure we have made. We are prepared to defend our position."

It's the second shareholder derivative filed against Sprinklr leaders this month. A proposed class action alleging similar issues against the company, its founder, and CFO is pending in the same court.

Figurella alleged wrongdoing from March 29, 2023, through June 5, 2024. Figurella seeks damages on behalf of Sprinklr against leaders for purported securities law violations, breach of fiduciary duty, unjust enrichment, and waste of corporate assets.

The Rosen Law Firm PA represents Figurella.

The case is Figurella v. Thomas , S.D.N.Y., No. 1:25-cv-02513, complaint filed 3/26/25 .

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Class Action

March 26, 2025, 8:10AM PDT; Updated: March 26, 2025, 12:09 PM PDT

Bally's \$4.6 Billion Standard General Sale Draws Challenge (1)

- **COURT:** Del. Ch.
- **TRACK DOCKET:** [No. 2025-0306](#) (Bloomberg Law subscription)

Standard General LP's \$4.6 billion acquisition of Bally's Corp. undervalued the casino conglomerate, shortchanged its public investors, and handed all of its upside to the hedge fund's affiliates, according to a lawsuit unsealed Wednesday.

A pension fund is suing Standard General and members of the Bally's board, including chairman Soohyung Kim, the New York investment firm's managing partner. Kim and Standard General teamed up with two other large stockholders, including Sinclair Broadcast Group Inc., to ram through a buyout that forced public shareholders to choose between an unfair cash price or stock in a business transformed by the debt it took on to fund the deal, the legal complaint says.

"Stockholders found themselves between Scylla and Charybdis—a dilemma with no good choice," according to the shareholder lawsuit filed in Delaware's Chancery Court.

The transaction closed Feb. 7. Bally's and Standard General didn't immediately respond to separate requests for comment Wednesday. Sinclair isn't named as a defendant.

According to the court filing, the \$18.25 price was less than half of what Standard General offered two years earlier, before Bally's poured cash into a strategic plan that included building a new casino in Chicago, buying the Tropicana in Las Vegas, reaching a deal with the Oakland Athletics to site their new stadium there, and acquiring one of President Donald Trump's golf courses.

Kim, his investment firm, Sinclair, and the second-largest Bally's stockholder allegedly wielded their combined 53% voting power and influence over the board in favor of a transaction that handed Standard General affiliates a 71% outright stake while leaving Bally's hugely overleveraged, with "a completely different asset mix" and a limited public float.

"That is not an attractive investment," the lawsuit says. The decision by some stockholders to roll over their shares instead of taking the cash reflects, "at best," their judgment that "rolling over was the lesser of two evils," according to the court complaint.

The suit, originally filed under seal March 20, includes separate class action claims on behalf of shareholders who accepted the buyout and those who didn't. It also involves shareholder derivative claims, which are technically filed on a corporation's behalf. Damages in derivative cases are typically paid into a company's coffers by its leaders, controlling stockholders, or insurers.

The lawsuit was filed by the Miami Police Relief and Pension Fund and an individual investor. They're represented by Bernstein Litowitz Berger & Grossmann LLP, Labaton Keller Sucharow LLP, Friedman Oster & Tejtcl PLLC, and Kaskela Law LLC. Standard General and the Bally's board members haven't yet made court appearances.

The case is Miami Police Relief & Pension Fund v. Kim , Del. Ch., No. 2025-0306, complaint unsealed 3/26/25 .

(Updates with additional reporting in sixth through eighth paragraphs.)

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Slot Machine Maker PlayAGS Beats Stock Offer Suit Appeal

PlayAGS Inc. put to rest an investor lawsuit alleging the electronic gambling company misrepresented its business prospects surrounding its initial and two secondary public offerings.

The US Court of Appeals for the Ninth Circuit, in an unpublished memorandum released Thursday, affirmed the dismissal of a proposed class action against AGS, its bank underwriters, and some interrelated investment companies that alleged a scheme to benefit from inflated share prices. The US District Court for the District of Nevada dumped the case last year after ruling the lead plaintiff—a pension and retirement fund—failed to plead AGS intentionally or knowingly made misleading statements.

- The lower court correctly tossed a bulk of investor claims, including finding that the fund lacked standing because it had not purchased shares in one of the secondary offerings, the appeals court panel said
- The Ninth Circuit held that statements “expressing confidence in PlayAGS’ potential growth” and anecdotal evidence didn’t “adequately allege intentional misrepresentations or omissions”
- Since the pension fund didn’t sufficiently plead that the defendants “employed any deceptive device” in offering a security, nor that they were injured from it, it wasn’t able to claim a fraudulent scheme
- Judges Mary H. Murguia, Gabriel P. Sanchez, and Holly A. Thomas sat on the panel

Labaton Keller Sucharow LLP was lead counsel for the Oklahoma Police Pension and Retirement System. Baker & Hostetler LLP represented AGS. Ropes & Gray LLP represented the underwriters. Paul, Weiss, Rifkind, Wharton & Garrison LLP represented the investment group. None of the firms immediately responded to emails seeking comment.

The case is Oklahoma Police Pension and Ret. Sys. v. PlayAGS, Inc. , 9th Cir., No. 24-1701, unpublished 3/27/25 .

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Sorrento Shareholders Lose Discovery Bid Over Judge Relationship

- Shareholders' appeal lacking for jurisdiction, judge rules
- Group sought probe related to bankruptcy judge romance

Sorrento Therapeutics Inc. shareholders lack grounds to appeal a bankruptcy court's decision blocking a broad probe into whether company attorneys sought to exploit a romantic relationship involving the judge who previously oversaw its bankruptcy case.

A Sorrento shareholder committee was properly denied an investigation into company advisers, and the bankruptcy court's ruling isn't a final order warranting appellate review, Judge Lee H. Rosenthal of the US District Court for the Southern District of Texas ruled Thursday.

The committee appealed to the district court following a December 2023 ruling in the US Bankruptcy Court for the Southern District of Texas. Houston bankruptcy Judge Christopher Lopez said at the time that the proposed investigation into Latham & Watkins LLP and other Sorrento advisers was unwarranted.

The bankruptcy court order, which dismissed the probe request without prejudice, wasn't properly teed up for review by a higher court, Rosenthal said Thursday. It also appears that the bankruptcy court didn't abuse its discretion in denying the request, Rosenthal added.

The shareholder committee filed its motion for discovery just weeks after former Houston bankruptcy judge David R. Jones admitted to being in a romantic relationship with bankruptcy attorney Elizabeth Freeman, who briefly advised Sorrento around the time of its bankruptcy filing in February 2023.

The shareholders sought to understand whether those leading Sorrento's Chapter 11 proceedings knew of, and potentially sought to take advantage of, the previously secret relationship.

Lopez, who took over the Sorrento proceedings following Jones' resignation in October 2023, said the committee failed to point to anything suspicious about the way Jones handled the case.

Freeman and her former law firm, Jackson Walker LLP, face several legal investigations related to cases heard by or mediated by Jones.

The company is represented by Latham & Watkins LLP. The committee is represented by Glenn Agre Bergman & Fuentes LLP.

The case is Off. Comm. of Equity Sec. Holders v. Sorrento Therapeutics Inc. , S.D. Tex., No. 24-00031, Opinion 3/27/25 .

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Umpqua Bank Settles Fraud-Assistance Suit Following Mistrial (1)

Umpqua Bank and victims of a \$300 million Ponzi-like real estate scheme have reached an agreement to settle claims that the bank aided the fraud after a trial resulted in a hung jury, they told a federal court Thursday.

The parties' notification to the US District Court for the Northern District of California didn't include the terms of the classwide settlement, which is still being finalized.

- Shela Camenisch and others who invested money with Novato, Calif.-based Professional Financial Investors Inc. and a related company brought the suit against PFI's bank, Umpqua, to recover funds they say they lost
- A San Jose federal court jury reached an impasse March 4 on whether Umpqua Bank should be liable to PFI's victims
- The class representatives will ask the court for preliminary approval of the settlement on or around May 1, they said

Gibbs Mura, Silver Law Group PC, and Geoffrey A. Munroe, who practices in San Luis Obispo, Calif., represented the investors. Reed Smith LLP and Stoll Berne represented Umpqua.

The case is Camenisch v. Umpqua Bank , N.D. Cal., No. 5:20-cv-05905, notice of settlement 3/27/25 .

(Updates story with additional information and context after second paragraph.)

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More Securities Suit Settlements in 2024, Settlement Amounts Decline

K [dandodiary.com/2025/03/articles/securities-litigation/more-securities-suit-settlements-in-2024-settlement-amounts-decline](https://www.dandodiary.com/2025/03/articles/securities-litigation/more-securities-suit-settlements-in-2024-settlement-amounts-decline)

Kevin LaCroix

March 28, 2025



The number of securities class action lawsuit settlements increased in 2024 compared to the year prior, but the median, total, and average settlement amounts decreased during the year, according to a new report from Cornerstone Research. Cornerstone Research's March 26, 2025 press release about the report can be found [here](#). The report itself, which is entitled "Securities Class Action Settlements — 2024 Review and Analysis," can be found [here](#).

According to the report, there were 88 securities class action lawsuit settlements in 2024, representing a 6% increase in the number of settlements compared to the 83 settlements in 2023.

The median settlement amount in 2024 was \$14 million, representing a 10% decline from the 13-year high median settlement amount of \$15.4 million in 2023. The 2004 median settlement amount remained 24% above median amount over the past decade – the median settlement amount for the period 2015-2023 was \$11.3 million.

The aggregate amount of 2024 securities class action lawsuit settlements was \$3.7 billion, representing a 8% decline from the \$4.0 billion of total settlements in 2023.

The average securities class action settlement amount in 2024 was \$42.4 million, representing a 13% decline from the \$48.7 million average settlement amount in 2023. The 2015-2023 average settlement amount was \$50.7 million.

Several factors contributed to the decrease in settlement amounts in 2024: a decline in plaintiff-style damages of the cases settled; an increase in the number of settlements involving SPACs (which tend to settle for lower amounts than cases generally); the number of settlements involving companies that had been delisted from a major exchange or had declared for bankruptcy; and the reduced involvement of institutional investor lead plaintiffs; and a reduction in the number of mega settlement (settlements of \$100 million or greater)

With respect to the size of plaintiff damages, the median plaintiff style damages amount in 2024 declined 20% to \$272 million from a record high in 2023. In addition, the issuer defendants involved in the 2024 settlements were 65% smaller than in 2023 as measured by total assets.

According to the report, 19% of 2024 securities class action lawsuit settlements involved special purpose acquisition companies (SPACs). The median settlement amount of cases involving SPACs was \$12 million compared to \$15.3 million for non-SPAC cases. The report notes that one potential factor contributed to the lower settlement amounts for the SPAC-related case was the limited availability of D&O insurance.

Institutional investors served as lead plaintiff in only 39% of securities class action lawsuits settled in 2024, the lowest level over the preceding 10 years. An institutional investor serving as lead or co-lead plaintiff historically has been associated with cases with larger settlements and higher plaintiff-style damages. Lower institutional investor involvement is consistent with lower median plaintiff-style damages.

There were seven mega-settlements in 2024, compared to nine in 2023. The seven mega-settlements in 2024 contributed over half (54%) of the total 2024 settlement value. It should be noted that the highest 2024 mega settlement was \$490 million, compared to \$1 billion in 2023.

Number of Securities Class Action Settlements Rises Slightly as Median Settlement Amount Declines from 2023 13-Year High

- Press Release
- 26 March 2025

Drop in settlement size attributable to lower plaintiff-style damages, among other factors.

The number of securities class action settlements increased slightly in 2024 while the size of those settlements declined, according to a new report from Cornerstone Research.

The report, *Securities Class Action Settlements—2024 Review and Analysis*, found that the number of securities class action settlements in 2024 increased to 88, up 6% compared to the 83 settlements in 2023. The median settlement amount (\$14 million) declined from the 13-year high in 2023, but remained at a historically high level compared to the past decade. The total (\$3.7 billion) and average (\$42.4 million) settlement amounts also declined year-over-year by 8% and 13%, respectively.

“The decline in settlement sizes can largely be attributed to lower ‘plaintiff-style damages’—a proxy for the amount of potential investor losses that plaintiffs may claim in a securities class action, which our research finds to be the single most important factor in explaining individual settlement amounts,” said Dr. Laarni T. Bulan, a report coauthor and vice president at Cornerstone Research. “What is interesting in 2024 is the high proportion of settled cases related to SPACs. The median settlement for SPAC cases was 21% lower than the median for non-SPAC cases.”

What is interesting in 2024 is the high proportion of settled cases related to SPACs. The median settlement for SPAC cases was 21% lower than the median for non-SPAC cases.

—Laarni Bulan

According to the report, 19% of settlements in 2024 were related to a special purpose acquisition company (SPAC). The median settlement amount for SPAC cases was \$12.0 million compared to \$15.3 million for non-SPAC cases.

Issuer defendant firms were 65% smaller than in 2023, as measured by median total assets, reaching the lowest observed level since 2018. Additionally, institutional investors served as lead plaintiff in only 39% of 2024 settled cases, reaching the lowest level over the last 10

years.

“In conjunction with the decline of median issuer defendant total assets, the percentage of 2024 settlements that involved issuers that were delisted from a major exchange and/or had declared bankruptcy was also higher compared to 2023,” added Eric Tam, a report coauthor and principal at Cornerstone Research. “Issuer defendant firm assets and issuer distress both have potential implications for the ability to fund a settlement, which is consistent with the smaller settlements in 2024.”

In conjunction with the decline of median issuer defendant total assets, the percentage of 2024 settlements that involved issuers that were delisted from a major exchange and/or had declared bankruptcy was also higher compared to 2023.

—Eric Tam

Median plaintiff-style damages declined 20% year-over-year to \$272 million, following a record high in 2023. Previous reports have presented “simplified tiered damages” as a measure of potential investor losses. This year marks the introduction of “plaintiff-style damages,” a measure of potential investor losses that accounts for additional case-specific data while still using a consistent approach across a large volume of cases. The latest investments in big data analytics and capabilities from Cornerstone Research’s Data Science Center enabled this new approach.

Judge hears arguments on proposed settlement between hedge funds, KY public pension systems

 kentuckylantern.com/briefs/judge-hears-arguments-on-proposed-settlement-between-hedge-funds-ky-public-pension-systems

By Jamie Lucke



A settlement reached by hedge funds and Kentucky's public pension systems was the subject of a hearing at the Franklin County Courthouse, March 26, 2025. (Kentucky Lantern photo by McKenna Horsley)

FRANKFORT — Franklin Circuit Judge Thomas Wingate told lawyers to expect a decision from him in two weeks in a long-running challenge of hedge fund investments made for Kentucky public pension funds.

Wingate spoke Wednesday at the end of a hearing that he called “very informative.”



Franklin Circuit Judge
Thomas Wingate

At issue is a proposed \$227.5 million settlement unveiled in January by Kentucky Attorney General Russell Coleman.

Attorneys for a group of state employees opposing the settlement say the amount falls far short of compensating the pension funds for what the plaintiffs allege were breaches of fiduciary duty by the hedge funds, in particular what they characterize as excessive fees.

In court Wednesday, an attorney for the state employees, Michelle Ciccarelli Lerach, also said the settlement would “extinguish” her clients’ ability to continue to press their claims on behalf of the pension systems.

“They are trying to wipe us out,” Lerach said. “Our clients’ due process rights are being violated.”

On the other side, attorney Justin Clark, head of the state attorney general’s civil division, told the judge that the benefits of settling far exceed the risks posed by continuing to litigate the case. He stressed that the boards of the three state pension systems have unanimously approved the settlement; he also said state law makes the attorney general responsible for representing the pension systems.

The original case drew national attention when filed by a group of eight state pensioners in late 2017 against some former officials of Kentucky Retirement Systems (now the Kentucky Public Pensions Authority) and major hedge fund companies KKR & Co., Prisma Capital Partners, The Blackstone Group and Pacific Alternative Asset Management. They alleged the financially troubled retirement systems gambled \$1.2 billion on secretive, high-risk hedge fund investments that eventually went sour.

The case has gone through several permutations since then and at one point might have reached a dead end but was revived by former Attorney General Daniel Cameron.

The proposed settlement came out of more than five months of negotiations between Attorney General Coleman’s office and the defendants and mediated by a former federal judge — a process that Lerach on Wednesday criticized as a “secret mediation.”

Musk-Linked Corporate Law Overhaul Criticized by Delaware Judge

- Statutory changes lower guardrails around insider conflicts
- Approach is inconsistent with other authorities, judge says

A Delaware judge sharply criticized a major overhaul of corporate law—shifting legal power toward business leaders like Elon Musk—saying the legislation drew arbitrary bright lines that will undermine the predictability it's meant to foster.

Vice Chancellor J. Travis Laster spoke about the changes at Fordham University School of Law on Wednesday evening, less than 24 hours after Gov. Matt Meyer (D) signed a bill designed to lower the guardrails around insider deals, reduce shareholder access to texts and emails of board members, and strengthen a presumption that they're legally independent.

Read More: Corporate Capital Delaware's Business Law Overhaul: Explained

Meyer proposed state Senate Bill 21 in mid-February in response to fears that a recent court crackdown on corporate self-dealing might drive an exodus from Delaware, which funds more than a quarter of its budget with billions in corporate fees. Musk responded to a decision voiding his \$56 billion pay package last year by assailing the state's elite business court, moving Tesla Inc. to Texas, and urging others to follow, a phenomenon dubbed "DExit."

Laster, one of seven specialist jurists serving on Delaware's Chancery Court, referred obliquely to Musk at several points, though never by name. It's fair game for politicians to act with an eye toward the state's role in the corporate ecosystem, but judges need to rule on the merits without fear or favor, he said.

"I want judges to be applying the rule of law, not the rule of whom," Laster said to applause. "The suggestion that a court should approach decision-making that way, to me, is far closer to corruption than any sense of judicial decision-making."

Missed Opportunity

The judge saved his direct commentary on SB21 for the end of a wide-ranging lecture on controlling stockholders, whose conflicts of interest face special scrutiny. The talk drew implicit contrasts with the new law, which defines the category narrowly, in a significant break from precedent—requiring, among other things, at least a one-third ownership stake.

The changes are “generally inconsistent with the weight of authority on control,” Laster said. “It’s not clear to me where the one-third figure came from. There isn’t anything in the legislative history.”

The bill’s backers have downplayed any link to Musk—or to Mark Zuckerberg’s Meta Platforms Inc., which had executives in the backroom meetings that led to the legislation—saying dealmakers and corporate planners have legitimate concerns about a swing toward shareholders that has made even routine transactions onerous and unpredictable.

Read More: Musk’s War on Delaware Spurs Law Pushed by Private Equity

But Laster suggested the legislation will backfire, pushing judges into unfamiliar territory where they’ll be forced to make it up as they go along. “We have a test with a lot of language that is left for courts to interpret,” he said. “That means a lot of litigation to try to find out what we have.”

He called the changes a significant departure “from the way other areas of the law define control,” including state and federal securities laws, banking statutes, US Treasury Department regulations, insurance codes, and many other contexts.

Those adjacent bodies of law generally recognize that corporate control is “a fact issue for a trial judge,” not something that can be made to fit hard-and-fast rules, according to Laster. They tend to create presumptions about ownership levels that can be bolstered or overcome—usually at around 20%—rather than the sort of hard 33% floor the new law adopted, he said.

“Delaware sacrificed a real opportunity to provide clear statutory standards,” the judge said. “Perhaps if the process had not moved so fast, perhaps if the process had been more open, perhaps if there had been more input from more voices, we could have ended up with a test that was more like the consensus.”

Legislative Supremacy

He appeared to be referring to the bill’s blitzkrieg rollout, which initially bypassed a months-long process that ordinarily begins with the state bar association’s influential Corporation Law Council. Prominent court watchers have expressed shock and outrage over the way the state’s House Speaker shouted down and ejected a former Securities and Exchange Commission member who tried to testify against the measure shortly before it passed.

Laster echoed the view that the law could permanently alter norms surrounding Delaware's constitutional separation of powers. Though he stopped short of calling the changes a rebuke of the judiciary, as many critics have, he said the state had "entered the legislative era of Delaware corporate law, where codification prevails over court decisions."

The judge said he'd avoided weighing in on SB21 until it was done and dusted after drawing fire last year for commenting publicly on a previous round of corporate law amendments. He also urged both sides of the state's tight-knit legal community to repair the ruptures caused by the bill's unusually aggressive process.

"I have policy disagreements with where things ended up, but I think it's important to remember that no one is doing this out of bad faith," Laster said. "Everyone involved in this process believes that whatever action they're taking is in the best interest of Delaware."

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Litigation

March 28, 2025, 6:33 AM PDT

Royal Caribbean 401(k) Investor Owes Litigation Costs After Loss

- **Defendants prevailed on all claims in 401(k) class suit**
- **Judge awards them majority of requested court costs**

A Royal Caribbean Cruises Ltd. 401(k) plan participant owes nearly \$40,000 in litigation costs after mounting an unsuccessful class action over the plan's move to funds from Russell Investments Trust Co.

Judge Robert N. Scola Jr. awarded costs of \$24,065 to Royal Caribbean and \$15,583 to Russell, representing amounts they spent on deposition transcripts, exhibit copies, and witness fees. But Scola declined to force plaintiff Ann Johnson to pay for certain deposition video recordings, saying it's not clear these recordings were made "for anything other than the convenience of counsel."

Scola's order, entered Thursday in the US District Court for the Southern District of Florida, comes two months after he ruled for the companies on all claims. Johnson's 7,000-person class action accused Russell of carrying out a "self-serving swap" of Royal Caribbean's 401(k) investment lineup in favor of its own poorly performing funds.

But Scola concluded that Johnson didn't support her criticisms of Russell's target date funds with comparisons to sufficiently similar alternatives. She said workers would have done better with investments from Vanguard or American Funds, but those investments have different strategies, glide paths, and asset allocations than the investments challenged by their lawsuit, Scola said.

A similar case challenging Russell's involvement with the Caesars Holdings Inc. 401(k) plan is pending before a federal judge in Nevada.

Wenzel Fenton Cabassa PA and Nichols Kaster PLLP represent Johnson and the class. Milbank LLP and Akerman LLP represent Russell. Groom Law Group and Ogletree, Deakins, Nash, Smoak & Stewart PC represent Royal Caribbean.

The case is Johnson v. Russell Invs. Tr. Co. , 2025 BL 103353, S.D. Fla., No. 1:22-cv-21735, 3/27/25 .

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How a Delaware Judge Ordered Switchboard to Reveal Its Crypto Token Records

 [law.com/nationallawjournal/2025/03/27/how-a-delaware-judge-ordered-switchboard-to-reveal-its-crypto-token-records](https://www.law.com/nationallawjournal/2025/03/27/how-a-delaware-judge-ordered-switchboard-to-reveal-its-crypto-token-records)

Michael A. Mora

March 27, 2025

Switchboard has less than 10 days to provide co-founders and minority shareholders of the company access to its books and records in connection with its planned cryptocurrency token offering, following an order entered this week by a Delaware state court.

Uri Itkin and Marshall Baker, partners at [Akin Gump Strauss Hauer & Feld](#) in the Am Law 50 firm's New York office, and local counsel Catherine Gaul of Ashby & Geddes are among the litigators representing the plaintiffs, Zachary Bruch and Joshua Kaufman, in their Delaware General Corporation Law Section 220 books and records action on the defendant, Switchboard.

"The Delaware legal framework has developed over decades of application by experienced Delaware judges and provides a roadmap for actions involving Delaware companies, regardless of the companies' business or industry," Itkin said in an email.

Switchboard, founded by Zachary Bruch, Joshua Kaufman and three additional people in 2021, is a Delaware corporation with its principal place of business in Florida. Switchboard describes itself as a software development company that builds blockchain Oracle software.

Tokens are digital assets created on a blockchain representing assets or rights in a blockchain ecosystem. Blockchain companies that issue tokens develop protocols to govern the process, including the process of allocating tokens to particular holders.

The book and records request dates to November, when the plaintiffs alleged that three other co-founders used their majority stake to award an outsize portion of the tokens to themselves, family and friends, and Switchboard refused to provide the requested information about the award of the crypto tokens, court records show.

To inspect books and records under Section 220, a plaintiff must establish by a preponderance of evidence that the plaintiff is a stockholder, has complied with the statutory form and manner requirements for making a demand and has a proper purpose for conducting the inspection.

The plaintiffs alleged there was a credible basis to suspect wrongdoing in connection with Switchboard's awards and to order an investigation of the independence of the CEO and director that the company appointed temporarily to effectuate the award. Switchboard did not

contest that the plaintiffs had standing as stockholders or that the demand complied with the statutory form and manner requirements. However, the defendants argued that plaintiffs have an ulterior motive for obtaining these records and that the request was too broad. During discovery, the litigators expedited the 90-day schedule entered by the court, despite facing opposition from Switchboard, which served nearly 100 discovery requests and filed seriatim motions to seal the case, expand the scope of the proceeding and obtain relevant documents from Akin's clients. However, the court denied all of Switchboard's motions.

The case went before Vice-Chancellor Bonnie W. David on a paper record in February. A couple of weeks later, David issued an oral post-trial ruling in which the vice-chancellor agreed with plaintiffs' counsel's arguments. Namely, these arguments were largely about whether there was a credible basis to suspect wrongdoing with the company's token allocation decision and whether there were reasons to investigate the independence of the temporary director and CEO.

However, Switchboard has failed to provide the documents, court records show.

David ruled this week that Switchboard must produce by April 8 formal board materials related to the token award, as well as formal and informal materials—in the event no formal materials exist—related to the appointment of the temporary director and CEO. David also ordered Switchboard to produce its financial statements, which the company has withheld.

Tyler J. Leavengood, a partner at Potter, Anderson & Corroon in Delaware who is among the attorneys for Switchboard, did not respond to a request for comment.

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Class Action

March 27, 2025, 3:40 PM PDT

3M Missed Window to Move State's PFAS Case to Federal Court

- **3M was two years behind on federal removal, judges say**
- **Decision affirms lower court ruling from March 2023**

Chemicals manufacturer 3M Co. failed to remove New Hampshire's PFAS contamination case to federal court in time, the First Circuit said Thursday in a decision affirming the case belongs in state court.

3M could have reasonably concluded two years earlier that New Hampshire's per- and polyfluoroalkyl substances (PFAS) pollution lawsuit, initially filed in state court, was removable to federal court, according to an opinion filed in the US Court of Appeals for the First Circuit. Judges William J. Kayatta, Julie Rikelman, and Jeffrey R. Howard sat on the judicial panel.

New Hampshire in February 2020 filed a document in state court alleging at least some of 3M's military-grade firefighting foam (MilSpec AFFF) contaminated natural resources with PFAS, according to the opinion. This action started a 30-day clock for 3M to file for removal to federal court under the federal officer removal statute, judges said.

"When considered with New Hampshire's allegations of statewide non-AFFF contamination in its natural resources," the document "made clear that New Hampshire was plausibly alleging that non-AFFF PFAS and MilSpec AFFF PFAS had commingled at some of the sites for which it seeks recovery in this case," the court said.

New Hampshire filed two 2019 state court lawsuits naming 3M: one alleging PFAS contamination from AFFF and one alleging PFAS contamination from non-AFFF sources. The AFFF lawsuit was removed to federal court shortly after and lumped into multidistrict litigation in South Carolina. New Hampshire amended its non-AFFF complaint in August 2021 and filed initial disclosures in December 2021.

3M removed the case to federal court four months later, arguing that the federal officer removal statute applied because some of the AFFF PFAS could have commingled with non-AFFF PFAS in nearby bodies of water.

The US District Court for the District of New Hampshire sent the case back to state court in March 2023, finding that the removal was untimely and that the federal officer removal statute didn't apply.

The case is *New Hampshire v. 3M Co.*, 1st Cir., No. 23-01362, opinion 3/27/25 .

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Class Action

March 27, 2025, 2:24 PM PDT

Judge to Probe Whether PFAS Boost Liver and Thyroid Cancer Risk

- National PFAS litigation plaintiffs focus on six diseases
- Science Day for liver, thyroid cancer rescheduled for June 20

A federal court updated and expanded its plans to explore scientific information about the possibility that PFAS in firefighting foams boosts the risk of liver and thyroid cancers.

The order Judge Richard M. Gergel, of the US District Court for the District of South Carolina, issued on Wednesday lists four diseases already being considered within personal injury claims, and it says plaintiffs have no immediate plans to pursue additional injury claims beyond liver and thyroid cancer.

The order makes June 20, rather than June 6, the date for a Science Day where Gergel will hear from scientists directly about research on per- and polyfluoroalkyl substances (PFAS) and those illnesses. And it sets pretrial schedules for subsequent discovery and other actions.

The thousands of individual lawsuits that are part of the case, *In Re Aqueous Film-Forming Foams Products Liability Litigation MDL 2873*, include cost-recovery sought by water utilities who must remove PFAS from aqueous film-forming foam (AFFF), a specialized fire suppressant, from drinking water; personal injury claims; and property damage.

The court already agreed based on scientific information previously provided to consider personal injury claims that maintain PFAS caused four illnesses: kidney cancer, testicular cancer, ulcerative colitis, and thyroid disease.

"There were approximately 200 other injuries that various plaintiffs at one time pursued," but which plaintiffs are no longer asserting, Gergel's order said.

More than 19,000 claims related to those other injuries are no longer being pursued under a previous order that allowed plaintiffs to refile claims if scientific evidence supporting them increased, he said.

For the immediate future however, plaintiffs are focusing only on the four diseases plus liver and thyroid cancer, the order said.

The case is *In Re Aqueous Film-Forming Foams Products Liability Litigation MDL 2873*, D.S.C., No. 18-02873, Order Issued, 3/26/25.

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Read the Document: Trump's DOJ Supports Antitrust MDL Alleging Health Care Price-Fixing Conspiracy

 [law.com/nationallawjournal/2025/03/27/read-the-document-trumps-doj-supports-antitrust-mdl-alleging-health-care-price-fixing-conspiracy](https://www.law.com/nationallawjournal/2025/03/27/read-the-document-trumps-doj-supports-antitrust-mdl-alleging-health-care-price-fixing-conspiracy)

Sulaiman Abdur-Rahman

March 27, 2025

What You Need to Know

- The U.S. Department of Justice filed a statement of interest favoring plaintiffs in antitrust multidistrict litigation involving health insurance companies and algorithmic pricing.
- Edelson, Susman Godfrey and Berger Montague represent the class plaintiffs, while Vinson & Elkins, Arnall Golden Gregory, Seeger Weiss and NS PR Law Services doing business as Napoli Shkolnik represent the direct action plaintiffs.
- Latham & Watkins and Phelps Dunbar represent defendant MultiPlan; Williams & Connolly represent Aetna; McDermott Will & Emery represent Cigna; Hogan Lovells represent Elevance; and Neal, Gerber & Eisenberg and Gibson, Dunn & Crutcher represent UnitedHealth Group.

U.S. Department of Justice antitrust lawyers on Thursday issued a statement of support for all plaintiffs in the litigation in Chicago federal court accusing an algorithmic tech company and major health insurers of unlawful price-fixing.

The move represents a pro-consumer stance that is perhaps surprising for the Trump administration.

“The United States files this Statement to make two points addressing errors of law in Defendants’ arguments,” DOJ attorneys, including antitrust chief Gail Slater, wrote in the brief filed Thursday in the U.S. District Court for the Northern District of Illinois. “First, using a common pricing algorithm can indeed qualify as concerted action under Section 1 of the Sherman Act, 15 U.S.C. § 1, even if the competitors do not always use the algorithm in the same way. Second, competitors’ exchange of competitively sensitive information can violate Section 1 even if those exchanges occur through an intermediary.”

Counsel for the class-action and direct-action plaintiffs said the DOJ’s statement vindicates their allegations against the alleged MultiPlan cartel.

“This is a game-changing moment in this litigation,” Hunter Shkolnik, co-counsel for the direct action plaintiffs, said Thursday in an interview. “The DOJ Antitrust Division stepping in and supporting our [clients] is a clear signal that we were right, and we are on the right track.

This is anticompetitive, and it has to stop.”

According to the allegations in the amended complaints filed last November and December, major health insurers for years have used MultiPlan’s out-of-network claim repricing services to underpay medical providers who submit OON reimbursement claims.

“Defendants have combined to form a cartel to artificially suppress out-of-network compensation rates paid to healthcare providers across the United States and exchanged non-public and competitively sensitive information with one another in order to accomplish that purpose,” counsel for the class-action plaintiffs alleged in their complaint.

“The Department of Justice’s Statement of Interest validates our case against MultiPlan and major health insurers including Aetna, Cigna, Elevance, and United, affirming that competitors’ coordinating pricing through any methods and sharing information through third-party intermediaries constitute antitrust violations,” Christopher Seeger of Seeger Weiss, the court-appointed plaintiffs’ coordinating counsel in the MultiPlan health insurance providers MDL, alleged in a statement.

MultiPlan, a technology, data and insights company for the health care industry, rebranded as Claritev Corp. in February amid the ongoing antitrust litigation.

Big Law firms represent the co-defendants in the case, including Latham & Watkins and Phelps Dunbar representing MultiPlan; Williams & Connolly representing Aetna Inc.; McDermott Will & Emery representing Cigna; Hogan Lovells representing Elevance Health Inc.; and Neal, Gerber & Eisenberg and Gibson, Dunn & Crutcher representing UnitedHealth Group Inc.

Counsel for the defendants filed a joint motion in January asking U.S. District Senior Judge Matthew F. Kennelly of the Northern District of Illinois to dismiss the consolidated class-action complaint with prejudice.

“Plaintiffs cannot establish antitrust standing or antitrust injury,” counsel for the defendants wrote in their motion to dismiss. “Second, Plaintiffs do not and cannot plausibly allege a conspiracy among [health insurance companies] to suppress OON reimbursements.”

The DOJ’s statement of support rejected those arguments, claiming counsel for the defendants have an “incorrect understanding of the law and of the types of concerted action the Sherman Act covers.”

The Justice Department is not a party to the MultiPlan litigation and filed its statement of interest to rebut some of the defendants’ core arguments for dismissal.

"I find it very significant that this new administration through their Antitrust Division has taken a serious look at this problem in the healthcare industry where physicians and hospitals are being underpaid while insurance companies are reaping the benefits on the money they are charging on premiums," said Shkolnik, a managing partner at Napoli Shkolnik.

Kennelly has not yet ruled on the defendants' motion to dismiss.

"We feel very confident we are going to be proceeding under violations of the Sherman Act," Shkolnik said. "Judge Kennelly is not one of these judges who sits on these motions for a year. ... He is a type of judge who believes in trials."

Edelson, Susman Godfrey and Berger Montague represent the class plaintiffs, while Vinson & Elkins, Arnall Golden Gregory, Seeger Weiss and NS PR Law Services doing business as Napoli Shkolnik represent the direct action plaintiffs in this MDL consolidated class action.

A trial could potentially occur in 2026 if the consolidated complaints survive the motion to dismiss. Claritev, formerly known as MultiPlan Corp., declined to comment on the DOJ statement but continues to describe the Sherman Act price-fixing allegations as meritless.

"We've been clear that these lawsuits are without merit and would ultimately increase prices for patients and employers," Claritev spokesperson Pam Walker said Thursday in a statement. "We'll continue to defend ourselves through the legal process. In the meantime, we're focused on continuing to deliver for our customers and patients."

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March 25, 2025

FTC's Republicans Poised to Enforce Long-Mothballed Antitrust Law —Even as They Dis It

By Greg Andrews and Chris O'Malley

March 11, 2025

Google to pay \$100 million to settle advertisers' class action

 [reuters.com/legal/google-pay-100-million-settle-advertisers-class-action-2025-03-28](https://www.reuters.com/legal/google-pay-100-million-settle-advertisers-class-action-2025-03-28)

Jonathan Stempel

March 28, 2025

People walk next to a Google logo during a trade fair in Hannover Messe, in Hanover, Germany, April 22, 2024. REUTERS/Annegret Hilse/File Photo/File Photo Purchase Licensing Rights , opens new tab

March 28 (Reuters) - Google has agreed to pay \$100 million in cash to settle a long-running lawsuit claiming it overcharged advertisers by failing to provide promised discounts and charged for clicks on ads outside the geographic areas the advertisers targeted.

A preliminary settlement of the 14-year-old class action, which began in March 2011, was filed late Thursday in the San Jose, California, federal court, and requires a judge's approval. Jumpstart your morning with the latest legal news delivered straight to your inbox from The Daily Docket newsletter. Sign up here.

Advertisers who participated in Google's AdWords program, now known as Google Ads, accused the search engine operator of breaching its contract by manipulating its Smart Pricing formula to artificially reduce discounts.

The advertisers also said Google, a unit of Mountain View, California-based Alphabet (GOOGL.O) , opens new tab, misled them by failing to limit ad distribution to locations they designated, violating California's unfair competition law.

Thursday's settlement covers advertisers who used AdWords between January 1, 2004, and December 13, 2012.

Google denied wrongdoing in agreeing to settle.

"This case was about ad product features we changed over a decade ago and we're pleased it's resolved," spokesman Jose Castaneda said in an emailed statement.

Lawyers for the plaintiffs may seek fees of up to 33% of the settlement fund, plus \$4.2 million for expenses.

According to court papers, the case took a long time as the parties produced extensive evidence, including more than 910,000 pages of documents and multiple terabytes of click data from Google, and participated in six mediation sessions before four different mediators.

The case is Cabrera et al v Google LLC, U.S. District Court, Northern District of California, No. 11-01263.

E-discovery and information governance: navigating new challenges and practical tips

 [reuters.com/legal/legalindustry/e-discovery-information-governance-navigating-new-challenges-practical-tips-2025-03-26](https://www.reuters.com/legal/legalindustry/e-discovery-information-governance-navigating-new-challenges-practical-tips-2025-03-26)

Tara Lawler, Matthew Hamilton

March 26, 2025

REUTERS/Aly Song Purchase Licensing Rights , opens new tab

March 26, 2025 - The legal and data landscapes are evolving rapidly, particularly in e-discovery and information governance. Legal professionals must anticipate and address these novel challenges in order to best represent their clients and achieve the best possible outcomes.

To effectively navigate these challenges, one must work closely with clients to understand their data collection capabilities, and pain points, and prioritize collaboration with IT teams to understand the technical aspects and implications of hyperlinks and emojis, among other complex issues. Additionally, strong data privacy and security measures are key, as evolving cybersecurity threats and shifting privacy laws create new risks that must be proactively addressed. As courts rarely excuse parties who struggle to comply with terms they previously agreed to, it is crucial to thoroughly understand a client's technical constraints before finalizing an ESI agreement.

Complex data landscapes and novel data types

Organizations and individuals are generating more data than ever, both in terms of volume and the swift emergence of new types of data. The advent of generative artificial intelligence (AI) coupled with almost universal smartphone adoption has led to an explosion of novel data types. New platforms, applications, and collaborative tools (i.e., unstructured data sources) are rapidly being adopted, leading to complexities in discovery and information governance.

Unstructured data sources present challenges in preserving and collecting relevant information due to their mixed data types and lack of organization. Additionally, the rise in structured data stored in relational databases requires a clear understanding of how to preserve and collect it defensibly.

The complexity of data is further increased by elements like hyperlinks, which may be prevalent due to the overwhelming adoption of cloud platforms. Understanding your client's data landscape — including email environments, communication applications and style, and both unstructured and structured data sources — is crucial.

It is also important to be aware of the client's data preservation and collection methods, capabilities, and policies. If the organization handles its own data collections for discovery, familiarity with their methods and sources is helpful to identify any potential gaps or areas for validation.

Collaboration with the client's IT team is vital to prevent routine data purging and deletion. Engaging with IT staff and platform administrators provides insights into data storage, backup procedures, retention policies, and system changes. This partnership ensures a comprehensive understanding of the client's data landscape and helps identify potential preservation challenges early.

Hyperlinks: What are they?

Document "families" traditionally involved only emails and attachments, making them relatively straightforward in discovery. Consequently, parties often included family production provisions in electronically stored information (ESI) protocols. However, the introduction of hyperlinks requires careful consideration before agreeing to produce entire families or referencing attachments in an ESI protocol.

Hyperlinks are links within emails, instant messages, or other formats that direct users to related documents hosted elsewhere. They often appear in collaborative environments, chat platforms, or email services. Hyperlinks present unique challenges in e-discovery because they are accessed through embedded URLs rather than being part of the email itself. Depending on how a system is configured, hyperlinked documents may not be available at the time of collection, and existing collection tools often struggle to locate them.

Complexities include whether parties must provide metadata for a hyperlinked document, which version is collected (current or at the time of sending), and whether parties must provide documents from hyperlinked files at all.

Parties now often engage in lengthy negotiations and motion practice over whether ESI agreements should include hyperlinked documents. Before negotiating an ESI agreement, assess whether and how your client uses hyperlinks, their ability to collect linked documents, and any related burdens. If hyperlinks are part of your client's data environment, counsel should oversee the collection process to ensure accuracy and completeness. Additionally, understand when your client began using hyperlinks and developed the ability to collect them.

If opposing counsel seeks to include terms about hyperlink handling in the ESI agreement, and you haven't evaluated your client's capabilities, consider using strategic language to delay the agreement until you have more information, if you choose to include it at all.

How to handle emojis

The nature of communications is inevitably changing. While email remains crucial in the workplace and discovery, the use of chat applications like Teams and Slack is increasing. However, preservation and collection features have not kept pace with this rapid adoption. Collaborative channel chats capture conversations, reactions, and exchanges, with participants frequently joining and leaving, creating complex interactive webs.

Emojis present unique challenges as they are nonverbal and can convey various meanings or emotions. Courts have even recognized a thumbs-up emoji as an agreement to a contract. These icons are deeply embedded in our digital communication, both personally and professionally. With the growing presence of emojis in work-related communications, it is important to consider platform-specific variations in emojis, generational differences in emoji interpretations, and context-dependent meanings for emojis.

Effective strategies are needed to ensure emojis are properly identified, collected, interpreted, and produced. Staying informed about technological advancements and leveraging human expertise is crucial for making informed decisions about production. Algorithms are being developed to better understand the nuanced relationship between emojis and text, aiding in interpretation.

ESI agreements — Be mindful of your approach

Some local rules may require court approval for ESI protocols, so you must choose between obtaining a court order or reaching an agreement. Court orders offer clear enforcement but lack flexibility if unexpected issues arise. Recent cases highlight the risks of agreeing to an ESI protocol without fully understanding your client's technical capabilities or the agreement's terms.

Courts have little sympathy for parties claiming compliance is impossible after agreeing to specific terms. It is crucial to understand your client's capabilities and pain points before committing to avoid unachievable terms. If an ESI agreement becomes a court order, the court can impose sanctions for noncompliance under Rule 37(b)(2)(A), as it is not limited by Rule 37(e). Overlooking client capabilities and the agreed language in an ESI protocol may lead to sanctions. You may want to consider captioning the agreement as a stipulation rather than an order.

Regardless of your choice, the ESI stipulation or order should include a clause allowing modification or parties to meet and confer if they face compliance challenges. If issues arise, follow this clause and be prepared to show that compliance is unattainable despite your best efforts.

Courts value cooperation. Including a modification or renegotiation clause for unforeseen compliance issues can provide a vital safety net. Demonstrating good-faith efforts to comply is highly valued by courts. This also may weigh in the favor of entering into shorter, more focused ESI agreements based on the information available to the parties.

Data Security, AI, and the protective order

In today's digital landscape, protective orders must evolve if they are to ensure client confidentiality. They should include provisions to prevent data from being uploaded to public-facing AI tools and address risks of inadvertent disclosure. Implementing strong data privacy and security measures is essential due to increasing cybersecurity threats and changing privacy laws.

Protective orders should clearly outline procedures for handling data breaches, including notification and compliance requirements. Additionally, consider amending existing orders to incorporate these provisions and ensure FRE 502(d) language is included, especially if a separate ESI order is not present.

Conclusion

Handling the complexities of e-discovery and information governance requires staying informed and proactive or, failing that, knowing when to engage an expert in the field. Staying updated with new technologies, legal developments, and best practices is crucial for compliance and success.

- Suggested Topics:
- Litigation
- Attorney Analysis
- Data Privacy

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Attorney: EV battery storage fire can happen elsewhere as industry grows

Environmental & Energy

Mar. 28, 2025

Litigation against Vistra Corp. intensifies over the Moss Landing Power Plant explosion, with plaintiffs alleging negligence and toxic fallout, while regulators and residents demand accountability.



Joseph Cotchett

As litigation against Vistra Corp. over the explosion at Moss Landing Power Plant heats up, plaintiffs' attorneys are concerned about nearby residents being left out of decision-making as state regulators grapple with the fall-out from the "thermal runaway" that forced 1,200 to evacuate.

Since February, four lawsuits have been filed in California state and federal courts against Vistra and its subsidiaries. They all accuse the companies of negligently designing and maintaining the world's largest battery storage facility, leading to the Jan. 16 explosion.

The plaintiffs claim that toxic metals have been found in the air and soil in a 20-mile radius around the plant, but Vistra disputed these claims in a public comment Wednesday.

Joseph Cotchett, founding partner for Cotchett, Pitre & McCarthy LLP, said in a phone interview Wednesday that these lawsuits are "very significant" given the severity of the explosion's fall-out and new battery storage facilities on the horizon in California.

Vistra's facility stored more than 110,000 batteries containing lithium, nickel manganese and cobalt oxides, or NMC batteries, best known for their use in electric vehicles, according to an August 2023 news release from Vistra's investor relations department.

"These are very significant lawsuits in where we're going as a country and what we're doing with these batteries, because it's very popular, as you know, around the country now, to move to this type of construction, by that, I mean this type of energy," Cotchett said.

At the crux of the four lawsuits is the claim that Vistra and its subsidiaries stored the batteries in a closed air facility against best industry and safety practices.

"The real question is, how did that ever happen? How did the explosion happen, and what caused it, and did they know that the propensity was there for the explosion, and what steps did they take to prevent it? Our position is quite simple," Cotchett added. "They never told the truth to the licensing authorities. They never told the truth to the California authorities as to ... the danger they were putting in there at the time they built the plant."

Among the upcoming regulatory changes in response to the fire is AB 303, proposed by California Assemblymember Dawn Addis, D-Monterey, which aims to give local governments more control over regulation of battery energy storage systems being built nearby.

Vistra's media relations department stated in an email Wednesday that testing by the University of California and other labs showed "no public health risk." The cause of the explosion and subsequent "thermal runaway event" has yet to be determined.

"While we are aware of the lawsuit and reviewing it, our focus remains on the safety of our personnel and the community and our ongoing work at the site. 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," the company stated. "Additionally, soil and water testing conducted by Cal EPA/Department of Toxic Substances Control, Monterey and Santa Cruz counties, UC Agriculture and Natural Resources, and others, has not detected risks to public water supplies or soil in the community."

Molly Erickson of Law Office of Molly Erickson in Monterey, who also represents plaintiffs, along with Cotchett, said in a phone interview Wednesday, "The problem is the locals have been ignored. There have been recent proposals for new laws that are focused on protecting firefighters and electricians. Unfortunately, they also ignore the local residents, who are the ones who, when there is a fire, pay the price with their health, their livelihoods, their homes, their animals."

On Feb. 18, the facility caught fire again and Monterey County forced Vistra to disconnect the facility from the power grid three days later. In that order the board of supervisors recommended "no enclosed battery energy storage systems be authorized going forward, due to their dangerousness and this incident."

The four 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); *Kloeppel et al. v. Vistra Corp.*, 5:25-cv-02800 (N.D. Cal. filed March 25, 2025).

While Big Law Mulls an Amicus Brief, Boutique Statements Multiply



[law.com/nationallawjournal/2025/03/27/while-big-law-mulls-an-amicus-brief-boutique-statements-multiply](https://www.law.com/nationallawjournal/2025/03/27/while-big-law-mulls-an-amicus-brief-boutique-statements-multiply/)

Andrew Maloney and Christine Simmons

March 27, 2025

Litigation boutiques and midsize law firms have become more vocal in calling out President Trump's executive orders against firms and supporting "rule of law" issues, running in stark contrast to Big Law firms that have remained mum.

Trump's presidential actions against four firms—including now Wilmer, Jenner & Block, Paul Weiss, Perkins Coie and Covington & Burling—are causing discord within other Big Law partnerships and the legal community on how to respond, including whether firms should band together for any kind of unified message or action. Some law firms are still deciding whether to sign an amicus brief that may be filed in Perkins Coie's litigation to fight an executive order

Among the latest boutiques to issue individual statements are New York-founded Hecker Fink and Washington-founded ZwillGen, both of which have well-known litigation practices. They each called for unity in standing up against the administration's actions.

For its part, Hecker Fink, an 80-lawyer firm with offices in New York, Washington, D.C., and Los Angeles, said law firms must protect the legal system "together."

"The administration's ongoing attacks and attempts to intimidate lawyers, law firms, and judges are unprecedented and threaten the rule of law and our democratic values. And, sadly, those attacks understandably instilled fear and hesitation, including on the part of colleagues in the bar for whom we have deep respect," Hecker Fink said.

"As lawyers, we are often across the aisle as adversaries. But we all believe in the same core principles. Protecting our clients and the legal system is something we must do together," the statement added. "Our firm commits to stand beside the firms and lawyers targeted by the administration. All of them. And we hope all those that can will do the same."

Meanwhile, ZwillGen, a 46-lawyer boutique that helps client on data and tech litigation, regulatory and enforcement issues, said in a Wednesday statement that presidential actions targeting Perkins Coie, Covington & Burling, Paul Weiss, and Jenner & Block, combined with a Friday memo directing repercussions against lawyers who litigate against the government, "demonstrate the administration's intent to intimidate and silence members of the legal profession."

“When law firms are punished—or threatened—for the clients they represent or the positions they argue in court simply because the administration disagrees with them, the rule of law begins to deteriorate,” the boutique said. “Efforts to intimidate and marginalize lawyers who challenge executive power erode our institutions while enabling unchecked authority. We call on the legal community to join us and to resist—clearly, publicly, and without apology—these attacks on the foundations of our legal system.”

“If we do not stand up for the ability to practice our own profession, how can our clients believe we will fight for them?” ZwillGen added.

Hecker Fink and ZwillGen join other prominent boutiques and midsize firms, including San Francisco-based litigation boutique Keker, Van Nest & Peters and Selendy Gay, that have, among others, also issued statements in support of the rule and protesting the administration's actions.

Some boutiques are encouraging other law firms to join the amicus brief, which, sources say, Munger Tolles & Olson is helping to coordinate.

For instance, Norton Law Firm, a 19-lawyer boutique based in Oakland, California, said it “will join the forthcoming amicus brief in support of Perkins Coie in its lawsuit against the current administration and encourage our colleagues to do the same. “

The firm said it supports “Perkins Coie, Covington & Burling, Jenner & Block, and the many brave lawyers who have rallied to their defense and the defense of the rule of law. We oppose unjustified and unconstitutional efforts to intimidate lawyers and law firms who take on causes adverse to an administration or its officers.”

Difficulty in Finding Consensus

Meanwhile, large law firms are keeping silent, while they assess their risks, talk to outside counsel and advisers about their exposure, scrub websites of material that may offend the Trump administration and try to stay off the president’s radar.

A source familiar with the industry likened big firms’ current level of uncertainty to the start of the pandemic, when they were grasping for details and cues from peers that weren’t readily apparent. But instead of questions about potential layoffs or credit lines, it’s questions about how firms are thinking through executive orders, EEOC inquiries and whether to sign on to amicus briefs, the source noted.

It’s proven more challenging for large firms to speak with one voice or find consensus. Plenty of firm leaders know each other, but there remains “great sensitivity” among chairs in discussing their views with people outside the firm. And within firms, there’s a divide about

“what position to take, or if to take a position at all,” the source said, because they do have differences of opinion within the partnership. It’s a different case in boutique firms like Keker, Van Nest & Peters or Selendy Gay.

“It’s like the province of the smaller firms, because if you’re a smaller firm like Keker or Selendy you have a more monolithic partnership, and it’s easier to get everyone on the same page about saying something publicly like this,” the source said. “You also have a smaller client base, and you’re less likely to lose clients over this. So I think it’s a really different deal for a boutique versus an Am Law 100 firm to take on the administration.”

The source also alluded to Paul Weiss chair Brad Karp’s memo about that firm’s deal with Trump, noting Karp’s insistence that the elite firm couldn’t survive a protracted fight with the administration. “If that’s true of Paul Weiss, it’s probably true of a very large group of firms,” the source said.

Meanwhile, bar groups continue to issue statements to support the rule of law.

“There are clear choices facing our profession,” said a Wednesday statement signed by the American Bar Association and about 70 other bar groups. “We can choose to remain silent and allow these acts to continue or we can stand for the rule of law and the values we hold dear. We call upon the entire profession, including lawyers in private practice from Main Street to Wall Street, as well as those in corporations and who serve in elected positions, to speak out against intimidation.

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March 26, 2025

'This Is an Embarrassment:' In-House Attorneys Dismayed by Paul Weiss' Trump Deal

By Greg Andrews

Murky Terms of Paul Weiss Agreement Raise Firm 'Audit' Questions, While Latest Order Urges Attorney Sanctions

By Patrick Smith and Christine Simmons

Johnson & Johnson unit ordered to pay \$1.64 billion in HIV drug marketing case

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Jonathan Stempel

March 28, 2025

A Johnson & Johnson banner is displayed on the front of the New York Stock Exchange (NYSE) in New York City, in New York City, U.S., December 5, 2023. REUTERS/Brendan McDermid/File Photo Purchase Licensing Rights , opens new tab

- Janssen was sued over Prezista, Intelence marketing
- Award followed June 2024 jury verdict
- Johnson & Johnson not immediately available for comment

March 28 (Reuters) - A federal judge ordered a Johnson & Johnson (JNJ.N) , opens new tab unit on Friday to pay the U.S. government \$1.64 billion after a jury found it liable in a whistleblower lawsuit for illegally promoting the HIV drugs Prezista and Intelence. U.S. District Judge Zahid Quraishi in Trenton, New Jersey, ordered the drugmaker's Janssen unit to pay \$360 million for violating the federal False Claims Act.

He also imposed \$1.28 billion in civil fines, or \$8,000 for each of 159,574 false claims the jury found were submitted to programs such as Medicare, Medicaid and the AIDS Drug Assistance Program.

Quraishi set aside the jury's \$30 million award for violations of various state false claims laws, citing a lack of evidence. The June 13, 2024 verdict followed a six-week trial.

Janssen had sought a new trial, saying the verdict was tainted by a lack of proof and by erroneous jury instructions.

Neither Johnson & Johnson nor Janssen's lawyers immediately responded to requests for comment. Johnson & Johnson is based in New Brunswick, New Jersey.

The plaintiffs Jessica Penelow and Christine Brancaccio, who worked as Janssen sales representatives, accused Janssen of improperly marketing Prezista and Intelence for off-label uses.

This included promoting Prezista as "lipid-neutral," meaning it would not affect cholesterol or triglyceride levels, contrary to its U.S. Food and Drug Administration-approved label. The plaintiffs also said Janssen paid doctors to promote the drugs at dinner and speaker programs, with the payments amounting to kickbacks.

Jurors found Janssen liable for some off-label claims, and no liability for the kickback claims.

In a 35-page decision, Quraishi said there was sufficient evidence that Janssen's off-label marketing was a "substantial factor in causing physicians to submit claims for reimbursement to government payors, and that it was reasonably foreseeable that false claims would result from such conduct."

The \$360 million award is three times the \$120 million the jury awarded under the federal False Claims Act, which allows triple damages.

False claims statutes let whistleblowers sue on behalf of governments, and share in recoveries.

A lawyer for the plaintiffs had no immediate comment.

The case is U.S. ex rel Penelow et al v Janssen Products LP, U.S. District Court, District of New Jersey, No. 12-07758.

Reporting by Jonathan Stempel in New York; Editing by Richard Chang

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- Suggested Topics:
- Sustainability
- Lawsuits

Ohio lawmakers are on the cusp of reshaping the state's energy market. Here's how

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By Jake Zuckerman, jzuckerman@cleveland.com

March 28, 2025

Central Maine Power utility lines are seen, Wednesday, Oct. 6, 2021, in Pownal, Maine. (AP Photo/Robert F. Bukaty)AP

COLUMBUS, Ohio – The state could be on the cusp of reshaping its marketplace for energy, with major implications for customer power bills and developers interested in expanding Ohio's grid.

The House and Senate have passed dueling legislation – House Bill 15 and Senate Bill 2 – to change the way Ohio regulates and taxes the companies that generate power and distribute it to people's homes and businesses.

Now, legislative leaders and negotiators from both chambers need to select one of the two bills as-is or hammer out a compromise to get it to Gov. Mike DeWine for final approval.

Three major factors animated the legislation in the two chambers:

- Electricity-intensive data centers that fuel the emerging artificial intelligence and cryptocurrency sectors are driving an explosive increase in power demand, especially in central Ohio.
- Increasingly inefficient and uneconomic coal-fired power plants have closed over the past decade, unable to compete with cheaper natural gas-fired power.
- A public corruption scandal and prosecutions from the U.S. Department of Justice and Ohio Attorney General revolving in part around Ohio's last major energy overhaul, House Bill 6 in 2019, has consistently dogged lawmakers since the arrest of ex-Ohio House Speaker Larry Householder in 2020. He's in prison on a 20-year sentence, while two FirstEnergy executives accused of bribing him (and, separately, a since-deceased top state utility regulator) await trial. The executives have pleaded not guilty.

Bill sponsors and backers say they focused on increasing the power supply, limiting costs to consumers, and improving grid reliability. Specifically, they sought to lower taxes on new power generators; establish that distribution utilities with government-backed monopolies can't also produce power; and speed up the permitting process to lure new (mostly natural-gas fired) generation to Ohio.

While energy is a touchy political subject given the criminal entanglement around Ohio's last major energy legislation, the two bills at hand have drawn together a remarkable array of typical rivals: Democrats, Republicans, power producers, environmentalists, ratepayer

advocates, the natural gas industry, business associations and more all wound up supporting the legislation.

With a few exceptions, the bulk of the opposition came from Ohio's investor-owned utilities, and their trade association.

What follows is an overview of the two bills and where they coincide or split, according to reviews of the legislation and reference documents, plus interviews with lawmakers, lobbyists and company officials who worked on or followed the legislation.

Ending the add on fees on electric bills

The Public Utilities Commission of Ohio (PUCO), a panel of gubernatorial appointees, sets the rates that power companies can charge their customers. Typically, they do so after "rate reviews" – comprehensive scrutiny of their costs and charges. But since 2008, state law has allowed utilities to file "electric security plan" (ESP) cases.

Those plans allow utilities to attach fees or surcharges to customers' bills for one-off capital expenses. And as critics have maintained for years, those infrastructure improvements can allow utility companies to save money without passing the savings on to customers.

Those charges don't appear on standard electric bills but are listed online in the state's utility rate survey. They contain jargon-heavy names. Clevelanders' bills in March, for instance, included a "delivery capital recovery rider" (\$8.59), an "advanced metering infrastructure rider" (\$1.86), a "universal service fund rider" (\$1.60) and many others. The individual amounts are small, but they add up to hundreds of millions of dollars across all customers.

Utilities came to favor the security plans over full blown rate reviews. In the most extreme case, FirstEnergy managed to go 17 years without a rate review, leaning on a patchwork of one-off surcharges. (Among the accusations against its ex-officials are that they bribed the PUCO's chairman for help evading a future rate review the company had previously committed to.)

Both bills would end ESPs and force utilities to undergo rate cases every three years.

Tax cuts for poles, wires, pipelines

A major split between the bills: How big a tax cut should power producers and distributors get?

Under current law, both generation (i.e. power plants) and distribution (i.e. utility) companies pay a tangible property tax on 85% of the assessed value of their transmission hardware and 24% of their generation assets' value. For pipeline companies, it's 88%.

In the House bill, that rate drops to 25% for all newly built electric distribution assets or pipelines, and 7% for newly built generation assets.

This all comes at a cost. The lost revenue from electric and gas distribution would cost the state \$49 million to \$74 million, according to state fiscal analysts. As for generation, that “will result in an indeterminate revenue loss, as it depends on future investment activity and the catalyst for those decisions.”

The Senate bill lowers that rate to zero for all newly built generation assets. Newly built distribution equipment (for gas or electric) would be taxed on 25% of their value.

Lawmakers theorize that lower taxes will attract new power producers to build in Ohio to help meet the state's growing energy demand.

Because the cuts only apply to new projects, lawmakers say local governments don't lose any current tax revenue. House Energy Chairman Adam Holmes, a Muskingum County Republican and key negotiator on the bill, said certain kinds of generation can force new costs on local governments like infrastructure improvements or special highway equipment. Keeping some tax, he said, would cover those costs.

He said the tax issue would likely be the major negotiation point between the House and Senate.

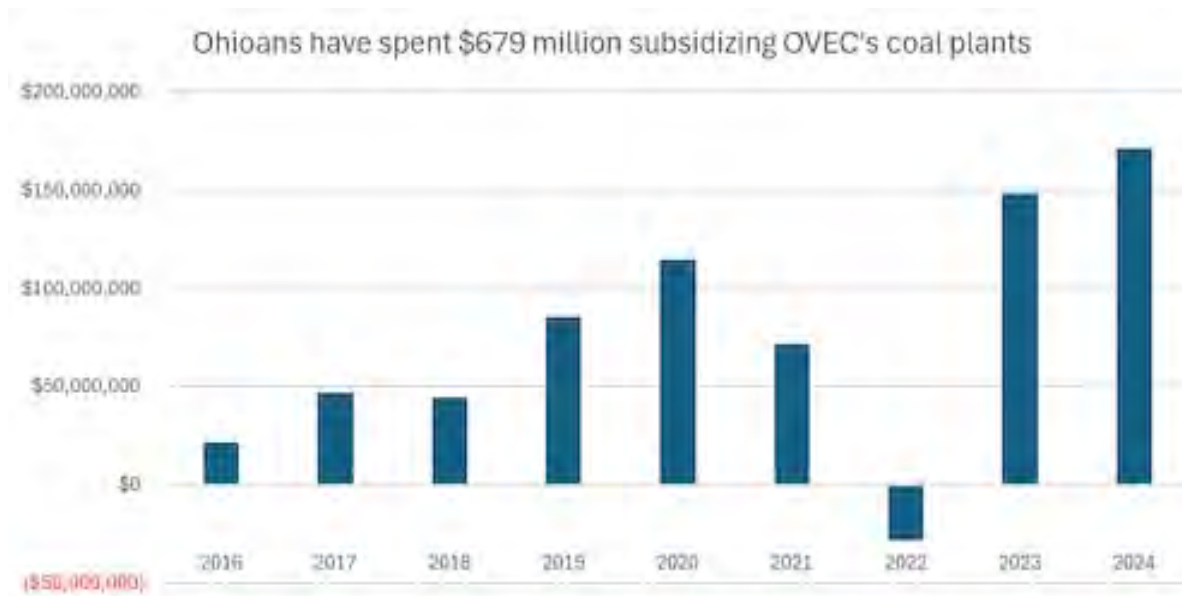
Death of a coal subsidy

In the 1950s, a dozen Midwest utility companies built two power plants – one in southeast Indiana and one in southeast Ohio – to fuel a uranium enrichment facility for the federal government in Piketon, Ohio, during the Cold War.

Starting in the 2000s, the utilities ended their agreement with the feds and instead sold the power into the regional electrical grid. By that time, state policy prohibited those distribution utilities from passing the cost of power generation to customers. But starting around 2014, the three Ohio utilities with equity in the plants – American Electric Power (a 44% stake), Duke Energy (9%) and AES Ohio (5%) – won permission from the PUCO to pass their losses to their customers anyway.

Under 2019's HB6, lawmakers at the time locked the bailouts in state law. The legislation forced all customers statewide to pay them regardless of their utility company and extended the lifespan of the bailouts through 2030. The subsidy was seen as a bargaining chip to win over conservative votes.

Ohioans, via fees on their electric bills, have paid \$679 million collectively to the three Ohio utilities with stakes in the coal plants since 2016.



Ohioans' payments per year to owners of the Ohio Valley Electric Corp. Data from the Public Utilities Commission of Ohio. Jake Zuckerman

While Democrats and some Republicans have fought for years to repeal them, HB15 and SB2 mark the first time the matter came up for a vote, which passed near-unanimously in both chambers.

Despite heavy lobbying from the utilities to allow the bailouts to continue through 2026 to give utilities time to prepare, both bills would end the subsidy immediately.

State budget analysts estimate the end of the coal bailout alone will save ratepayers \$591 million by the end of the decade.

Death of a solar subsidy

HB6 also created a subsidy for six solar farms in Ohio, some of the earliest utility-scale facilities of their kind in the state. Since then, Ohio collected \$62 million. However, only about \$8.5 million has gone out the door as a subsidy, for reasons ranging from hangups with developers to built-in bureaucracy. The rest is gathering dust in a state account.

Both bills end the solar subsidy, but they diverge over what to do with the money.

The House proposed refunding the money to customers.

The Senate bill, instead, creates a low-interest loan program, through which schools in Ohio could finance solar panels to generate their own power instead of buying it from their utilities, or finance other energy-saving improvements like LED lighting.

For Sen. Bill Demora, a Columbus Democrat, investing the money to help schools get long-term energy savings makes more sense than refunding Ohioans a piddling sum (his back-of-the-napkin math said \$1.23).

“Giving ratepayers \$1.23 or some miniscule amount similar to that is stupid,” he said.

From wastelands, rooftops to solar farms

The House bill includes a limited pilot program to, in general terms, allow profit-seeking developers to operate a generation facility of any kind – solar, wind, gas, etc. – on either rooftops or distressed land like brownfields or solid waste facilities.

Customers could pay subscription fees to those developers and use their power or sell it back to the grid. Essentially, they're betting the subscription fee is less than the cost of the electricity produced.

Both chambers have considered similar legislation in past general assemblies, though they never made it to final passage.

The Senate's legislation does not include a similar program.

Power outage data

Utilities already must produce aggregate data on electric outages. But policymakers and advocates say the reporting requirement is so weak, given how large utility companies' service territories are, that the information is unhelpful.

HB15 would, for the first time, require annual reliability reports at a granular level. That would include the average number of outages; how long they last; how many customers experienced multiple outages; and similar data points.

“There's accountability on outages for the first time,” said state Rep. Chris Glassburn, a North Olmsted Democrat.

The Senate's bill does not require those reports.

Smart thermostats

Most of the two bills focuses on increasing the supply of electricity. But the Senate included two programs aimed instead at reducing demand: energy efficiency for schools via the leftover solar subsidy funds and “demand response” technology for residential and commercial customers.

The PUCO allows the companies to create such programs so long as they're cost-effective for consumers.

For utilities, the companies can build out technologies to decrease customers' power use during moments of peak demand, like on a hot August day when air conditioners run full blast.

Customers, so long as they opt in to the programs and don't override the utilities more than half the time, get a \$40 annual bill credit in return.

Rob Kelter, a managing attorney with the Environmental Law and Policy Center, said the programs generally entail adjustments of one to three degrees Fahrenheit, if they're required at all.

"You can run the whole summer without entering the program once," he said. "Most customers who sign up don't even notice the change."

The House bill does not include the thermostat program or the energy efficiency in schools loan program.

'Advanced transmission technology'

Customers pay the infrastructure costs of transmission lines – the high voltage lines that carry energy over long distances – along with the distribution lines that ferry energy the last miles to people's homes.

Critics say that incentivizes utility companies – which receive guaranteed rates of return on investments – to build first and ask questions later.

Before requesting a regulatory permit to build a new transmission line, HB 15 says utilities must provide a summary of studies about what kinds of "advanced transmission technologies" could improve existing lines instead of building new ones.

The Senate bill has no such provision.

My own private power plant

Some data centers in Ohio have come up with an idea to solve the shortage of energy on the grid: make their own energy and keep it off the grid.

Two developers have asked the Ohio Power Siting Board, which issues permits for generation projects, for permission to build natural gas fired power plants on data center campuses. The power generated would only be used by the data centers, not the 13-state

regional grid. American Electric Power testified to lawmakers it has contracts with data centers operated by Amazon and Cologix to build solar farms to power those two companies' facilities.

Both bills set new rules for regulators to follow when considering such projects, and both of them prohibit utilities from owning such "behind the meter" generation.

But one major split between the House and the Senate revolves around those two AEP projects. The Senate version makes no consideration for works already in progress, meaning AEP could not own or operate its planned solar projects for data centers. The House version would grandfather the AEP projects in under current law.

What the utilities say

In general terms, electric companies do not like either bill. They were some of the few who testified in opposition to the bill, along with their trade groups.

FirstEnergy didn't publicly testify against the bill in person, though FirstEnergy Ohio CEO Torrence Hinton provided written comments arguing against it. He said the bills cuts off needed flexibility to address changes like extreme weather, economic trends or new technology, and raised other technical points of dispute.

"A thoughtful transition to a new regulatory framework will be key to providing safe and reliable power to our customers while managing impacts to their electric bills," said Hannah Catlett, a company spokeswoman. "As the legislation moves forward, FirstEnergy will continue to work with industry peers and regulators to advocate for sound energy policy that is critical to address the state's energy future while balancing cost and reliability for customers."

American Electric Power is Ohio's largest electric utility, serving central Ohio, including the data center boom that has developed here. The company lobbied against the end to security plans; the end to the coal plant subsidies, which will cost it hundreds of millions of dollars; and prohibitions against utilities owning any new "behind the meter" generation.

Spokesman Scott Blake said the bill as written limits its "innovations" in providing "important bridge solutions for customers with high energy needs" like data centers.

"We also will continue to advocate for a reasonable timeline for transitioning the cost recovery for the (coal) plants," he said. "There are other troublesome provisions in the bill, and we will continue to work with policy makers and other interested parties throughout the legislative process."

An AES Ohio spokeswoman didn't provide a comment for this report.

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

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Securities Law

March 28, 2025, 8:41AM PDT

AppLovin Hires Law Firm to Probe Short-Seller Allegations (1)

AppLovin Corp. has hired a law firm to investigate short sellers' allegations that the mobile advertising company is fraudulently juicing ad performance numbers on its platform.

The company retained the Quinn Emanuel Urquhart & Sullivan law firm to conduct an "independent review and investigation into recent short report activity," AppLovin said in a [statement](#) on Friday. It followed a [Muddy Waters report](#) released on Thursday that alleged that AppLovin was misappropriating data and violating some of its platform partners' terms of service, among other things, triggering a 20% drop in shares.

Shares rose 6.1% to \$277.73 at 11:37 a.m. in New York on Friday after the announcement.

Read More: [AppLovin Shares Sink After Muddy Waters Says It's Short](#)

AppLovin, which helps mobile app developers find users and sell advertising in their apps, had a [blistering rally in 2024](#), with shares soaring more than 700%. But a series of short-seller reports last month – including by Fuzzy Panda, Culper Research and Lauren Balik – have [taken their toll on the stock](#).

The reports alleged that AppLovin was using techniques to make it look as though its platform was delivering better results for advertisers than it really was. One way it allegedly did this was through attribution fraud, where a company hijacks the credit for an app install or purchase that was really triggered by an ad on another company's platform. AppLovin said the February reports were "littered with inaccuracies" and published a blog post on Thursday stating that Muddy Waters's report exaggerated standard industry practices to "stoke fear."

"We will take all necessary steps to ensure the facts are known and to protect our employees, stockholders, and partners," said AppLovin Chief Executive Officer **Adam Foroughi** in the statement on Friday.

(Updates with shares)

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Matt Levine's Money Stuff: The Synthetic Lender of Last Resort

Opinion

People are worried about the basis trade

One dumb way to think about “the basis trade” is that asset managers want to borrow money to buy Treasury bonds, and asset managers want to lend money against Treasury bond collateral, and for some reason big hedge funds sit in the middle. The trade is:

1. A bond manager wants exposure to Treasury interest rates, but she does not want to just *buy Treasuries*, because that will take up too much of the cash that she wants to use to buy corporate bonds. So instead she buys Treasury *futures*, which are like owning Treasury bonds but do not require nearly as much cash.
- 2. A hedge fund sells her the futures and hedges them by buying the underlying Treasury bonds. It is not betting on rates going up or down; it is simply clipping a fee for providing this service to the bond manager.
- 3. The hedge fund *also* doesn't want to put up all that cash to buy the Treasury bonds; it runs a pretty lean balance sheet and the returns on this trade — the reward it gets for the service it provides — are low. Instead, it *borrow*s most of the cash it uses to buy the Treasuries.
- 4. A cash manager (a money market fund, pension fund, corporate treasury or other cash investor) lends the hedge fund the money, secured by the Treasuries. This is a pretty safe loan, because the cash investor gets the Treasuries as collateral, and those are good collateral. This type of secured loan is called “repo,” and it is a big standardized market with low interest rates that lots of cash investors participate in.

You could imagine another way of doing the trade. You could imagine a bond manager saying “I would like to own Treasuries but not put up a lot of cash, so I am going to go across the hall to the money market fund manager at my firm and ask him to lend me the money to buy the Treasuries.” This is not the norm, in part because a lot of bond managers aren't supposed to *borrow* money but are free to use *futures*. (This is called “synthetic leverage”: It's economically equivalent to borrowing the money to buy Treasuries, but it doesn't technically count as borrowing.) A lot of asset managers will buy Treasury futures but won't go to the repo market to borrow money to buy Treasuries. Instead, hedge funds will do it for them; they will package the leverage into the right synthetic format for the asset managers.

It is possible that this could blow up: The hedge fund has mark-to-market gains and losses on its futures and its bonds, which should mostly offset each other (the futures are just contracts for the future delivery of *those bonds*, and ultimately the hedge fund can close them out by delivering the bonds), but they can temporarily move apart and cause trouble. Plus the hedge fund has to post collateral on both sides, and the collateral requirements could change: If repo lenders get more nervous, the hedge funds will have to pay them back, which could require selling their bonds and unwinding the trades. This could lead to big price dislocations, and in March 2020 it did. People have been worried about it ever since.

Bloomberg's Alex Harris reports:

The Federal Reserve should consider setting up an emergency program that would close out highly leveraged hedge-fund trades in the event of a crisis in the \$29 trillion US Treasuries market, according to a panel of financial experts.

Any vicious unwinding of a swath of the estimated \$1 trillion in hedge fund arbitrage bets would not only hamper the Treasuries market, but others as well — requiring Fed intervention to assure financial stability. When the US central bank did that in March 2020, during the initial Covid crisis, it engaged in massive outright purchases of Treasury securities, to the tune of about \$1.6 trillion over several weeks.

A better way of stepping in would be via hedged bond purchases, according to a Brookings Institution paper by Anil Kashyap at the University of Chicago, Harvard University's Jeremy Stein — a former Fed governor, Harvard Business School's Jonathan Wallen and Columbia University's Joshua Younger.

"If the Fed is tempted to buy again, we'd rather they do that on a hedged basis," Stein told reporters in a briefing on the paper, which was released late Wednesday. This approach "can be a valuable addition to the policy toolkit" at the Fed, the authors wrote in the paper.

Here is Kashyap, Stein, Wallen and Younger's research summary, and here is the underlying paper. From the summary:

Broker-dealers and, increasingly, hedge funds in essence lend their balance sheets to the asset managers. They directly hold the Treasury securities that the asset managers prefer to hold synthetically through derivatives. The hedge funds and broker-dealers hedge their direct holdings by taking a "short" position in derivatives (the opposite of the asset managers). If interest rates rise and the value of their direct holdings declines, then the value of their derivatives positions increases to offset the direct holdings' decline. The dealers and hedge funds are compensated for this service through the spread, known as a "cash-futures basis," between the returns on Treasuries and Treasury derivatives.

The vulnerability arises because the hedge funds, which are more lightly regulated than broker-dealers, finance their Treasury holdings almost entirely by borrowing against them. Thus, any number of shocks can lead the hedge funds to quickly exit the trade, requiring the broker-dealers to step in, at least in the short term.

The authors recommend that the Federal Reserve, in periods of extreme stress, be prepared to take over the hedge funds' positions. As before, the Fed could stand ready to purchase Treasury securities but it would also, as the hedge funds do, take offsetting short positions in derivatives.

The primary advantage of that approach for the Fed, they write, is that the purchases would be self-liquidating because the reversal of the securities purchases would be embedded in the short positions in derivatives. The Fed would not, as it has had to do during the COVID-era, worry about how to reduce its holdings once market stress subsides. And, because the purchases would be hedged, the Fed would not have to take a loss on those holdings if it has to raise interest rates to quell inflation, as it did in the aftermath of the pandemic.

The Fed has plenty of experience *lending against Treasuries* in the repo market. This proposal is just for the Fed to do a bit more of the trade: Instead of lending against Treasuries, it would buy the Treasuries and also sell the futures. It's economically pretty much the same thing, though: The Fed can print money, and it can lend its balance sheet to levered investors so they don't all have to dump their Treasuries at once. The Fed is the lender of last resort in the US financial system, and in modern finance that means being the *synthetic* lender of last resort.

Narrower banking

In possibly related news, Bloomberg's Yizhu Wang and Weihua Li report:

One of American banks' fastest-growing businesses is lending to the very companies trying to grab their market share.

Traditional bank lending to non-bank financial institutions like private equity firms, hedge funds and private credit shops more than doubled in the past five years, according to data analyzed by Bloomberg. That 16% annualized rate far surpassed their lending to categories including agriculture, credit cards, commercial and industrial companies as well as foreign governments, the data show.

The phenomenon underscores the seismic shift taking hold in US finance, where less-regulated lenders have stepped into a void opened up after the financial crisis prompted banks to slow certain types of lending. As those firms proliferated, traditional banks eager to capture the spoils have gotten in on the action, with lending to companies often dubbed shadow banks hitting \$1 trillion last year.

"The banks are caught in a weird dance," said Brian Foran, who covers bank stocks at Truist Securities Inc. "In effect, banks are financing their own competition."

You know my take on this. If you are a bank and you are losing leveraged buyout financing business to private credit firms, or losing trading business to quantitative proprietary trading firms, and those firms come to you and say “hey we need to borrow some money to keep taking business away from you, want to lend it to us?” you might reasonably be *annoyed*, but you are *wrong*. You *shouldn't* be lending to LBOs, or doing securities trades. It is a historical accident that banks do that, with their rickety funding model backed by demand deposits. That stuff *should* be done by nonbank firms with long-term locked-up equity funding. But not *exclusively* equity funding. Some equity funding, and some debt. Where do they get the debt? Well, from banks! Banks should invest in *safe assets*, which means not *directly* doing the stuff they used to do (lending to LBOs, securities trading), but rather *lending against* that stuff, letting someone else do the stuff and taking senior claims on their activities.

This is overstated in various ways: Of course banks should do LBO lending and securities trading, I'm not a monster, and of course lending to private credit firms is not perfectly safe. But there does seem to be a trend: Banking is getting incrementally narrower, and nonbank financial firms are increasingly getting into businesses that 20 years ago were done by banks. Those firms take the first-loss risk on that business, and banks lend to them and get some more cushion from losses.

Also I should say that my model of “the nonbank financial institutions are funded with long-term locked-up equity, not like the banks and their deposits” is pretty idealized. I think it is a roughly correct description of private credit: Private credit firms do borrow money from banks (and from bond markets), but they are basically more equity-funded and less flight-prone than banks are. But not everything in the “nonbank financial institutions” category is like that. The essential fact about nonbank financial institutions is that they are not *regulated like banks*. Sometimes their funding model is naturally safer than that of banks, but that's not guaranteed. If you are a hedge fund running basis trades at 18 times leverage using overnight repo, in some sense your funding model is riskier than a bank's — that's why the Fed is thinking about how to bail you out! — but you are not regulated like a bank. Some of the trend is toward narrower banking, but some of it is toward more *shadowy* banking.

Anyway, the new narrower banking is still a fine business for banks:

One Providence, Rhode Island-based lender says it's benefitting from the shift. Citizens Financial Group Inc. has more than doubled its roster of private equity customers to 175 since 2014, according to Chief Executive Officer Bruce Van Saun. Many of those clients expanded into private credit using financing from Citizens, which they lent to their portfolio companies, he said in an interview.

“We're making more money from the growth in private credit than we're losing in direct head-to-head competition with them,” Van Saun said.

Robinhood grows up

Perhaps investing firms, like social media companies, are generational. In the olden days, when young people graduated from college, their parents would take them down to the local full-service broker and buy them their first 100 shares of Amalgamated Spats preferred stock, and as their fortunes grew the broker took care of all their needs. But their kids were on the internet, and the idea of walking into a fusty old full-service brokerage (and paying high commissions) was off-putting to them, so they opened accounts at E*Trade or Charles Schwab. These accounts were small and not very lucrative, but over time those kids grew up, and they got more money and needed more financial services, and the discount brokerages grew up with them.

Their kids, though, (1) get their internet from phones, not computers, (2) want investing to feel like a video game and (3) don't want to pay any commissions at all. So Robinhood Markets Inc. launched and got a lot of customers with free, phone-based, gamified stock trading. That looks in various ways like sort of a downscale business — a lot of those accounts are small, and they get smaller by gambling on meme-stock options — but those kids grow up too and need retirement advice. It is possible, I have written, “that day trading meme-stock options is a gateway drug for sensible retirement investing.” Also for on-demand helicopter rentals though. The Wall Street Journal reports:

Robinhood, the digital brokerage that channeled the meme-stock and crypto craze, is angling to keep its youthful clientele as they graduate from YOLO investing to estate planning.

The company said Wednesday it plans to roll out many new services, from wealth-management tools and bespoke investment portfolios to bank accounts. All of them cater to Americans as they age, earn more money and navigate more complicated financial lives. Robinhood customers' median age has climbed to 35 years old from 31 over the past five years.

As it did with its brokerage, Robinhood is leaning into the ubiquitous presence mobile phones play in the lives of consumers. Some of its new offerings are more likely to appeal to a younger crowd; the perks planned for bank account holders include discounted helicopter rides and home deliveries of cash that are as easy as ordering a meal on DoorDash.

The world is “moving from people who grew up needing stockbrokers and visits to bank branches to the type of people...who are growing up with the tools to independently manage their finances from home,” Vlad Tenev, Robinhood's chief executive, told investors at an event late last year. “We're uniquely positioned at the epicenter of this massive cultural and financial shift.”

I mean, that's right, right? Robinhood made a big, somewhat messy bet that the kids these days wanted to do fun trading on their phones. That bet turned out to be correct, and the two main ways for it to pay off are:

1. Robinhood gets to sell them even more ridiculous high-margin bets: single-stock zero-day options! sports betting! so much crypto!

- 2. Those kids grow up, get more money, and need high-margin wealth and investment advice (and helicopters). They trust and are familiar with Robinhood, so it is well positioned to sell them that advice.

I am not sure which effect predominates in the long term, but Robinhood can certainly try both. There is some cognitive dissonance when the same app on your phone is offering you both retirement planning and sports gambling, but maybe “total comfort with cognitive dissonance on your phone” is what distinguishes today’s 35-year-olds from, you know, me.

What about *their* kids? If you are graduating college today, do you think Robinhood is for old fogeys? Where do you put your first \$100? What is the platform that you use for fun now, that will grow up with you, that will surprisingly be offering retirement planning in 10 years? Is it FanDuel? Is it Pump.fun? Am I a huge boomer for even suggesting those names? Is it something I’ve never heard of? Almost certainly.

HSBC

My model used to be that investment banks were socialist paradises run for the benefit of their workers, but that is increasingly untrue. The Financial Times reports:

HSBC fired investment bankers on the day they were due to learn their bonus figures and gave no bonuses to many it let go, in a sign of how the bank is taking a more ruthless approach to costs under new chief executive Georges Elhedery.

The London-based lender told staff in its UK investment banking business last month that they were losing their jobs, having said in January it would shut its mergers and acquisitions advisory work and its equity capital markets business outside of Asia and the Middle East.

Those conversations took place just as bankers expected to learn how much they would receive in bonuses for work done in the calendar year 2024, three people with knowledge of the matter said. But bankers at vice-president level and above within HSBC’s investment banking unit who had their employment terminated as part of the restructuring received no bonus, the people said.

“It’s very unlike HSBC,” one of the people said, adding that the bank had “a reputation for looking after [its] people”. The bank declined to comment.

Other investment banks sometimes pay bonuses to those whose positions they terminate as part of restructuring programmes, even if such bonuses are smaller than usual.

Yeesh! I get it: If you are getting rid of all of your investment bankers, why would you pay them bonuses on the way out the door? You don’t need anything else from them, and while zeroing the people you fire might be bad for the morale of the people who stay, if you’re firing *everyone*, that doesn’t matter. Traditionally investment banks try to avoid this, because they are run by investment bankers who tend to look out for the interests of investment bankers as a class. But increasingly investment banks are run like coldly rational profit-maximizing public companies, which sometimes involves stiffing the investment bankers.

Endeavor

Endeavor Group Holdings Inc. was taken private on Monday by its biggest shareholder, Silver Lake, for \$27.50 per share in cash. Last Friday, Endeavor's stock closed at \$29.25 per share on heavy volume. Everyone knew the merger was closing on Monday. Why did the stock trade above the deal price? The answer is probably that if you bought the stock on Friday, you were getting (1) a fairly certain \$27.50 per share on Monday plus (2) your share of a potential shareholder lawsuit against Silver Lake arguing that the deal was unfair and the price should be higher. On Friday, the market valued that lawsuit at about \$1.75 per share.

That is an approximate analysis, and the lawsuit does not really trade separately from Endeavor stock, which means that, like the stock, the lawsuit stopped trading on Monday morning. But if it was still trading I think it would probably be up today, because yesterday Icahn Enterprises LP disclosed that it owned 8.4% of Endeavor's stock as of Friday. If a big famous investor announces a big position in your stock, that stock tends to go up; presumably part of the reason that Endeavor's stock went up on Friday was just Icahn's buying pressure. But the main point today is that Carl Icahn has taken a position *in the lawsuit*: The most likely reason for him to be buying Endeavor stock in size last week was that he wants in on a lawsuit against Silver Lake. If you are also in the lawsuit trade, that is presumably good news for you, because:

1. Icahn is a smart successful investor and his interest arguably validates yours, and
- 2. Icahn is *cantankerous*, and at the margin it seems like he'd pursue a lawsuit vigorously and make life unpleasant for Silver Lake. You want him on your side in something like this.

GameStop converts

Man, GameStop is really doing the whole Strategy playbook:

GameStop Corp. is seeking to sell \$1.3 billion of convertible bonds to fund Bitcoin purchases as it embraces a strategy that was developed by the cryptocurrency advocate Michael Saylor.

The video-game retailer rallied after the company said on Tuesday that its board approved a plan to add Bitcoin as a treasury reserve asset. That was followed on Wednesday by a filing announcing the planned sale of the bonds, which will be used for general purposes, including the acquisition of Bitcoin.

The Grapevine, Texas-based GameStop joins a growing list of public companies taking on convertible debt to buy Bitcoin in an attempt to capitalize on upswings in the cryptocurrency. The tactic was pioneered by Saylor's Strategy, the enterprise software company formally known as MicroStrategy, which has acquired more than \$40 billion in Bitcoin and seen its share price soar. ...

GameStop's entry into the market comes even as investors appear to be growing more skeptical of the strategy.

I think that the three main elements of the Strategy strategy are:

1. Buying a lot of Bitcoin,
- 2. Getting retail investors to pay attention to you, and
- 3. Having a volatile stock.

The first element is straightforward. Strategy achieved the second element in part by being early to the corporate-treasury Bitcoin trade and in part by Saylor being very vocal about it, but GameStop can obviously achieve the second element by being GameStop. (There are multiple movies and TV series about how much attention retail investors pay to GameStop.)

The third element is perhaps the subtlest and the least essential, but Strategy has raised a lot of money by selling convertibles, and convertibles are essentially a way to package and sell volatility: The more volatile the stock is, the more valuable a convertible is to arbitrage investors, who hedge the convertible by buying stock when it goes down and selling it when it goes up. Strategy's stock is extremely volatile, in part because it is a meme-y Bitcoin investment vehicle and both memes and Bitcoin are pretty volatile, but in part because a lot of its stock is owned by levered exchange-traded funds that buy more stock when it goes up and sell when it goes down. The levered ETFs create volatility, which the convertibles consume, and Strategy sits in the middle collecting money.

GameStop is not quite as volatile as Strategy these days but, you know, it's GameStop. It can ramp up the volatility any time it wants. Get Roaring Kitty to tweet a picture! Announce a Bitcoin treasury strategy!

Things happen

OpenAI Close to Finalizing \$40 Billion SoftBank-Led Funding. CoreWeave Is Planning to Cut IPO Size to \$1.5 Billion. Delaware Punches Back at Texas Efforts to Lure Away Companies. Apollo president says private credit is 'not a bubble.' Vanguard Met With Blackstone, Carlyle on Private Markets Product. European oil traders weigh Russia return in market reshaped by war. U.S. Prosecutors Probe Tip About Timing of Pfizer Vaccine. JPMorgan Says Quantum Experiment Generated Truly Random Numbers. Lufthansa Shakes Up Business Class With Seven Seat Categories. "If you're the average Wall Street employee, it is no time to run out and buy your Hamptons home."

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- 1. Probably intermediated through the hedge fund's brokers.
- 2. And we talked the other day about the S&P 500 basis trade in equities, which does seem to work a little differently, in part I think because there is a less robust market for equity index repo. Bloomberg's Yiqin Shen

reported that “Janus Henderson is among those taking advantage of the wider financing spreads” for S&P 500 futures, and that “Natasha Sibley, a manager on the firm’s multi-strategy team, said Janus Henderson is buying the stocks in the S&P 500 index and selling futures against them.” Janus Henderson is doing this basis trade directly, rather than lending to hedge funds to do it, in part because it would be harder to lend to hedge funds and in part because the financing spreads are good enough that it’s worth it for Janus Henderson to do the trade unlevered.

- 3. It also filed an update disclosing that it owned 0% as of Monday, presumably because the merger closed.
- 4. Not investing advice, to the extent you have found a way to trade the lawsuit.

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It's all fun and games until somebody loses their retirement savings.

 [businesslawprofessors.com/2025/03/private-company-trading](https://www.businesslawprofessors.com/2025/03/private-company-trading/)

Ann Lipton

March 28, 2025

It's all fun and games until somebody loses their retirement savings.



Private company share trading seems to be the theme of the week. The WSJ reported on it Tuesday, and on Wednesday, Mike Levin and I posted a new episode of *Shareholder Primacy* – where we talk about “withhold the vote” and “vote no” campaigns for corporate directors – but we also talk about the phenomenon of private company share trading. (Here on Apple, here on Spotify, here on YouTube).

The WSJ focuses on how accredited investors – which is a relatively low bar, for individuals, it just means someone who earns \$200K per year, or has \$1 million net worth (minus the primary residence) – are increasingly able to trade shares of pre-IPO companies on sites like EquityZen and Forge Global.

But the WSJ only glancingly references the point that Mike and I focused on in the podcast: The investors aren't trading shares of the operating company; they're trading shares of SPVs, which themselves own shares of the operating company. This is something I posted about before, here – it's a way to avoid the securities law requirement that companies begin public reporting if they have 2,000 investors holding a single class of equity.

Except, under the securities laws, the operating company is not supposed to be involved in creating the SPV – a detail that companies seem to be ignoring.

The phenomenon allows companies to stay private longer – they can raise all the capital they need, and get liquidity to boot, through the use of SPVs – but also herds a lot of only moderately wealthy investors into opaque funding vehicles, that may charge hefty fees, that give them no insight into the operating company and no rights associated with it (like, fiduciary claims, inspection rights, etc).

For example, here are the offering documents that StartEngine posted for investment in a StartEngine SPV that will invest in Kraken. As I understand it, in addition to a 20% carry, the SPV will purchase the Kraken securities from one of its affiliates at a price that is approximately 45% higher than the price the affiliate paid.

Which brings me to CoreWeave. It was generally viewed as a hot AI startup until it filed for its IPO – at which point, the public got a look at its financials and recoiled (very much like WeWork, in that respect). The IPO is supposed to happen today; I guess we'll see how it trades, but it's already been scaled back.

One argument is that CoreWeave is disappointing precisely because it needed the IPO – public companies are where you go when you aren't good enough to be hoarded in private markets. But that situation is unsustainable because, as Elisabeth de Fontenay pointed out several years ago, private market investors rely on the information supplied in public markets in order to value their companies. Without a robust public market, everyone's flying blind.

These are the kind of dangers that we're exposing moderately wealthy retail investors to, with a healthy dose of SPV fees to boot.

And another thing. Belated plug for the *Shareholder Primacy* podcast released last week, where Mike Levin spoke to Sarah Haan at Washington & Lee about the connections between shareholder democracy and civic democracy. Here at Apple, here at Spotify, and here at YouTube.

Reposted by Ann M. Lipton



George Pearkes @peark.es · 1h
why would you say this out loud?

*COREWEAVE CEO: WITHOUT NVIDIA ANCHOR, IPO WOULDN'T HAVE CLOSED

btw they're indicated \$43 and not trading yet, original indication was \$50...and that's after cutting the IPO price down to \$40 from original \$47-\$55 range



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Reposted by Ann M. Lipton



Conor Sen @conorsen.bsky.social · 1h

If the top 15 investors took a blood oath not to sell the actual float of this might be as low as \$100M for awhile. Basically a public company in name only:

CoreWeave Said to Sell 50% of \$1.5 Billion IPO to Three Buyers

By Bailey Lipschultz and Ryan Gould
03/28/2025 11:56:39 [BFW]

(Bloomberg) -- Half of CoreWeave Inc.'s \$1.5 billion initial public offering went to the three largest investors in the deal, according to people familiar with the matter.

- The top 15 investors in the IPO took 90% of the shares, the people said, asking not to be identified as the information isn't public
- The offering raised \$1.5 billion, with 37.5 million shares priced at \$40 apiece; the deal was downsized from an initial plan of 49 million shares



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FT Alphaville CoreWeave

Public markets risk becoming a dumping ground for bad companies

CoreWeave's faltering IPO is a symptom of market enshittification



© FTAV montage via Wikimedia. No shade intended to Johnson's

Craig Coben

Published 9 HOURS AGO



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[Livingston, New Jersey](#) (population 31,330) has always punched above its weight. Its residents have included *Seinfeld*'s [Jason Alexander](#), my novelist brother [Harlan](#), and Genovese crime family capo [Ritchie "The Boot" Boiardo](#), who some say [inspired *The Sopranos*](#). Its main landmark is the Livingston Mall, which [opened to great fanfare in 1972](#) and has since slid into [decline](#) and is facing condemnation. I used to go there as a kid.

Livingston isn't perfect, but it's my hometown. So imagine my excitement when I saw that CoreWeave, an AI-infrastructure company whose headquarters are a 10-minute drive from my childhood home, was preparing a blockbuster IPO on [Nasdaq](#), outshining Sand Hill Road's darlings with a sky-high valuation.

But then reality struck like a [pothole on the New Jersey Turnpike](#).

The IPO has now been downsized, [the price range slashed](#), and the buzz has long faded. CoreWeave, a cloud-computing firm that rents out GPUs to AI companies, was supposed to be a marquee offering, proof that the IPO market was roaring back after years in the wilderness. Instead, it has become the latest exhibit in a troubling trend: IPO enshittification, where the public markets are offered the runt of the litter.

“[Enshittification](#)” is a term coined by journalist Cory Doctorow to describe how platforms and services decay over time. They start out great, enticing users with quality. Then, as profits take precedence, they degrade, squeezing customers, suppliers, and, eventually, themselves. His thesis focused on social media: once vibrant, now clogged with ads and algorithmic sludge. The same rot is taking hold in the IPO market.

There was never a golden age of IPOs, but some of the greatest companies went public early, rewarding investors willing to take the risk. The IPO marked not just a fundraising event but a cultural milestone, a corporate coming-of-age ritual, a chance to shine or stumble. An entire ecosystem — equity capital markets originators, syndicate desks, salesforces, research analysts, portfolio managers, buy-side analysts — grew around it, a symbiotic dance of capital and opportunity.

It wasn't perfect but it was the best finance show in town.

Over time, the process has soured. Investment banks, eager to win deals, overpromise on valuations, inflating client expectations. This isn't new, but it feels like it has become more pronounced. Meanwhile, the explosion of private capital, driven by low interest rates and other advantages, has made public markets less attractive. Companies no longer need IPOs to fund growth; they turn to them when they're out of options.

CoreWeave isn't alone in its struggles. Earlier this year, Venture Global, a liquefied-natural-gas exporter, tried to cash in on Europe's energy crisis and excitement over Donald Trump's election by seeking a nosebleed valuation. Investors weren't fooled. The company [reduced its valuation by more than 40 per cent to get the IPO out the door](#), only for the shares to plunge almost 60 per cent in the after-market. Like CoreWeave, it had glaring red flags: massive litigation, huge execution risks, and a valuation propped up by temporary price spikes.

These aren't the kinds of companies that should be leading an IPO revival. Ideally, thoroughbred companies would lead the charge, much like Google's 2004 debut following the dotcom collapse (the IPO priced [below the range](#) but traded well in the after-market) or [AIA's 2010 offering](#) after the financial crisis. Instead, the market's reopening features firms unable to secure private funding, desperate for cash to survive, or banking on investors overlooking their shortcomings in favour of hot trends.

The public markets risk becoming a dumping ground. When the best assets are hoarded by private equity firms, venture capitalists, sovereign-wealth funds, and family offices, the IPO market gets the leftovers. As FTAV [wrote](#) on Thursday, CoreWeave, for all its AI hype, has massive debts, huge capex requirements, mounting losses, rapidly depreciating assets, a slew of related-party dealings, and a significant dependence on just two customers (Microsoft and Nvidia). Yet here it was, looking for public investors willing to take the plunge. CoreWeave is seeking public investment not from a position of strength, but out of necessity.

The same pattern played out with WeWork and other cautionary tales — companies that didn't go public because they were ready but because they had no other choice. The IPO market is ostensibly the showcase for the best and brightest. Now, increasingly, it's the venue for the desperate and the distressed, a place where overhyped, overleveraged, and overrated companies try to hang on long enough for insiders to exit.

This shift isn't just about a few bad listings; it reflects a fundamental realignment of capital flows. Private markets have ballooned, while the number of public companies in the US has roughly [halved](#) since the 1990s. Startups no longer need to go public when they can raise billions from private sources. By the time they reach the public markets, the easy money is gone.

If CoreWeave and Venture Global represent the vanguard of the IPO revival, we're in trouble. Public markets should be a launchpad for great companies, not a last resort for troubled ones. The only hope is that enough high-profile flops will force a reckoning, steering investors back towards quality — or at least rational pricing. After all, private shareholders can't hold on forever. Their own backers are [desperate for liquidity](#), [unsold assets are piling up](#), and the cycle of secondary buyouts, continuation funds, and other financial contortions won't last indefinitely. Sooner or later, something has to give. When it does, companies will need to come to market with sustainable valuations and capital structures, rather than constantly pushing the limits.

As the fluorescent lights flicker over empty stores, Livingston Mall has gone from representing suburban aspiration to memorialising the decline of in-person shopping. The IPO as a product offers a similar spectacle of decay and lost promise: from a blue-ribbon event in front of cheering throngs to a tired lounge act playing to an indifferent crowd.

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The Anti-Trump Movement Has Found Its Target: Elon Musk's Tesla

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By Trisha Thadani and Pranshu Verma

Democrats are furious at the Trump administration. But no one is firing them up as much as Elon Musk.

(Washington Post) -- Jennifer Cousins has a laundry list of grievances against President Donald Trump: the dismantling of the Department of Education, the administration's anti-transgender policy, and deep cuts to the Social Security Administration.

The 48-year-old Florida resident was unsure where to direct her ire. But an obvious outlet has emerged: Elon Musk's Tesla.

"Musk is a bigger threat to democracy than Trump is at this point," said Cousins, a longtime activist who organized an anti-Tesla rally in a deep-red district in Central Florida last weekend, drawing about 100 people. "The goal is to make him broke."

Musk has become the most polarizing figure of Trump's second term, overseeing dramatic cuts and sweeping layoffs within the federal government through his U.S. DOGE Service. As public sentiment toward Musk has curdled, activists have taken aim at the electric-vehicle company that undergirds much of the billionaire's wealth - transforming Tesla into the symbol of a new anti-Trump movement.

A groundswell of Tesla protests has erupted across the globe, many launched by groups that have emerged in recent months. Activists created "Tesla Takedown," a clearinghouse for smaller protests, earlier this year. Rise and Resist, a social advocacy group started in 2016 during Trump's first administration, now focuses on anti-Tesla action, offering a tool kit for organizing protests at Tesla showrooms. On Saturday, protesters will gather at dozens of Tesla dealerships as part of a global day intended "to stop Musk's illegal coup."

This anti-Tesla sentiment has spread online, inspiring videos of people defacing Teslas with spray paint, eggs and keys, and in one viral post, Mardi Gras revelers throwing beads and alcohol at a Cybertruck during a parade. Cousins said those attacking Tesla vehicles and the company's properties are "not the same people we are rallying with," and she does not condone the violence.

Still, the singular focus on Tesla - a brand that built its popularity largely through liberal customers concerned about climate change - is a shift from Trump's first term, when unrest scattered across issue-specific events, including the Women's March, demonstrations against the president's "Muslim ban," and pro-science rallies.

But in Tesla, activists have found a catchall for an array of political grievances - and a rare chance to trace impact directly, through sinking car sales and company stock. Although Tesla's stock has risen slightly in recent days, it has fallen by nearly 30 percent since Trump's inauguration. Tesla owners are also trading in their vehicles at an increasing rate, and prices for used Teslas have sunk.

"The Tesla dealership is a godsend for activists," said David S. Meyer, a professor of sociology and an expert in social movements at the University of California at Irvine. "You can see them. They're tightly, tightly associated with Musk ... [and] it's a place where people can assemble."

Musk and Tesla did not respond to a request for comment.

Cousins was thrilled at the popularity of the rally she hosted in Clermont, Florida, where more than 60 percent of residents voted for Trump. As the movement gains steam, Cousins said she has been finding great satisfaction in checking Tesla's stock price.

"The stock has been steadily falling. And it can't just be from people being mad and shouting at their TV screens," Cousins said. "This has to be the result of direct action being taken against this megalomaniac oligarch who nobody elected."

'Let this be a warning'

Tesla was already struggling at the beginning of the year, but analysts and shareholders are increasingly concerned that the sustained demonstrations are causing significant harm to the stock. Dan Ives, a senior analyst at Wedbush Securities, said Tesla is in a "dark brand crisis tornado" calling on Musk to reengage with the company.

"Musk and Tesla have become a political symbol which has been a major overhang on the stock," he wrote in an investors note.

Trump - whose hotel business also took a hit amid the unrest of his first term - has attempted to summon a wave of conservatives to the rescue. The president showcased a string of Teslas on the White House lawn this month, while Commerce Secretary Howard Lutnick urged Fox News viewers last week to buy Tesla stock - an apparent violation of federal ethics rules that prohibit executive branch officials from endorsing products or businesses.

Musk has claimed without clear evidence that Tesla protests are coordinated, accusing ActBlue, a Democratic fundraising tool, of funding anti-Tesla activist organizations. Two of the five organizations Musk listed do not raise money using the tool, according to a Post review. ActBlue states on its website that it operates as a "conduit" for raising funds, and it doesn't "fundraise, donate, or send texts or emails on behalf of any group." ActBlue did not respond to an additional request for comment.

In an all-hands this month, Musk denounced the widespread unrest against his company, calling images of burning Teslas "Armageddon."

"It's like, I can't walk past the TV without seeing a Tesla on fire. Like, what's going on?" Musk said in the meeting, which was live-streamed on X, the social media platform he owns. "This is psycho, stop being psycho!"

Although the majority of demonstrations have been peaceful, some attackers have lit charging stations on fire, destroyed vehicles with molotov cocktails, vandalized storefronts and shot bullets through showroom windows. Trump has seized on these incidents, calling them acts of "domestic terrorism," and the FBI launched a task force this week to investigate the suspects.

Attorney General Pam Bondi announced charges last week against three people behind violent acts against Tesla, involving molotov cocktails and gunfire. "Let this be a warning: if you join this wave of domestic terrorism against Tesla properties, the Department of Justice will put you behind bars," she said in a statement.

Meanwhile, peaceful protests are increasingly being met with force.

On Saturday, a man sped his car into a group of protesters standing outside a Tesla dealership in Palm Beach, Florida - roughly eight miles west of Mar-a-Lago. No one was injured, said Teri Barbera, a spokeswoman for the Palm Beach County Sheriff's Office. That same day, a counterprotester brandished a stun gun at a gathering outside a Tesla showroom in Berkeley, California, according to Jessica Perry, a spokeswoman for the Berkeley Police Department.

From pink hats to staring down Tesla drivers

During a protest in Northern California this month, Patty Hoyt stood peacefully at the entrance of a Tesla dealership with a dozen others, holding signs that said "Sell or Sieg Heil" and "Boycott Tesla." When a Tesla pulled up to the dealership's service station, she took off her sunglasses and stared the driver down.

"My signs are meant to shame people," said Hoyt, 63, who organized the protest in Corte Madera. "Musk is the guy who wants to [ruin] everything that is good with America, so I would like to [ruin] his company."

A longtime activist, Hoyt flew to Washington during Trump's first inauguration for the Women's March, where hundreds of thousands of women wore pink knitted hats to protest the president. She organized protests across Northern California during Trump's first term, rallying against Brett M. Kavanaugh's Supreme Court nomination and immigration and education issues.

While the marches served as a powerful place for Hoyt to channel her grief and rage, she said the Tesla protests are attracting a much "broader swath of people." She has met veterans at her rallies motivated by DOGE's cuts to veterans services. Some had last attended a protest in the 1960s to object to the Vietnam War.

The diversity of the attendees reflects Musk's widespread impact: "He is hurting everybody," she said.

As images of massive protests and defaced Teslas go viral online, demonstrations have also mushroomed around the world with an aim of stigmatizing the billionaire's brand.

After Musk twice made a gesture that resembled a Nazi salute on Inauguration Day and supported far-right British extremist Tommy Robinson, a group of British activists formed the group "Everyone Hates Elon."

The group organizes guerilla-style protests across the United Kingdom, attempting to use humor and legally questionable tactics to criticize Musk. They have placed stickers on parked Teslas that say "don't buy a swasticar" and have hacked into London bus stop displays to post their own ads. Featuring photos of Musk and Tesla cars, the ads say: "Autopilot for your car. Autocrat for your country," and another using a British slur for male genitalia.

Transport For London, a transit body for the city, said in early March that train and bus stop ads likening Musk to a Nazi are "not authorized" and pledged to take them down.

Ed Niedermeyer, author of "Ludicrous: The Unvarnished Story of Tesla Motors," who is organizing "Tesla Takedown" rallies in Oregon, said people are motivated by the idea of targeting a company because they can feel a tangible difference when they watch the stock drop or hear about people selling their vehicles.

"We are using economics and the vulnerability of Tesla to exert pressure," he said. "The one lever we have to effect this situation is Tesla's vulnerability."

[Click Here](#) to see the story as it appeared on the Washington Post website.

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-0- Mar/28/2025 16:35 GMT

Will 'Tesla Takedown' weekend protest deliver its intended jolt to Elon Musk?

[marketwatch.com/story/a-tesla-takedown-is-coming-this-weekend-will-it-rock-tesla-4bb11a9d](https://www.marketwatch.com/story/a-tesla-takedown-is-coming-this-weekend-will-it-rock-tesla-4bb11a9d)

Claudia Assis

March 28, 2025



Activists are pushing for an intensified public denunciation of Elon Musk's involvement in politics, as calls for the Tesla Inc. chief executive to refocus on the company continue to grow and the backlash against the so-called Department of Government Efficiency has grown into a major drag on the electric-vehicle maker's stock.

This weekend's planned "Tesla Takedown" in the U.S. and elsewhere is being billed as a "Day of Action," with Saturday protests planned in places as far apart as Vancouver, Canada, and Hamburg, Germany, and in major cities such as New York and London, with more actions scheduled for early April in additional European cities.

It's the latest in a string of demonstrations that have targeted Tesla

↓

TSLA

-3.26%

locations in recent weeks. The organizers say that they “oppose violence, vandalism and destruction of property” and that the protests will be peaceful.

Musk’s aggressive actions as the apparent driving force behind the “Department of Government Efficiency,” or “DOGE,” and elsewhere in politics and governance, including voicing highly controversial support for far-right parties in Europe, most notably in Germany, have been followed by protests at Tesla facilities, vandalization of Tesla vehicles and charging stations, and altercations between protesters and Tesla owners.

See: This guy makes over \$100,000 a month selling anti-Elon Musk stickers for Teslas

Investors fear that Musk is irrevocably alienating Tesla’s customer base with his right-wing politics, and that the company will struggle to rebuild brand equity. The stock has lost about a third of its value this year, and is off about 40% from its December record close.

‘I don’t know if we’ve ever seen a brand shift quite this quickly and become quite so polarizing.’

— Tim Calkins, Northwestern University

Until recently, the idea that people would be protesting outside Tesla stores would have been “inconceivable,” said Tim Calkins, a marketing professor at Northwestern University’s Kellogg School of Management. It “indicates how far the Tesla brand has fallen,” he said.

“I don’t know if we’ve ever seen a brand shift quite this quickly and become quite so polarizing,” Calkins said. It is unclear if Tesla will be able to pivot and become a broadly acceptable brand again, even as it brings new products to market. For new technology such as robotaxis and robots, the company likely would have to consider launching a new brand, he said.

Alexander Edwards, president of market-research firm Strategic Vision, said that the backlash against Tesla seen so far sends “a very clear message” that Musk cannot continue to alienate consumers “and expect sales to happen.”

See: Elon Musk urges Tesla employees to hang on to their stock as he lays out ‘sustainable abundance’ vision

An online platform that organizers are using to coordinate the protests accuses Musk of “destroying” democracy and using his Tesla fortune to do it. The demonstrators are coordinating the protests on social media, with Saturday’s efforts appearing to be the biggest yet. (Musk, of course, acquired Twitter, later rebranding it X, in late 2022 and immediately set about making the social-media platform more amenable to controversial far-right accounts, some of which had been banned in the past following terms-of-use infractions.)

The protest-organizing platform, ActionNetwork.org, lists a single main sponsor for the “Tesla Takedowns,” a group based in Washington state calling itself Troublemakers.

MarketWatch has reached out to the group, but it did not immediately return a request for comment about the Tesla protests. The group’s site describes it as “an ever-growing community of people who are committed to taking action for life on Earth.”

Don’t miss: This investor has millions in Tesla. Here’s his big wish for Elon Musk.

U.S. Attorney General Pam Bondi has labeled vandalism against Tesla property as “nothing short of domestic terrorism,” vowing to continue to investigate and impose “severe consequences on those involved in these attacks.”

FBI Director Kash Patel said in a tweet earlier this week that the agency has been investigating “the increase in violent activity toward Tesla” and taken steps to “crack down and coordinate our response.”

Tesla did not return requests for comment. On X, Musk has claimed that “many” involved in “these ‘takedowns’ have also sold Tesla stock short, so they benefit financially from a drop in the stock.” In the past, Musk has frequently blamed short sellers for Tesla’s woes.

The company is expected to unveil first-quarter sales figures in early April. Tesla does not report sales by region or by specific model; instead, it lists Model 3 and Model Y combined production and sales data, along with “other models,” without providing a further breakdown.

Third-party agencies have signaled Tesla sales declines, the latest of which came from Europe — where sales were reported to have plummeted for a second straight month.

To be sure, Tesla — and Tesla’s stock — has bounced off low points before. In late 2017, Musk described a “production hell” as the company struggled to reach volume production of its lower-cost Model 3s, then a newly launched EV. In 2018, he said he had been working 120-hour weeks, and sometimes would not leave the factory for days on end — including on his birthday.

‘There’s a way out of this, but it requires a little bit of humility.’

— Alexander Edwards, Strategic Vision

This time feels different, however, said Jay Woods, chief global strategist at Freedom Capital Markets, with the undeniable political backdrop.

Read also: Trump just bought a Tesla, but many other owners are selling their Musk-made EVs. What’s going on?

"The longer-term prospects seem to be murky. Not bad, but tough to see given the current climate," he said. Musk's focus seems to be elsewhere, and although his recent town-hall meeting with employees may have had merit, Wall Street is still "waiting for results on autonomous driving."

"While we wait, sales are falling, and he is alienating some of his loyal user base given his political involvement," Woods said. He warned investors, however, to "never bet against Elon Musk."

Musk donated \$291 million in support of Trump and other Republican candidates before the November election, which one Tesla analyst called a "bet for the ages."

The steep financial support and proximity to power was expected to help smooth Tesla's path into self-driving cars and provide other benefits to the EV maker and to SpaceX, which Musk also leads.

And while Musk's rocket company may be in line for billions of dollars in government contracts, a rebranding of Tesla may be harder to pull off.

President Donald Trump and Fox News host Sean Hannity bought new Teslas in support of Musk earlier this month, and supporters of Trump posted on X their intention to back Tesla, suggesting that the EV maker could pick up some new buyers. Plenty of past purchasers, meanwhile, have sold their Teslas.

"Republicans certainly might come to the aid," Strategic Vision's Edwards said. But while Trump and Hannity can afford to put a Tesla in the garage, many others on a political right reshaped by the Trump era may not. Most people can direct financial support to a cause they believe in, but "when you talk about a car you are at a different level," Edwards said.

The least-expensive Tesla model starts at \$35,000.

Tesla could also have a hard time making inroads in red states because its stores and infrastructure are largely located in densely populated urban and suburban areas, which increasingly in recent elections have become Democratic strongholds.

And while Tesla could, in theory, win back Democratic-leaning buyers, which previously composed most of its customer base, there are "way too many other terrific options" in EVs right now, including luxury vehicles from European makers such as Mercedes Benz

↓

MBG

-1.28%

and BMW

↓

BMW

-1.71%

, to say nothing of hybrid options, he said.

Musk needs to reconnect with Tesla's traditional base of buyers and disconnect from his DOGE project, or he needs to step down from leading Tesla, Edwards said. "There's a way out of this, but it requires a little bit of humility."

Read on: This electric-vehicle CEO may have cost retail investors more than half a billion dollars. Trump just pardoned him.

Trevor Milton

Nikola's Trevor Milton pardoned by Donald Trump

Founder of electric and hydrogen-powered truckmaker was found guilty in 2022 of lying to investors



Trevor Milton had been sentenced to four years in prison for misleading investors about the readiness of Nikola's technologies © Reuters

Jonathan Wheatley, Kana Inagaki and Ortenca Aliaj in London

Published 9 HOURS AGO | Updated 07:05



Trevor Milton, the founder of electric-truck maker Nikola who was found guilty in 2022 of lying to investors, has been pardoned by US President Donald Trump.

Milton [wrote on X](#): "I was issued a full and unconditional pardon by @realDonaldTrump himself. He called me personally to tell me."

[Milton](#) was sentenced to four years in prison in December 2023 for misleading investors about the readiness of Nikola's technology in order to boost its share price.

Two White House officials confirmed the pardon on Friday. Brad Bondi, Milton's lawyer and brother of US attorney-general Pam Bondi, declined to comment. A person close to the situation said he had not been involved in the pardon.

Milton said on X: "This pardon is not just about me — it's about every American who has been railroaded by the government . . . It is no wonder why trust and confidence in the Justice Department has eroded to nothing."

Nikola was once valued at almost \$30bn but it [filed for Chapter 11 bankruptcy protection](#) in February after its cash balance had dwindled to \$47mn.

The company benefited from the special purpose acquisition company boom, when businesses — sometimes with no revenue or products — listed on public markets and drew huge retail investor interest.

Its rally was quickly brought to a halt by short seller Hindenburg Research, which in September 2020 released a report calling it "an intricate fraud".

Milton donated about \$2mn to Pacs supporting Trump in the 2024 presidential election. In previous presidential and congressional races, he gave less than \$20,000.

During a five-week trial in 2023, Milton's lawyers argued he should not go to prison, saying he "sees the world differently than most other people". They also asked the judge to "resist any temptation" to compare his actions with Theranos founder Elizabeth Holmes, who was convicted for fraud and is serving an 11-year prison sentence.

In the trial, prosecutors called Milton “a conman” who used his gains from [Nikola](#) to buy property in the Caribbean and a private jet.

A press statement issued by Trevor Milton Media on Thursday highlighted the “striking similarities” between the fraud case brought against the Nikola founder and that of Trump, who was found guilty of conspiring to buy the silence of a porn actor before the 2016 election and falsifying business records.

It said Milton would now focus on a documentary about his life called *Conviction or Conspiracy: The Trevor Milton Saga*, which “invites audiences to revisit one of the most controversial stories in modern business history”.

Since becoming president, Trump has also [pardoned Ross Ulbricht](#), who was sentenced to life in prison in 2015 for masterminding an online marketplace for illegal drugs and online hacking. Earlier this week, he pardoned Devon Archer, a financier and former business associate of Hunter Biden.

On his first day in office, Trump also signed an executive order to pardon about 1,500 people charged in relation to the attack on the US Capitol on January 6 2021.

Additional reporting by Alex Rogers in Washington and Antoine Gara in New York

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Securities Law

March 28, 2025, 9:21AM PDT

Trump Pardons Nikola Founder Milton After Fraud Conviction (1)

Nikola Corp. founder **Trevor Milton**, who was convicted of fraud over misrepresentations about the electric-truck maker's financial progress, was pardoned by President Donald Trump.

Milton, who said on social media Thursday that he spoke with Trump over the phone, was facing four years in prison for securities and wire fraud. A jury in 2022 found him guilty of falsifying key details about the development of Nikola's products and technology.

Robert Frenchman, a lawyer for Milton's trial team, said in a text that his client is "just delighted." A White House official on Friday confirmed the pardon.

Milton maintained his innocence throughout the trial, saying that his communications were driven by his true belief in the company. His prison sentence was put on hold while he appeals his conviction.

Milton's pardon is the latest Trump has granted since he returned to the White House in January. Earlier this year, he [announced](#) a mass clemency for more than 1,500 people convicted of participating in the Jan. 6, 2021, attack on the US Capitol building.

In a social media post on X on Thursday, Milton said Trump "called me personally to tell me" about the pardon. In a statement, Milton said the pardon "marks a step" towards fulfilling Trump's promise to end the "political weaponization" of the Justice Department.

Milton made more than \$2 million in political donations late last year, much of which went to Republican causes, Federal Election Commission records show. His largest donation was \$920,000 to Trump 47 Committee Inc in October.

Milton had amassed a multibillion-dollar fortune off the startup he launched in 2014 and took public six years later. The company's market value soared as investors piled into prospective EV stocks, so much that Nikola's market capitalization briefly exceeded that of Ford Motor Co. despite not having sold a single truck.

But soon after Nikola began trading, Bloomberg News [reported](#) that Milton had greatly exaggerated the capabilities of one of its first prototypes, the Nikola One, describing it as a fully functioning vehicle even though the truck couldn't be driven at the time because of missing parts.

Milton stepped down as executive chairman in September 2020. He was charged by federal prosecutors the following July.

The US this month asked the court to order Milton to pay \$660.8 million in restitution to individual investors. It's unclear how Trump's pardon will affect restitution.

Nikola filed for [bankruptcy](#) last month, saying it was exploring a sale of its assets after entering Chapter 11 in Delaware. In court documents, it listed total funded debt and lease obligations of \$98 million. The company has since won court permission to auction its Arizona manufacturing facility.

--With assistance from **Ava Benny-Morrison, Bill Allison, Richard Clough** and Ryan Beene.

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<https://www.wsj.com/us-news/trump-pardons-nikola-founder-trevor-milton-948b1311>

U.S.

Trump Pardons Nikola Founder Trevor Milton

Milton was convicted of fraud in 2022 for statements about zero-emission trucks

By [Corinne Ramey](#) and [Ben Foldy](#)

March 28, 2025 10:14 am ET



Trevor Milton originally got a sentence of four years. PHOTO: BRITAINY NEWMAN/AP

President Trump pardoned [Nikola](#) founder Trevor Milton, who [had been convicted of fraud](#) in federal court for what prosecutors said were his lies to investors about his zero-emissions trucks.

Milton said in a video posted to social media Thursday that he received a call from Trump, who spoke about “how much of an injustice this all was, done by the same offices that harassed and prosecuted him.”

“The greatest comeback story in America is about to happen,” added Milton. The White House on Friday confirmed that the pardon had been granted.

A federal jury in Manhattan convicted Milton in 2022 of one count of securities fraud and two counts of wire fraud. During the trial, prosecutors portrayed Milton as a con man who duped investors, including in podcasts and on social media, about the company’s sales and the capabilities of its vehicles. In one instance, prosecutors said, he created a video of what appeared to be a truck driving normally—but it was really an inoperable prototype rolling down a hill.

Milton maintained his innocence and said he had acted in good faith, accusing prosecutors of cherry-picking his public statements to build their case.

He [was sentenced to four years](#) in prison but remained out on bond while he appealed his conviction.

Brad Bondi, a lawyer for Milton, didn’t respond to a request for comment. Brad Bondi is the brother of Attorney General Pam Bondi.

Campaign-finance records show that Milton and his wife donated more than \$1.8 million to a Trump fundraising committee in October.

Milton, 42 years old, founded Nikola in his basement in 2015. He took it public in 2020 at a valuation of \$3.3 billion. He [resigned from the company](#) later that year after a short seller’s report alleged he made misrepresentations about the status of the company’s vehicles and the production of hydrogen fuel needed to run them.

Nikola, whose market value briefly eclipsed that of automaker Ford before the fraud case against Milton, filed for bankruptcy last month, as it struggled with high costs and its efforts to convince the [trucking industry to abandon diesel engines](#).

Milton has sold roughly \$400 million in stock in Nikola, which delisted its shares from the Nasdaq a few days ago. Two weeks ago, federal prosecutors asked the judge from Milton’s criminal case to order him to pay back nearly \$661 million to shareholders.

The Securities and Exchange Commission sued Milton in federal court in July 2021, alleging he committed civil securities fraud. That case, which was on hold during the criminal proceedings, remains active, court records show. The SEC declined to comment.

Trump has issued a raft of pardons since taking office, and has pledged to crack down on what he has described as the weaponization of the justice system. Trump was twice indicted by the Justice Department after his first term and separately convicted of falsifying records in state court in New York. Both federal cases have been dismissed, and Trump is appealing the state conviction.

Earlier this week, Trump pardoned Devon Archer, the former Hunter Biden business partner who gave congressional testimony about their business dealings. Milton, Archer and [Silk Road founder Ross Ulbricht](#), whom Trump also pardoned, were all prosecuted by the U.S. attorney's office in Manhattan. The Justice Department has also asked a judge to drop a bribery case against New York City Mayor Eric Adams, who was charged by the same office.

Write to Corinne Ramey at corinne.ramey@wsj.com and Ben Foldy at ben.foldy@wsj.com

Videos

Securities Law

March 28, 2025, 7:41 AM PDT

Musk's DOGE Staffers Arrive at SEC to Hunt for Spending Cuts

Elon Musk's Department of Government Efficiency has landed at the US Securities and Exchange Commission one day after President Donald Trump's choice to lead the agency, **Paul Atkins**, appeared before the Senate Banking Committee for his nomination hearing.

A group of Musk advisers arrived Friday at the agency, according to communications from the agency sent to staff and reviewed by Bloomberg News. The message didn't identify the DOGE emissaries by name, and SEC staff were instructed to treat them as internal employees, according to the message.

"In compliance with the president's Executive Order establishing DOGE, the SEC is beginning to onboard members of the team," an agency spokesperson said.

The SEC has designated an internal team to work with DOGE. The group includes the offices of the chief operating officer, the general counsel, human resources and enforcement, according to the message.

Musk has been spearheading an effort to slash the size of the federal government, with DOGE taking credit for [halting programs](#), freezing spending and cutting the workforce through buyouts and terminations. Many of its moves have been [challenged](#) in court, with several judges ordering the government to [pause](#), [limit](#) or [reverse](#) its actions.

The SEC is already anticipating a smaller footprint. Roughly [500 staffers](#), or 10% of its workforce, have accepted the government-wide buyout and deferred-resignation offers.

The agency also intends to eliminate the leases for its offices in Los Angeles and Philadelphia, and the General Services Administration has also [explored](#) ending the Chicago office's lease. The most-senior positions at regional offices have also been cut, though the individuals in those roles aren't being forced out.

The agency has historically cost the government less in operating expenses than it produces in revenue from fees and enforcement actions. "In effect, the SEC pays for itself and costs taxpayers nothing," a group of Columbia Law School professors wrote in a blog post this month. "Cutting its staff and budget is thus counterproductive and inflationary."

In February, as Musk's team spread out across federal agencies, US Representatives Maxine Waters and Brad Sherman, both Democrats, raised an early warning about what DOGE might do at the SEC. "Given Mr. Musk's history with the SEC, it is troubling that he may now be given influence over the agency's operations," they wrote to acting Chair **Mark Uyeda**.

Musk has often been at odds with the SEC. During President Donald Trump's first term, the agency sued him after he tweeted that he had "funding secured" to take electric carmaker Tesla Inc. private. Musk and Tesla settled the case by paying \$20 million apiece to the SEC and Musk also had to step down as the company's chairman.

Days before Trump's second inauguration, the SEC [sued Musk again](#). This time, the regulator accused the billionaire of blowing the deadline to disclose his growing stake in Twitter before he tried to take over the social media platform in 2022.

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Agentic AI Presents New Frontier for Fraud Against Financial Companies

- Financial fraud perpetuated by AI getting more sophisticated.
- Agentic AI makes it difficult to trace fraud.

Agentic artificial intelligence tools can work autonomously to help scammers defraud financial companies while making the crimes difficult to trace, speakers at an SEC conference warned Thursday.

"You've essentially got a series of baton hand-offs between the various agentic models that are occurring," said Katherine Forrest, a Paul Weiss partner who chairs the firm's digital technology group. "What that really means for various kinds of financial services, potential scams or fraud is that the ability to trace back where the problem occurs becomes increasingly more complicated."

Agentic AI refers to tools that act as agents on behalf of humans, handling rote or multistep chores with minimal supervision. Proponents hail the technology's potential for reducing human drudgery, but in the wrong hands they can just as easily be put to use to bilk banks or consumers as they can for automating customer service.

That means the potential for increased fraudulent schemes against financial companies increases, Forrest, a former district judge for the Southern District of New York, said at a Washington conference organized by the Securities and Exchange Commission focused on artificial intelligence.

As artificial intelligence models get more sophisticated, they can track down sensitive information for individuals and firms, even as their scam emails get more consistent, said Brad Ahrens, who oversees analytics at FINRA, the financial industry's self-regulator. "We're seeing a hyper-personalization," he said. "We're seeing a consistency in approach to email communications and outreach that is pretty much unprecedented."

And with agentic AI, the fraud can change dynamically, he said.

Financial companies have been targeted for fraud for decades, but agentic AI ratchets up the pressure, said Kristen McCooey, chief information security officer at Edward Jones. "We're going to have to keep a close eye on it, is making sure that their use of agentic AI doesn't put them so far ahead of the defenders and the practitioners that we have a gap there."

Crypto industry set for worst quarter for hacks in history with \$1.6 billion in losses: Immunefi

 theblock.co/post/348440/crypto-industry-worst-quarter-hacks-in-history-1-6-billion-usd-losses-immunefi

James Hunt

March 27, 2025



Quick Take

- The crypto industry lost a record \$1.64 billion due to hacks in Q1, according to web3 bug bounty platform Immunefi.
- However, the losses are dominated by crypto exchange Bybit, which was exploited for \$1.46 billion in February.

The crypto industry is set to conclude the worst quarter for hacks in its history, registering \$1.64 billion in losses across 40 incidents so far, according to the latest report from web3 bug bounty and security services platform Immunefi.

The losses represent a 4.7x increase compared to the first quarter of 2024, when hackers stole around \$348.3 million, though the number of attacks decreased by 36% from 63. The majority of losses came from Bybit's record \$1.46 billion hack in February, with exploits outside of that confined to around \$176 million — down nearly 50% year-over-year.

The Bybit hack is believed to have been carried out by the notorious North Korean Lazarus Group, which is also suspected of being behind the \$69.1 million exploit of another centralized crypto exchange, Phemex.

"The Q1 2025 breaches mark a historic moment in crypto security, with CeFi accounting for 94% of total losses, all caused by North Korean hackers," ImmuneFi founder and CEO Mitchell Amador said. "The sheer scale of the Bybit and Phemex attacks, totaling \$1.5 billion, shows how state-backed actors are arguably the most pressing threat to our industry. Their success in breaching renowned, battle-tested platforms is a reminder of the need for security measures that protect the entire stack and help projects prevent catastrophic attacks before they happen."

With over \$180 billion of total value locked in web3 protocols, according to DeFiLlama data, decentralized finance also remains a key target for hackers, accounting for 38 of the 40 incidents identified by ImmuneFi in the first quarter, including hacks on Infini, MIM Spell and zkLend. However, they accounted for just \$106.8 million, or 6%, of the losses — down 69% year-over-year.

In total, \$6.5 million of the stolen funds were recovered from two of the exploits: 1inch (\$5 million) and Moby Trade (\$1.5 million), making up 0.4% of the total losses this quarter — significantly down compared to the 21.2% recovered in the same period last year.

No cases of fraud were reported this quarter, representing a significant decrease compared to Q1 2024, when losses caused by frauds, scams and rug pulls totaled \$14.7 million.

BNB Chain surpasses Ethereum to become most targeted in Q1

BNB Chain surpassed Ethereum to become the most targeted network in the quarter, accounting for 19 and 15 of the individual attacks, respectively. Base followed with three incidents, Optimism and Arbitrum both suffered two attacks and Abstract, Wemix and Mode each witnessed a single attack.

ImmuneFi claims to have paid out more than \$112 million in ethical hacker and researcher bounties to date. The payouts span three years and result from over 3,000 bug bounty reports, the largest of which was a \$10 million award for a vulnerability discovered in Wormhole's cross-chain protocol.

ImmuneFi claims to operate the largest blockchain security community with more than 45,000 researchers, saving over \$25 billion in user funds across protocols like Polygon, Optimism, Chainlink, The Graph, Synthetix and Sky from being stolen.

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Ex-UBS Trader Hayes Manipulated Libor For Profits, SFO Says (1)

Ex-UBS Group AG star trader, **Tom Hayes**, agreed to manipulate and rig Libor to dishonestly boost profits, prosecution lawyers said asking the UK's top court to reject attempts to overturn his conviction.

The Supreme Court appeal over the conviction of Hayes and ex-Barclays Plc trader **Carlo Palombo** for rigging Libor and Euribor will come to an end on Thursday. The judges will have to weigh whether Britain's first and most high profile criminal trial over rate rigging was unfair.



Tom Hayes at the Supreme Court in London on March 25

Photographer: Chris Ratcliffe/Bloomberg

Hayes sought to dishonestly increase profits “by agreeing to manipulate, move, influence or rig the published Libor rate,” James Eadie, the Serious Fraud Office’s lawyer, said in court filings.

Ex-UBS Trader Hayes Asks Top Court to Quash Libor Conviction

Lawyers for the traders have long argued their trials were tainted. The “core error, which has bedeviled” the case is a “marked failure to respect the limits of the role of the judge in a jury trial,” Adrian Darbishire, Hayes’ lawyer, argued earlier at the hearing.

A ruling overturning their convictions could lead to several others being quashed in the UK, vindicating years of effort to clear their names. The scandal — over fixing of benchmark rates that underpinned more than \$350 trillion of loans and securities — led to fines of almost \$10 billion for a dozen banks and brokerages.

He was not allowed to place the evidence of his daily profit and loss accounts before the jury to counter the prosecution’s case that he profited personally, a spokesperson for Hayes said. “This was opposed by the SFO and refused by the trial judge, denying him an important aspect of his defense.”

The juries, which found Hayes and Palombo guilty in 2015 and 2019 respectively, were wrongly instructed by the trial judge that the rules for the rates setting process prohibited considering the bank’s commercial interest before making their submissions, their lawyers have argued.

Hayes, who also worked at Citigroup Inc., was the “ringmaster” of a global network of 25 traders, prosecutors alleged at his trial.

While more traders faced convictions in separate trials, none of those named in Hayes indictment were convicted. “He’s the only person convicted of these serious conspiracies,” Hayes’ lawyer Darbishire said during the hearing.

Taking their trading advantage into account conflicts with the central purpose of the rate setting exercise and it would “cut across the fundamental nature of what is sought to be done in the process,” SFO’s lawyer Eadie countered on Thursday.

Hayes was sentenced to 11 years in prison, while Palombo was sentenced to four years. Hayes was released from prison in 2021 after serving half his sentence and continued the legal fight to prove his innocence.

(Updates with a comment from Tom Hayes’ spokesperson in the sixth paragraph.)

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JPMorgan Fails to Shed Claims in American Dream Mall Lender Suit

- Judge denied dismissal of fraud and breach-of-contract claims
- Junior lenders say 2021 deal took away their collateral

JPMorgan Chase Bank will have to face claims it engaged in a scheme to strip junior lenders that helped bankroll New Jersey's American Dream mall of their ability to be repaid for their loan, a Manhattan federal court ruled Thursday.

"This is a 'classic pocketbook injury' sufficient to confer standing," Judge John Koeltl of the US District Court for the Southern District of New York wrote in his opinion.

At issue is a 2021 deal in which JPMorgan granted an extension on the mall's debt, which stripped the junior lenders of their collateral.

Koeltl denied JPMorgan's motion to dismiss myriad allegations, including that it engaged in a fraudulent equity transfer with the owners of the mall in 2021, interfered in a contract agreement with the junior lenders, and breached the lenders' future rights to receive proceeds from a sale of the mall.

The judge dismissed claims that JPMorgan engaged in fraud when it, while engaging in the equity transfer, capped the corresponding reimbursement claims at \$1 million.

Those allegations "are insufficient to show that JPMorgan was a person for whose benefit the 'transfer' of the Reimbursement Claims was made," Koeltl said.

He also tossed the junior lenders' request to apply marshaling to the JPMorgan loan, which would have required the bank to satisfy its debt through a secondary fund not available to the junior lenders.

Quinn Emanuel Urquhart & Sullivan LLP represents the junior lender plaintiffs. Fried, Frank, Harris, Shriver & Jacobson LLP and Kramer Levin Naftalis & Frankel LLP represent JPMorgan.

The case is SOL-MM III LLC v. JPMorgan Chase Bank , S.D.N.Y., No. 1:23-cv-06479, opinion and order 3/27/25 .

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Upstart Investors Land Class Cert. In Insider Selling Suit

By **Sydney Price**

Law360 (March 27, 2025, 9:38 PM EDT) -- Shareholders who allege that tech-based lender Upstart and its executives participated in a \$2.7 billion insider stock selling scheme can now proceed with their claims as a class, an Ohio federal judge determined on Thursday.

U.S. District Judge Algenon L. Marbley said the proposed class meets the numerosity, commonality, typicality and adequacy requirements for certification. In his **order**, he also appointed Motley Rice LLC and Robins Geller Rudman & Dowd LLP as class counsel.

In their motion opposing class certification, the Upstart defendants had argued that two of the suit's lead plaintiffs — German investment company Universal-Investment-Gesellschaft mbHaf and Kathy Brooks — do not meet the typicality requirement because they bought additional Upstart securities after the proposed class period, which runs from Dec. 16, 2020, through Nov. 8, 2022. But Judge Marbley said Thursday that courts routinely certify a class with representatives who purchased stock after the revelation of the alleged fraud.

"Universal and Brooks are not atypical because of their purchases of Upstart securities after the proposed class period," Judge Marbley said. "Rather, purchasing a stock after a corrective disclosure that deflates the stock price may not even be relevant to the typicality inquiry because a party may believe a stock to be a bargain after such deflation, and may believe that it is now trading at a price with defendants' fraud removed from it."

In the complaint launched in 2022, the investors alleged that Upstart intentionally concealed that the increasing number of loans Upstart was putting on its own balance sheet were not for research and development purposes, but were actually the result of dwindling funding.

Several of the defendants, including a major funder of Upstart, Third Point Ventures, were motivated to sell shares of their Upstart common stock at inflated prices, which generated for them over \$2.7 billion in gross proceeds during the class period, the suit alleged.

During the first quarter of 2022, Upstart Chief Financial Officer Sanjay Datta explained on an earnings call that Upstart had started to use its balance sheet as a "funding buffer" to hold on to loans that it could not immediately offload. Upstart was forced to retain loans that had been sold back to it by its banking partners, exposing the company to interest and credit risk, the suit claimed. Following that call, the price of Upstart stock dropped 56%, according to the suit.

The truth was fully revealed, the suit alleged, on Nov. 8, 2022, when Upstart announced its third-quarter results, stating that revenue had decreased 31% and originations were down 48% from the same quarter the prior year. The next day, Upstart stock dropped to a low of \$17.06, the suit said.

"Contrary to their prior representations stating that the company's AI platform was not sensitive to interest rates and that macroeconomic turbulence was good for Upstart's business, the Upstart defendants now stated for the first time that they had planned all along for the company's business to shrink when there were 'rising rates and elevated consumer risk,'" the suit said.

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

The investors are represented by Gregg S. Levin, Max N. Gruetzmacher and Christopher F. Moriarty

of Motley Rice LLC and Ryan A. Llorens and T. Alex B. Folkerth of Robins Geller Rudman & Dowd LLP.

Upstart and the individual defendants are represented by Thomas D. Warren of Warren Terzian LLP and Caz Hashemi, Benjamin M. Crosson and John I. Karin of Wilson Sonsini Goodrich & Rosati.

Third Point Ventures LLC is represented by Douglas L. Shively of BakerHostetler LLP.

The case is Crain v. Upstart Holdings Inc. et al., case number 2:22-cv-02935, in the U.S. District Court for the Southern District of Ohio.

--Editing by Rich Mills.

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EV Co. Pumped Stocks Ahead Of 'Reverse' Splits, Suit Claims

By **Emilie Ruscoe**

Law360 (March 27, 2025, 10:00 PM EDT) -- Electric vehicle maker Mullen Automotive Inc. faces a proposed investor class action alleging that the company and a trio of its executives manipulated trading prices for the company's shares in advance of reverse stock splits that consolidated the number of shares of the company five times over roughly two years.

In a **complaint** filed Wednesday in Los Angeles federal court, three Mullen investor plaintiffs claimed that the carmaker, its current CEO David Michery, its Chief Financial Officer Jonathan New and its former CEO Oleg Firer should face liability for hurting investors as trading prices for investor shares have fallen to nearly zero since the company went public in 2021 via reverse merger.

Without citing specific dates when trading prices for the company's shares fell, the investors claimed that adjusting for the company's stock splits, trading prices for Mullen shares fell 99% between April 2023 and April 2024.

According to the investors, the declines occurred because Mullen and its trio of executives "repeatedly engaged in a scheme to inflate Mullen's stock price" with rosy, allegedly misleading press releases it sent out before its stock splits. Since May 2023, Mullen had executed five such stock splits, the investors said.

Mullen, previously known as Mullen Technologies Inc., went public via reverse merger with a company previously known as Net Element Inc., the suit said. The reverse merger closed in 2021, and since then the resulting company has traded on the Nasdaq stock exchange, the investors stated.

When Net Element and Mullen announced the merger plan in June 2020, the investors claimed, the companies said Mullen was aiming to launch a luxury sports car called the Dragonfly K50 in under a year, during the first half of 2021.

"Mullen boasted of creating a different business model to enter the EV market," the investors claimed, citing the companies' claim that Mullen was poised to enter the U.S. electric vehicle market with an offering that would have a development timeline of 17 months instead of four years.

The investors also pointed to Mullen leadership statements touting the company's "non-flammable, puncture proof" battery technology in the merger announcement.

The investors claimed that Mullen's claims in the 2020 merger announcement about the sports car were misleading because as of November 2019, Mullen had already seen the collapse of its deal to produce the car in the U.S. in cooperation with China-based car manufacturer Qiantu.

"Despite this, Mullen continued to market the vehicle as its own, even going so far as to solicit reservations for the vehicle, calling it the 'Mullen K50' in social media posts," the investors claimed.

The investors also claimed that between February 2022 and 2025, Mullen made "exaggerated statements about its solid-state battery power range being in the 600-mile range when, in fact, it only achieved a roughly 200-mile range."

The proposed class includes those who purchased Mullen shares between May 2022 and the filing of

the action.

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

Investors Cayden Crume, James LeGrand and Todd Holton are represented by Timothy Devlin, Deepali A. Brahmbhatt and Hayden B. Corrales of the Devlin Law Firm LLC.

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

The case is Cayden Crume et al. v. Mullen Automotive Inc. et al., case number 2:25-cv-02620, in the U.S. District Court for the Central District of California.

--Editing by Rich Mills.

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Alibaba Investors' Attys Awarded \$108M In IPO Settlement

By **Hailey Konnath**

Law360 (March 27, 2025, 8:37 PM EDT) -- A New York federal judge on Thursday granted final approval to Alibaba Group's \$433.5 million settlement with investors suing the company over alleged misstatements about its exclusivity practices and its planned initial public offering of a fintech affiliate, awarding the investors' attorneys 25%, or roughly \$108 million.

U.S. District Judge George B. Daniels also awarded more than \$1 million in reimbursements to the investors' counsel, led by attorneys with Glancy Prongay & Murray LLP. And the four class representatives — Salem Gharsalli, Laura Ciccarello, Dineshchandra Makadia and Wusheng Hu — will each come away with a \$25,000 service award, according to the attorney fee order.

In a separate judgment, Judge Daniels certified a settlement class of investors who purchased Alibaba American depository shares between November 2019 and December 2020. Judge Daniels said the deal is "in all respects, fair, reasonable and adequate."

Kara Wolke of Glancy Prongay, who served as lead counsel for the class, told Law360 on Thursday, "It was a hard fought case on both sides, and we're happy to have achieved this historic result on behalf of the class of investors."

Alibaba didn't immediately respond to a request for comment late Thursday.

The investors claim that they were damaged in December 2020 when trading prices for Alibaba's American depository shares fell by about 13% after Chinese regulators announced they were looking into the company's allegedly monopolistic practices.

Alibaba has continued to deny those claims. Last year, it said it **entered into the settlement** to "avoid the cost and disruption of further litigation."

The investors have said that their deal is the 21st-largest securities class action settlement in the Southern District of New York and among the top 50 largest in the U.S. since the Private Securities Litigation Reform Act was enacted in 1995.

Judge Daniels granted **preliminary approval** to the agreement in October. Thursday's final approval came during a settlement conference, according to the case docket.

The investors are represented by Kara M. Wolke, Melissa C. Wright, Robert V. Prongay, Joseph D. Cohen, Jason L. Krajcer and Raymond D. Sulentic of Glancy Prongay & Murray LLP, Jeremy A. Lieberman, Jonathan D. Park and Patrick V. Dahlstrom of Pomerantz LLP, Peretz Bronstein of Bronstein Gewirtz & Grossman LLC, Frank R. Cruz of The Law Offices of Frank R. Cruz and Lesley Portnoy of The Portnoy Law Firm.

The Alibaba defendants are represented by Jonathan K. Youngwood, Stephen P. Blake and Bo Bryan Jin of Simpson Thacher & Bartlett LLP.

The case is In re: Alibaba Group Holding Ltd. Securities Litigation, case number 1:20-cv-09568, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Sydney Price and Rae Ann Varona. Editing by Alanna Weissman.



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Chinese Fintech Investors Urge NJ Court To Keep Suit Alive

By **Sydney Price**

Law360 (March 27, 2025, 10:07 PM EDT) -- Investors in Chinese fintech company 9F Inc. urged a New Jersey federal judge to keep their securities class action alive on Thursday, arguing that their third amended complaint now includes the specific details the court previously said would make their securities fraud claims viable.

In their motion opposing 9F's motion to dismiss the suit, the investors argued that the company's registration statement was, in fact, misleading despite U.S. District Judge Michael E. Farbiarz's decision in December to **dismiss the plaintiffs' claim** since they offered no other factual information to support it.

The investors said on Thursday, however, that the latest version of the complaint repairs the argument. Among other things, the registration statement failed to disclose the true nature of 9F's arrangement with its insurance partner Property and Casualty Co. Ltd., the investors say.

9F, headquartered in Beijing, offers various financial products and services, including loan products, online wealth management and payment facilitation. 9F partnered with Property and Casualty to sell loan performance guarantee insurance policies, according to the complaint.

9F did not disclose that most of the accounts receivable listed by the company as uncollectible was money that Property and Casualty owed, the investors allege.

The registration statement also "failed to disclose that through its arrangement with [Property and Casualty], 9F used [Property and Casualty] as a conduit to circumvent Chinese regulatory bans and the borrowing cost for borrowers on 9F's platform frequently exceeded the 36% APR ceiling," the investors allege.

The lack of disclosures violated, among other things, generally accepted accounting principles, the investors argue.

Additionally, the motion also claims that the arrangement between 9F and Property and Casualty subjected the company to heightened risks since Chinese courts "are authorized to exercise discretion to deem a contract to be unenforceable because it is illegal," which is grounds for a securities fraud claim, the investors say.

The investors also say they sufficiently allege the initial public offering's underwriters were negligent and failed to conduct an adequate due diligence investigation.

"Plaintiffs allege that had the underwriters conducted an adequate due diligence investigation, they, in fact, would have discovered the facts and risks associated with the arrangement," the motion states.

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

The investors are represented by James E. Cecchi, Donald A. Ecklund and Kevin Cooper of Carella Byrne Cecchi Olstein Brody & Agnello PC, Robert V. Prongay, Ex Kano S. Sams II, Charles H. Linehan and Pavithra Rajesh of Glancy Prongay & Murray LLP and Howard G. Smith of the Law Offices of Howard G. Smith.

9F is represented by Scott D. Musoff, Robert A. Fumerton, Michael C. Griffin, Isaiah Strong, Steve Kwok and Beatriz (Bea) Paterno of Skadden Arps Slate Meagher & Flom LLP.

The case is Holland v. 9F Inc. et al., case number 2:21-cv-00948, in the U.S. District Court for the District of New Jersey.

--Editing by Jay Jackson Jr.

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Umpqua Bank Strikes Deal With Investors In \$300M Ponzi Suit

By **Gina Kim**

Law360 (March 27, 2025, 8:26 PM EDT) -- Umpqua Bank and a class of investors on Thursday informed a California federal judge they've reached a settlement to resolve claims the bank helped execute an alleged \$300 million Ponzi scheme led by a since-deceased real estate investment manager.

The **settlement notice** said Shela Camenisch and her co-plaintiffs have resolved the entire action on a classwide basis with Umpqua and are now asking the court to vacate all pending hearing dates, including a retrial that's set for next month.

"The parties are in the process of finalizing a settlement agreement," the parties said. "Plaintiffs anticipate filing their motion for preliminary settlement approval on May 1, 2025 or soon thereafter."

Thursday's settlement notice brings the five-year-old litigation closer to its end. It stemmed from an alleged Ponzi scheme run by real estate investment manager Kenneth J. Casey — who founded Professional Financial Investors, or PFI, in the San Francisco Bay Area and died in 2020 — and his alleged partner Lewis Wallach.

The U.S. Securities and Exchange Commission **sued Casey's estate in June 2021**, alleging he misappropriated more than \$10.3 million from clients before his death.

Casey was accused of being involved in a larger scheme in which hundreds of millions of dollars were bilked from 1,300 investors, the government had alleged. Many of the defrauded investors were retirees, or elderly, and depending on their investment income for day-to-day living expenses, according to the SEC.

Casey allegedly secured investments by making misleading statements to investors, such as saying their funds would primarily be used to invest in multi-unit residential and commercial real estate, according to the SEC. He also had PFI employees falsify financial records to make it appear as though their investments were safe and profitable, the agency alleged.

In reality, a significant cut of those funds were used to pay existing investors, the SEC's suit said. Casey also used the cash to renovate one of his homes and pay his personal federal and state taxes, the suit added.

In April 2023, Casey's estate **agreed to pay** the SEC \$11.9 million to end the case, without admitting or denying the allegations.

Camenisch and her co-plaintiffs sued Umpqua Bank in 2020, alleging Casey operated his scheme through Umpqua's Novato, California, branch, which purportedly "agreed to look the other way" when other financial institutions rejected PFI as a banking customer due to Casey's history of financial crime.

In 1997, Casey admitted to 21 counts of bank fraud, five counts of tax evasion, five counts of filing a false income tax return and one count of conspiracy to defraud the U.S. According to the investors, Casey was sentenced to 18 months in prison and lost his public accounting license.

In December 2022, U.S. District Judge Richard Seeborg **denied Umpqua's summary judgment**

bid against the plaintiff investors' claims and ordered the case to trial, finding the investors' claims referenced "evidence of direct participation" in the Ponzi scheme by Umpqua employees.

The judge further noted the investors had alleged one worker in particular "went well outside the bounds of ordinary banking transactions, including times where she did so on her own initiative" in service of the alleged misconduct.

Last summer, Umpqua **unsuccessfully moved** to partially decertify the class, after Judge Seeborg said the investors had met their burden to demonstrate it was appropriate to apply California law to all class members. The judge also said the investors could pursue a judgment ordering Umpqua to pay prejudgment interest, among other monetary obligations.

The case went to trial last month before U.S. District Judge P. Casey Pitts, with the plaintiffs pursuing a "fraudulent concealment" theory accusing Umpqua of aiding PFI's fraudulent concealment of using investor cash to enrich its executives, pay other investors and cover recurring shortages, regardless of PFI's ability to repay investors or of profitability.

A mistrial was declared on March 4, after the jury said it was deadlocked. Umpqua filed a motion for judgment as a matter of law the following week, arguing there was no evidence it had actual knowledge of the wrongful act its client was committing, let alone that the bank rendered significant assistance in committing that act.

Umpqua argued that according to the complete trial record, it's clear the investors lacked sufficient evidence showing the bank had actual knowledge of PFI's fraud, or any direct evidence that knowledge was adduced. Umpqua workers, PFI employees and other investors said they had no idea PFI was engaging in fraud until Casey's passing, the bank said.

However, the evidence at trial clearly showed the bank had no clue what PFI was telling its investors or hiding from them, which meant Umpqua couldn't have been aware whether PFI was fraudulently concealing information from its investors, Umpqua contended.

On March 21, the investor plaintiffs opposed Umpqua's motion and asked the court to keep the April retrial date.

"Although one or more jurors believed the evidence demonstrated that Umpqua knowingly assisted PFI's fraud, Umpqua wants the court to dispense with retrial and enter judgment in its favor now," the investors said, later noting, "The extensive evidence introduced by plaintiffs precludes entry of a directed verdict in Umpqua's favor, particularly on an issue like knowledge — a state of mind that can rarely be proven directly and typically requires a jury's time-honored ability to assess credibility, weigh circumstantial evidence, and draw the appropriate inferences."

The investors contended that PFI's main banker at Umpqua testified she repeatedly transferred money from accounts she knew had investor funds into personal bank accounts held by PFI's executives. That banker's supervisor also testified she didn't know of any reason why an entity called Professional Financial Investors would transfer funds from its business accounts into a personal account maintained by an executive, the investors said.

Representatives for the parties did not return inquiries seeking comment Thursday.

The investor class is represented by Amy M. Zeman, Linda P. Lam and E. Wynne Tidwell of Gibbs Mura LLP, Scott L. Silver and Ryan A. Schwamm of Silver Law Group, and Geoffrey A. Munroe of Law Office of Geoffrey A. Munroe.

Umpqua Bank is represented by Kasey J. Curtis, Charles P. Hyun, Kathryn M. Bayes and Katherine P. Goetz of Reed Smith LLP, and Keith A. Ketterling, Lydia Anderson-Dana, Madeleine C. Holmes and Erin E. Roycroft of Stoll Berne.

The case is Shela Camenisch et al. v. Umpqua Bank, case number 5:20-cv-05905, in the U.S. District Court for the Northern District of California.

--Additional reporting by Emilie Ruscoe, Sarah Jarvis, and Hailey Konnath. Editing by Lakshna Mehta.



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PayPal Investors Drop Derivative Suit Over SEC, CFPB Probes

By **Sydney Price**

Law360 (March 27, 2025, 6:20 PM EDT) -- Shareholders of PayPal voluntarily dismissed their derivative suit against the company's executives and directors accusing them of making false statements about PayPal's practices that allegedly led to federal investigations, saying the dismissal is proper since the defendants were not liable in a similar securities class action filed against them.

U.S. District Judge Charles R. Breyer **said in the order** Wednesday the court had previously entered an order staying the derivative suit pending the resolution of a motion to dismiss the securities class action. Now that the securities class action has been dismissed and cannot be appealed, dismissal of the derivative action without prejudice is proper, Judge Breyer said.

Voluntary dismissal of the derivative suit is also appropriate since the defendants have not answered the complaint nor filed a motion for summary judgment, the judge said.

According to shareholder Robert Lalor's derivative suit, PayPal assured investors it had rectified the issues after a settlement with the Consumer Financial Protection Bureau and was in compliance, but in reality, the disclosure practices were deficient, and PayPal continued to downplay its regulatory issues.

Lalor also alleged that three of the individual defendants — PayPal CEO Daniel Schulman, Chief Financial Officer John Rainey and Director Ann Sarnoff — sold more than \$6.25 million worth of company stock during the relevant period while prices were inflated.

Lalor is represented by Betsy C. Manifold, Rachele R. Byrd and Alex J. Tramontano of Wolf Haldenstein Adler Freeman & Herz LLP, Justin A. Kuehn of Moore Kuehn PLLC, and Seth D. Rigrodsky, Timothy J. MacFall and Vincent A. Licata of Rigrodsky Law PA.

PayPal and the individual defendants are represented by Alexander K. Talarides of Orrick Herrington & Sutcliffe LLP.

The case is Lalor v. Schulman et al., case number 5:22-cv-00370, in the U.S. District Court for the Northern District of California.

--Editing by Lakshna Mehta.

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Feds Allowed To Weigh In On MultiPlan Pricing MDL

By **Celeste Bott**

Law360 (March 27, 2025, 6:01 PM EDT) -- The federal government will be allowed to appear in multidistrict antitrust litigation targeting MultiPlan's out-of-network reimbursement rates to offer input on the legal framework for analyzing claims involving the joint use of algorithms, a practice it says poses "a growing threat" to free market competition.

In a statement of interest first filed Wednesday, the government said major insurers' alleged use of MultiPlan's common pricing algorithm to set starting or maximum prices could qualify as a "concerted action" that unreasonably restrains trade under the Sherman Act, even if they don't use the tools in the same way. And any exchange of those competitors' information may violate federal antitrust law, even if it's through an intermediary like MultiPlan, the government said.

U.S. District Judge Matthew Kennelly gave the green light for the government's input on Thursday.

Lawsuits in the MDL accuse MultiPlan Inc. and a host of insurers of colluding through the data firm's pricing tools to systematically underpay out-of-network providers. Fighting those allegations, the defendants argue that MultiPlan's software uses publicly available information to recommend reimbursement amounts and that the plaintiffs can't establish a conspiracy to suppress out-of-network reimbursement rates because payors don't use MultiPlan in the same way to determine individual reimbursements.

However, that argument is "based on an incorrect understanding of the law," according to the U.S. Department of Justice.

"The Sherman Act defines concerted action broadly because of its anticompetitive risk. Concerted action encompasses many types of joint conduct and is not limited to agreements among competitors to charge the same price," the DOJ said. "In particular — and especially important here — the Sherman Act can cover concerted action by competitors on any 'formula underlying price policies.' That includes any formula used to fix benchmark, component, recommended, or 'starting point' prices — even if end prices ultimately vary."

The government also noted in its statement that courts have already recognized that sharing information through an algorithm provider can lead to the same anticompetitive effects as a direct exchange because that provider has confidential price strategy information from multiple competitors and can program its technology to maximize industry-wide pricing even if the competitors aren't directly sharing their pricing strategies.

Christopher Seeger of Seeger Weiss LLP, an attorney for the plaintiffs, said the Justice Department's statement "validates" their case and affirms "that competitors' coordinating pricing through any methods and sharing information through third-party intermediaries constitute antitrust violations."

The litigation is proceeding with a class of plaintiffs and a group of direct-action plaintiffs. The class plaintiffs argue the defendants failed to grapple with the allegations against them and presented only a "strawman" argument and "self-serving narratives" in a bid to escape them.

Meanwhile, the direct-action plaintiffs assert they've caught Multiplan and the insurers "red-handed" with "reams" of direct evidence, including contract, meeting and presentation details to prove their claims. They say Judge Kennelly should let their claims proceed because they have business documents, sworn testimony and admissions to show that the defendants agreed to stop their previous practice of competing on out-of-network pricing, thereby underpaying health providers by

billions of dollars.

The government is represented by Abigail A. Slater, Roger P. Alford, Mark H. Hamer, William Rinner, David B. Lawrence, Alice A. Wang, Karina Lubell, Henry J. Hauser, Esther Pyon and Grace Lee of the U.S. Department of Justice.

The hospital organizations are represented by Ryan Schmidt of Jones Day.

The MDL's class plaintiffs are led by Edelson PC, Susman Godfrey LLP and Berger Montague PC.

The direct-action plaintiffs are led by Arnall Golden Gregory LLP, Seeger Weiss LLP, Napoli Shkolnik PLLC and Vinson & Elkins LLP.

MultiPlan is represented by Latham & Watkins LLP and Phelps Dunbar LLP.

Law firms representing other defendants in the MDL include Williams & Connolly LLP, Hogan Lovells, Davis Polk & Wardwell LLP, McDermott Will & Emery LLP, Sidley Austin LLP, Gibson Dunn & Crutcher LLP, Neal Gerber & Eisenberg and Crowell & Moring LLP.

The case is In re: MultiPlan Health Insurance Provider Litigation, case number 1:24-cv-06795, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Lauraann Wood. Editing by Drashti Mehta.

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Target Settles Antitrust Claims Against Visa Over Swipe Fees

By **Gina Kim**

Law360 (March 27, 2025, 7:25 PM EDT) -- Target Corp. and Visa have settled a yearslong antitrust dispute accusing the card company of being part of an illegal anticompetitive scheme that forced merchants to pay excessive fees when customers pay with credit or debit cards, according to a stipulation filed Thursday in New York federal court.

The stipulation and proposed order states Target Corp., TCI Interiors, TCC Cooking, Retail Activation Services, Shipt and Dermstore LLC have fully resolved their claims against Visa Inc., Visa USA Inc. and Visa International Service Association. The parties noted that the suit would be dismissed with prejudice and that each side would pay their own fees and costs.

Thursday's stipulation **comes two months after** office supply retailer Staples Inc. informed the court it settled its dispute against Visa and Mastercard over the alleged overcharging fee scheme.

The stipulations stem from a complaint that Target, Macy's and several other U.S. retailers initiated in May 2013 and amended earlier this year accusing Visa and Mastercard of carrying out an "illegal anticompetitive scheme" by adopting competitive restraints retailers claim have led to merchants paying excessive interchange fees, or fees merchants have to pay when shoppers make purchases with debit or credit cards.

Since 2005, Visa and Mastercard have been battling retailers that allege the companies schemed to maintain a set of rules that allowed them to overcharge merchants whenever customers used their cards. The cases are widely seen to pose potential liability in the tens of billions of dollars to the card companies.

The retailers brought their suit in 2013, days after revealing they had **opted out of a \$7.25 billion settlement** in a related multidistrict litigation filed nearly two decades ago in October 2005.

In their amended Jan. 23 pleading, the retailer plaintiffs alleged they paid more than \$1 billion collectively in their last fiscal year in credit and debit interchange fees to issuing banks that are Visa and Mastercard members.

The retailers argued the fees were among merchants' largest operating expenses, noting that eliminating Visa and Mastercard's allegedly competitive restraints "would substantially reduce interchange fees, allowing plaintiffs to operate more efficiently and at lower costs, to the benefit of consumers."

A parallel lawsuit was also filed in New York federal court in 2013 by a group referred to as the 7-Eleven plaintiffs. That group no longer includes the convenience chain, which settled its claims against the card companies in January 2024, according to court documents.

A six-week trial is set to **take place in October**. The court picked Target, T.J. Maxx, and Macy's to represent the Target plaintiffs, and Marathon Petroleum, Circle K and Gap Inc. to be representatives of the 7-Eleven group. That 7-Eleven group also accused Citigroup, Bank of America, JPMorgan Chase, Wells Fargo and other financial institutions of antitrust violations.

The defendants have argued the case isn't legitimate since the retailer plaintiffs "do not pay such fees directly, and instead pay them to intermediaries in the payments chain." That would make them

indirect buyers who lack standing, the defendants argued, according to court papers.

Representatives for the Target and Visa entities did not immediately respond to request for comment Thursday.

Target and its related parties are represented by James A. Wilson, Robert N. Webner, Douglas R. Matthews, Kimberly Weber Herlihy, Alycia N. Broz and Kenneth J. Rubin of Vorys Sater Seymour and Pease LLP and Kathy D. Patrick, Barrett Reasoner, Jorge M. Gutierrez Jr., Nick Beachy and Erica Krennerich of Gibbs & Bruns LLP.

The Visa defendants are represented by Robert Vizas, Anne Davis, and Matthew Einstein of Arnold & Porter Kaye Scholer LLP and Michael S. Shuster, Demian A. Ordway and Blair E. Kaminsky of Holwell Shuster & Goldberg LLP.

The case is Target Corp. et al. v. Visa Inc. et al., case number 1:13-cv-03477, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Rae Ann Varona and Pete Brush. Editing by Drashti Mehta.

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Coverage Row Over OpenText Merger Now Moot, Judge Says

By **Ganesh Setty**

Law360 (March 27, 2025, 6:15 PM EDT) -- A Michigan federal court tossed on Thursday an insurer's lawsuit seeking a declaration that it had no duty to indemnify a shareholder class action stemming from Covisint's 2017 merger with software company OpenText, finding the dispute is now moot because the insurer's coverage limit has already been exhausted.

Dismissing Wesco Insurance Co.'s declaratory action **with prejudice**, U.S. District Judge Linda V. Parker noted there is "no dispute" that the underlying class action has since been settled and that the parties also don't dispute that Wesco exhausted its coverage limit in July through its payment of defense costs.

"In light of these facts and the considerations underlying the court's declaratory judgment authority, the court declines to exercise jurisdiction as judgment on Wesco's claim would be futile," Judge Parker said.

According to court filings, the coverage dispute centers on an amended class action Covisint shareholders Leslie Murphy and Vincent Martin III filed in state court against certain former Covisint directors and officers in February 2023 after Murphy first sued the executives in June 2017.

Murphy and Martin said Covisint's merger agreement, under which shareholders would receive \$2.45 per share, was "fundamentally unfair" and such consideration "represented a meager 2% premium compared to the company's 52-week high closing price of \$2.40" and that it was "significantly below" other bidders' "indications of interest."

After the underlying plaintiffs **won class certification** in October 2023, the class action ultimately settled in October 2024.

Wesco kicked off the coverage litigation in July 2023, arguing that as the primary directors and officers insurer in Covisint's coverage tower, it owed no duty to indemnify any judgment or settlement reached. The insurer pointed in its policy to so-called bump-up language, which generally excludes insurance coverage for sums a corporate insured pays to resolve shareholder lawsuits alleging that compensation they received as part of an insured's merger or acquisition was insufficient.

The Wesco policy specifically excluded from its definition of a covered loss "any amount representing the increase in price or consideration where the claim involves allegations that the price or consideration paid or offered to be paid for a merger... is inadequate or unfair."

Following her finding that Wesco's no-indemnification claims were moot because the insurer's limit was already reached, Judge Parker further rejected on Thursday **a bid** from Allied World National Assurance Co., Covisint's first-layer excess insurer, to intervene in the case.

Representatives of the parties did not immediately respond to a request for comment.

Wesco is represented by Nicole E. Wilinski of Collins Einhorn Farrell PC and by April H. Gassler of Sperduto Thompson & Gassler PLC.

OpenText is represented by Nick Gorga and Jewel Haji Boelstler of Honigman LLP and by Edwin M.

Baum of Perkins Coie LLP.

Former Covisint directors or officers Samuel M. Inman, III, John F. Smith, Bernard M. Goldsmith, William O. Grabe, Lawrence David Hansen and Enrico Digirolamo are represented by William H. Horton and John R. Fleming of Giarmarco Mullins & Horton PC. Former Covisint directors or officers Andreas Mai and Jonathan Yaron are represented by Thomas G. Costello of Lipson Neilson PC.

Allied World is represented by Andrew J. Kolozsvary and Brent H. Olson of Dykema Gossett PLLC.

The case is Wesco Insurance Co. v. OpenText Corp. et al., case number 2:23-cv-11816, in the U.S. District Court for the Eastern District of Michigan.

--Additional reporting by Carolyn Muyskens and Jennifer Mandato. Editing by Nick Petruncio.

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Nuture Can't Escape Parents' Heavy Metal Baby Food Case

By **Lauren Berg**

Law360 (March 27, 2025, 10:29 PM EDT) -- Nuture Inc. cannot escape consolidated class claims brought by parents who allege the baby food manufacturer hid the presence of toxic heavy metals in its Happy Family Organics products, a Manhattan federal judge ruled Wednesday.

U.S. District Judge Mary Kay Vyskocil's **order** largely denies Nuture's motion to dismiss the parents' proposed class claims, finding that the plaintiffs have plausibly pled they suffered injury — that they paid too much for a product they believed to be free of heavy metals — which is sufficient to allege standing in the Second Circuit, where the case is filed.

The judge rejected Nuture's assertion that, because the parents didn't test their own purchases and didn't link test results to what they bought, they haven't plausibly pled the baby food they bought and that their children consumed contained heavy metals, the order states.

Judge Vyskocil noted in the order that the parents cited a **February 2021 congressional report** that found "significant" levels of arsenic, cadmium, lead and mercury in baby foods. What's more, the report states that Nuture allegedly "'sold all products tested, regardless of how much toxic heavy metal the baby food contained,'" according to the order.

In addition, Judge Vyskocil found that the parents have shown that their alleged economic injury is "fairly traceable" to Nuture's alleged omissions, and that they have adequately alleged they did not know about the heavy metals in the baby food they purchased, the order states.

More than a dozen suits claiming that Nuture's baby food contained toxic heavy metals were consolidated before Judge Vyskocil in September 2021. She centralized only personal consumer protection claims against the baby food maker, and she ordered that all personal injury claims resulting from the allegedly tainted food be consolidated in a separate proceeding.

The lawsuits followed the House Committee on Oversight and Reform's report that discovered high levels of heavy metals in baby foods produced by Nuture, Gerber Products Co., Plum Organics, Hain Celestial Group, Sprout Foods and Walmart.

Nuture has **moved to dismiss** the case more than once, court records show, with the instant motion filed in June.

In her order Wednesday, Judge Vyskocil determined the U.S. Food and Drug Administration — which is "currently evaluating the action levels of heavy metals in baby foods through its Closer to Zero Plan" — does not have primary jurisdiction, nor are the parents' claims preempted by federal law.

What's more, she said, the continued viability of the primary jurisdiction doctrine might be in question after the U.S. Supreme Court **struck down** the so-called Chevron doctrine, which "at times required courts to defer to 'permissible' statutory interpretations by agencies based on their 'subject matter expertise.'"

"The doctrine of primary jurisdiction, which similarly allows courts to defer to agencies' expertise may be inconsistent with the reasoning of **Loper Bright**," she said, adding that there haven't been any binding opinions from the Second Circuit looking at the issue.

Judge Vyskocil also determined that the parents have adequately alleged their omission-based claims, saying the complaint includes "numerous allegations about the potentially harmful effects of heavy metals" in baby food products, according to the order.

And "it follows logically from these allegations" that the presence of heavy metals in baby food is something reasonable consumers would want to know, the order states.

She also determined that the parents have sufficiently alleged Nuture's fraudulent intent, noting that the complaint alleges the company "sought to capitalize" on buyers' beliefs that its baby food is made from "high-quality organic ingredients" and meets "rigorous and uncompromising quality standards," according to the order.

However, Judge Vyskocil did dismiss the parents' unjust enrichment claim as duplicative of their other claims because it is premised on the same factual allegations and does not plead distinct damages arising from the claims, the order states.

The judge also dismissed state claims brought under California's Unfair Competition Law and False Advertising Law, finding that those statutes don't create a private right for plaintiffs to seek monetary damages; they can only seek equitable relief through an injunction and restitution, according to the order.

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

The consumers are represented by George Feldman McDonald PLLC, Sheehan & Associates PC, Gustafson Gluek PLLC and Wexler Boley & Elgersma LLP, among others.

Nuture is represented by Angela Agrusa, Colleen Gulliver and Connor Rowinski of DLA Piper.

The case is In re Nuture Baby Food Litigation, case number 1:21-cv-01217, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Mike Curley. Editing by Emily Kokoll.