

DocGo, Ex-CEO Must Face Investor Background and Growth Claims

- Lied about degree, migrant Medicaid enrollment, judge said
- Investor sufficiently alleged ex-CEO, company fraud intent

DocGo Inc. and its ex-CEO must contend with allegations they knowingly deceived investors about its business growth and his resume, after a Friday ruling by a federal judge.

The lead plaintiff, a public pension fund, sufficiently alleged Tony Capone lied about his educational background to gain investor trust, said Judge Katherine Polk Failla. Capone resigned from his position leading the mobile healthcare servicer in 2023 after acknowledging he lied about having a master's degree.

And Capone plausibly knew or recklessly ignored that he misled investors by saying DocGo had signed 3,000 asylum-seekers onto New York State Medicaid through UnitedHealthcare, Failla said for the US District Court for the Southern District of New York. The company didn't even have the ability to do so, she said.

Capone allegedly lied about the Medicaid signups "to improve DocGo's prospects with investors in the face of negative publicity" over its contract with New York officials, the judge said.

Because the pension fund plausibly pleaded Capone's level of intent, it could continue with the securities fraud claims against the company, Failla said.

As a result of these successful fraud pleadings against Capone, the pension fund sufficiently alleged a separate liability claim under a different securities law against the executive as a "culpable participant in the alleged fraud," Failla said.

The pension fund didn't plausibly allege scienter as to claims about the purported value of a Customs and Border Protection contract DocGo bid for, she said. And Capone's statements about DocGo's credibility made in an effort to get that deal were mere corporate puffery, she said.

Failla dismissed claims against a current and a former executive of DocGo, saying the pension fund didn't adequately allege they recklessly disregarded Capone's misstatements or knew he was lying about his background.

This lawsuit commenced in 2023 as DocGo, which went public after its precursor merged with a blank-check company in 2021, faced severe public scrutiny and stock declines related to its handling of migrant relocation.

DocGo had garnered a \$432 million contract with the New York City Department of Housing Preservation and Development to service and relocate asylum-seeking migrants in 2023, the judge said. But reports soon accused DocGo of disrupting communities where they were relocating migrants, prompting public officials to call on the company to improve its operations, Failla said.

The proposed class would include those who got stock from Nov. 5, 2021, through Sept. 15, 2023.

Robbins Geller Rudman & Dowd LLP is lead counsel for lead plaintiff Genesee County Employees' Retirement System; VanOverbeke, Michaud & Timmony PC is additional counsel. Gibson, Dunn & Crutcher LLP represents DocGo. None of these firms immediately responded to emails seeking comment.

Finn Dixon & Herling LLP, which declined to comment in an email, represents Capone.

The case is *Naclerio v. DocGo Inc.*, S.D.N.Y., No. 1:23-cv-09476, 3/28/25.

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Bezos-Musk Space Rivalry Dispute Goes to Delaware Supreme Court

- Bezos used Blue Origin instead of SpaceX, pension fund said
- Delaware Chancery Court judge threw out lawsuit in February

A lawsuit blaming the feud between the world's two richest men for costly delays plaguing Amazon.com Inc.'s space satellite project is headed to Delaware's top court.

The pension fund leading the shareholder case launched its appeal Wednesday, asking the state supreme court to revive claims that Amazon founder Jeff Bezos hamstrung its Project Kuiper by relying on his own rocket startup, Blue Origin LLC, rather than Elon Musk's more established SpaceX. A judge tossed the suit from Delaware's Chancery Court last month, saying Amazon's board was free from conflicts of interest when it made that choice.

"Directors can always do more," Vice Chancellor Nathan A. Cook wrote Feb. 24, quoting a previous court filing by Bezos and the board. "A bad-faith claim is reserved for disciplining directors who deliberately do essentially nothing."

Musk has a net worth of \$337 billion, according to the Bloomberg Billionaires Index, while Bezos is worth \$222 billion. Facebook founder Mark Zuckerberg is third on the list with \$213 billion.

Project Kuiper—among the costliest ventures in the tech giant's three-decade history—is a planned competitor to SpaceX's Starlink network, a multibillion-dollar enterprise involving a mega-constellation of satellites facilitating global internet access. Under its Federal Communications Commission license, Amazon has until 2026 to send up the first of roughly 1,600 satellites and three more years to launch the next batch, according to the 2023 court complaint.

The lawsuit focuses on animosity between Musk and Bezos, who arguably won a separate "billionaire space race" when he left the Earth's atmosphere aboard a Blue Origin vessel in July 2021, days after Virgin Galactic Holdings Inc. founder Richard Branson entered sub-orbit. But policy changes favored by the Trump administration—in which Musk wields enormous influence—could raise the rivalry's stakes.

Recent moves by Commerce Secretary Howard Lutnick and senior congressional Republicans could put more than \$40 billion in federal funds up for grabs by revamping a broadband subsidy program to embrace satellite-based technologies like Starlink and Project Kuiper. The program previously focused on fiber-optic cables that are expensive to install but durable over time.

Read More: [Bezos, Amazon Defend Space Project Contracts With Blue Origin](#)

Cook's brief ruling last month rejected the idea that Bezos' status as a "superstar CEO" with outsized influence at Amazon should make it easier prove other corporate directors were beholden to him, a theory borrowed from a landmark 2024 decision voiding Musk's \$56 billion Tesla Inc. pay package.

The Cleveland Bakers and Teamsters Pension Fund acknowledged it belatedly raised that argument "after limited recent case law suggested it might have some 'traction,'" according to the decision throwing out the case. "I question the premise," Cook said. "This case ultimately concerns an independent board's exercise of its business judgment."

The fund's opening appellate brief is due May 13.

It's represented by Grant & Eisenhofer PA. Amazon, Bezos, and the board are represented by Ross Aronstam & Moritz LLP and Wachtell, Lipton, Rosen & Katz.

The case is Cleveland Bakers & Teamsters Pension Fund v. Bezos , Del., No. 127, 2025, notice of appeal filed 3/26/25 .

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Elon Musk must face fraud lawsuit over disclosure of Twitter stake

 [reuters.com/legal/elon-musk-must-face-fraud-lawsuit-over-disclosure-twitter-stake-2025-03-28](https://www.reuters.com/legal/elon-musk-must-face-fraud-lawsuit-over-disclosure-twitter-stake-2025-03-28)

Jonathan Stempel

March 28, 2025

BLETCHLEY, ENGLAND - NOVEMBER 01: SpaceX, X (formerly known as Twitter), and Tesla CEO Elon Musk speaks with other delegates during day one of the AI Safety Summit at Bletchley Park on November 01, 2023 in Bletchley, England. Leon Neal/Pool via REUTERS/File Photo Purchase Licensing Rights , opens new tab

NEW YORK, March 28 (Reuters) - A U.S. judge on Friday rejected billionaire Elon Musk's bid to dismiss a lawsuit claiming he defrauded former Twitter shareholders by waiting too long to disclose his initial investment in the social media company, now known as X.

U.S. District Judge Andrew Carter in Manhattan said the shareholders adequately pleaded that Musk, now a top adviser to President Donald Trump, intended to commit fraud through an improper regulatory filing, misleading tweets about Twitter's future, and a strategy to "silently" build his Twitter stake.

Carter dismissed some other claims in the proposed class action. He did not rule on the case's merits. The U.S. Securities and Exchange Commission is also suing Musk over the late disclosure.

Lawyers for Musk did not immediately respond to requests for comment.

Plaintiffs led by the Oklahoma Firefighters Pension and Retirement System said Musk ignored an SEC deadline of March 24, 2022 to reveal he had bought 5% of Twitter shares, and waited 11 more days before revealing his 9.2% stake in an SEC filing.

The plaintiffs said this saved Musk more than \$200 million, and harmed them because they sold Twitter shares at artificially low prices. Musk bought all of Twitter for \$44 billion in October 2022.

In a 43-page decision, Carter said Musk's disclosure of the 9.2% stake could be seen as misleading because it suggested he made a "passive" investment and did not plan to buy the company.

Carter said shareholders could also sue over two tweets on March 26, 2022, where Musk said he was "giving serious thought" to building a Twitter rival, and responded to a suggestion he buy Twitter and change its bird logo to a doge by saying "Ha ha that would [be] sickkk."

Musk's lawyers said the tweets undermined any suggestion of fraudulent intent because they could bring unwanted attention to him concerning Twitter, but Carter found the plaintiffs' argument "at least as compelling."

The case is Oklahoma Firefighters Pension and Retirement System v. Musk et al, U.S. District Court, Southern District of New York, No. 22-03026.

Reporting by Jonathan Stempel in New York; Editing by Leslie Adler and Diane Craft

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- Suggested Topics:
- Boards, Policy & Regulation

Musk Loses Bid to Thwart Investor Suit Over Twitter Purchase

Elon Musk failed to fend off an investor lawsuit claiming he manipulated the stock price of Twitter Inc. months before he bought the company in 2022 by concealing how much stock he'd acquired.

A Manhattan federal judge on Friday said investors can move forward with claims that Musk committed securities fraud by failing to make timely disclosures to the US Securities and Exchange Commission, posting "misleading tweets about Twitter's future" and carrying out "a coordinated trading strategy to silently build up" his position in the social media company.

Lawyers for Musk and the investors didn't immediately respond to requests for comment.

Several tweets Musk posted as he publicly questioned whether to go through with the Twitter purchase figured into the judge's ruling. In March 2022, the billionaire polled Twitter users about whether they believed the platform had too many fake or spam accounts.

US District Judge Andrew Carter Jr. ruled that some of the tweets support fraud claims, while others don't.

In their request to have the case thrown out, Musk's lawyers had argued it has no legal merit and is merely an attempt to "harness the spectacle" around him and his \$44 billion acquisition of the social-media platform.

[Read More: SEC Official Sought Staff's No-Politics Pledge on Musk Lawsuit](#)

Musk is facing similar allegations in a suit filed by the SEC days before Donald Trump was sworn in as president. Musk's lawyer **Alex Spiro** said at the time his client has "done nothing wrong" and accused the SEC of pursuing "ticky tak" violations that ordinarily carry nominal penalties.

Musk is set for a deposition next week in yet another investor suit over his Twitter acquisition.

The case is *Rasella v. Musk*, 22-cv-03026, U.S. District Court, Southern District of New York (Manhattan).

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Tesla Stock Plunge Raises Questions for Chicago Teachers' Pensions



Elon Musk at an America PAC town hall on Sunday in Green Bay, Wisconsin.

Photographer: Jamie Kelter Davis/Bloomberg

Critics of Elon Musk's efforts to cut the federal government have turned their ire to his car company, Tesla, and owners of its stock. Shruti Singh is here today to explain what happens when politics collides with the financial reality of a pension fund. Plus: A close-knit California neighborhood has its advantages when facing wildfire, and the economics of baseball don't work for small-market teams.

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At a town hall event in Wisconsin on Sunday night, Elon Musk was candid about the effect his White House work is having on his car company, Tesla Inc. "It's costing me a lot to be in this job," he said, referring to his leadership of the so-called Department of Government Efficiency. "My Tesla stock and the stock of everyone who holds Tesla has gone, went roughly in half. I mean it's a big deal."

It's a very big deal, indeed, for the former teachers who wonder how a swoon in stocks, and specifically a plunge in Tesla shares, will hit their already underfunded pensions.

Tesla stock was down as much as 56% earlier this month, plunging from a record \$488.54 a share on Dec. 18. The shares spiraled as Tesla's sales slumped, the threat of tariffs set off panic and Musk forged ahead to meet President Donald Trump's goal to downsize the federal government. This week will be crucial for Tesla, as it's poised to announce sales figures for its most recent quarter on Wednesday, and Trump's 25% tariff increase on imported cars is set to go into effect on Thursday. The company has also been the target of "Tesla Takedown" protests that call on Musk's opponents to sell their cars and dump their stock.

The Chicago Teachers' Pension Fund posted a statement on its website on March 14 explaining its Tesla stock ownership after seeing "social media outreach" about the retirement plan's holdings. As of a day earlier, its asset managers had held 209,744 Tesla shares worth about \$50.5 million, or 0.4% of the portfolio, with most in passive funds.

"These 'indexed funds' rise and fall with the market," Carlton W. Lenoir Sr., CTPF's executive director, said in the statement. "That can be seen as both a strength and a limitation because we own the market, and do not get to select individual stocks with these investments."

While asset managers oversee investment decisions and serve as fiduciaries who manage the portfolio in the best interests of members, CTPF is dedicated to "a well-diversified and financially sound investment portfolio, ensuring the long-term financial health of the Fund," Chief Investment Officer Fernando Vinzons said in an emailed statement.

Teachers in the Windy City aren't alone in questioning the holdings. American Federation of Teachers President Randi Weingarten in a letter last month asked the country's biggest money managers to immediately review investments in Tesla. The California State Teachers' Retirement System (CalSTRS) has received more than two dozen emails since January asking it to divest from Tesla.



Weingarten at a rally outside of the US Department of Education headquarters in Washington on March 13.

Photographer: Al Drago/Bloomberg

Weingarten—who's traded a few personal barbs with Musk—noted in her letter that Tesla's lower profits, pricing power and stock pose a risk to pensions. Public school teachers across the country are concerned about DOGE potentially cutting funding or dismantling the Department of Education completely. They also worry about who's accessing their private data.

The Chicago teachers' fund got a couple of direct inquiries about the holdings in addition to the social media posts but no demands to divest, according to a statement.

Still, a key difference between the Chicago teachers' fund and the likes of CalSTRS is the funding—or more precisely the lack of funding—and the significance of returns. At yearend, CalSTRS owned about \$1.12 billion in Tesla shares as part of a massive \$350 billion pension fund with enough assets to cover 75% of its liabilities.

Meanwhile, the Chicago Teachers' Pension Fund ratio of assets to liabilities stands at 48%. Its unfunded liability stands at nearly \$14 billion. That's largely because of decades of anemic contributions and volatile returns. Assuming statutorily required contributions and a 6.5% investment return, the fund is expected to reach a 90% funded ratio by 2059.

“This is a severely underfunded plan,” according to its most recent actuarial report, which included the results of a stress test to show the impact of various levels of returns. The total amount of required employer contributions will depend on the returns, according to the report.

While concerns voiced about a particular stock are common among public employees or retirees when it's in the news for a negative reason, no single stock will impact pension portfolios as much as the sweeping impact that policies such as tariffs by the Trump administration are having on market and portfolios, said Anthony Randazzo, the executive director of Equable Institute, a bipartisan nonprofit focused on pensions. Similar concerns had popped up a couple of years ago regarding Silicon Valley Bank and now-defunct crypto exchange FTX Trading Ltd., he said.

The situation at the Chicago teachers pension “speaks to the potential focus on particularly poorly funded systems when the stock market is going down,” Randazzo said.

Related: US Stocks Fall, Bonds Gain as Fears Build Ahead of Trump Tariffs

In Brief

- Amazon will resume metal-detector screening for employees leaving its warehouses, a theft-prevention measure suspended during the pandemic.
- Far-right French politician Marine Le Pen was convicted of embezzlement and barred from running in the next presidential election.
- Chaotic US student-loan restart drives a surging delinquency rate.

Trump's Crypto Fandom Isn't the End of State or Investors' Suits

- Private securities lawsuits could pick up what SEC doesn't
- State AGs, private parties can still sue those seen as bad actors

Investor litigation around cryptocurrency won't disappear just because the US Securities and Exchange Commission has been dropping Biden administration enforcement actions.

Buoyed by campaign support from the industry, President Donald Trump returned to office pledging to make the US "the crypto capital of the world," issuing an executive order creating a strategic bitcoin reserve and abandoning the prior administration's efforts to regulate by enforcement the virtual currencies as though they were traditional securities.

He also pardoned Ross Ulbricht, founder of the drug-trafficking site known as Silk Road, where virtual currency was the coin of the realm. He had been serving a life sentence following his 2015 conviction for trafficking and other crimes.

But even as Trump's SEC ends suits against Coinbase Global Inc., Binance Holdings Ltd, Ripple Labs Inc.—in which a court had ruled its token was a security when sold to institutional investors, but not to the general public—and others, privately-filed lawsuits against them have continued.

And suits against promoters of other digital assets, such as the "Hawk Tuah" and "Peanut the Squirrel" memecoins, are ongoing despite a signal that the SEC won't consider most securities.

Private plaintiffs and state attorneys general can and likely will still pursue claims—perhaps even more so if the SEC backs off enforcement entirely and bad actors emerge, lawyers said.

Nothing's changed legally in determining what is a security—it's still the *Howey* test outlined by the US Supreme Court in 1946, said Sean Masson, a partner at Scott+Scott Attorneys at Law LLP. Even if the federal securities route for crypto accountability gets nixed, there are other ways under state securities laws, consumer laws, or just plain fraud, he said.

Regulation Still in Play

"There's still a lot of arrows left in the plaintiffs bar's quiver," Masson said. Much of the litigation surrounding crypto was pretty far along when the administration changed, he said. The number of new cases arising depends on the number of new digital asset projects, he said, while the SEC's task force explores a "regulatory framework" for crypto.

The SEC will still pursue securities fraud claims, said Davis Polk & Wardwell LLP partner Rob Cohen among multiple attorneys Bloomberg Law spoke to. The idea that federal officers aren't going to recommend regulating crypto is false—the query is by how much and whom, said Masson.

And, acting SEC Chairman Mark Uyeda has said it's possible some digital assets will be defined as securities. The SEC, in an email, declined to comment for this story.

Trump's pick to lead the agency, Paul Atkins, said in a public Senate committee hearing on March 27 that providing a "firm regulatory foundation" for crypto assets would be a "top priority." Atkins himself reported having up to \$6 million in crypto-related investments in ethics disclosures publicized days earlier.

Private Action

There's such a wide range of digital assets, attorneys said—from stablecoins, whose values are pegged to other currencies, to memecoins, digital tokens depicted with an animated character or animal, that can quickly gain value—that might draw different regulation or recommendations.

One of those lawyers, Stubbs Alderton & Markiles LLP partner Neil Elan, said "even if a 'Hawk Tuah' coin or the newest 'Libra' coin or the 'Melania' coin or the 'Trump' coin is not deemed a security, it does not mean that the operators or offerors are free to commit fraud, make materially false statements, or otherwise act improperly." The prospect of liability remains, he said.

Consumer protection is a wide body of law, said Max Burwick, founder and senior managing partner at Burwick Law. His firm leads a series of suits involving the Hawk Tuah, Libra, and other memecoins.

"Although there is a supposed lack of regulatory clarity, an active plaintiff's bar stands as a check on bad actors, and can positively impact the market," he said.

State Enforcers

Just as plaintiffs' attorneys remain a resource for aggrieved investors, state attorneys general haven't paused as state officials of the opposing party of the administration typically tend to increase activity during the president's term.

There may be “an increase in state regulatory activity in the space, which has been more active in the last few years (both in enforcement activity as well as digital asset legislation),” said, Mitzi Chang, co-chair of Goodwin Procter LLP’s FinTech and Digital Currency & Blockchain practices.

The office of California Attorney General Rob Bonta this month said it would continue protecting consumers from “crypto confidence scams.” California’s Department of Justice shuttered 42 crypto scam sites that drew at least \$6.5 million from individuals in 2024.

Illinois’ too said it would continue. “As we review the SEC’s decisions and their impact on the marketplace, we urge consumers to be cautious when purchasing or using cryptocurrencies,” a spokesperson for Attorney General Kwame Raoul’s office said in an email.

New York Attorney General Letitia James and Massachusetts’ Andrea Campbell have also indicated they too intend to pursue perceived crypto-wrongdoing. All four of the AGs are Democrats.

Caution, Readiness

But some plaintiffs’ attorneys might not want to pursue claims without clear regulatory support. Adam Moskowitz, founding and managing partner of The Moskowitz Law Firm, said there would probably be a ton of litigation, “but you won’t see me doing them because what am I going to do, put millions of dollars towards these cases where there may be no federal regulatory support or guidance?”

Davis Polk’s Cohen said crypto companies have a strong point to make: “That federal regulation is very much in flux, and the fairness of trying to enforce what may soon become an old set of rules is a legitimate point for them to raise in private litigation.”

And so companies would be prudent “to backstop compliance efforts by demonstrating that either offerings are not securities and that there are established capital formation objectives to crypto asset offerings,” said Al Chakravarty, a partner at Saul Ewing LLP.

— With assistance from Martina Barash.

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[Securities Law News](#)

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Citadel Securities, Virtu Must Face Biotech Stock Spoof Suit (1)

- Biotech company says it sold shares at depressed prices
- Company adequately linked some losses to alleged actions

Northwest Biotherapeutics Inc. can proceed with claims against seven firms including Citadel Securities and Virtu Americas LLC for depressing the company's stock price through false sale orders, a federal court ruled.

The company adequately supported its allegations that the spoofing trades caused some of its losses from selling shares, but not all of them, Judge Gregory H. Woods said in an opinion docketed Thursday in the US District Court for the Southern District of New York.

Bethesda, Md.-based Northwest, which develops cancer-treating vaccines, said the market-making firms made "at least hundreds of millions" of dollars from late 2017 to mid-2022 by buying the company's artificially depressed shares. According to Northwest, more than 49 million of its shares were sold at manipulated prices.

Woods agreed with a magistrate judge who concluded that Northwest plausibly pleaded loss causation with respect to its stock sales—at prices derived from same-day closing prices—in two situations: where the broker-dealers allegedly spoofed its stock during the final hour of trading, and where they allegedly conducted the spoofing at any time during the trading day.

But claims that the firms' actions "had a persistent, long-term impact" on Northwest's stock price fail, Woods said, also adopting the magistrate judge's recommendation on that point.

Cohen Milstein Sellers & Toll PLLC represents Northwest. Law firms representing the defendants include Morrison & Foerster LLP, Quinn Emanuel Urquhart & Sullivan LLP, Ballard Spahr LLP, and Paul, Weiss, Rifkind, Wharton & Garrison LLP.

The case is *Nw Biotherapeutics, Inc v. Canaccord Genuity LLC*, S.D.N.Y., No. 1:22-cv-10185, docketed 3/27/25.

(Updates story with additional court analysis and counsel information in fifth and sixth paragraphs. A prior version was corrected to remove the name of a broker-dealer firm that is no longer a defendant.)

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Biogen Must Face Investors' Claim on Alzheimer's Drug Trial Data

- Investors can allege presumption of reliance now, judge said
- Clinical trial data claim revived after appeals court trip

Biogen Inc. investors can advance their claim that the company misrepresented clinical trial data for its Alzheimer's drug, a federal judge ruled.

The claim at this stage is entitled to a presumption that the alleged misrepresentation was affecting the stock price, despite the company's argument that the investors bought shares after a federal report about the efficacy of a high dose was published, Judge Indira Talwani said Thursday.

The case is part of a wider controversy involving Biogen and the Food and approval of the \$28,000-per-year Aduhelm. Biogen said last year that it would stop selling and studying the drug once seen as a potential blockbuster in Alzheimer's treatment.

That doctrine allows plaintiffs to allege they bought shares based on the integrity of the price, with purported misrepresentations affecting it in an efficient market, "rather than expecting investors to prove that they individually relied on specific misstatements," the US District Court for the District of Massachusetts judge said. An appellate court already found an earnings call remark was plausibly misleading, Talwani said while denying Biogen's motion for judgment on the pleadings.

Talwani said that investors alleged the market hadn't yet fully absorbed information from the draft Food and Drug Administration statistician report when they bought shares, entitling them at this stage to the presumption the misrepresentation was still affecting prices.

"Biogen may rebut that presumption with competent evidence on summary judgment or at trial," the judge said. "But Biogen may not do so here, where the pleadings are taken as true for purposes of this motion."

Talwani allowed two more investors to join lead plaintiff Nadia Shash and named plaintiff Amjad Khan's proposed class action. She dismissed one of the former executives.

The 2021 lawsuit said Biogen withheld data finding that patients who were treated with a higher dose of the drug, Aduhelm, actually had worse outcomes than patients with a lower dose.

Talwani had tossed the investors' suit in 2022, but the US Court of Appeals for the First Circuit revived a claim alleging Biogen's former chief medical officer misrepresented drug trial data in 2020. The officer, Alfred Sandrock, told investors the reason one of its clinical trials had failed while another prevailed was because, "You really need to get to the higher dose," and, "I think our data are all consistent with that."

But there were at least some contradictory subgroup data, the First Circuit said when remanding the case to Massachusetts court. By failing to disclose that data, Biogen could've plausibly misled investors, the First Circuit said. It could be reasonably inferred that Biogen leaders knew about that data, so failing to disclose it suggested a level of intent or reckless disregard to carry securities fraud claims, the appellate court said.

The Rosen Law Firm PA represents the proposed class. Paul, Weiss, Rifkind, Wharton & Garrison LLP and Latham & Watkins LLP represent Biogen and three then-executives. None of these firms immediately responded to emails seeking comment.

The case is Shash v. Biogen Inc. , D. Mass., No. 1:21-cv-10479, 3/27/25 .

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Fulcrum Sheds Investor Suit Over Blood Treatment Trial Safety

- Investor failed to allege intent to deceive over trial safety
- Judge isn't letting him amend complaint over blood therapy

Fulcrum Therapeutics Inc. beat allegations that the the biotech company misdirected investors about the safety and likelihood of federal approval for its sickle-cell treatment.

The lead plaintiff only sufficiently alleged one misleading statement about the treatment, FTX-6058—that it had no adverse affects—Judge Indira Talwani said Thursday. Still, Steven Santillanes failed to plead the level of intent or reckless disregard to deceive by then-executives to bring securities fraud claims, the US District Court for the District of Massachusetts judge said when granting Fulcrum's motion to dismiss.

The investor alleged former executives concealed that FTX-6058 presented safety concerns for human test subjects as a result of similar treatments' connection to blood cancer in clinical trials, thus increasing the likelihood of the Food and Drug Administration pausing its clinical trial.

But the "recurring problem" with his complaint was that there weren't any allegations that FTX-6058 itself wasn't safe for testing on people, Talwani said. The FDA lifted a clinical hold it had placed on the treatment's investigational new drug application in 2023 after six months, she said, which she said was "notable."

Fulcrum had conducted non-clinical studies of the treatment as early as 2019, Talwani said, and by the start of the proposed class period, "most of these non-clinical studies had shown no adverse effects, or at most minimal adverse effects, on important cellular health markers."

Talwani denied Santillanes' request to be able to amend his complaint.

Investors originally sued in 2023 following severe stock turbulence—including a record stock drop since the gene-therapy company's initial public offering, according to data compiled by Bloomberg.

Fulcrum's share prices plummeted more than 56% in a February 2023 trading day after the company announced the FDA had placed a complete clinical hold due to previously shared preclinical data, Talwani said. Then the stock price fell again by 23% in a day that March after Fulcrum said the data related to evidence of hematological malignancies from similar therapies, she said.

In 2022, the FDA had designated the investigational blood disorder treatment as an orphan drug, which offers some incentives for products targeting rare diseases, and granted it a fast-track review. Talwani said those actions contradicted the investor's allegations that Fulcrum had misled on its likelihood of FDA approval.

Pomerantz LLP is lead counsel and Andrews DeValerio LLP is liaison counsel for Santillanes. Goodwin Procter LLP represents Fulcrum, former executives, and a board member. None of these firms immediately responded to emails seeking comment.

The case is *Celano v. Fulcrum Therapeutics, Inc.*, D. Mass., No. 1:23-cv-11125, dismissed 3/27/25.

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Fintech Firm Escapes Securities Lawsuit Over China Operations

- Company executives adequately disclosed investment risks
- Shareholder can amend claims to remedy deficiencies

An investor failed to plausibly allege that UP Fintech Holding Ltd. withheld material information about the company's unlicensed operations in China, a federal district court ruled.

The financial technology firm adequately disclosed the "risks and uncertainties in the legal landscape in China" to the proposed class members in its annual reports and Sarbanes-Oxley certifications, Judge Jessica G. L. Clarke said in an opinion and order Thursday. Clarke dismissed the proposed class action in the US District Court for the Southern District of New York without prejudice and will allow lead plaintiff Lavale Burns to file a second amended complaint to try to address the deficiencies by April 21.

Burns "fails to plausibly allege that the company knew more than what it disclosed about the risks or that the disclosures were otherwise false or misleading," Clarke said.

UP Fintech, a financial technology brokerage firm focusing on global Chinese investors, informed shareholders as early as 2019 that it may have trouble obtaining or maintaining the necessary licenses to operate in China, the opinion said. While UP Fintech's legal counsel allegedly advised the company that certain licenses weren't necessary, US news articles started reporting that Chinese regulators were cracking down on the firm in 2021.

UP Fintech's stock was trading at \$8.85 per share prior to the regulatory revelations and dropped to as low as \$2.64 per share by May 2023, Clarke wrote. Burns sued the firm and its board of directors the following month, alleging they violated multiple sections of the Securities Exchange Act.

But Burns failed to allege any material omissions by the firm or its board of directors, the opinion said. The annual reports that Burns said were a "half-truth" of hypothetical penalties were in actuality sufficient warnings to investors about the risks in China.

The reports disclosed that, despite the company's position, the Chinese "government might disagree, and they may require a license or other approvals that the company may not be able to obtain," Clarke said.

The various media articles cited by Burns fail to demonstrate that UP Fintech knew that it was in violation of Chinese law, the opinion said. Clarke also said that many of the allegedly false or misleading statements identified are also non-actionable statements of opinion.

The alleged misstatements in the firm's Sarbanes-Oxley certifications don't rise to the level of being an actionable misstatement or omission under federal law, Clarke wrote.

Rosen Law Firm PA represents Burns and the proposed class. Davis Polk & Wardwell LLP represents UP Fintech.

The case is Burns v. UP Fintech Holding Ltd. , S.D.N.Y., No. 1:24-cv-01632, 3/27/25 .

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DXC Defeats Claims It Misrepresented Integration After Mergers

- Cost-cutting measures allegedly led to inefficiencies
- Investors failed to plead falsity, intent, court says

DXC Technology Co. investors can't proceed with claims that the global information technology services company misled them about the success of its efforts to integrate 13 acquired companies, a federal court ruled.

The challenged remarks are protected forward-looking statements, too vague to be actionable, or not false when made, Judge Anthony J. Trenga said in an opinion docketed Friday in the US District Court for the Eastern District of Virginia. Trenga dismissed the latest version of the class action complaint and closed the case.

DXC fought off previous securities suits over the 2017 merger that created the company—a union between a Hewlett Packard Enterprise Co. division and Computer Sciences Corp.—and over statements about its financial health. But it settled Securities and Exchange Commission claims that it misrepresented income by incorrectly classifying transaction, separation, and integration-related costs. In the March 2023 deal, DXC agreed to pay the SEC \$8 million and neither admitted nor denied the allegations.

Here, the investors alleged DXC's cost-reduction efforts in the wake of the mergers undermined its goals for integrating the businesses and led to stock-price declines. Former employees cited in the complaint said that "the failure to integrate caused employees within DXC to have different email systems, time sheets, computer systems, sales teams, delivery systems, human resources departments, client systems, and back-end systems," among other problems, according to the complaint.

But targeted company statements, including that DXC was making progress "on our transformation journey," didn't qualify as actionable false or misleading statements for purposes of showing securities fraud, Trenga said.

The investors also failed to show that key executives had the necessary level of fraudulent intent, he said.

Kessler Topaz Meltzer & Check LLP was lead counsel for the investors. Latham & Watkins LLP represented DXC and individual defendants.

The case is In re DXC Tech. Co. Sec. Litig. , 2025 BL 104149, E.D. Va., No. 1:24-CV-01351, 3/27/25 .

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NextEngine Investor Suit Against Founder Blocked on IP Row (1)

NextEngine Inc. investor Bigfoot Ventures Ltd. can't bring a shareholder derivative suit against the laser scanner maker's founder and his new company in the midst of a bitter fight over intellectual property, the Ninth Circuit ruled Friday.

The lower court acted properly in dismissing the case after other shareholders objected to Bigfoot's suit on grounds that it couldn't competently and fairly represent their interests, the US Court of Appeals for the Ninth Circuit said.

- Bigfoot sued Mark Knighton and his company, ShapeTools LLC, on behalf of NextEngine, alleging a transfer of NextEngine's inventory and revenue to ShapeTools wasn't intended to benefit NextEngine or its shareholders
- The US District Court for the Central District of California correctly applied the factors for determining a plaintiff's inadequacy, the Ninth Circuit said, clarifying that a court need not assess every one of the factors
- Courts may consider other factors like "outside entanglements," as the lower court properly did here in considering a spate of lawsuits between Bigfoot and NextEngine, Judge Ronald M. Gould said, joined by Judges Richard R. Clifton and Gabriel P. Sanchez

Reich Radcliffe & Hoover LLP represented Bigfoot. Balaban & Spielberger LLP and Esner, Chang, Boyer & Murphy represented Knighton, ShapeTools, and nominal defendant NextEngine.

The case is Bigfoot Ventures Ltd. v. Knighton , 9th Cir., No. 23-2940, 3/28/25 .

(Updates story with additional information from opinion starting in third paragraph.)

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This Week in Chancery Court: Mattel Settlement, Paramount Files

This week in the Delaware Chancery Court, Paramount Global goes to trial over internal files about its merger with Skydance Media, and Mattel Inc. seeks approval of a settlement to resolve litigation over infant deaths and injuries allegedly linked to the Fisher-Price Rock 'n Play Sleeper.

Here's a look at highlights from the court's calendar:

Monday: Leo Inv. Hong Kong Ltd. v. Tomales Bay Cap. Andurill III LP, Del. Ch., No. 2022-0175, hearing 3/31/25.

At issue: A lawsuit over a failed SpaceX investment venture went to trial last December, in a case involving a joint venture formed by Leo Investments Hong Kong Ltd. and Tomales Bay Capital LLC to buy a piece of Elon Musk's private space flight company. SpaceX isn't named as a party in the litigation. Leo alleges that Tomales terminated the deal less than a week after signing it. Vice Chancellor J. Travis Laster, who narrowed the claims in a Nov. 4 order granting partial summary judgment, now hears closing arguments in the case.

Court action: A hearing for post-trial arguments will be held in Wilmington, Del.

Failed SpaceX Investment Deal Lawsuit Gets Go-Ahead in Delaware

Tuesday: In Re Mattel Inc. Rock 'n Play S'holder Derivative Litig., Del. Ch., No. 2020-0552, settlement hearing 4/1/25.

At issue: Mattel Inc.'s board and senior leadership will pay, through their insurers, almost \$17 million and enact corporate governance changes to resolve long-running litigation, according to a proposed settlement. Investors alleged the company spent years hiding deadly problems with the Fisher-Price Rock 'n Play Sleeper before finally recalling it over dozens of infants' deaths and hundreds of injuries. About 4.7 million Rock 'n Play Sleepers were sold between 2009 and 2019, when Fisher-Price announced the recall. Vice Chancellor Morgan T. Zurn must give final approval to the settlement, which also would require recognition of Mattel's head of product quality and safety as a formal member of the company's global management team.

Court action: A settlement hearing will be held in Wilmington, Del.

Mattel Board Hid Baby Deaths Before Sleeper Recall: Suit (1)

Tuesday: Gabelli Value 25 Fund v. Paramount Glob., Del. Ch., 2024-1353, trial 4/1/25.

At issue: Money manager Mario Gabelli asked the Chancery Court to order Paramount to hand over internal files about the Skydance merger so investors can determine how controlling stockholder Shari Redstone might benefit from the deal. Gabelli's funds own about 12% of Paramount voting shares. A trial will determine whether Gabelli is entitled to inspect any of the film and TV company's books and records, and, if so, the appropriate scope of an inspection.

Court action: Senior Magistrate in Chancery Selena E. Molina will preside over a one-day trial in Wilmington, Del.

Gabelli Pushes Paramount for Files in Fight Over Skydance Deal

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Securities Law Prof Blog

Sunday, March 30, 2025

New Securities Law Articles in Print

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

Joseph A. Grundfest, & Mohsen Manesh, *Still Abandoned*, 79 Bus. Law. 1085 (2024).

Rayaan Hossain, Note, *Regulating Best Interest: SEC Confronts the Brave New Markets*, 31 U. Miami Bus. L. Rev. 92 (2023).

Ann M. Lipton, *Not Dead Yet: A Reply to Professors Manesh and Grundfest*, 79 Bus. Law. 1071 (2024).

Richard Young, Note, *Working from 10 to 5, What a Way to Make a Livin': The SEC's Most Recent Amendments to Promote Corporate Governance and Curb Exploitative Hedge Fund Activism*, 76 UC L. J. 275 (2024).

Delaware Ignores Tradition and Misses Big With Opt-In Snub

Case Western Reserve University School of Law professor Anat Alon-Beck and law student Atticus Williams say Delaware's break with tradition is creating an uncertain future for corporate law in the state.

Delaware has made a bold shift to its corporate legal framework that will likely affect the future of corporate governance across the US. By amending Sections 144 and 220 of the state's corporate statute through Senate Bill 21, Delaware is heralding a new chapter in corporate law.

Traditionally, the Delaware State Bar Association's Corporation Law Council has spearheaded efforts to amend corporate laws by drafting proposals and submitting them to the general assembly for consideration. SB 21 took a different path, bypassing the DSBA's usual drafting and voting process.

Sponsors introduced the bill directly to the Delaware General Assembly, where it quickly passed through both chambers and was signed by the governor on March 25. The Corporation Law Council eventually voted to recommend the bill, while the executive committee of the DSBA chose not to take a position.

While the expedited process was efficient, it raises questions about the future of Delaware corporate law reform.

A critical suggestion from law professors—an opt-in provision—was left out of the final version. This proposal, which would have allowed shareholders to opt in to certain provisions of the statute, would have offered greater flexibility and shareholder protection.

The opt-in provision allows for shareholders to make the decision whether to adopt the amendments or contract around them, a typical feature of Delaware law. The law professors, supporting the provision, argue the opt-in would have preserved the flexibility of Delaware's corporate law and reduced the risk of reincorporation by allowing corporations to customize their governance structures in a manner that suits them. Further, law professors argue an opt-in provision allows for empirical testing of the amendments' market impact.

The failure to adopt this suggestion is a missed opportunity to enhance the balance of power between corporate managers and shareholders.

Significant Changes

The legislation overhauled Section 144 of Delaware's corporate statute, which governs interested director transactions, to broaden its scope and strengthen protections.

Previously, a transaction in which a director had a vested interest could proceed only if the board or shareholders were informed and the deal was fair to the company. Now, only a majority of shareholders must approve the transaction, provided their vote is informed and voluntary. They no longer need to be notified of the material facts about the director's interest in the transaction.

Section 144's safe harbor rules were extended to cover transactions involving controlling shareholders. The statute now applies similar standards to these transactions, except for "going-private" deals, which now require both shareholder and director approval.

The law introduces a presumption that directors are disinterested in safe harbor transactions—a presumption that can be overturned only if substantial evidence proves a conflict of interest. There also is now a lower standard for being classified as an "independent" director to the equivalent level under federal securities laws.

Another change is the introduction of a duty-of-care exculpation for controlling shareholders. Modeled after rules for directors, this provision limits liability for controlling shareholders, protecting them from lawsuits unless they violate their duty of loyalty, engage in bad faith actions, or benefit personally from the transaction.

The new law offers a more stringent definition of "controlling shareholder," setting the bar at a one-third ownership stake, coupled with managerial control, rather than the traditional majority threshold.

SB 21 also overhauled Section 220, which governs shareholder access to a corporation's books and records. Previously, shareholders needed only to have a proper purpose and present a "credible basis to suspect wrongdoing" to request documents. This made it relatively easy to gain access to informal materials, including emails and other communications between corporate directors.

The amendments now explicitly define what constitutes "books and records," excluding informal documents from the statutory definition. Shareholders may only request such materials if they demonstrate a "compelling need" for the information, backed by "clear and convincing" evidence that the records in question will contain the sought-after information.

This change effectively raises the bar for stockholders hoping to access informal materials, potentially reducing the frequency and scope of book and records requests.

The Road Ahead

The changes to Section 144 are likely to shift the balance between directors, controlling shareholders, and other stakeholders in a way that may lead to significant changes in corporate governance practices across the nation.

Had the opt-in provision been included, the bill may have avoided an expected constitutional challenge that may be on the horizon. The amendments impose a broad, mandatory restriction on the Chancery Court's equitable power, potentially violating state constitutional guarantees. An opt-in approach would let corporations explore different governance structures, avoiding the complex issues related to the separation of powers and legal validity that arise with sudden statutory changes such as SB 21.

The opt-in proposal—designed to offer shareholders more control over how certain provisions apply to their corporations—feels like a lost opportunity to strike a better balance in Delaware's corporate law. It could have provided clearer pathways for shareholder protection.

It's a reminder that even in a state known for its forward-thinking corporate laws, there's still room for more innovation and flexibility when structuring corporate governance.

These amendments will influence corporate governance far beyond Delaware's borders. But with certain suggestions left on the table and unanswered questions about the future of corporate law reform, one can't help but wonder what could have been achieved with a more inclusive approach.

We will see whether Delaware will continue its tradition of adapting and evolving its corporate laws to meet the needs of modern business, or whether we've witnessed a rare misstep in what is otherwise a dynamic legal landscape.

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

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Write for Us: Author Guidelines

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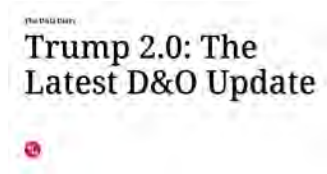
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Trump 2.0: The Latest D&O Update

K [dandodiary.com/2025/03/articles/director-and-officer-liability/trump-2-0-the-latest-do-update](https://www.dandodiary.com/2025/03/articles/director-and-officer-liability/trump-2-0-the-latest-do-update)

Kevin LaCroix

March 30, 2025



Posted in Director and Officer Liability



In prior posts (most recently here), I have noted the ways the new Trump administration's policies and actions could affect the D&O liability and insurance arena. In the current rapid-fire environment, with daily developments that threaten to overturn established practices and norms, just trying to keep up – much less understand the significance of events – can be a challenge. In an effort to try to keep the scoreboard up to date, I have noted below some of the most recent key developments and tried to describe their significance for the D&O environment.

SEC Pauses the Defense of Climate Change Disclosure Guidelines: The nomination of SEC Chair Paul Atkins has not yet even been confirmed; indeed, he just appeared this past week for his initial Senate Committee hearing. But while Atkins is not yet even on board, the acting SEC leadership is moving forward to undo key Biden administrative initiatives. Among other things, this past week SEC announced that it had voted to end its court defense of the agency's climate change disclosure guidelines, which the agency had just finalized in March 2024.

After the agency adopted the disclosure rules last year, several parties, including a group of states' attorneys general, challenged the rules in court as beyond the SEC's authority and as unconstitutional. The court challenges were consolidated in the Eighth Circuit, where the litigation remains pending. The agency's recent move means that the SEC will no longer defend the rules in the Eighth Circuit proceeding.

As noted in a March 28, 2025, *Wall Street Journal* article (here), the agency's move to drop its defense of the rules means that the agency "is effectively walking away from the regulations it had established, despite not actually rescinding the rules."

The remaining Democratic member of the Commission, Caroline Crenshaw, issued a blistering March 27, 2025 statement criticizing the agency's move to withdraw the defense of the guidelines. She noted that while the rules' adoption had gone forward in compliance with the Administrative Procedures Act, the agency's withdrawal of its support of the rules had not. She also argued that withdrawing the defense of the rules while leaving the rules on the books puts the rules, as well as those who job it is to try to comply with the law, "in a strange and perhaps untenable situation."

The rules seem likely now to be stricken down by the courts and in any event to be non-enforced by the SEC under the current administration. However welcome development this development may be by companies who regretted the burdens that the rules impose, a number of companies will still be obliged to make climate change, sustainability, and other disclosures under the EU Corporate Sustainability Reporting Directive (as discussed here).

To be sure, at discussed here, the European Commission recently introduced a package of amendments that would streamline the EU disclosure requirements and reduce the number of companies to which the requirements apply. But the continued existence of the EU rules and their continued applicability to a number of companies, including companies based in the U.S., highlights the conflicting obligations companies face as European and U.S. policies and regulatory postures diverge.

This divergence between Europe and the U.S. was underscored in a March 28, 2025, Wall Street Journal article entitled "In Europe, You Can Be Sued for Not Taking Action on Climate Change. In the U.S., It's The Opposite" (here). Among other things, the article notes that while in the U.S., where asset managers are being too focused on ESG, the Dutch bank ING was told on Friday that it would be sued by a climate advocacy group for not taking strong enough action to tackle climate change.

The different approaches in the two legal environments highlights the difference in the political environments. The problem is that companies that operate in the two environments face the challenge of navigating these challenging circumstances. In the meantime, however, it appears that under the new administration, U.S. companies will not be obliged to meet the SEC's climate change disclosure guidelines.

SEC Staffers Taking Up Buyout Offers, Shrinking Agency Staff: In addition to the news about the agency's position in the climate change disclosure guidelines litigation, it also developed this past week that as much as 10% or more of the SEC's agency staff appears to be positioned to leave the agency as a result of a mix of Trump administration initiatives.

According to a March 21, 2025 *Politico* article (here), hundreds of SEC staffers have agreed to voluntarily leave the agency, in part by taking up the administration's \$50,000 buyout offer, an "exodus" that the article describes as a development that "stands to substantially shrink

the ranks of the top Wall Street regulator.” Sources cited in the article speculate that the departures could reach as high as 15% of the agency’s staff, or 750 people.

These developments arise amidst the Trump administration’s move to shrink the government generally. According to the article, the recent and likely upcoming staff reductions at the SEC have “sparked broad concern among both current and former agency officials who warn that some of the most experienced staffers are leaving after having spent years overseeing the nation’s financial markets.” Concerns about the departures’ impact on the agency are exacerbated by the fact that agency has already moved to shutter a number of its regional offices, including those in Los Angeles and Philadelphia.

As John Jenkins noted in his March 27, 2025 post on *The CorporateCounsel.net Blog* about these developments (here), the SEC staff departures raise the question whether the agency will have sufficient personnel to fulfill the administration’s objectives at the agency. The attrition at the agency also “is a source of legitimate concern for public companies and the lawyers who advise them.”

I will say this: one of the most important reasons that the U.S. financial markets are so widely respected is that there has been an active and engaged cop on the beat. At some point, staff departures – and in particular departures of the most experience staff – will mean that the trustworthy cop may no longer be as effective as it has been in the past. This could create a serious problem both for the financial markets and for investors.

DOJ, EEOC Issue Guidance on Trump Administration’s Policies on DEI: On March 19, 2025, the U.S. Department of Justice (DOJ) and the Equal Employment Opportunity Commission (EEOC) issued a joint statement and released two technical assistance documents focused on educating the public about unlawful discrimination related to diversity, equity, and inclusion (DEI) in the workplace.

The agencies’ joint March 19, 2025, press release can be found here. The EEOC’s accompanying document “What to Do If You Experience Discrimination Related to DEI at Work” can be found here, and the accompanying document entitled “What you Should Know About DEI-Related Discrimination at Work” can be found here.

The documents collectively project the position that DEI initiative can run afoul of the anti-discrimination laws if an employment action is motivated in relation to a protected characteristic, such as race or gender. The documents cite of examples of DEI-related actions that could be counter to the law’s requirements include efforts to “balance” the workforce; limit or classify employees; make hiring or promotion decisions or make access to mentoring or support programs based on protected characteristics. Indeed, among other

things, the documents suggest that even DEI training programs could give rise to a hostile work environment claim, and even that reasonable opposition to DEI training could constitute protected activity that could prohibit employer retaliation.

The documents collectively take a curious approach. These documents are not intended to help companies to ensure that their DEI programs are in compliance with the requirements of the law. Rather, the documents are addressed to company employees and appear calculated to educate employees on how to protect themselves from potentially unlawful purposes or impact of DEI initiatives.

The guidelines and other documents are open to criticism for their lack of clarity. The documents do not, in a way that might have been helpful to well-intentioned employers, help employers to understand what constitutes “illegal DEI.” It also doesn’t require a cynical mindset to see these documents as intended as “shots across the bow” – the documents seem intended to have a chilling effect on corporate DEI programs. At a minimum, the guidelines appear intended to suggest that the administration’s is taking aim at traditional programs intended to try to redress historical discrimination.

The most practical concern about the agency’s guidelines is they seem calculated to try to encourage employees and advocacy group’s to legally challenge corporate DEI programs. The agencies’ publication of these guidelines and their articulation of their approach to DEI seem to intended to foreshadow future government enforcement actions against employers under the anti-discrimination laws with respect to DEI. The documents’ clear intent to speak directly to employees about their putative rights with respect to employer DEI programs also seems meant to encourage employees to consider taking action against their employers with respect to corporate DEI initiatives. At a minimum, the agencies’ statements on these issues create a complicated compliance environment for employers who have in the past promoted DEI initiatives.

It should be noted that the administration’s hostility to DEI is not limited to just the EEOC and the U.S. Department of Justice. The *Wall Street Journal* reported over the weekend (here) that the Federal Communications Commission is investigating Disney for its diversity, equity, and inclusion practices. The agency’s Chair has previously publicly stated his intent for the agency to use its investigative powers to combat diversity initiatives in the private sector.

9th Circuit says claims over weed killer's safety can move forward against Bayer

Class Action

Mar. 31, 2025

A 9th Circuit panel reversed the dismissal of a class action against Bayer AG over its Roundup weed killer, ruling that allegations about dangerous chemical levels were enough to survive the pleading stage.



A 9th U.S. Circuit Court of Appeals panel has revived a class action against Bayer AG, the maker of Roundup, after concluding that the complaint included enough factual allegations to survive.

Monsanto disagreed with the decision and noted the case had been dismissed twice by the lower court.

Senior U.S. District Judge Maxine M. Chesney of San Francisco dismissed the lawsuit, but the panel - in an unsigned, unpublished opinion - ruled Thursday that there was enough evidence to allow the case against the weed killer's manufacturer to move forward.

The panel - comprised of Senior 9th Circuit Judge Richard C. Tallman, Senior 9th Circuit Judge Richard R. Clifton, and 9th Circuit Judge Morgan B. Christen - affirmed Chesney's dismissal of the class claims against The Scotts Company.

The class action, filed in 2022, accused both companies of violating the Magnusson-Moss Warranty Act, the Song-Beverly Consumer Warranty Act, as well as false advertising, fraud, unjust enrichment and other claims.

The plaintiffs allege that the products, sold under the brand name Roundup, contains glyphosate and sought economic damages regardless of whether - as in many other lawsuits concerning the weed killer - they were physically harmed.

"We conclude that the [first amended complaint] contained sufficient allegations to make plausible the claim that [N-Nitrosoglyphosate] levels above 1 [part per million] pose a serious safety hazard," the panel wrote. "At this point, however, we cannot conclude, on de novo review, that the facts alleged in the [complaint] were insufficient to get past the plausibility requirement at the pleading stage."

The panel reversed the dismissal of claims against Bayer and its Monsanto subsidiary. *Koller et al. v. Monsanto Company et al.*, 24-43 (9th Circ., filed Jan. 3, 2024).

A Monsanto statement sent Friday said, "We disagree with the Court's decision which makes no determination on the merits and only allows the case to proceed, and the Company will vigorously defend against these claims, which were previously dismissed twice by the lower court."

Attorneys with Gutride Safier LLP of San Francisco, which represents the plaintiffs, could not be reached for comment Friday, nor could attorneys for The Scotts Company.

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'Giant Killa!' law firm fights Beasley Allen lawsuit after partnership blows up in J&J talc bankruptcy

 legalnewsline.com/stories/670730063-giant-kill-law-firm-fights-beasley-allen-lawsuit-after-partnership-blows-up-in-j-j-talc-bankruptcy

John O'Brien

March 31, 2025

Attorneys & Judges

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MONTGOMERY, Ala. (Legal Newsline) - Disappointment can't be the basis for a lawsuit, a personal injury firm says after being sued by lawyers it once teamed with to push asbestos litigation against Johnson & Johnson.

The Smith Law Firm of Mississippi on March 26 filed a motion to dismiss the case brought against it by Beasley Allen, which is one of the lone holdouts in J&J's \$10 billion plan to resolve claims the talc in its Baby Powder contained asbestos and caused ovarian cancer in tens of thousands of women.

Smith and Beasley once partnered on these lawsuits, but when Smith changed its mind and encouraged clients to vote for J&J's bankruptcy plan in Houston federal court, the relationship soured.

Beasley sued Smith last year in Alabama federal court, claiming partly that Smith was motivated to accept the plan because it owes some \$240 million to an outside litigation funder. Smith notes that J&J offered to pump more money into the bankruptcy, which is why it now votes to approve the deal.

"Beasley's suit contains contrived claims based on conclusory allegations, but the gravamen of Beasley's suit is its opposition to the Proposed Resolution," Smith's motion says.

"Now, however, Beasley finds itself virtually alone in opposing the Proposed Resolution. Nearly every plaintiff firm in the Talc Litigation supports the Proposed Resolution, as does the Talc Claimants Committee, which is appointed by the U.S. Trustee to represent the interests of the Talc claimants in the latest bankruptcy proceeding."

Houston bankruptcy judge Christopher Lopez recently conducted a trial and will determine whether to approve or deny J&J's plan to use a spinoff company designed to go bankrupt in order to absorb the company's talc liabilities.

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

The plaintiffs firm Beasley Allen has been one of the biggest objectors and created the Coalition of Counsel for Justice for Talc Claimants. It has waged a battle over how rival firms collected votes from their clients, as current numbers show more than the 75% of clients needed support the plan.

Smith reached out to Beasley in 2013 for a possible partnership on talc cases. It and Porter Malouf signed an agreement with Beasley in 2014 that split the work and expenses evenly.

Things went well at first. After J&J pulled talc-based Baby Powder from American shelves in 2020, leading Beasley partner David Dearing to send Allen Smith a glowing email that called him a "Giant Killa!"

And they were aligned when J&J tried to use bankruptcy court in New Jersey to settle ovarian cancer claims. And when J&J's third try came in Texas court.

But Smith was part of negotiations that added more than \$1 billion to J&J's \$8 billion proposal. That arrangement also called for \$650 million into a fund to pay plaintiff lawyers.

Beasley's lawsuit accused Smith of breaching their contract and fraudulent suppression of those negotiations - claims Smith says are intended to "punish Smith for having the temerity to disagree with Beasley."

"Beasley alleges Smith breached the (Joint Venture) Agreement by failing to perform 50% of the 'work,'" the motion to dismiss says.

"However, Beasley's JV Agreement does not define 'work' or how each party's 'work' contribution will be calculated."

"Work" could mean success for clients, or it could simply mean administrative hours, Smith says. The agreement never refers to hours performed by either firm.

And nothing prevented it from splitting from Beasley on the bankruptcy issue, Smith says. It adds that Beasley was well aware Smith was negotiating more money for the plan with J&J, dooming the fraudulent suppression claim.

And Smith says it was not required to tell Beasley about any money it owed to outside funders.

"Moreover, Beasley was aware of Smith's litigation financing debt," the motion says. "In fact, Beasley was actively involved in Smith's use of litigation financing."

An Insurance Firm Took a \$500M Class Action to Trial ... and Won



law.com/therecorder/2025/03/31/an-insurance-firm-took-a-500m-class-action-to-trial--and-won

Amanda Bronstad

March 31, 2025

What You Need to Know

- On March 26, after one month of trial and 90 minutes of deliberations, jurors handed a defense verdict to First American Title Insurance Co., represented by Dentons partner Joel Siegel.
- Plaintiff's attorney Richard Friedman said it was a 'really complicated case in terms of what the jury was asked to do.'
- Most class actions settle, but an increasing number are going to trial.

Defense attorney Joel Siegel had reasons not to go to trial: A judge had certified a class of more than 300,000 policyholders in California against his client, First American Title Insurance Co., and the case was in Los Angeles Superior Court, where no defendant wanted to be.

On March 25, one day before jurors began deliberating, Siegel got a handwritten note from plaintiffs' lawyer Steven Jay "Bernie" Bernheim offering to settle the case for \$400 million. But he didn't. And, on March 26, after 90 minutes of deliberations, jurors handed his client a defense verdict.

"Juries do the right thing," Siegel, managing partner of the Los Angeles office of Dentons, told Law.com. "And how juries react to class actions doesn't have to be what companies think is going to be. Jurors are smart people, and they want to get to the truth of the matter, too."

Siegel tried the case with Ronald Kent, managing partner of Dentons' office in Newport Beach, California.

Richard Friedman of Seattle's Friedman Rubin, who tried the class action for the plaintiff with Michael Bidart of Claremont, California-based Shernoff Bidart Echeverria and Steven Jay "Bernie" Bernheim of The Bernheim Law Firm in Los Angeles said his team planned to appeal.

"This was a really complicated case in terms of what the jury was asked to do," Friedman said. "In this case, the issues were so complicated the defense thought they had a chance of confusing the jury of what was going on and were willing to take the risk."

The case, originally brought in 2005, represents a rare class-action trial. Most class actions end in settlements, but an increasing number are heading to trials, despite the substantially higher costs, given the dollars at stake and experts required to determine potential damages.

“The reason why companies settle is they’re terrified,” Siegel said. “You get this hydraulic pressure on companies. It sounds like too much of a financial risk, so they end up settling.”

But Siegel's client wanted to fight. The case alleged the California insurer had overcharged title insurance rates to policyholders. At stake, Siegel said, were \$500 million in potential damages.

The jury never even got that far. On an 18-question verdict form, they answered “no” to the first: Did First American make a false representation of fact to the class members?

‘Kickbacks and Rebates’

The case had a long road to trial, starting nearly two decades ago, when Bernheim filed the first of about a half-dozen class actions alleging First American Title was charging beyond the fees agreed to by the California Department of Insurance.

“He found illegal kickbacks and rebates,” Friedman said of Bernheim. “They were charging for things not on their schedule of fees.”

One case ended in a \$5 million bench verdict about a decade ago, Friedman said.

In this month’s case, plaintiff Jeffrey Albert Sjobring alleged he paid \$563 to First American Title after closing on a home in 2004. In 2017, Los Angeles Superior Court Judge Marion Nelson certified two classes but, one year later, granted First American Title’s motion for judgment.

The California Court of Appeal in 2022 reversed that decision and, after a reassignment, Los Angeles Superior Court Judge Kenneth Freeman set a trial for a class of policyholders from 2003 to 2006 who alleged First American Title charged them premiums of more than \$125 on loan policies. Then he transferred the case to Los Angeles Superior Court Supervising Judge Samantha Jessner.

The trial lasted about a month, with experts on both sides.

For Friedman, it was his first class-action trial. However, Friedman did not walk away believing jurors were critical of class actions; in fact, he said, most relayed positive experiences during voir dire.

“The sad truth is class actions are the only way much corporate cheating is ever policed because the government doesn’t do a very good job of that, nobody else does a good job of that,” Friedman said. “But there is room for improvement in the class action world.”

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Trending

New Suit - Copyright

WBOC, a CBS affiliate television station based in Salisbury, Maryland, was hit with a copyright infringement lawsuit on March 31 in Maryland District Court. The court action, brought by Sanders Law Group on behalf of a professional videographer, claims WBOC posted the plaintiff's video showing a Missouri tornado destroying homes on its Facebook account without authorization. The case is 1:25-cv-01045, Hall v. Wboc, Inc.

[Read More](#)

New Suit - Antitrust Class Action

Zelis Healthcare; UnitedHealth Group; Elevance Health; Aetna and Cigna Group were hit with an antitrust class action on March 31 in Kansas District Court. The suit, brought by Paul LLP, accuses Zelis and the insurers of conspiring to suppress out-of-network reimbursements and sharing sensitive pricing information among insurers to artificially lower reimbursement rates, earning commissions on the difference between billed and paid amounts. The case is 2:25-cv-02166, Dennis C. Ayer, DDS, LLC v. Zelis Healthcare, LLC.

[Read More](#)

Class Action

March 28, 2025, 10:26 AM PDT

Exxon Asks Judge to Scrap Sierra Club Plastics Recycling Suit

- **Company didn't advise hazardous use, disposal of products**
- **Plaintiffs' claims 'take direct aim' at Exxon's free speech**

ExxonMobil Corp. asked a federal judge to dismiss environmental nonprofits' lawsuit over plastics recycling claims, calling the case "a real stretch" and an attack on the company's First Amendment rights.

Exxon did not advise consumers to dispose of or use its product—plastics polymers—in a hazardous manner, so the California environmental group plaintiffs weren't able to allege an "actionable theory of nuisance liability," the company said in a motion to dismiss with prejudice filed Thursday in the US District Court for the Northern District of California.

"Recycling cannot be deemed a hazardous use when federal, state, and local policymakers encourage it," the motion says. "The idea that consumers made purchasing decisions based on ExxonMobil's statements as opposed to, for example, their own needs—or policies enacted by the State of California, which for decades has vigorously promoted plastic recycling—is, to put it mildly, a real stretch."

The statements about plastics recycling that Exxon started making decades ago likely couldn't have altered consumer demand enough to increase pollution levels, the company said in its filing. The recycling statements at issue also fall outside the limitations period, according to the motion.

Sierra Club Inc. and three other environmental groups sued Exxon in state court in September for promoting plastics as recyclable when few are, allegedly violating state nuisance and unfair competition laws. California Attorney General Rob Bonta (D) filed a similar lawsuit the same day.

The environmental groups lack standing to sue, Exxon said in its Thursday motion. Private plaintiffs can only file complaints under the state's unfair competition law if they've lost money or property, the motion says.

The groups also failed to point to solid evidence of unlawful conduct, Exxon said. The plaintiffs said Exxon violated California law by polluting state waterways, but they don't allege that the company itself deposited pollution where it could pass into waters, according to the motion.

Exxon on Thursday also asked the court to strike the environmental groups' nuisance and unfair competition claims. The nonprofits violated California's "anti-SLAPP" law, which allows defendants to strike lawsuits that arise from protected activity like free speech, according to the motion to strike.

"Plaintiffs' claims take direct aim at ExxonMobil's rights to petition and speak freely in connection with plastics-related issues," the motion says. Judge Richard Seeborg oversees the case.

The Sierra Club has received funding from Bloomberg Philanthropies, the charitable organization founded by Michael Bloomberg. Bloomberg Law is operated by entities controlled by Michael Bloomberg.

O'Melveny & Myers LLP and Weil, Gotshal & Manges LLP represent the company.

Cotchett, Pitre & McCarthy LLP represent the environmental groups.

The case is Sierra Club Inc. v. ExxonMobil Corp. , N.D. Cal., No. 3:24-cv-07288, motion filed 3/27/25 .

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Class Action

March 28, 2025, 2:26 PM PDT

Google Chrome Users Get Skeptical Judge at Privacy Class Hearing

- **Case involves pledge not to collect data without account sync**
- **But proposed class raises 'too generic' a case, judge says**

A federal judge in California found issues with class certification for Chrome browser users accusing Google LLC of collecting their data without their permission.

"The problem I've always had with this case is it's too generic. It's using Chrome, it's using the internet," Judge Yvonne Gonzalez Rogers of the US District Court for the Northern District of California said at a hearing Friday, while discussing whether Google could raise an implied consent defense to the breach of contract claims.

Google argued in court papers that the plaintiffs and "millions of Chrome users understand" Chrome routinely collects information on them, and determining who didn't agree to that required denying class certification.

The hearing is the latest development in the five-year case. The Chrome users first sued the Alphabet Inc. subsidiary for privacy violations in 2020, arguing that Google tracked users' personal information, IP addresses, and browsing history even if they chose not to "sync" their Google account with Chrome, or if they had no Google account at all.

The company settled for \$217 million a separate lawsuit alleging Google browser's incognito mode improperly collected user data. As part of the settlement to end *Brown v. Google LLC*, the tech giant agreed to delete billions of records and implement some policy changes to settle the case.

"How people think about using searches in browsers is very different than clicking on a button and saying you're going incognito," Rogers said, referring to *Brown*.

"We're not talking about searches," Jay Barnes said on behalf of the users. "We're talking about web browsing communications" like the ones in *Brown*.

"It is not *Brown*," Rogers said.

Chrome would only collect personal information if a user synced the browser with their Google account, the plaintiffs said in court documents. But that information was collected regardless of whether the user synced, they argued.

Google countered that the data collection was routine, and that it would be too burdensome for the court to determine each proposed class members' understanding of its data privacy promises.

The need to incentivize Google to follow the law doesn't change case law that says "implied consent has been found again and again to make class treatment unsuitable," Andrew H. Schapiro argued for the tech giant.

The users sought class status for millions of potential class members after their lawsuit was revived by the US Court of Appeal for the Ninth Circuit ruled in August. The Ninth Circuit held that the lower court failed to properly review the terms of Google's various data privacy disclosures and to let the user consent issue advance to trial.

Simmons Hanly Conroy LLP, DiCello Levitt LLP, and Bleichmar Fonti & Auld LLP represent the Chrome users. Quinn Emanuel Urquhart & Sullivan LLP represents Google.

The case is Calhoun v. Google LLC , N.D. Cal., No. 4:20-cv-05146, hearing 3/28/25 .

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The privacy tug-of-war: States grappling with divergent consent standards

 [reuters.com/legal/legalindustry/privacy-tug-of-war-states-grappling-with-divergent-consent-standards-2025-03-27](https://www.reuters.com/legal/legalindustry/privacy-tug-of-war-states-grappling-with-divergent-consent-standards-2025-03-27)

Sara Jodka

March 27, 2025

People look at data on their mobiles as background with internet wire cables on switch hub is projected in this picture illustration taken May 30, 2018. REUTERS/Kacper Pempel/Illustration/File Photo Purchase Licensing Rights  , opens new tab

March 27, 2025 - In recent years, the United States has seen a significant surge in adopting state-level data privacy laws. With the number of those laws now at 20 and counting, the states' laws have sought to impose additional and heightened requirements on certain types of data and specific data processing activities.

Unlike general privacy obligations, these heightened protections reflect the increased risks associated with processing certain types of information, such as sensitive information and personal data of minors, and in engaging in certain actions with personal data, such as selling it, using it to engage in targeted advertising, and using it to profile individuals.

While these efforts aim to address growing concerns over personal data privacy, these heightened requirements have not been uniform across the implementing states and have created a patchwork of laws with widely varying consent standards. The result is a confusing landscape of opt-in and opt-out requirements that creates significant challenges for businesses, particularly those operating across multiple states.

The consent divide: opt-in vs. opt-out

The central issue in the state-by-state approach to data privacy lies in the type of consent required depending on the type of data at issue and the kind of use. Broadly, states have adopted two competing models:

- Opt-in consent: Businesses must obtain explicit, affirmative consent from consumers before collecting or processing their personal data. This model prioritizes user control and transparency.
- Opt-out consent: Businesses can collect or process data by default, but consumers must take action to affirmatively opt-out if they do not want their data used.

The opt-in model gives consumers more control over their data upfront, but it can create friction for businesses that rely on data for their operations. While more business-friendly, the opt-out model often places the burden on consumers to protect their privacy, leading to "consent fatigue."

The scope of opting in/out

State privacy laws recognize that not all data is created equal. For example, most state laws impose heightened consent requirements on sensitive data. Generally, sensitive data requires additional safeguards due to its potential impact on an individual's rights and freedoms, such as information that includes government identifiers, such as Social Security Numbers, health information, precise geolocation data, and similar data.

While the definition varies from state to state, most state privacy laws require businesses to obtain explicit opt-in consent before collecting or processing sensitive data.

Additionally, specific activities such as targeted advertising, profiling, and selling data are subject to stricter rules because of their implications for consumer autonomy, discrimination risks, and other misuse.

Targeted advertising: Targeted advertising involves using personal data to deliver ads tailored to a consumer's preferences, behavior, or interests, often based on profiling.

Profiling: Profiling refers to the automated processing of personal data to evaluate certain aspects of an individual, such as their behavior, preferences, or location. It is often used for targeted advertising or decision-making with significant or legal effects. However, the definition varies.

State variances

While all state privacy laws aim to give consumers more control over their personal data, their various consent mechanisms may create a fragmented compliance landscape for businesses.

Some states, like California, Colorado, and Connecticut require businesses to honor universal opt-out mechanisms (UOOM), such as Global Privacy Control, which allows consumers to opt out of personal data sales and targeted advertising automatically.

Many states require that consumers opt-in or otherwise consent to processing their sensitive data, while Utah and Iowa take a more lenient approach for businesses, which does not impose an explicit opt-in requirement for process sensitive data. Instead, those states allow businesses to process sensitive data as long as they provide consumers with notice and an opportunity to opt out.

Additionally, certain states impose age-based consent requirements, particularly for children under 16, aligning or expanding upon the federal Children's Online Privacy Protection Act (COPPA).

Another key point of divergence is the definition of "sale" for purposes of determining what businesses can do with personal data in conjunction with such sale. While the California Consumer Privacy Act (CCPA) and California Privacy Rights Act (CPRA) employ a broad definition of sale, which includes an exchange of personal data for money or "other valuable consideration," California also governs the "sharing" of data, which includes data transfer for cross-context behavior advertising, even if no money changes hands. Other states adopted a narrower definition, limiting the scope of what is a "sale" to a monetary exchange and transfer to a third party, and have no prohibition for sharing data.

California adopted a "strictly opt-out" model for sales, sharing, and profiling information, meaning the information can be shared, sold, and used for profiling by default and until a consumer opts out through clear opt-out mechanisms. It does require opt-in consent for data collection from children under 16. As such, businesses must allow consumers to opt out of, not only the sale of their personal information but also the sharing of their personal data with third parties for cross-context behavioral advertising. California law requires businesses to provide a clear and conspicuous "Do Not Sell or Share My Personal Information" link on their websites.

Below is a summary chart, which addresses state consumer privacy laws that are in effect or that go into effect in 2025.

Reuters Image Purchase Licensing Rights  , opens new tab

Source: Dickinson Wright

Business challenges

Businesses operating across state lines face mounting compliance burdens as they navigate conflicting consent requirements. For example, a business may need to implement opt-in mechanisms for sensitive data in Colorado and Virginia while maintaining opt-out systems for general data in California. This patchwork approach requires significant investment in legal advice, technology, and employee training.

Consumer challenges

In addition to business challenges, consumers are unlikely to understand the nuances of varying consent models. A user in California, for instance, may assume that their opt-out rights extend nationwide, only to discover that businesses in Utah or Iowa operate under different rules. This inconsistency erodes trust and makes it harder for consumers to exercise meaningful control over their data.

Opt-out models rely heavily on consumers taking action to protect their own privacy, which can lead to "consent fatigue." With constant pop-ups, cookie banners, and privacy settings, many users click "accept" without understanding or reviewing the terms — negating the intended protections.

Conclusion

Businesses must tailor their data practices to each state's specific requirements, including whether consent is required for data processing, sale, or sharing and whether that consent is opt-in or opt-out. This necessitates different systems, processes, and potentially even different privacy policies for each jurisdiction.

Managing multiple compliance frameworks, including potentially developing separate data processing systems and privacy policies for each state, increases businesses' operational costs and administrative burdens. This privacy tug-of-war raises questions about how consent should be defined, implemented, and enforced — and whether the U.S. can reconcile these differences before the fragmentation becomes untenable.

Sara H. Jodka is a regular contributing columnist on privacy law for Reuters Legal News and Westlaw Today.

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Sara H. Jodka

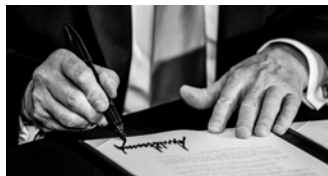
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Our Law Firm Won't Cave to Trump. Who Will Join Us?

 [nytimes.com/2025/03/30/opinion/perkins-coie-trump.html](https://www.nytimes.com/2025/03/30/opinion/perkins-coie-trump.html)

John W. Kecker, Robert A. Van Nest, Elliot R. Peters

March 30, 2025



President Trump this month issued an executive order clearly intended to destroy the venerable law firm Perkins Coie, a firm that has zealously represented clients large and small for more than a century.

The order left no doubt that Perkins Coie's primary offense was representing Hillary Clinton in 2016 and standing up for other causes Mr. Trump views unfavorably. It could not have been more blatantly unconstitutional than if a legal scholar had been asked to draft a template for an unlawful executive order: It violates the First Amendment, contravenes fundamental due process rights and imperils the Sixth Amendment right to counsel.

On March 11, the courageous and skillful law firm Williams & Connolly filed a lawsuit on Perkins Coie's behalf, seeking to enjoin the president's order on constitutional grounds. At a hearing the next day, Judge Beryl A. Howell of Federal District Court in Washington issued an order temporarily barring enforcement of most of the order. The Justice Department responded by moving to disqualify Judge Howell, a motion she rejected in a withering opinion on Wednesday.

Our firm stands with Perkins Coie and all firms and lawyers who fight against this president's lawless executive actions. That's why we've called on other firms to join us in submitting a friend of the court brief in support of Perkins Coie.

If lawyers and law firms won't stand up for the rule of law, who will?

Beyond the Perkins Coie executive order, Mr. Trump has issued similar, and equally unlawful, executive orders directed at other law firms that have represented causes or people he doesn't like, including because they have sued him, investigated him or contributed in some way to civil and criminal legal matters brought against him. That includes executive orders in recent days targeting the firms WilmerHale and Jenner & Block. He also issued a memorandum directed across the board at lawyers and law firms that have taken on causes he disfavors, including the pro bono representation of political asylum seekers.

We applaud Jenner & Block's and WilmerHale's lawsuits, filed Friday, challenging the administration's executive orders.

To the shock and dismay of many in our profession, the law firm Paul, Weiss, with a tradition of fighting for justice — and also the subject of one of Mr. Trump's executive orders — chose not to fight for itself or for our legal system. Instead, the firm capitulated, agreeing to direct \$40 million worth of free legal work to causes Mr. Trump supports. (Mr. Trump said on Friday that another major firm, Skadden, Arps, had agreed to a similar arrangement to avoid an executive order punishing it.) Paul, Weiss's choice was particularly disappointing because it further empowered Mr. Trump's attack on our profession and because Perkins Coie had already charted an alternative path, with a high likelihood of success.

We understand that while many firms have agreed to sign on to the Perkins Coie friend of the court brief, some large firms have hesitated or only conditionally agreed if enough of their peers do so first. No doubt they fear losing clients and incurring the president's ire.

We sympathize. We take seriously our obligations to our clients, our associates, our staff and their families. But at this crucial moment, clients need to find their courage, too. And partners at big firms — who often earn millions a year — must be willing to take financial risks when the fate of our nation, the future of our profession and the rule of law itself is at stake.

You can support a lawyer's right to represent unpopular clients and causes against powerful forces — essentially the oath we all took when becoming members of the bar. Or you can sit back, check your bank balance and watch your freedoms, along with the legal system and the tripartite system of government we should not take for granted, swirl down the drain.

This is not hyperbole. The common denominator among the president's recent spate of actions is that he appears to believe he has absolute authority to govern by fiat. What we've seen in the last few months tells us that we are moving ever closer to becoming an autocracy — and the current Congress is a lap dog that essentially offers no resistance. Along with the body politic as a whole, it seems the courts, and the lawyers who advocate in them, are all that stand in the way. A few brave judges will decide whether Mr. Trump is a president or a king. Knowing this, Mr. Trump attacks those judges, calls for their impeachment and sends out messages on social media trying to intimidate them.

Our decision to speak out on this issue was an easy one. We believe that one of the noblest things a lawyer can do is to stand up against the government on behalf of a client whom the government seeks to destroy. When Mr. Trump was indicted and sued, he hired lawyers to defend him. They did a good job, keeping him out of jail and preserving his fortune. For his administration to attack lawyers and firms whose members have opposed or annoyed him is a threat to our democracy.

Lawyers and big firms: For God's sake, stand up for the legal profession, and for the Constitution. Defend the oath you took when you became officers of the court. If we stand together and fight, we will win.

John W. Keker, Robert A. Van Nest and Elliot R. Peters are the senior partners at the law firm Keker, Van Nest & Peters.

The Times is committed to publishing a diversity of letters to the editor. We'd like to hear what you think about this or any of our articles. Here are some tips. And here's our email: letters@nytimes.com.

Big Law's Peril From Trump Orders Is Shown in Court Filings

Big Law Spotlight

- WilmerHale's top clients almost all have US contracts
- Jenner & Block must access federal facilities to work

WilmerHale and Jenner & Block laid bare the existential risks Donald Trump's orders pose as the law firms rushed into court to stop the president.

Trump's directive to cut companies' federal contracts for which WilmerHale has done work could affect 21 of the firm's top 25 clients, the firm said in its March 28 lawsuit. The order threatens "the very viability of the firm's business model," WilmerHale said.

WilmerHale's loss of clients who are contractors "would be a devastating blow," US District Judge Richard Leon said late on March 28. "This says nothing of the potential clients who may not even consider hiring" the firm because of contract worries, he said.

Leon temporarily blocked Trump's order against WilmerHale in part, while in a separate courtroom US District Judge John Bates for now halted the directive against Jenner & Block. The blocking actions late on March 28 follow Perkins Coie's March 12 win of a temporary order stopping part of Trump's directive against that firm.

Despite the temporary wins, details about the orders in the March 28 lawsuits filed by WilmerHale and Jenner & Block show the devastation the directives threaten for the firms' bottom lines. Together the two firms collected more than \$2 billion in revenue in 2023, according to the American Lawyer.

More than 40% of Jenner & Block's revenue last year came from clients who are US contractors, subcontractors, or affiliates, the firm said in its lawsuit. "If we lost that business, or even a portion of it, it would be a serious threat to the firm's financial health," firm chair Thomas Perrelli said in a court filing.

Perkins Coie earlier this month described similar distress. The firm lost clients and business as a result of Trump's order, and its top 15 customers by revenue have US contracts or ties to them, Perkins Coie said in its March 11 lawsuit.

The devastating effects spelled out in the firms' lawsuits show why big law operations have been so quick to fight Trump's orders. They also help explain why Paul Weiss and Skadden moved so fast to strike deals with the president.

A key question going forward for law firms facing Trump's ire is what clients prefer they do—and whether those customers will stand by them in a fight with the president.

WilmerHale's clients include Gilead, Comcast, T-Mobile, Elon Musk's Tesla and Facebook owner Meta Platforms Inc. Jenner & Block has advised clients including General Dynamics, General Motors and Uber Technologies.

"The critical question is how will the clients respond," said Jeffrey Gordon, a professor at Columbia Law School. "It's up to them in a certain way."

Chilling Effect

Trump's orders targeting law firms cut to the heart of their operations by limiting lawyers' access to federal buildings—access they need to do their jobs—and by discouraging companies with US contracts from using the firms' services.

WilmerHale showed how much is at stake by the lawyer it hired to battle Trump—Paul Clement, a conservative who is one of the top US Supreme Court litigators of this era.

On March 28 in arguing for the restraining order, he said Trump's directive had an immediate chilling effect on the work of the firm. He cited the cancellation of two planned meetings with government agencies immediately following the order.

"You're not sanctioned for the clients you represent" in "our country," Clement said. He argued that Trump's order violates the First Amendment.

The firm argued in its filing that the order "irreparably damages WilmerHale's reputation and its goodwill with clients."

The president singled out WilmerHale for its ties to Robert Mueller, the former special counsel who led a probe into the 2016 Trump campaign's alleged coordination with Russian state officials. Trump in his order said the probe "epitomizes the weaponization of government."

Mueller's "affiliation with the firm can't be undone," Gordon said. That leaves WilmerHale with no alternative except to fight, he said.

"I don't know that there's a basis for settlement there in which the president gets something in exchange for relinquishing his attack," Gordon said.

Litigation Impact

Jenner & Block said the portion of Trump's order that restricts firm lawyers from accessing government buildings is particularly painful.

Unlike many other law firms, nearly 90% of Jenner's attorneys focus on litigation, the firm said in a court filing. It currently has around 540 active matters pending before US courts and agencies that require access to federal buildings and officials, Perrelli said.

Part of the order barring Jenner's lawyers from federal spaces is already being enforced, the firm said. The Justice Department told a firm client not to bring Jenner to an April 3 meeting.

Clients are already asking about how the order will hurt the firm's ability to attend future meetings with other government agencies, according to Jenner's filing.

"Partners at the firm have spent hundreds of hours, collectively, speaking with clients about the order and its implications," said the firm, which is being represented by Cooley's litigation chair Michael Attanasio.

Like WilmerHale, Jenner expressed concern over preserving the confidentiality of attorney-client relationships.

Making Deals

While WilmerHale, Jenner & Block and Perkins Coie have sought to fight the administration, two other law firms have settled with Trump.

Manhattan-founded Paul Weiss Rifkind Wharton & Garrison reached a deal to rescind Trump's executive order against the firm. Another elite New York law firm—Skadden Arps Slate Meagher & Flom—proactively reached a deal with the Trump administration on March 28 to avoid an executive order.

"I can understand the short-term capitulation," said Adam Badawi, law professor at the University of California at Berkeley. "But you're putting yourself under the thumb of this administration for the next four years."

Trump could issue another executive order if the firms do something he doesn't like, Badawi said. However, "if you fight and get some sort of injunction, there's probably going to be some soft ways that the administration can punish you," he said.

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Legal services

Top US law firms balk at backing Perkins' challenge to Donald Trump sanctions

Legal industry split over whether to join amicus brief against president's order for fear of retaliation



Donald Trump terminated the security clearances of Perkins Cole's lawyers in an executive order on March 6 © Alex Wong/Getty Images

Sujeet Indap in New York

Published MAR 30 2025



None of the top 20 law firms in the US have so far offered their “unconditional support” to an effort by Perkins Coie to fight sanctions imposed by the Trump administration.

Organisers of an amicus brief in support of Perkins Coie's lawsuit are struggling to convince America's most powerful [law](#) firms to sign up amid concerns they will face retaliation by the Trump administration, according to emails seen by the Financial Times.

Eric Green, a well-known mediator, has been circulating a draft of the brief and tallying daily numbers of those law firms willing to add their names to the document. The brief is being prepared by the Los Angeles firm Munger, Tolles & Olson.

According to an email sent on Saturday afternoon by Green's firm, Resolutions LLC, which was seen by the FT, 173 of 248 law firms that have responded to the survey are offering "unconditional support".

However, among the top 100 law firms by revenue, as ranked by The American Lawyer magazine, only three have offered "unconditional support" with none coming from the top 20.

The brief is supposed to be submitted to the court in the next few days in conjunction with the formal court papers Perkins Coie files to challenge the executive order against the firm, with Munger, Tolles & Olson trying to rally law firms behind the effort before that deadline.

Eight firms in the top 100 have offered their support with conditions, including that their closest peers also sign the brief, according to one person involved in the process. As such, nearly all of the full-throated support so far for the amicus brief originates from small- and medium-sized firms.

"So the numbers are great, but not from the largest firms," wrote Green in the email, which said the responses of law firms would remain anonymous in the current feedback phase.

According to Trump's executive order, Perkins Coie would be banned from federal government work and have any security clearances revoked. A federal judge in Washington has issued a temporary injunction to halt the implementation of the order while Perkins Coie pursues its appeal in court.

Since the Perkins Coie order, the Trump administration has imposed sanctions on several top law firms tied to the [Democratic party](#) or who have hired investigators who previously targeted President Donald Trump.

Law firms have been struggling with the question of whether to publicly confront Trump's campaign against the legal community or seek a détente in order to avoid the business disruptions that the executive orders could bring.

After facing a similar executive order, Paul, Weiss cut a deal with Trump to cancel the sanctions in exchange for \$40mn of pro bono legal services dedicated in part to causes Trump supports. Another large firm, Skadden, said it would offer \$100mn to support similar legal services to avoid facing its own order.

Two other firms, WilmerHale and Jenner & Block, have vowed court fights to contest their sanctions and had their own orders temporarily blocked in federal court on Friday.

Perkins Coie and Eric Green, the mediator, did not immediately respond to requests for comment.

The three-page draft brief seen by the FT sets out legal arguments that challenge the constitutionality of the executive orders.

It concludes: “Like every lawyer, the members of the amicus law firms have sworn an oath to uphold the constitution . . . that oath obligates all of us, no matter our political views, to be faithful custodians of our Nation’s commitment to the rule of law . . . we therefore feel a special responsibility to stand up now to the unprecedented threat posed by the Executive Order.”

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Judges block Trump orders targeting two law firms as Skadden cuts deal

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Nate Raymond, Mike Scarcella, Andrew Goudswaard

March 29, 2025

Item 1 of 2 Signage is seen outside of the law firm Jenner & Block LLP in Washington, D.C., U.S., August 30, 2020. REUTERS/Andrew Kelly/File Photo

[1/2]Signage is seen outside of the law firm Jenner & Block LLP in Washington, D.C., U.S., August 30, 2020. REUTERS/Andrew Kelly/File Photo Purchase Licensing Rights , opens new tab

- Skadden to donate legal work to avoid executive order
- Firms WilmerHale and Jenner & Block sue administration
- Firms say Trump actions unlawful, chill legal profession

March 28 (Reuters) - Two U.S. judges temporarily blocked key parts of Donald Trump's executive orders targeting Jenner & Block and WilmerHale on Friday as the prominent law firms challenged the Republican president in court while another one, Skadden Arps, cut a deal with the White House to avoid a similar directive.

Calling parts of Trump's order targeting Jenner & Block reprehensible and disturbing, Washington-based U.S. District Judge John Bates blocked portions of it that sought to cancel federal contracts held by the firm's clients and to restrict its access by its lawyers to federal buildings and officials.

Bates also said Trump's order appeared to bar lawyers at the firm from entering federal courthouses, which are managed by the U.S. government's executive branch.

"Considering the firm-wide effects of the executive order, it threatens the existence of the firm," Bates added.

Separately, Washington-based U.S. District Judge Richard Leon, handling the WilmerHale case, called Trump's order retaliatory and granted the firm's request to block parts of the directive intended to restrict its access to U.S. government buildings and officials. Leon denied WilmerHale's request to block a section that suspended security clearances held by any lawyers at the firm.

Jenner & Block and WilmerHale sued Trump's administration earlier on Friday, escalating a clash between the president and a large swath of the legal profession. The firms said Trump's orders violated the U.S. Constitution's protections for free expression and due process and were meant to punish opposition to the president and his administration.

Jenner & Block said in a statement after the judge ruled: "Consistent with the law, the court has agreed that this is an unconstitutional executive order holding no legal weight."

Bates called Trump's Jenner & Block order "disturbing" in how it targeted the firm in part based on its pro bono representation of transgender individuals and immigrants. The judge also called much of the opening section of Trump's order - the part in which he accused the firm of various misdeeds - "reprehensible."

"Our legal system relies on our lawyers who advocate zealously for all clients," Bates said.

In the WilmerHale case, Leon wrote in his order, "The injuries to plaintiff here would be severe and would spill over to its clients and the justice system at large. The public interest demands protecting against harms of this magnitude."

WilmerHale said in a statement afterward: "We appreciate the court's swift action to preserve our clients' right to counsel and acknowledgement of the unconstitutional nature of the executive order and its chilling effect on the legal system."

'CERTAINLY MAY BE MORE'

Trump to date has signed executive orders targeting five firms, with three of the firms suing Trump in response.

"We should expect that more are going to come, shouldn't we?" Bates asked before he ruled.

"There certainly may be more," Justice Department attorney Richard Lawson responded.

U.S. District Judge Beryl Howell on March 12 temporarily blocked most of an earlier executive order Trump issued against the firm Perkins Coie, finding Trump's actions were unconstitutional.

At a White House event earlier on Friday, Trump said Skadden Arps agreed to dedicate \$100 million in free legal services to mutually agreed projects benefiting veterans and other groups. The firm also committed to what Trump called merit-based hiring and retention of employees.

Skadden Executive Partner Jeremy London said in a statement that it had engaged proactively with Trump in the interests of clients, employees and the firm.

Both WilmerHale and Jenner have ties to lawyers who were involved in former Special Counsel Robert Mueller's investigation during Trump's first term in office that detailed contacts between Trump's 2016 presidential campaign and Russians as well as Moscow's interference in that year's election. Trump called that investigation, and several others that have targeted him, a "witch hunt."

The White House said in a statement on Friday that law firms had "weaponized the legal process to try to punish and jail their political opponents."

Trump's executive orders are "lawful directives to ensure that the President's agenda is implemented and that law firms comply with the law," White House spokesperson Harrison Fields said.

PAUL WEISS DEAL

The lawsuits brought on Friday referred to a deal Wall Street law firm Paul Weiss struck with the White House to rescind a similar executive order. Paul Weiss agreed to dedicate \$40 million in free legal services to "mutually agreed" causes supported by the administration. The judge in the Perkins Coie suit noted that Trump's order cited its work for the campaign of his 2016 Democratic opponent Hillary Clinton.

Trump's orders against WilmerHale and Jenner & Block also focused on the 2016 race, citing WilmerHale's ties to Mueller. The executive order against Jenner & Block cited its past employment of Andrew Weissmann, a top federal prosecutor involved in Mueller's investigation.

WilmerHale, Jenner & Block and Perkins Coie are among more than a dozen large firms representing clients in pending lawsuits against the administration. Jenner's cases include one seeking to protect transgender rights.

WilmerHale represents a group of inspectors general who allege the administration illegally ousted them. The firm also played a key role in lawsuits against the prior Trump administration.

Trump's executive orders sought to terminate federal contracts held by the law firms' clients if the firms had any role in them. Jenner's lawsuit said more than 40% of its revenue over the last five years comes from government contractors, subcontractors or affiliates. The firm said several of its clients were worried their work with Jenner could affect their relationship with the federal government.

WilmerHale in its lawsuit said Trump's order "will inevitably cause extensive, lasting damage to WilmerHale's current and future business prospects."

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Skadden Makes \$100 Million 'Settlement' With Trump in Pro Bono Payola

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March 28, 2025

photo by David Lat

Last night, we learned Skadden Arps would be taking the coward's way out from under Donald Trump's ire, with the New York Times reporting the number 5 richest law firm in the nation was seeking a deal with the administration to avoid an Executive Order targeting the firm. Now the terms of the deal have come to light.

Somehow Skadden has negotiated a deal with Trump that might even make Paul Weiss blush. In comparison to the \$40 million in pro bono services that PW (the first in Biglaw to crumble in the face of Trump's anger) committed, Skadden is on the hook for \$100 million in pro bono payola. "This was essentially a settlement," Trump said. "We appreciate Skadden coming to the table... It's a shame what's going on, it's a shame, but we very much appreciate their coming to the table."

In exchange, Skadden will avoid one of the increasingly common Executive Orders targeting Biglaw, and the tremendous harm that can bring. The deal comes just a few days after Skadden's pro bono work against right-wing commentator Dinesh D'Souza's "2000 Mules" (a film and book that contains widely debunked conspiracy theories about the 2020 election) garnered the attention of shadow president Elon Musk.

As part of the "settlement" announcement, Trump also said Skadden won't deny representation to clients from "politically disenfranchised groups, who have not historically received legal representation from major national law firms," which will include assisting "members of the military, law enforcement and on and on."

Skadden also functionally disavowed their DEI efforts and committed to "merit-based hiring, promotion and retention." And, in a particularly ironic twist, Skadden promised to fund at least five Skadden fellows as part of the deal. I'm pretty sure the people who historically want those competitive Skadden fellowships are bound to be pretty disappointed with the firm's craven acquiescence to Trump.

Skadden's executive partner Jeremy London sent the following email firmwide sharing the terms of the firm's capitulation:

Colleagues –

Over the past few days, we learned that the Trump Administration intended to issue an executive order directed at Skadden. We believed it would focus on DEI initiatives and our pro bono activities. When faced with this information, we carefully considered what the right path would be for us, and the answer was not obvious. We were thoughtful and deliberate in determining the steps we might take, knowing that the decisions we were grappling with would have fundamental consequences for our Firm. As we considered our options, we were guided by our determination to uphold the significant commitments and responsibilities we have to our clients, our people, and to the broader communities and society we serve.

With that in mind, we chose to engage proactively and constructively with the Administration to align on a productive path forward without the issuance of an executive order. We entered into the agreement the President announced today because, when faced with the alternatives, it became clear that it was the best path to protect our clients, our people, and our Firm.

This agreement provides that we will:

- Provide a total of at least \$100 million in pro bono legal services, during the Trump Administration and beyond, to causes that the President and Skadden both support in relation to the following areas: assisting veterans and other public servants, including members of the military, law enforcement, first responders and federal, state, and local government officials; ensuring fairness in our justice system; and combatting antisemitism.
- Change our pro bono policy so that all pro bono moving forward will be done in the Firm name and ensure that pro bono activities represent the full political spectrum.
- Continue The Skadden Foundation's mission of providing pro bono legal services to a wide variety of deserving organizations and individuals. Skadden will fund no fewer than five Skadden Fellows each year dedicated to the following projects: assisting veterans; ensuring fairness in our justice system; combatting antisemitism; and other similar types of projects. Law graduates that receive Skadden Fellowships will represent a wide range of political views, including conservative ideals.
- Affirm our commitment to merit-based hiring, promotion, and retention and we will not engage in illegal DEI discrimination and preferences. We will engage independent outside counsel to advise the Firm to ensure employment practices are fully compliant with law, including, but not limited to, anti-discrimination laws.

- Not deny representation to clients, such as politically disenfranchised groups who have not historically received legal representation from major national law firms, including in pro bono matters and in support of non-profits, because of the personal political views of individual lawyers. However, this commitment does not obligate any one of our attorneys to take on any specific representation.

Not everyone will agree with the decision we made today, and I have great respect for the differing views that make us stronger as a Firm. But I firmly believe that an agreement centered around our pro bono work and complying with the law was an acceptable outcome to ensure Skadden will continue to thrive long into the future. This agreement does not change who we are.

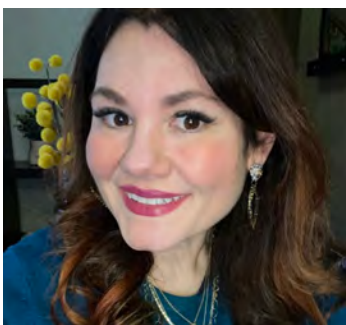
Skadden is a remarkable institution. We have 21 offices around the world, and our impact reaches communities in every corner of the globe. Every year we provide thousands of hours and hundreds of millions of dollars in pro bono assistance and charitable contributions to worthy causes. Through the Skadden Foundation, we have funded over 1,000 fellowships to recent law graduates to pursue the practice of public interest law on a full-time basis. And we have more than 3,500 extraordinary people who rely on the Firm for their livelihood. As executive partner, it is my duty to protect our storied Firm so that we can continue to fulfill our commitments to our people, our clients and our communities, now and into the future.

I fully appreciate that this development and other recent events have been extraordinarily difficult for all of us, both personally and professionally. I understand the significant weight that carries. Despite all the uncertainty in our profession over the last several weeks, you have continued to serve our clients with excellence and support one another in the very human way that defines our culture, and for that I am very grateful. I want to thank you for everything that you do – your continued commitment to our clients and each other is at the heart of who we are as a Firm. With this resolution, I am confident that we will go forward with resilience, strength, and integrity.

With gratitude,

Jeremy

Despite the “nothing is fucked here, dude” spin London attempts in the email, the dangerous precedent the deal sets — not just for the firm, but the industry, is clear. Skadden attorneys and other employees, how do you feel about the firm’s decision? Feel free to sound off by email, by text message (646-820-8477), or by tweet (@ATLblog). An insightful response — we’ll keep you anonymous — could find its way into an update to this story.



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

Skadden Reaches 'Settlement' With Trump

 [law.com/therecorder/2025/03/28/skadden-reaches-settlement-with-trump](https://www.law.com/therecorder/2025/03/28/skadden-reaches-settlement-with-trump)

Amanda O'Brien

March 28, 2025

Photo: Ryland West/ALM

News

Skadden has agreed to provide \$100 million in pro bono services to causes that both Trump and Skadden support, the president said.

🕒 5 minute read

Government

By Amanda O'Brien



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

This article has been updated with more details of Skadden's deal and comments.

President Donald Trump on Friday announced that Skadden, Arps, Slate, Meagher & Flom has agreed to a "settlement" with the White House, as it seeks to avoid becoming the latest target of the president's executive orders.

The deal includes several terms, including Skadden providing \$100 million in pro bono services to causes that both Trump and Skadden support; the firm providing pro bono activities that represent "the full political spectrum"; and Skadden funding at least five scholarship fellows to specific causes.

The firm also said it will stop DEI "discrimination and preferences" and it will hire an independent outside counsel to ensure employment practices, Trump said.

"This was essentially a settlement," Trump said Friday in the Oval Office. "We appreciate Skadden coming to the table. ... It's a shame what's going on, it's a shame, but we very much appreciate their coming to the table."

The Skadden settlement is part of a larger campaign Trump is waging against Big Law firms, claiming their "weaponization" of the legal system has harmed Americans. Five other Big Law firms have faced executive actions by Trump.

Trump adviser Elon Musk, in social media, has called out Skadden's pro bono work against conservative commentator Dinesh D'Souza. In a lawsuit, Skadden and several other lawyers on behalf of plaintiffs claim D'Souza defamed them in a documentary that accused them of

ballot fraud.

In a statement in Trump's announcement, Skadden executive partner Jeremy London said the firm is "pleased to have achieved a successful agreement with President Trump and his administration. We engaged proactively with the President and his team in working together constructively to reach this agreement."

"The firm looks forward to continuing our productive relationship with President Trump" and his administration, London said in a statement. "We firmly believe that this outcome is in the best interests of our clients, our people, and our firm."

"Skadden, Arps, Slate, Meagher & Flom LLP approached President Trump and his administration, and declared the firm's strong commitment to ending the weaponization of the justice system and the legal profession," the White House said in a statement. "The President will never stop fighting to deliver on his promises of eradicating partisan Lawfare in America, and restoring Liberty & Justice for ALL."

The Skadden deal follows the path of Paul Weiss, which settled with Trump last week, but with a much lower pro bono figure. Paul Weiss agreed to \$40 million in pro bono services for a variety of causes.

Still, three other law firms are choosing a different course, including Jenner & Block and Wilmer Cutler Pickering Hale and Dorr, which each filed suit on Friday to declare the executive orders against them unconstitutional. The third firm suing the Trump administration, Perkins Coie, has obtained a TRO against the U.S. government to block the executive order against the firm.

Skadden's approach stands out among other law firms, however, because Trump had not yet issued an executive order against the firm, and the firm's deal with Trump appeared to preempt one. Other law firms are also considering a preemptive deal with Trump, sources say.

'The Full Political Spectrum'

According to the deal terms announced by Trump on Truth Social on Friday, Skadden will provide at least \$100 million in pro bono legal services, "during the Trump administration and beyond, to causes that the president and Skadden both support," including helping veterans and other public servants; ensuring fairness in the justice system; and combatting antisemitism.

As part of the announced deal terms, Trump said Skadden will change its pro bono policy so that all pro bono moving forward will be done in the "firm name." A pro bono committee will ensure that "pro bono matters are consistent with the objectives of the program, and that pro bono activities represent the full political spectrum," Trump said.

Trump also said the Skadden foundation will commit to providing pro bono legal services to a wide variety of deserving organizations and individuals, and that Skadden is committed to funding at least five Skadden fellows each year dedicated assisting veterans; ensuring fairness in the justice system; combating antisemitism; and other similar types of projects. “Law Graduates that receive Skadden Fellowships will represent a wide range of political views, including conservative ideals,” Trump said.

Skadden also affirms its commitment to merit-based hiring, promotion, and retention and will not engage in DEI discrimination and preferences, Trump said. “Skadden will engage independent outside counsel to advise the firm to ensure employment practices are fully compliant with law, including, but not limited to, anti-discrimination Laws,” Trump said.

Trump also said Skadden will not deny representation to clients, such as members of politically disenfranchised groups, including in pro bono matters, and in support of nonprofits, because of the personal political views of individual lawyers.

Andrew Maloney contributed to this report.

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News from Bloomberg Terminal

March 31, 2025, 10:39 AM PDT

Musk Merged His Xes

By Matt Levine

(Bloomberg Opinion) --

X x xAI

You could imagine this being big news:

Elon Musk said his xAI artificial intelligence startup has acquired the X platform, which he also controls, at a valuation of \$33 billion, marking a surprise twist for the social network formerly known as Twitter.

"The combination values xAI at \$80 billion and X at \$33 billion," the billionaire wrote Friday in a post on X. The value of X is \$45 billion when including \$12 billion of debt, he said, describing the purchase as an all-stock transaction.

The deal gives the new combined entity, called XAI Holdings, a value of more than \$100 billion, not including the debt, according to a person familiar with the arrangement, who asked not to be identified because the terms weren't public. Morgan Stanley was the sole banker on the deal, representing both sides, other people said.

For Musk, the deal streamlines his businesses and solidifies the relationship between the former Twitter and xAI, which has used information from the social network to hone its chatbot. The deal also offers a resolution to X's other backers following months of uncertainty over the state of their investment as Musk's changes led to an exodus of users and advertisers.

I mean!

1. This is the biggest mergers-and-acquisitions deal in the world so far in 2025, which has so far been a rough year for M&A.¹
2. There is an obvious symbiosis between modern artificial intelligence companies, with their demand for real-world training data, and social media companies, with their consumer distribution and huge corpora of natural-language posts.² So we've seen social media companies striking licensing deals with AI companies, and of course Meta Platforms Inc. is building its own AI models. But this seems to be the first large-scale acquisition of a big social platform by a big AI competitor.³ You could imagine it setting a precedent, launching a rush of acquisitions, being a valuation benchmark, that sort of thing.
3. Elon Musk is a famous guy who has done a lot of weird M&A stuff, and this is weird Elon Musk M&A stuff.
4. In particular, there is an obvious *conflict of interest*: Musk owns most of X, he owns most of xAI, there is a lot of overlap among the other shareholders, but the overlap is not total. There is surely *some* xAI shareholder who does not own any X, and *some* X shareholder who does not own any xAI.⁴ If you are, say, an xAI shareholder who thinks that xAI is a promising world-changing company and X is a broken social media company, you might be aggrieved to see the company you own wasting \$45 billion to bail out another company just because Musk owns it. You might be annoyed that Musk was on both sides of the deal, that he controls both companies, that he used the same bankers on both sides, that no one negotiated independently on behalf of xAI's shareholders. (Or X's. William Cohan asks: "Will Linda Yaccarino be the C.E.O. of the combined entity? Did she even know it was happening?") You might draw parallels to the time when Tesla Inc. bought SolarCity Corp. and Tesla shareholders sued, objecting that Musk was using Tesla's money to bail out his investment in SolarCity. They lost that lawsuit but at least they tried.
5. If you're an X shareholder you are *surely elated*, but I suppose you are theoretically allowed to be aggrieved that your company took the first deal that Musk offered. What if X is really worth *more* than \$45 billion? Cohan asks: "Did anyone know X was for sale? Was the company shopped around before deciding to sell out to xAI?" Absolutely not. Imagine!
6. Just as like an M&A mechanics matter, what exactly does it mean that Musk tweeted "xAI has acquired X in an all-stock transaction"? The deal *signed*? It *closed*? Often when two companies agree to a \$45 billion merger, there is some delay between signing and closing. The typical main causes of delay – getting a target shareholder vote, lining up financing – are probably not relevant here, because (1) Musk controls the vote at both companies⁵ and (2) it's an all-stock deal so it doesn't require any money.⁶ Still you might expect some time between the announcement of the deal and closing. Big acquisitions normally have to wait for antitrust clearance from US and foreign regulators, for one thing.

But my heart isn't in any of this. Nobody cares. Musk has absolute control of (1) xAI, (2) X and (3) US government regulators. If he wants to smush X and xAI together, no one will complain, and it doesn't mean anything. Surely Musk isn't required to file forms or get regulatory approvals anymore. He is not required to abide by merger best practices or zealously protect the interests of minority shareholders, in part because all his companies have left Delaware, but in larger part because none of the shareholders of his private companies complain about anything he does. If you are giving money to a private Musk venture, it's because you trust Musk to make decisions, not because you care about corporate formalities.

X/xAI is the largest M&A deal so far in 2025 in the sense that it values X at, you know, 33/80 of the value of xAI, and Musk announced that xAI is worth \$80 billion, and all of that is reasonably plausible though not clearly validated by arm's-length transactions with economically motivated counterparties. xAI last raised money in December at a \$51 billion valuation; it was reportedly looking to raise more at a \$75 billion valuation last month. X raised money at a \$33 billion equity valuation earlier this month, but (1) some of that money came from Musk and (2) I wonder if this deal was already in the works at the time? In hindsight, X's funding round looks a little like it might have been designed to validate a merger price.

In any case, it's barely an M&A deal? Two companies that were owned by the same person (and some slightly non-overlapping friends) and shared employees and data and revenue and, you know, a *name*, are now one company. They were informally one company before, and they are formally one company now, and no money changed hands. It feels like a silly technicality to call this a big M&A deal.

It is perhaps more interesting that they were ever separate. Elon Musk bought Twitter (and renamed it X) with a plan to do some AI to it. He then spun up a separate company called xAI, raising new money from investors to fund it but promising to give some of it to X. The companies were closely linked. Why start a new one? Why not just do the AI stuff within X?

I don't know, but when Musk closed the Twitter deal, Twitter looked to be a bit of a shambles. He had just fought a lawsuit calling it a big fraud, advertisers were fleeing, he was getting rid of all the employees and his bankers were having a tough time selling the debt he used to finance it. It was possibly not the *most* auspicious vehicle for ambitious AI hiring and fundraising. Just start a new one, free of the Twitter baggage. Investors and employees wanted AI, so put AI right in the name. It is sort of remarkable that an AI startup that Musk spun out of the damaged husk of Twitter – two years ago! – has gotten big enough to come back and be the acquirer in the latest Musk reshuffling.

Those are, I suppose, the two critical elements of the Musk Mars Conglomerate:

1. Every new idea gets its own company: Each new Musk company can present a clean investment case to investors,⁷ can incentivize employees with direct ownership of their work, and can give Musk full control and upside in the project.
2. Nothing is permanent, and if one of the companies succeeds while another one has some temporary struggles, the winner can subsidize – or buy – the loser.

People are worried about FX liquidity

A theme in modern financial markets is the move from human trading to electronic trading. In the olden days, if you wanted to buy or sell a bond, you'd pick up a telephone and call a trader at a securities dealer (generally a big bank).⁸ She would give you a price, you would trade with her, and you'd pay her a markup for doing the trade. In exchange for the markup, she would (1) try to fill all your orders at competitive prices and (2) take you out to dinners and drinks and sporting events.

Sometimes, the market would crash and you would be desperate to offload your bonds. When that happened, you could call her, and she might buy the bonds from you at a pretty good price, despite the panic all around her. Why would she do that? Various reasons:

1. She is a fearless trader at a powerful bank with a big balance sheet, she thinks the market will turn around, and she thinks this is an attractive entry point. She will buy your bonds now, while everyone is panicking, to bet on a recovery. She has the balance sheet and risk appetite and patience to do that. Traders *do* make a lot of their money in volatile times. She is giving you what you think is a good price for you, because she thinks it is a good price for her.
2. You have been a good customer over the years, paying her lots of big markups, and she wants to give you good service now so that you continue paying her big markups in the future.
3. You have been to a lot of sporting events together, she *likes* you personally, and it would be awkward for her to listen to you weeping and cursing over the phone if she said no. She buys your bonds out of some sense of personal obligation.
4. She has some moral sense that the social role of a bond dealer is to provide liquidity in crisis situations, so she steps up when the market is crashing to preserve her bank's reputation as a good citizen that helps its customers in tough times.

I think that I have listed those reasons in roughly declining order of importance, and I am not sure that the fourth one was ever a thing at all, but people do sometimes talk about it.

This system had a lot of overhead: The trader gets paid a lot of money, the tickets to sporting events are expensive, the bank requires a large balance sheet to hold all the bonds that she buys and sells, regulation makes that balance sheet expensive, phone calls are a fairly slow way to trade, and every so often a bank trader would blow herself up by taking on too much risk.

Over time, trading tends to get more electronic: There are electronic trading platforms where you can submit an order to buy or sell bonds, and anyone can take the other side of that trade. Sometimes the person on the other side of the trade will be the bank trader whom you would previously have called on the phone.

But as electronic markets get bigger, it is easier for other firms to compete. These firms have electronic algorithms that decide what prices they will pay for bonds, so they save money on traders. Because trading is electronic, they can buy and sell more quickly, so they do not have to hold lots of bonds for a long time and can have smaller balance sheets. A handful of people with a fast computer can compete with banks with huge balance sheets and armies of traders. They don't need to buy you dinner, because they trade electronically and often anonymously. They just have to give you the best price.

Over time these electronic trading firms can often out-compete the big banks, so they can come to dominate a market and the banks retreat. And then sometimes the market crashes and you want to sell your bonds, so you send an order to an electronic platform. Will the electronic trading firms buy your bonds at a good price? Well, no, probably not:

1. They do *not* have huge balance sheets, they are rigorously rational, and they keep their costs low in part by not taking huge swings that might blow them up. If markets are erratic, they can just *turn off their computers* and stop trading.
2. Their markups aren't that big, they often trade anonymously, and they might not even have a concept of "good customer who pays big markups." They don't care about your loyalty.
3. They've never gone to a sporting event with you and don't talk to you on the phone, so if you weep and curse it isn't their problem.
4. Whether or not bank traders have some sense of themselves as liquidity providers in crises, electronic trading firms surely have even less of that sense.

This is called "liquidity illusion." When times are good, electronic trading lets you trade faster and with lower costs than the old system of calling a bank on the phone. But when times are bad, you might miss the bank traders, who at least had to listen to you weep.

This is a pretty generic description but you see versions of it in many markets. US stocks perhaps most famously, Treasury bonds, a little bit in corporate bonds, and now here is Bloomberg's Alice Atkins on foreign exchange:

The global arena for foreign exchange appears on the surface to be a giant pool of cash in constant churn, generating \$7.5 trillion of transactions per day – more than all other major asset classes combined. But lately key names from the industry including the likes of Citigroup Inc., Deutsche Bank AG and XTX Markets Ltd. have begun to fret about just how deep the pool really is.

They fear a proliferation of trading platforms and the widespread use of automation are creating the illusion of market depth, while a retreat of big institutions has actually drained liquidity away. The symptoms are subtle, including things like rising trade rejections, declining volumes at key venues, and volatility in the gaps between what buyers offer and sellers ask. But they all point to what's known as liquidity mirage, a phenomenon that can ramp up risk for market participants without them even knowing.

"Liquidity on the face of it might look quite robust," says Mark Meredith, head of FX e-trading and algo execution at Citigroup. "But actually in extreme events it's more and more fragile." ...

Jeremy Smart, global head of distribution at XTX, one of the market's top providers of liquidity, says moments like the carry-trade selloff highlight changes at the heart of the system. Volumes on the two primary inter-dealer markets, EBS and LSEG (formerly Refinitiv), have been in steady decline for years as banks move to offset more of their client flow internally, while regulation has also reduced the ability of many dealers to take on risk. That leaves non-bank market makers playing an increasingly critical role.

In stress events, banks can't offset their various client flows against each other, Smart says. Instead, they turn back to the primary market and non-bank market makers, only to find they can't absorb all of the risk. "There's a limited number of takers on the other side of the market," he says. "That does mean that when you get very directional markets, you get over-sized moves."

What is the solution? Well, if you ask a bank, the solution is “pay more markups to the nice bank traders who take you out to sporting events”:

To some firms the fragmentation, rising competition and resulting liquidity dangers simply underline the value of a more old-school approach. Banks including Deutsche Bank, UBS Group AG and SEB Corp. maintain that, despite the move toward e-trading, clients who come direct and honor fewer relationships will see better liquidity, particularly during times of stress.

“More is not better,” says Benedict Carter, global head of FX e-trading at Deutsche. By working with trusted partners “you can lower your technology cost, get better liquidity and negotiate outcomes. You can make sure they are there for you when times get tough,” he says.

I do wonder a little what the contractual “there for you when times get tough” provisions are. The banks are businesses too.

The Luna pump and dump

To a certain sort of person, the promise of crypto was not some utopian vision of financial empowerment, but this:

1. An entrepreneur could invent some flimsy project, and a token to go along with it.
2. Institutional investors (venture capitalists, hedge funds, crypto celebrities, etc.) could buy the token from the entrepreneur, lending their names and reputations to the project and making people think it was legitimate. They could also tweet about how world-changing the project was and how nice it was that everyday investors could get in on it.
3. The token would go up as retail investors bought it.
4. The institutional investors would sell their tokens to the retail investors.
5. There was no disclosure: The entrepreneur didn’t have to disclose anything about the project, the institutional investors didn’t have to disclose that they were selling, and no one even needed to disclose if the entrepreneur was paying the institutional investors to promote the token, as sometimes happened.
6. Maybe the project would change the world! Or maybe it would collapse and the retail investors would lose all their money, but the institutions, who bought cheap from the entrepreneurs and sold at pumped-up prices to retail, would make a profit either way.

That is, crypto was arguably an alternative way to do stock offerings with these distinctive features:

- You didn’t need a real business, since nobody cared if the stock was worthless.
- You could sell the stock privately, and the buyers could immediately resell to the general public.
- Securities laws did not apply.

It always seemed to me, and until recently to the US Securities and Exchange Commission, that this analysis couldn't really be right. Surely if you sell tokens promising economic interests in some project, those tokens are securities and you need to follow securities laws? Surely if you sell them to institutional investors who plan to turn around and resell immediately to retail, those institutions are "underwriters," are liable for any misstatements about the platform, and have to disclose their involvement? And to be fair a lot of people in crypto seemed to agree: Many venture capitalists who invested in crypto projects did due diligence and held onto their tokens for months or years before reselling them, to avoid accusations like "you are just pumping this token and dumping it on retail investors."

Not Galaxy Digital Holdings though:

Michael Novogratz's Galaxy Digital Holdings will pay \$200 million in penalties over the investment firm's role in promoting the failed Luna cryptocurrency, as part of a settlement with the New York Attorney General. ...

The settlement includes an undiscounted monetary penalty of \$200 million, payable in instalments until 2028. Galaxy noted a legal provision of \$166 million to cover the fine in its full-year results on Friday, noting the impact of discounting.

The investment firm was accused of violating rules in promoting an asset without disclosing its intent to sell it, according to a filing published by the NYAG. Galaxy did not admit or deny wrongdoing as part of the deal, the filing said.

Here is the filing. Basically, per the New York Attorney General, "Galaxy bought more than 18.5 million Luna from Terraform in October 2020 at \$0.22 per token, a nearly 30% discount to Luna's then-market price of \$0.31 and began endorsing Luna." Terraform gave Galaxy the discount because it wanted Galaxy to promote its token. Novogratz tweeted about it regularly, and Galaxy falsely "marketed Terra and Luna's purported use on the Chai payment platform, stating that Luna provided a real-world use case for crypto." (Terraform told Galaxy that Luna was widely used on the Chai payment platform in Korea, but that was false and "Galaxy did not take sufficient steps to determine its veracity.") Novogratz got (and tweeted) a Luna tattoo when the token hit \$100.

Meanwhile Galaxy was getting monthly releases of Luna tokens and selling them on without telling anyone; it ended up making more than \$100 million by selling most of the Luna tokens it had pumped. Then Luna collapsed to essentially zero.

"Do Kwon and Terraform, the creators of Luna, deceived us and many other prominent institutional investors," Novogratz said in a statement, which seems true, but of course being deceived by Terraform was very *profitable* for Galaxy. If it is profitable to be deceived, you might go looking for opportunities to be deceived; certainly you won't *do due diligence* to make sure that the tokens you are pounding out to retail investors do what they say they do. The incentives are bad!

This is just exactly, exactly, exactly what securities laws are supposed to regulate. Now they're gone! Oh well.

Assorted fraud stuff

Elsewhere in “fraud is legal now” news, President Donald Trump commuted Carlos Watson’s prison sentence and pardoned Trevor Milton. Watson ran Ozy Media, which impersonated a customer on a due diligence call; Milton ran Nikola Corp., which rolled a truck down a hill to pretend it had an engine. One possibility is that if you do hilarious high-profile fraud, Donald Trump will find that amusing and will pardon you. There are alternate readings.

Meanwhile “Charlie Javice was found guilty of defrauding JPMorgan Chase & Co. in its \$175 million acquisition of her student-finance startup, Frank, following a six-week trial.” I thought Javice’s fraud was also pretty funny – she sold JPMorgan a fake email list for \$175 million! – so there is hope for her; perhaps Trump just hasn’t gotten around to pardoning her yet.

It is probably bad that politically connected people can do fraud with impunity but. You know.

Equities in Dallas

In like 1900 the way a stock exchange worked is that there was a building or a room or a tree where people met to trade stocks. If you were in New York, you met at a New York stock exchange, possibly though not necessarily the New York Stock Exchange. (You could have met at the American Stock Exchange, which was also in New York.) If you were in Philadelphia or Chicago or San Francisco, you met at the Philadelphia or Chicago or San Francisco stock exchanges. A big company’s stock might trade in more than one place, but if you were in Chicago you could not stroll onto the New York Stock Exchange floor to trade stock, because New York was far away.

In 2025 the way a stock exchange works is that there is a computer in New Jersey and you send an electronic messages to that computer to buy or sell stocks. Other people also send their electronic messages to that computer, and you can trade with them. There are a bunch of different stock exchanges, and you might want to send your messages to different computers to trade different stocks; for a big trade, you might want to send messages to all of the computers. But the computers are in New Jersey. The reason for this is basically that stock trading is very *fast*, and you want to be able to quickly send messages back and forth between the different exchanges, so that you can monitor and profit from price differences on each exchange. An exchange located outside of New Jersey would be too far away from all the other exchanges; it would take too long for messages to travel back and forth.

Obviously there are exchanges outside of New Jersey: There are important futures exchanges in Chicago, and there are stock exchanges in, like, Italy and Japan. If you trade financial products globally, you will send messages back and forth between those exchanges and the US stock exchanges in New Jersey. But the US stock exchanges are in New Jersey.

For historical and marketing and product-differentiation reasons, some of the computers in New Jersey have geographically misleading names like "Nasdaq PHLX" (the PHL is for Philadelphia) or, for that matter, "New York Stock Exchange." One was called "NYSE Chicago" until this weekend; now it is called "NYSE Texas." The advantage of NYSE Texas is that, if you want to list your stock on a US stock exchange, but you want to signal that you are not a New York City coastal elite, listing on NYSE Texas allows you to put the word "Texas" in your press release. Guess who?

President Donald Trump's media venture is forging a symbolic link to Texas, becoming the first company to list on the New York Stock Exchange's upstart outpost in the Lone Star State.

Trump Media & Technology Group Corp. will list warrants tied to its shares on the new NYSE Texas while maintaining a primary listing on the Nasdaq. The move – along with plans to switch its corporate headquarters to Florida – is part of efforts to align the company with states that are friendly to conservative values, according to Chief Executive Officer Devin Nunes.

"We're part of a growing movement to take our business to states that value free enterprise and personal freedom," Nunes said in a statement.

Adding Trump Media to another exchange carries more symbolic weight than practical effect, with the difference unlikely to be noticed by most investors or users of the social media site. ...

The plan to start NYSE Texas was announced in February. It will be a fully electronic exchange. Unlike the New York Stock exchange, there is no physical trading floor in Texas as the systems and data center are located outside the state.

Okay. Trump Media's stock is primarily listed on Nasdaq (whose computers are in Carteret, New Jersey), but now it is also listed on NYSE Texas (Mahwah).

Bloomberg news quiz

Bloomberg has a new news quiz game called Pointed, which has some almost Learned League-style tactical gameplay that I enjoy. You can play it here.

Things happen

Rocket to Buy Mortgage Firm Mr. Cooper in \$9.4 Billion Deal. Is UBS's 'deal of the century' starting to sour? CK Hutchison Shares Fall as Li Ka-shing Mulls Ports Deal Delay. Hedge funds fight over one of Europe's largest lingerie brands. Strategy Ends Quarter With Biggest Bitcoin Purchase of Year. The Trump Family Advances Its All-Out Crypto Blitz, This Time With Bitcoin Mining. In Crypto's Darkest Corner, a Suicide Becomes Just Another Meme Coin. In Japan, an Iceless Lake and an Absent God Sound an Ancient Warning.

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1. Source is Bloomberg page MA as of this morning, tab 5 (Deal List). Some caveats: Bloomberg's top-ranked deal is actually Elon Musk's proposal to buy OpenAI for \$97.4 billion, which is probably just trolling, but I guess technically a hostile takeover offer. The second-ranked deal is the Walgreens Boots Alliance Inc. going-private, a \$10 billion deal with a total enterprise value (including debt and leases) of a little less than \$40 billion, or a bit below X's \$45 billion enterprise value.
2. And their terms of service that mostly don't give users any rights to control the use of their posts, and their vulnerable ad-based business models.
3. Reddit Inc. bought a small AI company last year? Not the same thing.
4. I don't know who they are, but a reasonable guess would be *employees* of only one company, who are presumably paid in stock of just their company. Arguably every X shareholder owns some xAI indirectly, because Musk once tweeted "X Corp investors will own 25% of xAI," but it's never been clear what that meant, and the Verge reported that "as of January, that had not materialized for X employees with shares in the company."
5. Good practice might include a majority-of-the-minority vote at X (and maybe xAI), where the non-Musk shareholders could vote on whether to approve the deal, but come on!
6. X has debt outstanding, and some changes of control might require consents from X's creditors, but (1) probably not this one and (2) even if it did, you'd get those consents in 15 minutes. This is hugely credit positive!
7. You could have a model that is like "some Elon Musk ideas are intrinsically attractive to investors, while others are tough sells." You might then imagine that it could benefit Musk to combine them: Investors would be willing to invest in a combined good-and-bad company, but if the companies were separate they would not give any money to the bad one. But in fact Musk gets that benefit anyway, as investors try to put money into tougher funding rounds for less appealing Musk companies in order to get allocations in the hotter rounds for more appealing companies. So the attractive ideas subsidize the unattractive ones anyway, even without being combined.
8. Really you'd call a salesperson, but here I will conflate the roles of sales (taking you out to dinner, giving you a price) and trading (making the price). In many cases they will be in some conflict, but there is a sort of combined social role of "the bank's sales and trading team is in charge of managing risk for the bank *and* keeping customers happy."

Opinion **Lex**

Musk's merger suffers from serious grade inflation

The huge valuations ascribed to X and xAI have raised eyebrows



Elon Musk has given investors who backed his acquisition of Twitter a quarter of xAI's shares © REUTERS

Published 40 MINUTES AGO



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Elon Musk is, among other things, the king of the related party transaction. Almost a decade ago, Tesla bought SolarCity, a clean energy start-up backed by Musk and his brother. Now, the tech billionaire is [merging xAI and X, formerly known as Twitter, in an all-stock deal](#). This values the former's equity at \$80bn and the latter's at \$33bn, for a combined total of \$113bn.

From an industrial standpoint, crunching these companies together is probably sensible. One may be a mature social network and the other a rocket-ship artificial intelligence start-up. Yet xAI's Grok chatbot feeds off the social media's data, and Grok is tirelessly flogged to X users.

The huge valuations ascribed to the two companies may have raised eyebrows. But both groups are privately held and tightly controlled. The numbers, in this case, are less informative than those of public companies derived by daily trading with liquidity.

And, of course, in all-stock combinations it is the ratio between the two companies' sizes — rather than their absolute values — that is most intriguing. It determines how big a slice of the combined pie each set of shareholders is going to end up with. In this case, xAI's are getting about 70 per cent, while those in X are getting the remaining 30 per cent.

Whether this is equitable is hard to determine. xAI has very little revenue, but apparently lots of promise. It was [valued at \\$45bn a few months ago](#) in the private market, which makes its current \$80bn valuation look particularly juicy. It benefits from the excitement the technology is currently generating.

AI is fizzing

Global venture funding (\$bn)



Meanwhile, animal spirits at X are frenetic. Banks have recently sold its debt at about face value. That's a dramatic turnaround compared with the distressed levels it was trading at in late 2024. Musk has [also raised fresh equity at roughly the valuation that X is getting in this deal](#). Annual Ebitda, apparently [with heavy adjustments](#), is just \$1.2bn — about the same as interest payments — implying an enterprise value of more than 35 times ebitda. That is a lot for a company relying on sluggish ad revenue.

The two companies have many common shareholders, starting with Musk but including some venture capital investors. Indeed, Musk has [given investors who backed his acquisition of Twitter a quarter of xAI's shares](#). Should the exchange ratio turn out to be lopsided, at least they will have been on both sides of the deal.

Investors in only one of the two companies will be looking at relative ownerships more closely to weigh the value creation or destruction. With both xAI and X suffering from serious grade inflation, the way the pie has been sliced may, by happenstance, just may make sense, even if the absolute pegged sizes do not. And, anyway, Musk controls both companies and almost certainly gets the final say.

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Lex

US & Canadian companies

Big Tech

Tesla deliveries likely fell as competition, Musk backlash surge

 [reuters.com/business/autos-transportation/tesla-deliveries-likely-fell-competition-musk-backlash-surge-2025-03-31](https://www.reuters.com/business/autos-transportation/tesla-deliveries-likely-fell-competition-musk-backlash-surge-2025-03-31)

Akash Sriram, Abhirup Roy

March 31, 2025



Item 1 of 2 Residents protest against Elon Musk's role at U.S. President Donald Trump's administration, outside of a Tesla dealership in Palo Alto, California, U.S. March 5, 2025. REUTERS/Carlos Barria/File Photo

[1/2]Residents protest against Elon Musk's role at U.S. President Donald Trump's administration, outside of a Tesla dealership in Palo Alto, California, U.S. March 5, 2025. REUTERS/Carlos Barria/File Photo [Purchase Licensing Rights](#), opens new tab

- Tesla faces backlash over Musk's politics, weakening demand
- Analysts predict first-quarter deliveries of 373,000 vehicles
- Demand for Cybertruck tepid, refreshed Model Y uncertain

March 31 (Reuters) - Tesla (TSLA.O), opens new tab investors are bracing for a drop in first-quarter vehicle deliveries as a backlash against CEO Elon Musk's politics exacerbates weakening demand for the electric vehicle maker's aging lineup.

Musk promised Tesla would return to growth this year after its annual deliveries fell for the first time in 2024, and Wall Street will be watching to see how a refreshed Model Y SUV and incentives made a difference.

Tesla has been grappling with rising competition, especially in China and Europe, and protests against Musk's role overseeing cuts to federal spending as an adviser to U.S. President Donald Trump. This has angered a largely liberal base of Tesla buyers, and data has shown Tesla owners trading in their vehicles at record levels.

"We have seen major brand deterioration of Tesla across the entire world essentially," said Ken Mahoney, CEO at Mahoney Asset Management, which owns Tesla stock. "The brand has become far more politicized than any public company's brand should wish to be."

Tesla is set to report its first-quarter deliveries and production numbers on Wednesday. Its shares were down more than 7% on Monday and have fallen 35% this year.

Wall Street expects Tesla to have delivered about 373,000 vehicles in the January-March period, according to an average of 15 analysts' estimates from Visible Alpha that were refreshed in the past 30 days to reflect growing demand concerns. That would be a 3.6% drop from the same period a year ago, when it delivered 386,810 vehicles.

Tesla's Q1 deliveries expected to edge higher from last year

Even the updated average estimate may be too optimistic, according to some investors and analysts.

"I think that the numbers are going to come in below 400,000 and, maybe as low as 350,000," said Thomas Martin, senior portfolio manager at Tesla shareholder Globalt Investments.

Deutsche Bank analysts expect between 340,000 and 350,000 vehicles to have been delivered.

The company and Musk did not respond to requests for comment.

Data from auto associations and analyst estimates has shown sharp drops in Tesla sales in the first two months of the year in the U.S., Europe, and China.

Adding to the malaise about the economy that has curbed people's appetite for big-ticket purchases, demand for Tesla cars has also been hit as some potential customers waited for a refreshed version of the top-selling Model Y.

Tesla started selling the updated Model Y, which now comes with full-width front and tail lights, a rear-seat touchscreen, and improved interiors, late last month in China and this month in the U.S. and Europe.

"The refreshed Model Y could boost demand, but it may be prolonged a bit as many customers could be waiting for the launch of a more affordable vehicle," said David Wagner, head of equity and portfolio manager at Aptus Capital Advisors.

Tesla has said it would launch a more affordable model based on existing platforms this year but has not offered details.

Demand for Tesla's Cybertruck pickup that rolled out in late 2023 after several delays has also been cool, with its polarizing trapezoidal design and higher-than-promised price tag keeping buyers at bay. Quality concerns have plagued the model, and Tesla recalled ,

opens new tab nearly all Cybertrucks in the U.S. this month to fix an exterior panel that could detach while driving.

TESLA TAKEDOWN

The company has been offering discounts and other incentives, including low-cost financing.

But these seemed to have had little impact in Europe, where sales declined in the first two months of the year. People have been turned off by Musk's support of right-wing politics. Sales of China-made Teslas fell as well. Chinese rivals including BYD (002594.SZ) [opens new tab](#), (1211.HK) [opens new tab](#) have ramped up a price war and launched at least six models in the past year to take on the Model Y.

The multiple bar charts show Tesla's battery electric vehicle sales and its market share in the EU between 2018 and February 2025.

"Tesla Takedown" protests in countries including Germany and Finland have amplified criticism against Musk in the U.S., where he has been instrumental in driving reductions in the federal workforce and the termination of humanitarian initiatives.

Teslas have been lit on fire in Las Vegas, and incidents of vandalism at Tesla stores have spiked. Trump has said perpetrating violence against Tesla dealerships will be labeled domestic terrorism.

Tesla is likely to be less affected than rivals by Trump's latest 25% tariffs on imported vehicles and parts. Tesla brings in fewer parts than other automakers from outside the U.S. and makes domestically all cars it sells in the U.S.

Still, Musk has said the cost impact from tariffs will not be trivial. Tesla has also warned it is exposed to retaliatory tariffs that could be leveled in response to Trump's levies.

A pie chart showing Tesla sales in some of its biggest markets in Europe.

Reporting by Akash Sriram in Bengaluru and Abhirup Roy in San Francisco; Editing by Sayantani Ghosh and Rod Nickel

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Akash Sriram
Thomson Reuters

Akash reports on technology companies in the United States, electric vehicle companies, and the space industry. His reporting usually appears in the Autos & Transportation and Technology sections. He has a postgraduate degree in Conflict, Development, and Security from the University of Leeds. Akash's interests include music, football (soccer), and Formula 1.

Tesla Stock (TSLA) Screeches Lower as Delivery Numbers Set to Slide in the U.S. China and Europe

 [tipranks.com/news/tesla-stock-tsla-screches-lower-as-delivery-numbers-set-to-slide-in-the-u-s-china-and-europe](https://www.tipranks.com/news/tesla-stock-tsla-screches-lower-as-delivery-numbers-set-to-slide-in-the-u-s-china-and-europe)

David Craik

March 28, 2025

Story Highlights

Tesla stock is lower today on fears that first quarter deliveries around the globe will miss targets

Shares in EV maker Tesla TSLA -3.51% ▼ slumped over 3% today on fears that first-quarter deliveries will fail to meet forecasts.

Drivers Wait for Refresh

According to a RBC Capital Markets report, Tesla's Q1 deliveries are projected to come in at 346,000, well below consensus estimates of 398,000. RBC said January and February deliveries were affected by planned Model Y production halts for a refresh of the vehicle.

This is also likely to have impacted demand for Tesla vehicles as wannabe buyers kept their wallets and purses in their pockets until the highly anticipated launch of the new model. A new, more affordable model is also likely to come in the second quarter, again causing buyers to think twice about spending their money too soon.

In the report, RBC estimated quarter-on-quarter Q1 delivery declines of 5.4% in the U.S., a 47.8% drop in China, and 19.9% in Europe.

Long-Term Potential

RBC, however, reiterated its outperform rating on Tesla with a price target of \$320. This rating is based on strong electric vehicle market position, financial advantages for growth, and long-term potential in energy, software, and artificial intelligence, the report said.

Indeed, it was only earlier this week that three-star TipRanks-rated RBC analyst Tom Narayan gave a glowing view on Tesla's future, stating, "EVs are still relatively underpenetrated globally, so it could be a rising tide lifts all boats when it comes to car sales."

What he doesn't mention in that statement, of course, is the impact the close ties between Elon Musk and President Trump are having on brand sentiment and potentially demand. The Tesla share price is down 36% over the last three months.

Is TSLA a Good Stock to Buy Now?

On TipRanks, TSLA has a Hold consensus based on 14 Buy, 11 Hold and 11 Sell ratings. Its highest price target is \$550. TSLA stock’s consensus price target is \$335.32 implying an 27.10% upside.

Tesla (TSLA) Stock Forecast & Price Target

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TSLA Analyst Ratings

Hold

36

Ratings

14 Buy

11 Hold

11 Sell

Based on 36 analysts giving stock ratings to Tesla in the past 3 months

TSLA Stock 12 Month Forecast

\$335.32

▲(27.10% Upside)

Based on 36 Wall Street analysts offering 12 month price targets for Tesla in the last 3 months. The average price target is \$335.32 with a high forecast of \$550.00 and a low forecast of \$120.00. The average price target represents a 27.10% change from the last price of \$263.83.

Past 12 Months

12 Month Forecast

High \$550.00

Average \$335.32

Low \$120.00

Highest Price Target \$550.00

Average Price Target \$335.32

Lowest Price Target \$120.00

Detailed List of Analyst Forecasts

Ranks

Analyst Rating

Upside/ Downside

Action

Any

Any

Any

Any

Analyst Profile	Expert Firm	Price Target	Position	Upside / Downside	Action	Date	Follow	Article
 Tom Narayan ★★★★★	RBC Capital	\$320	BUY	21.27% Upside	Reiterated	03/28/25		
 Edison Yu ★★★★★	Deutsche Bank	\$420 – \$345	BUY	30.75% Upside	Reiterated	03/28/25		
 Daniel Ives ★★★★★	Wedbush	\$550	BUY	108.44% Upside	Reiterated	03/27/25		
 Mike Tyndall ★★★★★	HSBC	\$165 – \$130	SELL	-50.73% Downside	Reiterated	03/27/25		

See more TSLA analyst ratings

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Tesla faces 'hundreds of millions' in damage claims in autopilot suit

Torts/Personal Injury

Mar. 31, 2025

An Alameda County judge's ruling allows a lawsuit against Tesla over a teen's death in an autopilot crash to proceed, with attorney Brett Schreiber seeking massive damages for the family's loss.



An attorney suing Tesla said he would pursue damages in the "hundreds of millions" after a judge ruled a case involving the death of a teenager in a Tesla car crash could go to jury trial and the company could face punitive damages.

Brett Schreiber, partner at Singleton Schrieber, is lead attorney for the plaintiff in an Alameda County Superior Court case that claims Tesla and its CEO, Elon Musk, made misrepresentations about the safety of the car's autopilot feature.

"What is it worth for a family to have lost one of their children?" said Schreiber in a phone interview Friday. "It's obviously an incredibly significant number and I have absolutely every intention of asking the jury for many tens if not hundreds of millions of dollars for what they've suffered."

Plaintiff Benjamin Maldonado Escudero is suing the car company after his son, Jovani Maldonado Garcia, was killed in a crash in which Romeo Lagman Yalung, the driver of a Tesla in autopilot mode, slammed into the back of his truck, according to the complaint. *Escudero et al., v. Tesla, Inc. et al*, RG21090128 (Alameda Super. Ct. filed Feb 26, 2021).

Tesla, Musk's attorney and the lead attorney for Tesla in this case, Samuel J. Galvin of Bowman and Brooke LLP, were all contacted for comment but did not respond in time for print.

In their motion for summary adjudication, Tesla's attorneys said there was no evidence that the driver of the car had seen or heard the statements that the plaintiff says misrepresented the autopilot's reliability. "The plaintiffs' negligent and fraudulent misrepresentation claims

failed because both causes of action lacked justifiable reliance," Galvin wrote.

Musk is not named in the lawsuit, but Schreiber's case centers on the Tesla CEO's claims that the autopilot function is "better than a human driver," and whether the driver of the Tesla in the collision that killed Garcia relied on this.

Judge Rebekah Evenson wrote in her ruling Thursday, "There is a triable issue of material fact as to whether defendant Romeo Cruz Yalung relied on misrepresentations by Tesla and/or its founder Elon Musk about the self-driving capabilities of Yalung's Tesla vehicle (specifically, whether the autopilot function was 'better than a human driver')."

She also wrote, "The (purported) fraudulent misrepresentations on which that claim is based were made by Elon Musk, who is a managing agent of Tesla for which punitive damage liability may be imposed."

Tesla filed the motion for summary adjudication on March 10. In a reply to its own motion four days later, Galvin wrote, "They [plaintiffs] cannot identify a specific representation relied upon that caused harm to plaintiffs. Plaintiffs argue that Yalung could have relied on Tesla's product names alone to prove misrepresentation. No such evidence exists. Mr. Yalung testified that his understanding of the Full Self Driving nomenclature related to something the vehicle would be able to do in the future:

"Because Plaintiffs cannot identify a specific representation upon which Mr. Yalung relied, Plaintiff argue that Mr. Yalung can be deemed to have relied on Tesla's marketing as a whole. Plaintiffs have no evidence that Mr. Yalung saw, heard, or read any Tesla advertisements. In fact, he testified he thinks he saw just a single statement from Mr. Musk on Facebook. That's it."

John Rushing, managing partner at Rushing McCarl LLP said in a comment on Evenson's decision in an emailed statement Friday, "The question for the jury will be whether Tesla should be held accountable for claiming that its autopilot system was 'probably better than a person' at driving.

"When tech executives make such claims, those aren't just marketing statements -- they create expectations that change driver behavior and can lead to tragedies like the death of a child. This ruling shows what's truly at stake in autonomous vehicle litigation: not just financial liability, but human lives lost when marketing promises exceed technological capabilities." Rushing is not involved in the case.

Schreiber explained his approach. "What we have here is an automotive product defect wrapped inside of a big lie. And what makes these cases unique is we are bringing misrepresentation fraudulent misrepresentation claims along with our product defect claims.

And that's because Elon Musk has decided, I believe, in an effort to push more product and pump the stock that he can make representations about what the vehicle can do."

Personal injury attorney Tray Gober of Lee, Gober & Reyna is based in Texas, where Tesla headquarters moved in 2021, said the legislation on autonomous vehicles was not up to speed to prevent incidents such as the Garcia case.

"All products that are put into the stream of commerce have to be designed to avoid foreseeable injuries. That is especially true for vehicles," Gober said.

"When we have imperfect self-driving technologies it feels as though there's been a rush to market to get these technologies activated to maintain a competitive edge against other vehicle manufacturers.

"Tesla has bragged that their crash per miles driven is lower than the crash per miles driven for humans. That's a great statistic and it may very well be that these cars are safer than human drivers but that's not the standard.

"The standard isn't, 'Is this technology safer than human drivers?' The standard is, 'Is there a safer alternative design to this product at the time that the product was put into the stream commerce?' And I think the answer to that is definitively yes."

#384575

James Twomey

Daily Journal Staff Writer

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Novogratz's Galaxy to Pay \$200 Million in NY Luna Settlement

Michael Novogratz's Galaxy Digital Holdings will pay \$200 million in penalties over the investment firm's role in promoting the failed Luna cryptocurrency, as part of a settlement with the New York Attorney General.

Galaxy reached an agreement with the state authority on Thursday to resolve civil claims relating to certain investments, trading and public statements it had made regarding Luna between late 2020 and 2022, the company said in an earnings statement Friday.

The settlement includes an undiscounted monetary penalty of \$200 million, payable in instalments until 2028. Galaxy noted a legal provision of \$166 million to cover the fine in its full-year results on Friday, noting the impact of discounting.



Michael Novogratz

Photographer: Michael Nagle/Bloomberg

The investment firm was accused of violating rules in promoting an asset without disclosing its intent to sell it, according to a filing published by the NYAG. Galaxy did not admit or deny wrongdoing as part of the deal, the filing said.

Galaxy and Novogratz began promoting Terraform Labs' Luna cryptocurrency in 2020, a token whose main purpose was to support the value of its sister coin TerraUSD through algorithmic trading. Both tokens later spiraled to near zero in mid-2022, wiping out more than \$40 billion in market value.

"This was not an easy decision and one that we considered carefully," **Novogratz**, the founder and chief executive officer of Galaxy, said in a statement to Bloomberg. "**Do Kwon** and Terraform, the creators of Luna, deceived us and many other prominent institutional investors. Over the last few years, Galaxy has cooperated fully with regulators – including the New York Attorney General."

Novogratz had promised he would get a Luna tattoo if the token's price reached \$100, which he posted a photo of in early 2022. At the same time, Galaxy was profiting from Luna's price rise in the hundreds of millions of dollars, the New York Attorney General's office said. Galaxy sold nearly all of its Luna holdings prior to the crash, it added.

Luna's collapse kicked off a series of blow-ups across the crypto industry, causing waves of bankruptcies, unmasked frauds and widespread scandal. The now-infamous tattoo on Novogratz's arm — a wolf howling at the moon with the word "Luna" by its side — serves as a "good reminder of hubris," he said in 2023.

Read More: All The Ways That Crypto Broke in 2022

The settlement comes as many long-running crypto enforcement actions have been dropped or paused by US authorities, seeking to reestablish the regulatory playing field ahead of developing new rules for the sector. The US Securities and Exchange Commission dropped lawsuits against crypto firms Kraken and Consensus, it said in litigation notices published Thursday, as well as an action against the crypto activities of Cumberland DRW.

Galaxy Sees About \$4.5B in Revenue From 15-Year CoreWeave Lease

Galaxy reported net income for the fourth quarter of \$174.5 million, compared to \$301.5 million a year ago. This included the impact of the settlement, it said.

{ Galaxy Sees About \$4.5B in Revenue From 15-Year CoreWeave Lease }

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Trump Commutes Prison Sentence for Ozy Media's Carlos Watson (1)

Ozy Media co-founder **Carlos Watson**, who was set to begin serving his nearly 10-year prison term for lying to investors in his startup, had his term commuted by President Donald Trump on Friday, according to a senior White House official.

Watson was convicted last July by a federal jury in Brooklyn, New York, of a wire fraud conspiracy, securities fraud and aggravated identity theft for a scheme to con investors out of tens of millions of dollars.



Carlos Watson in New York in December.

Photographer: Yuki Iwamura/Bloomberg

He was sentenced in January to 116 months in prison and ordered to forfeit almost \$60 million and pay more than \$36 million in restitution. He had been scheduled to report to a federal prison in California on Friday.

Trump this week also issued pardons to the three co-founders of the storied crypto exchange BitMex and to **Trevor Milton**, the founder of Nikola Corp. who was facing four years in prison after he was convicted of defrauding investors in the electric-truck maker.

Arthur Aidala, a lawyer for Watson, had asked a federal appeals court in Manhattan to allow him to remain free as he fought the charges, but Trump commuted Watson's sentence. Unlike a pardon, a commutation means the conviction isn't erased.

Prosecutors declined to comment. Aidala didn't respond to a message seeking comment.

In a statement late Friday, Watson said he was "profoundly grateful" to Trump and said that he was "wrongfully targeted" in the case.

The evidence at trial showed Watson staged a deceptive phone call with two bankers at Goldman Sachs Group Inc. to raise funds.

Ozy, a once-lauded startup backed by billionaire investor **Marc Lasry**, collapsed shortly after the New York Times reported on the deception in 2021. Prosecutors said Watson told one investor that Google Chief Executive Officer **Sundar Pichai** had offered to buy Ozy for hundreds of millions of dollars. Pichai testified that he never discussed a purchase.

In imposing a prison term, US District Judge Eric Komitee, who presided over the case and was appointed by Trump, said "the quantum of dishonesty in this case is exceptional."

The commutation was reported earlier by CNBC.

(Updates with Watson statement in seventh paragraph.)

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Trump Pardons Nikola Founder Milton After Fraud Conviction (2)

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.

Speaking to reporters in the oval office Friday, Trump said Milton "was taken advantage of" and alleged that he was targeted by prosecutors because of his support for the president.

"When I heard about it, I said, 'nope, not going to happen,'" Trump said. "They destroyed five years of his life," and added that Milton "did nothing wrong" and that "he is a good person."

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.

(Updates with comments from Trump in the oval office in paragraph seven.)

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Trump Pardons BitMEX Crypto Exchange Co-Founder Arthur Hayes (1)

President Donald Trump has pardoned **Arthur Hayes**, **Benjamin Delo** and **Samuel Reed**, the three co-founders of the storied crypto exchange BitMEX, according to a person familiar with the matter who asked not to be named as they were not authorized to speak publicly.

Hayes, Delo and Reed were charged in 2020 with violating the Bank Secrecy Act; all three pleaded guilty in 2022. They agreed to forfeit \$10 million each and were sentenced to probation. CNBC first reported the pardons on Friday.

In January, a federal judge additionally ordered BitMex to pay a \$100 million fine for violating US anti-money laundering laws.



Arthur Hayes

Photographer: Michael Nagle/Bloomberg

Hayes, Delo and Reed founded BitMEX in 2014. For a time, BitMex was the largest platform for trading crypto derivatives, an area in which it was a pioneer.

Hayes has continued to be an influential figure in the market, with more than 657,000 followers on X and frequent appearances on crypto-industry podcasts and other media. Through a family office called Maelstrom, he guides "investments on infrastructure startups powering the next wave of decentralization," according to the firm's website.

Hayes takes credit for inventing the perpetual swap, a type of crypto derivative that's similar to a futures contract but does not include an expiration date.

The criminal enforcement cases against BitMEX and its co-founders were among the first and most significant ones to target the crypto market.

The charges against Hayes were filed by federal prosecutors in Manhattan in October 2020 under the first Trump administration, a month before the presidential election won by Joe Biden, and were among among the last to be resolved by the US Justice Department at the end of the Biden administration.

"This full and unconditional pardon by President Trump is a vindication of the position we have always held – that BitMEX, my co-founders and I should never have been charged with a criminal offense through an obscure, antiquated law," Delo said in an emailed statement. "I'm sincerely grateful to the President for granting this pardon to me and my co-founders."

A lawyer for Hayes did not immediately return a request for comment. Reed could not be immediately reached for comment.

The current Trump administration, in contrast to the perceived crackdown during Biden's tenure, has sought to actively court the crypto industry. The US Securities and Exchange Commission has dismissed or put on hold at least a dozen cases or investigations since Trump's inauguration in January, including those involving high-profile crypto companies like Binance Holdings Ltd, Coinbase Global Inc., Kraken, Consensus Software Inc. and Ripple.

Other regulators have also signaled a softening in their approach to digital assets.

On Friday, the US Federal Deposit Insurance Corp. said it would no longer require banks under its supervision to receive prior approval to engage in crypto-related activities, undoing a Biden-era policy. Hours later, the US Commodity Futures Trading Commission said it was withdrawing an advisory on the review of risks tied to clearing and trading digital assets.

The day after his inauguration, Trump pardoned Ross Ulbricht, the founder of the dark-web Silk Road marketplace. That pardon was one of several promises Trump made as part of his overtures to the crypto industry during his reelection campaign last year.

The parents of FTX founder Sam Bankman-Fried have been exploring ways to secure a pardon for their son, including having meetings with lawyers and others considered to be in Trump's orbit, Bloomberg News reported previously. Bankman-Fried is serving a 25-year prison sentence for fraud.

Read: Sam Bankman-Fried's Parents Explore Seeking Trump Pardon for Son

(Updates with context on Hayes, Bitmex and crypto enforcement actions throughout)

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Crypto's Trumpian Embrace Is Leaving Bitcoin's Big Rival Behind

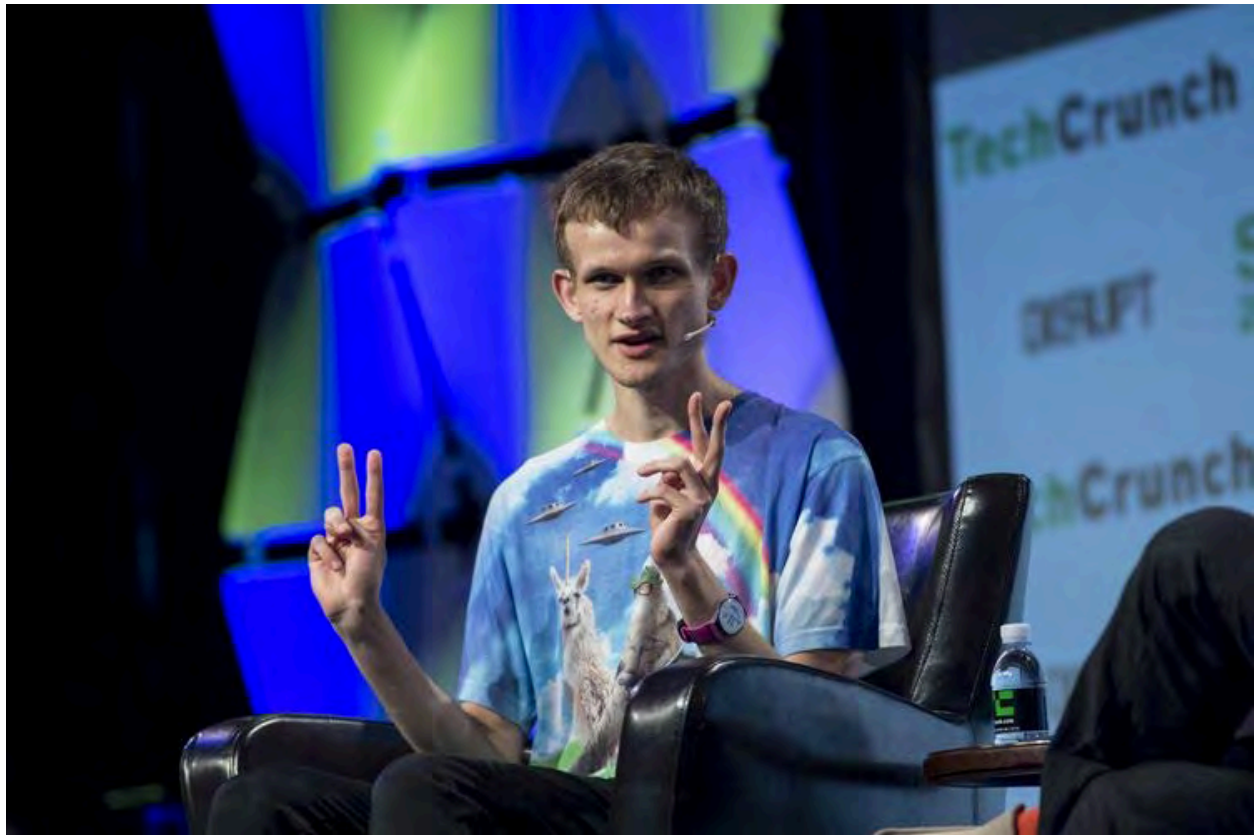
Vitalik Buterin was long viewed as the wunderkind of the cryptocurrency world.

The gawky, playful founder of Ethereum — known for his rainbow-colored, animal-themed shirts — created the biggest competitor to Bitcoin and offered a techno-utopian vision that was supposed to change the financial system and our everyday digital lives.

But after capturing the imaginations of both corporate America and Wall Street, Buterin's project is now struggling to deliver on its early promise as it enters its second decade, having fallen out of step in an industry transformed by the embrace of Donald Trump. Developers have been fleeing, early followers are angry and the token on the network — Ether — has lagged both Bitcoin and its smaller competitors.

The pressure on Buterin, who is now 31, has spilled into the open as complaints about his leadership have become louder.

"If you 'keep the pressure on,' then you are creating an environment that is actively toxic to top talent," he wrote to one critic of the Ethereum Foundation, which was created to help oversee the development of the software that underpins the digital token. "YOU ARE MAKING MY JOB HARDER."



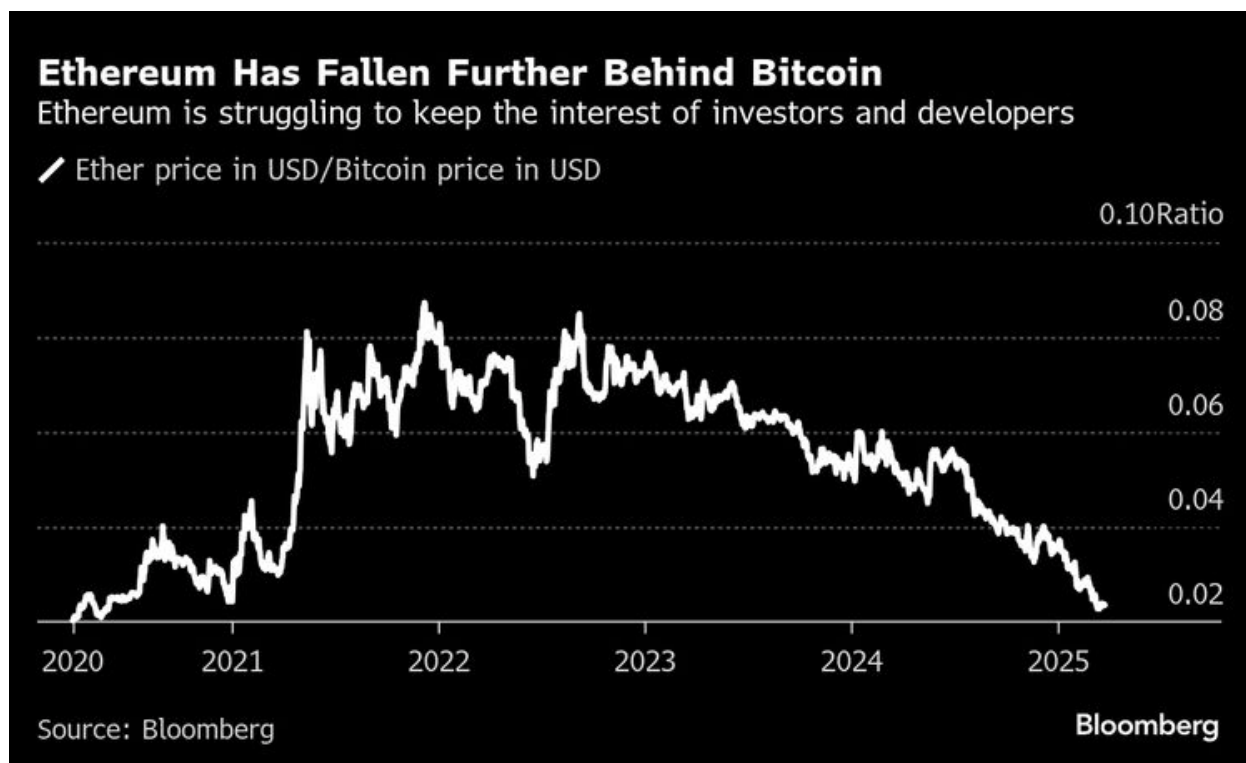
Vitalik Buterin in 2017.

Photographer: David Paul Morris/Bloomberg

The anger is a departure from Buterin's reputation as one of the more even-keeled actors in the chaotic crypto industry. His moments of agitation underscore just how many challenges Ethereum is confronting as the practical utility of cryptocurrencies and their blockchain ledgers has been overwhelmed by memes and rampant speculation, now with the imprimatur of the president.

Ethereum is still the second biggest cryptocurrency, with all outstanding Ether worth some \$225 billion. But Ether has fallen about 44% in 2025, poised for its worst quarterly drop since the bear market in 2022. Over the past year, while Bitcoin is up 30%, Ethereum is down 45% and it is losing its lead over competitors.

The active developers working on Ethereum-related software fell about 17% last year, according to a December report from Electric Capital. By contrast, Solana, the digital token that has been the most direct rival to Ethereum — and the host to many popular memecoins, including Trump's — was one of the top ecosystems for new developers in 2024, with 83% year-over-year growth.



Standard Chartered analysts put out a report this month slashing its year end forecast for Ether by 60%, noting that “its dominance has been waning for some time” due to “something of an identity crisis.”

At the end of a conference in San Francisco this month, Buterin recognized the unrealized promises but pushed back against the people expecting swift change.

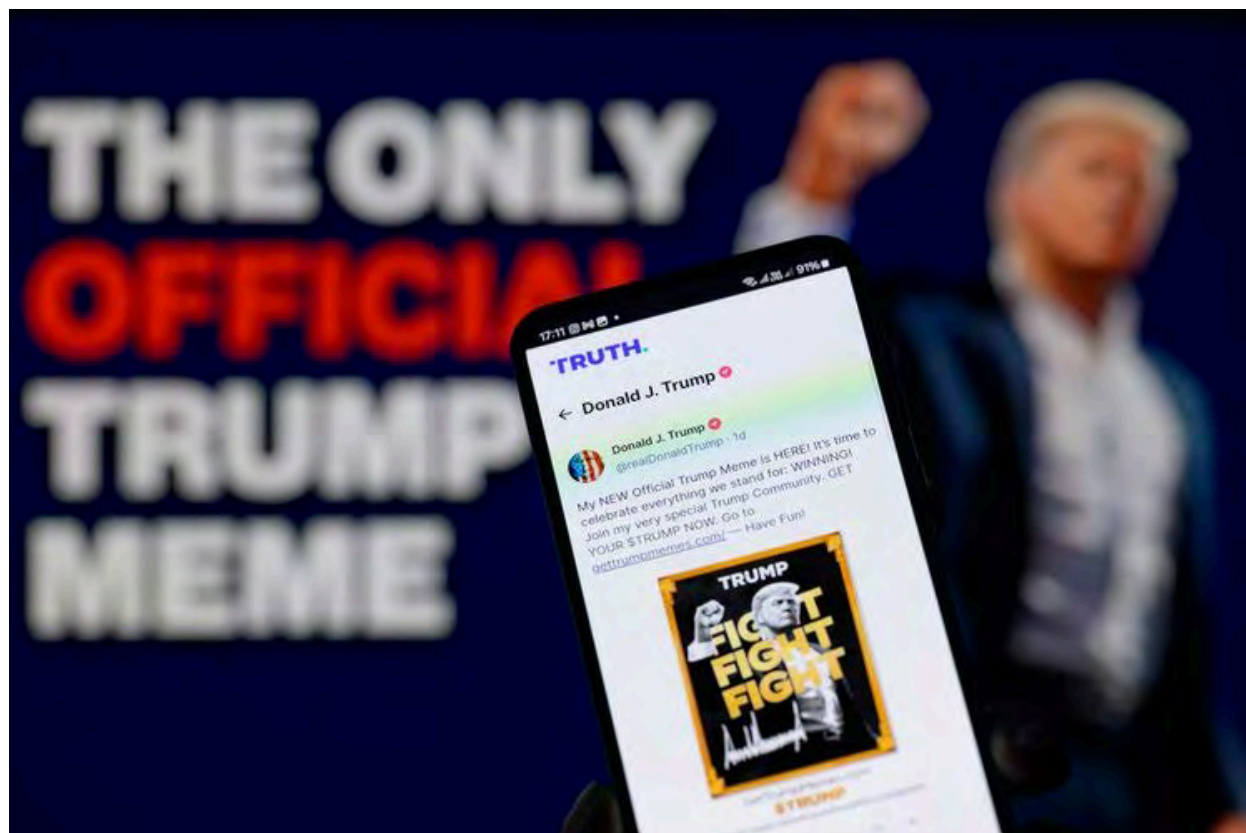
“The only thing that can move Ethereum forward at this point is things that give long term value in a way where you can clearly see that the value is coming from a thing that is actually sustainable — like actual use for people,” he said.

Global Computer

Buterin, who grew up in Russia and then Canada, wrote the Ethereum white paper in 2014, not long after dropping out of college, with the goal of improving on the shortcomings he saw in Bitcoin. His hope was to create what he referred to as a shared global computer outside the control of any company or government.

The ledger, or blockchain, underpinning Ethereum, was designed so that it could handle digital contracts and serve as the infrastructure for a host of decentralized digital applications. Investors bought into that vision and Ether skyrocketed during the crypto booms of 2017 and 2021, as developers built thousands of applications on top of the blockchain, ranging from silly cat games to more wonky prediction markets and lending programs.

Ethereum gained such a following in part because of Buterin's idealistic, often gnomish pronouncements, and his methodical oversight of the software and network. While it was a hotbed for rampant speculation, Buterin himself showed little interest in material wealth and lived out of a backpack despite owning a stash of Ether tokens that has grown to be worth hundreds of millions of dollars.



Donald Trump's Truth account announcing the TRUMP meme coin.

Photographer:Jonathan Raa/NurPhoto/Getty Images

His monkish identity has been less of a good fit in the new environment ushered in by the president. After Trump embraced crypto and pushed the government to begin holding tokens, the leaders of many projects rushed to donate and otherwise show support for Trump, with many attending the inauguration and posing for photos with the president.

Buterin, in contrast has kept a studied distance. Just after the inauguration he said on social media that he had no interest in making some sort of "vibe pivot" to what he referred to as the "bronze aged mindset" — the hypermasculine philosophy that has become popular with both crypto enthusiasts and the Trump crowd.

The clash became most apparent after Trump and his business associates issued the \$Trump memecoin, which began spinning off millions in fees. Buterin quickly took to X to slam "politician coins" as "a perfect bribery vehicle" and "risky to democracy."

"Now, the most powerful people in the world are cheering on the idea of anyone creating tokens for anything, at any scale," he wrote.

Buterin declined a request for further comment from Bloomberg News.

Left Out

Buterin and Ethereum have, not surprisingly, been far from the action as Trump has moved forward with his efforts to create a more friendly environment for cryptocurrencies in Washington.

Buterin and his community were conspicuously absent when Trump brought together several industry leaders at the White House for a summit in early March. The son of Steve Witkoff — one of Trump's closest business and political associates — tried to reassure the Ethereum community that he would represent their interests at the event.

Ethereum's lack of a strong voice in Washington is a result of Buterin's longer term push to make the network and the community as decentralized as possible — to stay in tune with the original ideas that gave rise to Bitcoin and Ethereum. But what used to be viewed as a strength has become a liability.

Vivek Raman, a cryptocurrency researcher and executive, said the new environment "created a difficult playing field for Ethereum, which has been very neutral."

"I think part of the criticism is people expected Ethereum — which is like the internet, a decentralized network — to step up, and be involved in politics and be involved with institutions. And that is literally not really possible," Raman said.

Raman recently founded an organization with funding from Buterin, called Etherealize, that is designed to give Ethereum a voice on Wall Street and in Washington.

Blockchain Blues

The problems for Ethereum, though, are not just a matter of politics and lobbying. Not long ago, Wall Street was abuzz with talk about the lending and trading programs being built on Ethereum that were supposed to create a more seamless, efficient financial system — the so-called DeFi movement.

While critics have questioned the real-life utility of these applications, some have gained traction. The most notable success has been stablecoins, the asset-backed tokens like Tether and USDC that move across national borders on blockchains while avoiding the volatility of cryptocurrencies. Most popular stablecoins operate on Ethereum in some form.

Even stablecoins, though, have failed to gain much use outside of speculative trading, and the occasional money laundering operation. Michael Novogratz, the founder of Galaxy Digital, and one of Ethereum's biggest boosters on Wall Street, acknowledged in a recent podcast that the progress on DeFi projects has been much slower than expected.

"Building these decentralized systems on top of these blockchains has proven harder than we thought," Novogratz said. "Lots of people have tried and failed."

The same problems have plagued the push to build what is referred to as Web3 — a new, more decentralized and privacy-focused version of the internet. These applications have been slow to take off, and to the degree that blockchain projects have caught on, it has often been for speculative tokens tied to internet memes. In this realm, the most popular new projects — such as Trump's meme coin — have chosen Solana, which offers faster transaction times and cheaper fees.

Solana had almost twice as many active addresses as the Ethereum ecosystem in February, and more than five times as many transactions, according to data compiled by the cryptocurrency company Grayscale.

Ethereum Foundation

Many users have placed blame for Ethereum's falling market share on the foundation that Buterin helped create to oversee technical development. Critics have said that the foundation has been slow to move forward with updates to the network that could have made it more competitive.

"A lot of people interpret its actions as complacent," said Armani Ferrante, the founder of the crypto exchange Backpack, who was an Ethereum developer before moving his work to Solana.

There has been particular concern that the foundation has pushed forward without enough regard for the price of Ether. To make payments cheaper, Buterin and the foundation made changes that move transactions onto so-called Layer 2 blockchains that operate on top of Ethereum. This shift has taken activity and fees away from the underlying Ethereum network. Standard Chartered cited these issues to explain its falling expectations for Ether's price.

"There's a practical reality: people want to go where they feel there's growth," said **Jill Gunter**, chief strategy officer for Ethereum developer Espresso Systems. "That's been a challenge for Ethereum when the whole community for a very long time dismissed any kind of a focus on price."

The foundation did not respond to a request for comment. But to address the critics, Buterin and the foundation hired two new co-executive directors earlier this month. In the midst of the fighting, Buterin said that the foundation needs to find a new path forward. He made it clear, though, that he only wants the change to go so far.

"I see people saying things like, 'Oh, Ethereum, by caring about idealistic things and improving the world is out of touch with reality,'" he told an interviewer in December. "If the goal of blockchains now is just being a casino, then that's not even a thing that I feel excited about being a part of."

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Securities Law

March 31, 2025, 7:23 AM PDT

Trump Family to Launch US Bitcoin Mining Venture With Hut 8 (1)

The Trump family is set to launch a Bitcoin mining-focused venture with Hut 8 Corp., the latest expansion of the US president's ties to the cryptocurrency sector.

Hut 8 is launching American Bitcoin Corp. as a majority-owned subsidiary, focused exclusively on Bitcoin mining and "strategic Bitcoin reserve development," the Miami-based company said in a statement Monday.

During the presidential campaign, Donald Trump vowed to ensure that all remaining Bitcoin is "made in the USA" and to establish a Bitcoin reserve. Trump used to be a skeptic about digital assets but pivoted to embracing the sector on the campaign trail, in part as the industry ramped up its involvement in the election through sizable political donations.

The launch of the mining venture follows Hut 8's acquisition of a majority interest in American Data Centers Inc., a company formed by a group of investors including **Eric Trump** and **Donald Trump Jr.** Following that transaction, American Data Centers has been renamed and relaunched as American Bitcoin Corp., Hut 8 said.

The president's previous forays into crypto include issuing collections of nonfungible tokens, digital collectibles that show him in a variety of poses and costumes. Along with his sons, he's also endorsed the World Liberty Financial decentralized finance project. Last week World Liberty said it plans to launch a stablecoin.

Earlier this month, Trump signed an executive order calling for the creation of a Strategic Bitcoin Reserve and a separate stockpile of other digital assets. While the creation of the reserve fulfilled a promise Trump made on the campaign trail, the details fell short of industry expectations.

Hut 8 has transferred substantially all of its ASIC mining equipment to the new American Bitcoin entity in exchange for an 80% stake in that business, it said. Eric Trump will serve as American Bitcoin's chief strategy officer.

As Bitcoin more than doubled last year, Hut 8 saw revenue jump by almost 70% to \$162 million on net income of around \$331 million. Revenue is projected to have declined in the first quarter and analysts surveyed by Bloomberg expect a loss for the period.

Shares of Hut 8 rose about 4.3% as of 10:17 a.m. in New York. The stock has slumped about 40% so far this year.

Donald Trump made the mining pledge in a post on his Truth Social account in June after meeting at Mar-a-Lago with a group of executives from crypto miners, the companies whose massive, high-tech data centers do the work that facilitates transactions on the blockchain in exchange for compensation paid in Bitcoin or other cryptocurrencies.

The Bitcoin mining sector in the US has morphed into a multi-billion dollar industry over the last several years as the token saw exponential increases in prices. The total computing power generated from US-based miners was below 50% as of the end of last year.

(Adds Hut 8's financial performance in the eighth paragraph.)

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SEC Signals Definitive Shift on Crypto Crackdown in Three More High-Profile Actions

 [law.com/nationallawjournal/2025/03/28/sec-signals-definitive-shift-on-crypto-crackdown-in-three-more-high-profile-actions](https://www.law.com/nationallawjournal/2025/03/28/sec-signals-definitive-shift-on-crypto-crackdown-in-three-more-high-profile-actions)

Michael A. Mora

March 28, 2025

What You Need to Know

- The SEC dropped major lawsuits against Kraken, Cumberland and Consensys without ruling on the claims' merits.
- Dismissals signal a shift away from aggressive crypto enforcement under the Trump administration's new regulatory agenda.
- The SEC is restructuring units to focus on broader cyberthreats, moving away from strict crypto oversight.

The U.S. Securities and Exchange Commission officially dismissed on Thursday evening three high-profile enforcement actions—against Cumberland DRW LLC, Consensys Software Inc., Payward Inc. and Payward Ventures Inc., together known as Kraken—as part of the agency's larger regulatory shift under the Trump administration.

"The Commission's decision to exercise its discretion ... rests on its judgment that the dismissal will facilitate the Commission's ongoing efforts to reform and renew its regulatory approach to the crypto industry, not on any assessment of the merits of the claims alleged in the action," the SEC said in a statement. "The Commission's decision to seek dismissal of this litigation does not necessarily reflect the Commission's position on any other case."

The SEC, under former Chairman Gary Gensler, sued Consensys, a Texas-based private blockchain software technology company, in the U.S. District Court for the Eastern District of New York in June over MetaMask, claiming that the wallet tool was an unregistered securities broker that engaged in both the offer and sale of securities, court records show.

The SEC charged Cumberland in October with operating as an unregistered dealer in more than \$2 billion of crypto assets offered and sold as securities in violation of the registration requirements of the federal securities laws that are designed to protect investors.

Meanwhile, the SEC sued Kraken in November over allegations that the cryptocurrency exchange acted simultaneously as a broker, dealer, exchange and clearing agency without registering with the regulatory agency. The SEC also claimed that Kraken commingled customers' crypto assets and fiat currencies with its own, which, according to the agency's independent auditor, created a "significant risk of loss" for the exchange's customers.

The commonality between these cases is that under the Biden administration, Gensler issued Wells notices and sued a broad array of crypto companies, including Kraken, Cumberland and Consensys. Those actions led to hundreds of millions of dollars in campaign donations from the industry ahead of the 2024 presidential and congressional elections.

Since President Donald Trump—who was elected to the White House with a significant portion of those campaign donations—began his second term in January, the SEC has scaled back its enforcement efforts. For instance, the Crypto Task Force is working to develop a comprehensive and clear regulatory framework for digital assets.

The SEC then created the Cyber and Emerging Technologies Unit to replace the Crypto Asset and Cyber Unit. The unit will focus on combating cyber-related misconduct and protecting retail investors from bad actors in the emerging technologies space, and it intends to complement the work of the Crypto Task Force.

Last week, the SEC hosted its first Crypto Task Force roundtable.

“Spring signifies new beginnings,” Hester Peirce, an SEC commissioner, said at the gathering. “And we have a new beginning here, a restart of the commission's approach to crypto regulations.”

Peirce noted that fundamental questions remain about how existing securities law can or should be applied to crypto, what makes something a security and whether an asset can start as a security before evolving into something else.

Moving forward, the SEC is likely to officially dismiss additional actions beyond Kraken, Cumberland and Consensys, such as the case against Ripple Labs, where a deal has been brokered with SEC staff. The deal is still awaiting the Commission's approval. In addition, Paul Atkins, Trump's pick to lead the SEC, will soon lead the agency.

Renato Mariotti, a partner at Paul Hastings' investigations and white-collar defense practice in the Am Law 30 firm's Chicago office, said the dismissals reflect that the Trump administration rejects the prior “regulation by enforcement” approach and has acted quickly to reverse course.

“I don't expect aggressive enforcement in the crypto industry absent fraud or other intentional wrongdoing. The administration is focused on putting a comprehensive regulatory framework in place,” Mariotti said. “More broadly, outside of the crypto space, these dismissals reflect that the administration is rapidly changing agency priorities and acting to implement its agenda. If you don't adjust to these changes, you'll fall behind competitors who do.”

Trump's Pick for Wall Street Prosecutor Will Keep Apollo Stock

President Donald Trump's pick to police Wall Street's financial crimes plans to hang onto holdings in Apollo Global Management, American Express and a digital asset platform, according to documents released Friday by the Office of Government Ethics.

Jay Clayton, the Sullivan & Cromwell lawyer Trump selected to serve as US Attorney for the Southern District of New York, disclosed his assets, clients and financial stakes in the documents. Clayton, 58, joined Apollo's board in 2021 following co-founder Leon Black's decision to step down as CEO as he faced scrutiny over his ties to convicted sex offender **Jeffrey Epstein**.

But rather than sell off his stake in the private equity giant and a handful of other companies he had close business relationships with, Clayton has opted to recuse himself should matters involving them cross his desk as the top prosecutor in a district that oversees Wall Street.



Jay Clayton

Photographer: Jeenah Moon/Bloomberg

Clayton, who was Trump's chair of the Securities and Exchange Commission during the president's first term, will resign his position at Apollo, his law firm and other companies when he's confirmed by the Senate, according to his ethics agreement that spells out the steps he'll take to remove conflicts of interest.

He'll also step down from American Express' board of directors, and as an adviser to digital asset platform Fireblocks, Inc. He's already resigned from some positions, including a senior adviser role at Coinbase Asset Management, an investment firm owned by the cryptocurrency exchange with the shared name.

But he's not selling off his holdings in some of those companies, his ethics agreement says. Clayton will also continue to have equity stakes in Fireblocks and accounting and advisory firm CFGI LLC.

Clayton will hold onto his common Apollo stock, but divest a capital commitment for a fund for employees. He said he will sell his interests in more than 20 other companies, including Apple Inc., Bank of America Corp., GE Electric Co. and UnitedHealth Group Inc.

The assets he's retaining that will require him to recuse from some matters are worth at least \$2.6 million, according to the filing. Overall, Clayton disclosed holdings worth at least \$33.9 million. Nominees value their assets in broad ranges.

Because of his position as US attorney, federal rules don't require Clayton to divest all his holdings as is required by cabinet officials and other political jobs, said attorney **Stan Brand**, an expert in ethics law.

"As long as he's not participating in issues or cases that relate to his investments," Brand said, "there's not an issue."

New York's Southern District handles many high-profile financial fraud cases, as well as those alleging terrorism, organized crime and public corruption. They include the prosecutions of FTX co-founder Sam Bankman-Fried and Archegos Capital Management's **Bill Hwang**, both convicted of fraud.

US attorneys, who prosecute civil and criminal cases for the federal government, are nominated by the president and must be approved by the Senate.

If confirmed, Clayton will forgo some of the perks from his past roles. Sullivan & Cromwell offers retired partners office space and secretarial services at the firm's expense, while Apollo lets retired directors the right to invest in its sponsored funds. Clayton won't take advantage of those benefits for the duration of his time in office, according to his disclosure.

--With assistance from **Bill Haubert**.

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FCC Chairman Orders DEI Investigation Into Disney, ABC

The head of the Federal Communications Commission ordered an investigation into Walt Disney Co. and its ABC network over their diversity, equity and inclusion practices, broadening his examination of media and telecom companies for perceived discriminatory biases.

FCC Chairman **Brendan Carr** directed the agency's Enforcement Bureau to "ensure that Disney and ABC have not been violating FCC equal employment opportunity regulations by promoting invidious forms of DEI discrimination."

Carr specifically called out policies at Disney including its "Reimagine Tomorrow" initiative designed to advance its DEI mission and inclusion standards across ABC that require "50% of regular and recurring characters" be drawn from "underrepresented groups," according to a letter Carr wrote to Disney Chief Executive Officer Bob Iger and posted on X on Friday.



Brendan Carr

Photographer: Kent Nishimura/Bloomberg

“Disney started out a century ago as an iconic American company,” Carr wrote. “But then something changed. Disney has now been embroiled in rounds of controversy surrounding its DEI policies.”

Since being appointed by President Donald Trump earlier this year, Carr has sent similar letters to Verizon Communications Inc. and Comcast Corp. He recently told Bloomberg that a company’s DEI practices would affect its chances of receiving merger approval.

Carr noted that Disney has recently walked back some of its DEI initiatives but said “significant concerns remain.” Earlier this year Disney said it would end the Reimagine Tomorrow program that Carr called out. The company is also removing diversity from the criteria for determining manager compensation.

“We are reviewing the Federal Communications Commission’s letter, and we look forward to engaging with the commission to answer its questions,” a spokesperson for Disney said.

Disney’s modern remake of *Snow White and the Seven Dwarfs* hit theaters earlier this month under a deluge of criticism, including over casting an actress of Colombian heritage as the title character and the re-imagining of the seven dwarfs.

--With assistance from **Thomas Buckley**.

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<https://www.wsj.com/articles/in-europe-you-can-be-sued-for-not-taking-action-on-climate-change-in-the-u-s-its-the-opposite-8163e6d3>

SUSTAINABLE BUSINESS

In Europe, You Can Be Sued for Not Taking Action on Climate Change. In the U.S., It's the Opposite.

Dutch bank ING is facing trial over its environmental conduct, while asset managers in America are being taken to court for focusing too aggressively on green issues

By Yusuf Khan

March 28, 2025 6:09 am ET | **WSJ PRO**



Donald Pols, CEO of Dutch environmental group Milieudefensie, speaks to the media outside the court in The Hague after the ruling in the climate case between various green organizations and Shell.

PHOTO: ANP/ZUMA PRESS

The biggest bank in the Netherlands is being sued for not taking strong enough action to tackle climate change, it was told on Friday, as corporate environmental strategies increasingly become a hotbed for legal action.

ING joins a list of companies and other organizations that have been sued for not doing enough to tackle climate change in Europe and the U.K. On the flip side,

companies and nonprofits in the U.S. have been sued for focusing too aggressively on commitments to combat climate change, with some facing costly pushback in courts.

The bank, which is being sued by Dutch environmental group Milieudefensie, has been one of the biggest players in the financing of commodities projects, including those related to fossil fuels. Milieudefensie says that as ING is one of the world's largest banks, it bears responsibility for the impact its investments have on the climate.

ING said that Milieudefensie's claims were "unrealistic and unreasonable," adding that it was confident in its climate approach. "We share the concern about the climate but differ in opinion on what action that requires," it said in a statement.

The suit follows a trial in the Netherlands in 2021 that found oil giant [Shell has a responsibility to combat climate change](#). That litigation was also brought by Milieudefensie. Last year, a court of appeal ruled that while Shell is obliged to reduce its emissions, the court was unable to determine which percentage should apply, and rejected Milieudefensie's claims.

"Climate change is a direct threat to human rights, and the court has ruled that companies such as ING must take accountability for reducing their emissions," said Donald Pols, chief executive of Milieudefensie, which is the Dutch wing of environmental group Friends of the Earth. "ING must align its climate policies with the Paris Climate Agreement to do their part and help secure a sustainable future."

For ING, a ruling isn't expected until next year, but if the case against the Dutch bank is successful it could open the doors to further legal action in Europe against fossil-fuel companies and the corporate actors that work with them, such as banks and asset managers.

This is in contrast to the situation in the U.S., where banks and asset managers have been taken to court for being too intensely focused on making green investments and environmental nonprofits have been thrust into expensive legal battles.

This month, the U.S. fossil-fuel industry secured a victory over environmental charity [Greenpeace, which was ordered to pay hundreds of millions of dollars to](#) an oil pipeline company after a jury found the charity liable for defamation and trespassing. Greenpeace has said it will appeal the decision.

In December, Texas Attorney General Ken Paxton said [BlackRock](#) and other asset managers were avoiding their fiduciary duty to shareholders by making climate-focused investments instead of investing in markets such as coal in their search for profitable returns.

In the U.S. regulatory sphere, the Securities and Exchange Commission [paused its defense of proposed climate-disclosure rules](#) under which large companies would report on their emissions, similar to regulations adopted in Europe and California. The SEC faced lawsuits saying the proposed rules were arbitrary and capricious and violated the First Amendment.



ING is one of the biggest players in the financing of commodities projects, including those related to fossil fuels, according to Milieudefensie. PHOTO: JAN WOITAS/ZUMA PRESS

With lawsuits under way on both sides of the Atlantic, companies and charities that operate in both jurisdictions are being put in a bind. In the U.S., being sued for taking action on climate is becoming more likely, especially amid a [Trump presidency](#). In Europe, litigation working in the opposite way is equally likely.

For many companies, the answer at the moment appears to be to keep their heads below the parapet to avoid criticism, and possibly costly litigation.

“Global corporates and financial institutions have to really think hard about what they’re doing, how they’re doing it, and what they’re saying about it,” said Ken Rivlin, global co-head environment, climate, and regulatory law at A&O Shearman, a legal firm which operates in both Europe and the U.S., referring to actions on climate and sustainability. “It’s something that is top of mind in the C-suite with almost all of our clients right now. And there’s no easy answer right now.”

However, some companies and NGOs in the U.S. are trying to push back.

In Texas, the American Sustainable Business Network is suing Attorney General Paxton and Glenn Hegar, comptroller of public accounts, over Texas Senate Bill 13, which bars state public entities from investing and contracting with companies on the basis of their actual or perceived political views regarding fossil fuels. The ASBN said this violated the first and 14th amendment rights to free speech and stopped investors from being able to choose where to put their money and how to spend it, including in renewable energy.

“I think most companies are going to do what makes sense for them financially,” said David Levine, co-founder and president of ASBN. “We have to be vocal about this political and legal threat and we should not be intimidated out of doing the right thing for our businesses and our economy.”

Texas Attorney General Ken Paxton said in December that asset managers are avoiding their fiduciary duty to shareholders by making climate-focused investments. PHOTO: TONY GUTIERREZ/ASSOCIATED PRESS

Greenpeace said the litigation it faced recently could set a precedent for further action. “Every step of the way, we’ve emphasized that these

types of lawsuits — intended to silence and shut down critics—are part of a growing national attack on our First Amendment rights,” the nonprofit said after the jury decision last week. “The truth is, ‘victory’ doesn’t just mean defeating this specific lawsuit. It means that no other organization or individual has to defend themselves against this type of attack.”

How this plays out on either side of the Atlantic isn't clear-cut. The European Commission—the executive arm of the European Union—recently watered down its [flagship climate accounting policies](#) amid pushback from countries within the bloc and from companies that said the reporting requirements were too arduous and costly, putting them at a disadvantage to those in the U.S. and Asia.

A trial last year in Switzerland may have set a precedent. The European Court of Human Rights ruled in favor of a group of elderly Swiss women who argued that their [government wasn't doing enough to fight climate change](#), putting them at risk of death from heat waves. In effect, it ruled that governments have a responsibility to protect citizens against the effects of climate change.

“You may see litigation as your best way of having an impact,” A&O Shearman's Rivlin said. “And even if you don't win the case, you're bringing press to it. I think a similar kind of approach is going to drive how attorneys approach things. It's just that depending on if it's a red state or blue state, the approach is going to be different.”

Write to Yusuf Khan at yusuf.khan@wsj.com

Appeared in the March 29, 2025, print edition as 'Europe, U.S. Companies Face Split Views on Climate Action'.

Accounting & Consulting services**US accounting regulator says audit quality improved after crackdown**

Oversight board claims vindication after imposing steeper fines and tougher audit standards



The Public Company Accounting Oversight Board found flaws in 20% of the Big Four audits it inspected last year, down from 26% in 2023 © FT montage

Stephen Foley in New York

Published 24 MINUTES AGO



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Regulators found fewer mistakes in audits of US companies in 2024, according to new data, in a reversal of a negative trend that began in the pandemic.

The Public Company Accounting Oversight Board hailed the results as vindication of its campaign to raise quality, which has involved levying higher fines and imposing tougher [audit](#) standards and has created friction with firms.

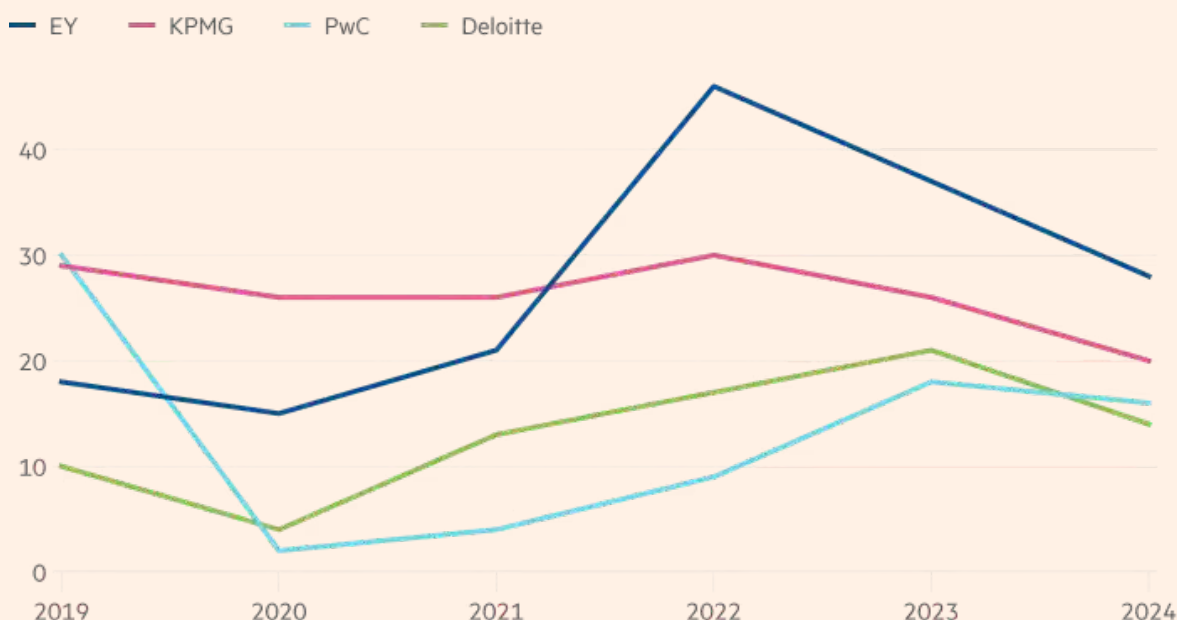
The regulator found flaws in 39 per cent of audits it inspected last year, down from 46 per cent in 2023. Among the Big Four firms, which audit four out of five US-listed companies, 20 per cent of inspected audits did not meet audit quality standards, down from 26 per cent the previous year.

Of the Big Four, [Deloitte](#) claimed the top slot in the league table from PwC, recording a deficiency rate of 14 per cent, down from 21 per cent in 2023. The PCAOB found flaws in 16 per cent of the PwC audits that it inspected in 2024, down from 18 per cent.

EY again scored worst among the Big Four, but its deficiency rate improved to 28 per cent after it invested in new technology and processes to standardise its audit work.

Big Four scored better last year in US audit inspections

Deficiency rate (%)



Source: Public Company Accounting Oversight Board

“We challenged the audit profession to do better for America’s investors, and these significant improvements demonstrate real progress in protecting investors,” said Erica Williams, [PCAOB](#) chair. “Still, our work is far from over, and I urge the audit profession to build on this momentum.”

The PCAOB also released inspection reports for several mid-market firms that showed improvements there, too. BDO — whose 86 per cent deficiency rate last year prompted it to beef up an internal body overseeing audit quality — improved the most, but inspectors still found flaws in 60 per cent of its audits.

The PCAOB has the power to inspect all accounting firms that audit US-listed companies, and has encouraged corporate boards to use its inspection reports when weighing which auditor to hire. Some in the profession and one dissident PCAOB board member have argued that inspections, which focus on the most tricky audits, are not the best measure of audit quality, however.

Large accounting firms accused Williams, an appointee of then-president Joe Biden, of disregarding their objections to new rules. Under the two previous administrations, the board has been replaced by new leadership within months; the first administration of Donald Trump made an abortive attempt to disband the organisation.

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March 31, 2025, 10:22 AM PDT

US Auditors Boost Quality Scores After Covid-era Spike in Flaws

Accounting firms have started reversing a pandemic-era trend of mounting audit violations, with the largest firms leading the way with quality scorecards that the US audit regulator said showed “substantial improvement.”

The inspection findings released Monday report progress among the 171 firms the Public Company Accounting Oversight Board reviewed in 2024. The board said it had found shortcomings in 39% of all audits it inspected last year, a marked improvement from the previous year, when inspectors found at least one violation in nearly half of all audits reviewed.

Inspections serve as the PCAOB’s primary tool to check the work of auditors—assessing how they handle core work like testing revenues or vetting the value of inventory. The latest results reflect inspections performed last year that examined work stemming from 2023 financial statement audits.

Just 20% of KPMG LLP’s inspected audits fell short of PCAOB standards, the firm’s strongest showing since 2010, according to inspection reports the PCAOB released Monday. Fellow Big Four firms Deloitte LLP, PwC LLP, and Ernst & Young LLP also saw their deficiency rates shrink compared to the prior year.

Mid-tier leaders BDO USA P.C. and Grant Thornton LLP were cited for fewer problems though they still struggled to meet core audit standards, inspection reports show.

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Kroger and Albertsons play blame game after failed merger in billion-dollar battle

 [reuters.com/legal/government/kroger-albertsons-play-blame-game-after-failed-merger-billion-dollar-battle-2025-03-28](https://www.reuters.com/legal/government/kroger-albertsons-play-blame-game-after-failed-merger-billion-dollar-battle-2025-03-28)

Jenna Greene

March 28, 2025

The Albertsons logo is seen on an Albertsons grocery store, as Kroger agrees to buy rival Albertsons in a deal to combine the two supermarket chains, in Riverside, California, U.S., October 14, 2022. REUTERS/Aude Guerrucci/File Photo Purchase Licensing Rights , opens new tab

March 28 (Reuters) - Breakups are rarely easy, but the acrimony over a busted blockbuster deal can rival finger-pointing by the bitterest of star-crossed lovers.

Consider the blame game unfolding now between Kroger and Albertsons in Delaware Chancery Court, where each grocery chain is attempting to fault the other for the failure of their \$25 billion merger, which was blocked by judges in both federal and state courts in December.

To hear Albertsons tell it in its Chancery Court lawsuit , opens new tab seeking billions of dollars, Kroger had “a classic case of buyer’s remorse” after negative reaction to the merger by investors, workers and politicians, as well as falling post-pandemic profits. As a result, Kroger allegedly failed to take “any and all actions” possible to win antitrust approval for the deal, as required by the merger agreement.

In a countersuit , opens new tab made public on Tuesday, Kroger says Albertsons “secretly coordinated” with C&S Wholesale Grocers, which was set to buy hundreds of grocery stores that the parties planned to divest, in a “surreptitious scheme” to pursue their own regulatory strategy.

Kroger is seeking unspecified damages from Albertsons for willfully breaching the merger agreement.

Also jumping in the fray, C&S on March 14 sued Kroger , opens new tab in Delaware Superior Court seeking payment of a \$125 million termination fee it says it’s entitled to under its agreement with Kroger.

This isn’t the first time companies in a merger gone wrong have sued each other in Delaware, though the cases tend to be highly fact-specific. To misquote Tolstoy, every failed merger fails in its own way.

Still, a 2020 decision , opens new tab by Vice Chancellor Travis Laster holding that Cigna breached its obligation to try to close a \$54 billion merger with Anthem – but that the merger would probably have been enjoined anyway, so Anthem wasn’t entitled to recover damages – will likely come into play in allocating the burden of proof for the thwarted grocery union. A Kroger spokesperson declined comment.

Albertsons in a statement said it was “steadfastly committed to the success of the combination,” but that Kroger “did not hold up its end of the bargain.”

A C&S spokesperson said via email that the New Hampshire-based company “worked tirelessly in support of the merger and divestiture, including communicating with both Kroger and Albertsons executives.”

Announced in 2022, the proposed merger would have been the largest-ever supermarket combination.

Kroger – operating stores under regional names including Fry’s, Harris Teeter and King Soopers – and Albertsons – whose regional banners include Jewel-Osco, Safeway and Vons – together have about 5,000 supermarkets across 48 states.

Going into the deal, Kroger anticipated it would have to sell off stores in locations where the two chains competed head-to-head to appease the Federal Trade Commission and state regulators. Per the merger agreement, Kroger agreed to divest up to 650 properties and lined up C&S as the buyer.

Like many antitrust fights, market definition was key.

Kroger argued its grocery competitors nowadays go beyond traditional supermarkets to include retail behemoths like Walmart, Costco and Amazon. If Kroger could convince regulators to adopt such a broad view of the competitive landscape, perhaps divesting a few hundred stores might assuage their concerns that the merger would lead to higher prices for consumers.

At its first meeting with the FTC, Kroger proposed shedding just 238 stores, Albertsons said. Kroger subsequently offered to divest 413 stores to C&S, later upping the total to 541, then 579 outlets.

Albertsons argues this was the wrong approach, calling Kroger’s position “indefensible.” According to Albertsons, Kroger “squandered its credibility with regulators” by refusing to propose a viable divestment package, its lawyers from Williams & Connolly; Selendy Gay; Dechert; and Richards, Layton & Finger wrote in the Delaware complaint.

Albertsons also says Kroger shut it out of the “disorganized [and] protracted” process of selecting C&S as the purchaser, and that picking a wholesaler with a limited track record of running retail outlets “introduced new obstacles” for regulatory approval.

The FTC along with attorneys general from eight states and the District of Columbia sued to block the deal in 2024, while Colorado and Washington filed suits on their own.

Albertsons says it's owed a \$600 million contractual break-up fee since the merger failed to close by the outside date set in the agreement, plus additional damages.

Under the terms of the merger agreement, Kroger was in charge of antitrust regulatory strategy, while Albertsons was obliged to cooperate and support the effort. Kroger faults Albertsons for allegedly engaging in "secret communications" with C&S, urging it to tell regulators it needed more stores from Kroger to compete effectively post-merger, Kroger counsel from Weil Gotshal & Manges and Ross Aronstam & Moritz wrote.

Offering to divest more assets is of course one way to mitigate antitrust concerns, but here, Kroger said Albertsons' rogue strategy backfired, making regulators believe C&S was "a weak buyer that would not be an effective competitor regardless of the number of stores it received."

Kroger also alleges Albertsons manufactured a "faux litigation record" of "lawyer-crafted letters" so it would be ready to sue its would-be partner for billions of dollars if the merger failed to close. To bolster the allegations, Kroger notes that shortly after court decisions enjoining the merger were issued, Albertsons moved to terminate the deal and sued Kroger in Delaware for damages.

"No doubt capable counsel represents Albertsons, but even they could not draft a 140-page complaint in a few hours," Kroger said.

Was having a complaint ready to go nefarious? Or just advance planning?

The Delaware court will decide this and other questions in weighing whether the union was ever meant to be, with a possible trial late next year or early 2027.

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Jenna Greene writes about legal business and culture, taking a broad look at trends in the profession, faces behind the cases, and quirky courtroom dramas. A longtime chronicler of the legal industry and high-profile litigation, she lives in Northern California. Reach Greene at jenna.greene@thomsonreuters.com

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MARKETS & FINANCE | STOCKS

CoreWeave Stock Bounces on First Day of Trading After Scaled-Back IPO

Company's highly anticipated initial public offering started trading at \$39, a high-profile stumble for both the AI industry and new public listings

By [Corrie Driebusch](#) [Follow](#) and [Deepa Seetharaman](#) [Follow](#)

Updated March 28, 2025 2:37 pm ET



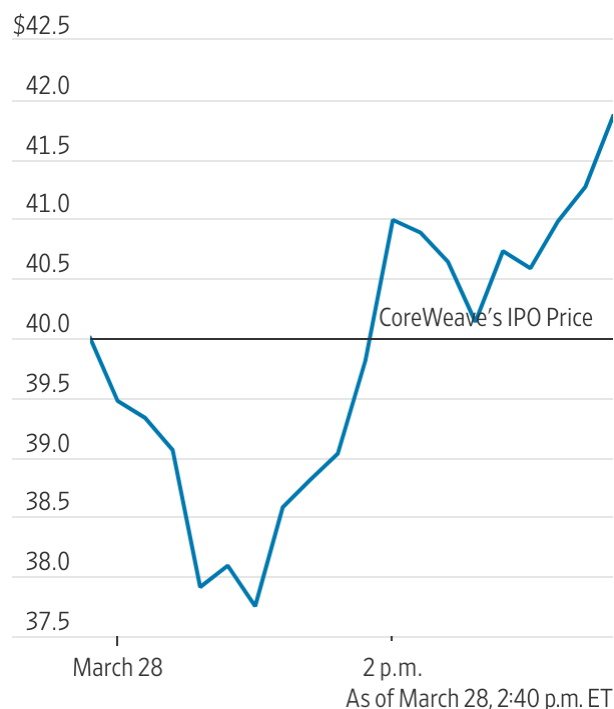
CoreWeave CEO Michael Intrator commemorated the start of the trading day Friday. PHOTO: MICHAEL NAGLE/BLOOMBERG NEWS

It was supposed to be one of the splashiest IPOs of the year. Now [CoreWeave's](#) CRWV **0.00%** ▲ stock-market debut is turning into a high-profile stumble for both the AI industry and new public listings.

The startup that rents out access to [Nvidia](#) chips priced its initial public offering below expectations late Thursday and then opened even lower on Friday, a sign

of [flagging investor enthusiasm](#) for artificial-intelligence companies as well as the chilly state of the [U.S. market for new listings](#).

CoreWeave shares on their first day



Source: FactSet

Later Friday, the stock had climbed above the original IPO price of \$40, but remained lower than the company had been hoping.

That is a sharp contrast from just last year. Investor mania for all things AI drove up shares of Nvidia, making the chip maker the world's [most valuable publicly traded company](#) for the first time (a title it has since ceded). CoreWeave raised money in May at a \$19 billion valuation, nearly triple its price just five months prior. Its backers include OpenAI and Fidelity.

The sheen has since worn off. The New Jersey-based company priced its offering at \$40 a share, well below the \$47 to \$55 range it was targeting for a fully diluted valuation of up to \$32 billion. The lowered price reflects a valuation of approximately \$23 billion. The company also sold fewer shares than planned.

“Obviously there are macro headwinds, AI headwinds,” said Chief Executive Mike Intrator. “Everybody likes a higher price. But at the end of the day we IPO’d.”

Friday, CoreWeave opened for trading even lower at \$39 before rising above \$40. The stock is listed on the Nasdaq stock exchange under the symbol CRWV.

Investors pushed back on the price tag during CoreWeave’s IPO roadshow, citing the company’s high costs and debt load. The uncertainty echoes the broad concerns many hold about the sustainability of the AI boom, for which the world’s biggest companies are [spending hundreds of billions of dollars](#).

Some of the issues are specific to CoreWeave's business, including its concentrated customer base. [Microsoft](#) accounted for nearly two-thirds of the company's revenue in 2024.

CoreWeave operates a network of data centers that house the chips and equipment the company rents out to clients, who in turn create and deploy AI systems. The company brought in \$1.9 billion in revenue in 2024, yet still lost \$863 million, due in part to high operating expenses.

Its business took off in 2023 when AI startups were taking [any route possible](#) to obtain specialized graphics chips, or GPUs, that companies use to build and train AI systems that they then sell to companies. One founder at the time compared looking for GPUs to hunting for "[toilet paper during the pandemic](#)."

The supply shortage has since subsided, and companies say it is comparatively easy to buy the required chips. Renting a GPU for an hour cost about \$5.50 in mid-2023; it's now \$1.55, said Evan Conrad, chief executive of San Francisco Compute, a market for GPUs.

CoreWeave's IPO pricing is likely to disappoint a host of private companies that had been considering U.S. listings.

Bankers had hoped 2025 would be a return to normal for the IPO market after many private companies refrained from going public the last three years. Ticketing marketplace StubHub and fintech company Klarna are among those waiting in the wings with springtime IPO plans. Chime Financial and Medline Industries are also expected to go public later this year. A poor showing by CoreWeave could delay—or derail—their plans.

It isn't the first big IPO that hasn't lived up to expectations this year.

In January, gas exporter Venture Global [slashed its price](#) by more than 40% from its initial goal in the biggest offering of the year. Its shares still fell in opening trading. At the time, bankers told clients the poor showing was company-specific and not reflective of broader investor demand for new listings.

The second biggest IPO of the year, cybersecurity firm [SailPoint](#), also fell in its stock-market debut last month.

Both SailPoint and Venture Global stocks remain below their IPO prices, meaning if investors bought shares in those offerings they are sitting on big losses.

Stock-market volatility isn't helping. Swings in the broader stock market make it tricky for investors to value companies. The up-and-down could give companies cold feet, by sapping confidence about their business prospects.

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Adobe Beats Class Action Over Alleged Competitive Threats

By **Katryna Perera**

Law360 (March 28, 2025, 8:48 PM EDT) -- A New York federal judge has tossed a securities class action against Adobe Inc. alleging that the software company and its top brass misled shareholders about the competitive threat Adobe's products faced from a user experience design tool developed by another company, saying the investors have failed to plead any actionable misstatements or knowledge of wrongdoing.

U.S. District Judge John G. Koeltl issued an **opinion and order** on Thursday agreeing with Adobe and the individual defendants that the operative complaint fails to plead any actionable misstatements or omissions.

According to the opinion, the plaintiffs point to statements made by the defendants during the proposed class period that allegedly downplayed competition from Figma Inc. — the creator of the UI/UX design tool at the heart of the suit — promoted Adobe's rival product, Adobe XD, as successful and viable and misled investors about the extent of Adobe's merger and acquisition plans.

The investors first alleged that Figma posed a "serious risk" to both Adobe XD and other Adobe products and that the defendants made statements minimizing the risk of the competition. However, Judge Koeltl found Thursday that the investors failed to allege that any of the statements were false or misleading.

"The plaintiffs fail to allege that competition from Figma caused Adobe's premier products any lost sales or decline in revenue and the plaintiffs conceded at the argument of the current motion that they did not point to any concrete losses," the opinion states.

"In light of the absence of tangible harm resulting from increased competition, 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," the opinion further states.

The investors also do not specify any statements where the defendants specifically downplayed the threat that Figma Design posed to Adobe XD, the judge noted, and the defendants also did not pose the threat as hypothetical.

The investors also claimed that the defendants misleadingly promoted AdobeXD's viability and success, even though Adobe had decided to deprioritize and discontinue the product. But the judge agreed with the defendants' argument that to the extent the statements represented facts, they were "truthful and accurate" and therefore inactionable.

"That Adobe made the business decision to deprioritize Adobe XD did not render its choice to continue to promote an existing product misleading," the judge added.

Finally, the investors claimed that statements about Adobe's merger and acquisition plans were misleading because they implied that the company would pursue "organic growth" instead of larger mergers, while at the same time, Adobe was actively negotiating a \$20 billion acquisition of Figma.

However, Judge Koeltl noted that although Adobe "endorsed organic growth," it did not entirely rule out M&A deals.

"Although the defendants endorsed organic growth, they declined to rule out M&A activity — whether large or small — even going so far as to declare that they would 'burn calories to acquire those assets' that they considered valuable and worthwhile," the opinion states.

Judge Koeltl also dismissed the suit for inadequate pleadings of scienter. The investors did not offer any support for their claims that the individual defendants' stock sales during the class period were "unusual," and he rejected their claim that Adobe itself sought to inflate its stock price to fund its acquisition of Figma because according to the complaint, Adobe embarked on the alleged scheme "long before" the contemplated merger.

The operative complaint, filed last year, alleges that Adobe and the defendants downplayed the competitive risk Figma Design posed to Adobe XD and its other products, and when Adobe decided to purchase Figma in September 2022 for \$20 billion, its stock price fell by 17% and continued to drop over the following days.

"Analysts responded poorly to news of the planned acquisition, with some analysts observing that 'the steep valuation [of Figma] ... suggests that Figma was a formidable competitive threat' and that the deal 'appears more defensive than offensive,'" the opinion states.

Regulators also expressed concern that the deal might stifle competition in the market for digital design applications, and the United Kingdom Competition and Markets Authority launched an investigation, concluding "that the proposed transaction would harm competition in the global market for all-in-one product design software," according to the opinion.

In December 2023, the opinion states that Adobe and Figma terminated the proposed transaction amid speculation that the U.S. Department of Justice might move to block the merger, and the deal's termination caused Adobe's stock price to rise, according to the opinion.

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

The investors are represented by Jeremy A. Lieberman, Emma Gilmore, Villi A. Shteyn, Orly Guy and Eitan Lavie of Pomerantz LLP, and Samuel H. Rudman, Robert M. Rothman, Joseph Russello and T. Alex B. Folkerth of Robins Geller Rudman & Dowd LLP.

Adobe and the other defendants are represented by Andrew Clubok, Kevin McDonough, Jooyoung Yeu, Corey Calabrese and Brent Murphy of Latham & Watkins LLP.

The case is *Pembroke Pines Firefighters & Police Officers Pension Fund et al. v. Adobe Inc. et al.*, case number 1:23-cv-09260, in the U.S. District Court for the Southern District of New York.

--Editing by Vaqas Asghar.



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Del. Corporate Law Rework Might Upend Over 3 Dozen Cases

By **Jeff Montgomery**

Law360 (March 28, 2025, 7:22 PM EDT) -- Legislation pushed through Delaware's General Assembly last week has called into question dozens of corporate law precedents, including some of the state's most important, according to a Columbia Law School professor and researcher.

The measure, S.B. 21, whisked through the Legislature in 37 days, buoyed by warnings that some of the state's largest corporate residents had started or were thinking about rechartering in other states, particularly Texas and Nevada — jurisdictions now touting themselves as more business-friendly.

Lawmakers approved the overhaul in lopsided House and Senate votes soon after its introduction, with Democratic Gov. Matt Meyer, whose call for action triggered drafting of the bill and its rushed vote, signing hours later.

"Delaware has changed itself in a pretty significant way to be much more controller-friendly," said Eric L. Talley, an Isidor and Seville Sulzbacher professor at Columbia Law School.

Critics argued the changes lowered guardrails around insider deals and narrowed avenues for stockholder challenges in a state where two-thirds of the nation's Fortune 500 companies are chartered. The measure nevertheless drew heavy support from Democrats and Republicans alike in both chambers, at a time typified by partisan friction.

"Our corporations really want more certainty that Delaware will remain balanced and predictable," said Republican House Minority Leader Timothy D. Dukes, whose district lies in the deeply conservative southwestern part of the state.

"We have the best business court in the nation. We want the Court of Chancery to continue to adjudicate the most important and complicated cases," said House Judiciary Committee chair Krista Griffith, an attorney. "Our corporations really want more certainty that Delaware will remain balanced and predictable."

The legislation — which also limited stockholder books-and-records access rights — followed an estimate by Talley that the changes would overturn at least 36 important corporation law decisions by Delaware's courts, including *Kahn v. M&F Worldwide* in 2014.

Kahn, considered landmark precedent, required approval of conflicted deals from the start by independent directors and an independent stockholder majority.

Also unwound: *In re Match Group Inc. Derivative Litigation*, a 2024 decision that required double, unanimous independent special committee approval as well independent stockholder approval for all transactions with controlling stockholders.

And Talley also identified *In Re Tesla Motors Inc. Shareholder Litigation*, a 2023 decision that required a combined, "holistic" analysis of fair price and process that takes into account the timing, initiation, structure, negotiation and disclosure of deal terms, as well as other details.

Delaware Supreme Court Rulings Nullified By S.B. 21

At least 36 Delaware Supreme Court corporation law precedents, including books-and-records access rulings, are expected to be nullified under newly enacted Delaware General Corporation Law provisions signed by the governor on March 25, according to Columbia Law School professor Eric L. Talley. "Likely many more" Court of Chancery decisions were likewise nullified, the professor said.

- *Americas Mining Corp. v. Theriault*
- *Appel v. Berkman*
- *Basho Techs. Holdco B LLC v. Georgetown Basho Invs. LLC*
- *Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Holdings LLC*
- *City of Dearborn v. Brookfield Asset Mgmt*
- *City of Sarasota v. Inovalon Holdings*
- *Corwin v. KKR Fin. Holdings LLC*
- *Del. Cty. Employees v. Sanchez et al.*
- *Emerald Partners v. Berlin*
- *Flood v. Synutra Int'l Inc.*
- *In re Kraft Heinz Co. Derivative Litig.*
- *In re Match Group Inc. Deriv. Litig.*
- *In re Tesla Motors Inc. S'holder Litig.*
- *Kahn v. M & F Worldwide Corp.*
- *Kahn v. Stern*
- *Kahn v. Tremont Corp.*
- *Levco Alternative Fund Ltd. v. Reader's Dig. Ass'n Inc.*
- *Maffei v. Palkon*
- *Marchand v. Barnhill*
- *Mills Acquisition Co. v. Macmillan Inc.*
- *Morrison v. Berry*
- *Olenik v. Lodzinski*
- *Rosenblatt v. Getty Oil Co.*
- *Sandys v. Pincus*
- *Stroud v. Grace*
- *Swomley v. Schlecht*
- *Weinberger v. UOP Inc.*

Section 220 books-and-records cases

- *AmerisourceBergen Corp. v. Lebanon Cnty. Employees' Ret. Fund*
- *KT4 Partners LLC v. Palantir Techs. Inc.*
- *NVIDIA Corp. v. City of Westland Police & Fire Ret. Sys.*
- *Saito v. McKesson HBOC Inc.*
- *Seinfeld v. Verizon Communications Inc*
- *Thomas & Betts Corp. v. Leviton Mfg. Co.*
- *Tiger v. Boast Apparel Inc.*
- *Wal-Mart Stores Inc. v. Indiana Elec. Workers*

Some watching the legislative process in Delaware cautioned after the vote that the changes diminish some key state advantages as a corporate hub, while others saw them as lowering shields against "moral hazards" that directors and controllers face when confronted with conflict-tainted decisions.

"Nevada and Texas are actively in the game and, paradoxically, from some aspects, this S.B. 21 might actually make it easier for some companies to reincorporate," said Michal Barzuza, a law professor and director of the University of Virginia's John W. Glynn Jr. Law & Business Program.

Interest in alternatives to Delaware are likely to arise "not only from controlling shareholders, but from board members who are interested in more protections," Barzuza said, noting she had hoped state lawmakers would have adopted an "opt-in" amendment rather than making a blanket change.

Passage of the bill followed intense corporate bar pushback against recent big awards and hefty attorney fees in stockholder suits challenging corporate deals, including after the Court of Chancery's strikdown of Elon Musk's \$56 billion, 10-year compensation plan and a \$176 million fee awarded to attorneys who won a suit challenging Tesla director pay as excessive.

Lawrence A. Hamermesh, a professor emeritus at Widener University Delaware Law School and former executive director of the Institute for Law and Economics at the University of Pennsylvania Carey Law School, said the legislative amendments approved on March 25 would require "substantial and particularized facts" to rebut the presumption of director independence, "which has long existed in our law."

Columbia's Talley said in an interview that he believed the United States itself "has started to look less and less" attractive to outside capital investment.

"U.S. federal policy has kind of whipsawed investors in ways you can see in the markets," Talley said. "It does strike me as odd that the state that has the monopoly has decided to put it at risk. It might end up proving to be a good bet. It might end up being an awful bet."

"There are a lot of unknown unknowns. As an academic, I'm kind of fascinated. The General Assembly and governor seemed unconcerned. There's almost certainly going to be a constitutional challenge," he added.

Apart from constitutional risk, Talley said "[t]he real question, which I think a lot of people were trying to think through, concerns, 'How is this going to affect the overall landscape for the corporate chartering business, which Delaware has had roughly a monopoly on for the last 60 years?'"

Among other provisions, S.B. 21 created new "safe harbor" protections for controlling stockholders even if conflicted, and lowered some hurdles for securing independent stockholder approval of otherwise conflicted deals. Also approved were changes limiting stockholder rights to some corporate documents.

Unintended consequences, some have warned, are likely to follow.

"I don't hear defenders of the law arguing that this will keep people honest. They're implicitly saying that Delaware should tolerate a certain level of predictable misconduct as the price of keeping Delaware competitive," said Mark Lebovitch, a former stockholder rights attorney and adjunct professor at the University of Pennsylvania Carey School of Law.

"Now the question is: How aggressively will conflicted fiduciaries overreach because the hurdles to misconduct are being lessened, and how long before people say, 'This is over the top,'" Lebovitch said, adding: "With a new law that eases the ability to game the system while avoiding judicial scrutiny, either the judiciary will have to interpret loopholes in order to prevent egregious misconduct, or we may see investor or even congressional backlash."

Benjamin P. Edwards, a professor at the University of Nevada, Las Vegas, William S. Boyd School of Law, said: "It likely just became much easier to raise money if you're a Delaware state legislator."

Edwards observed that "the plaintiffs' bar can donate plenty of money" in support of their views. "If they haven't already, I expect the leaders of the Delaware plaintiffs' bar are about to start talking internally about the need to recruit and support quality state legislative candidates that understand the importance of investor protection."

For proxy advisers and institutional investors favoring Delaware, Edwards said, "the investor protection benefits of Delaware appear weaker today as the dial shifts to allow greater freedom for managers and controlling shareholders."

Mark D. Richardson, a Labaton Keller Sucharow LLP partner in the firm's Delaware office, said

lawmakers first flexed their muscles in 2024 when they quickly passed legislation that allows corporations to grant some governance rights to stockholders after the Court of Chancery invalidated similar provisions in *West Palm Beach Firefighters' Pension Fund v. Moelis & Co.*

"Then they're back less than a year later and overturning things that corporations, controllers and private equity didn't like," Richardson said. He noted that some provisions of S.B. 21 adopted business-favored changes limiting requirements for "enhanced" dual protections for conflicted deals obliging approval by both an independent board special committee and an unaffiliated stockholder committee.

In addition, the same bill also changed the requirement for approval of a transaction with a corporate controller or other fiduciary without judicial review to approval by an unconflicted majority of a special committee of the board or a majority vote of unconflicted directors.

"The passage of SB 313 and SB 21 in quick succession and in direct response to recent rulings sends a pretty clear message: Plaintiffs aren't allowed to win challenges to conflicted transactions, even where a court has found someone lacks independence or there was a material process flaw," Richardson said. "The corporate bar is basically telling the court that if you do something we don't like, we will go to the governor and the Legislature and fix it. That is not a fair or viable legal system and poses a great risk to the Delaware franchise."

--Graphics by Ben Jay. Editing by Philip Shea.

Correction: A previous version of this story included an incorrect description of some changes in S.B. 21. The error has been corrected.



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What Del. Corporate Law Rework Means For Founder-Led Cos.

By **Andrew Garelick, Nathaniel Sussman and Cy Emeka Ray** (March 28, 2025, 2:59 PM EDT)

S.B. 21, which **passed** in the Delaware General Assembly and was signed into law on March 25, garnered national attention and an enormous volume of commentary. Through amendments to the Delaware General Corporation Law, S.B. 21 attempts to address a number of perceived issues that have emerged in Delaware case law on corporate governance.

We examine several of S.B. 21's most significant provisions and discuss their likely impact on corporate governance in the context of founder-led public companies.

Key Provisions of S.B. 21

S.B. 21 updates the DGCL primarily in two areas: (1) navigating transactions with insiders and controlling stockholders under Section 144, and (2) responding to stockholder books-and-records requests under Section 220. The key amendments include the following.

Limiting Controlling Stockholders' Monetary Liability

Prior Framework

A line of Delaware cases indicates that controlling stockholders may owe a fiduciary duty of care to the corporation and its stockholders when the controller exercises voting rights in a manner that changes the corporation's status quo.[1]

Amendment

S.B. 21 provides that a controlling stockholder, acting in such capacity, cannot be liable to the corporation or its other stockholders for monetary damages for a breach of fiduciary duty other than where the controlling stockholder (1) breaches the duty of loyalty; (2) acts or fails to act in a manner that constitutes bad faith, intentional misconduct or a knowing violation of law; or (3) derives an improper personal benefit from a transaction.

This effectively absolves controlling stockholders from monetary liability for breaching a fiduciary duty of care unless there is a showing of particularly egregious conduct.

Expanding Section 144's "Safe Harbor" to Cover Controlling Stockholder Transactions

Prior Framework

Section 144 of the DGCL provides a safe harbor for transactions involving conflicted directors or officers if the transaction receives appropriate cleansing approvals or is adjudged to be fair to the corporation. Conflicted transactions can be cleansed by the approval of an informed majority of the corporation's disinterested directors acting in good faith, or by an informed majority of the



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corporation's disinterested stockholders.

If a conflicted transaction satisfies any of the foregoing conditions, Section 144 requires courts to review it under the highly deferential business judgment rule. Previously, the DGCL did not expressly address situations in which a corporate transaction involved a conflicted controlling stockholder.

Delaware case law recognized that conflicted controlling stockholder transactions could benefit from business judgment rule protection if the transaction received appropriate cleansing approvals or was fair to the corporation, but the procedure for cleansing such a transaction — known as the MFW framework, derived from the Delaware Supreme Court's 2014 decision in *Kahn v. M&F Worldwide Corp.* — was strenuous compared to Section 144.[2]

The MFW framework required that the transaction be approved by both (1) a committee of the corporation's board comprising a majority of disinterested directors, with specific authority to negotiate the transaction; and (2) an informed majority of the corporation's disinterested stockholders.

Amendment

S.B. 21 explicitly extends the safe harbor under Section 144 to cover transactions involving conflicted controlling stockholders, and provides that generally, following either of the MFW framework's two procedural prongs is sufficient for the business judgment rule to apply. This aligns the cleansing approvals applicable to conflicted controlling stockholder transactions more closely with those previously applicable to transactions involving conflicted directors or officers.

An exception exists for going-private transactions, where business judgment rule protection continues to require both of the MFW framework's procedural prongs.

Defining "Controlling Stockholders"

Prior Framework

The DGCL did not previously define "controlling stockholders." In cases where corporations had large stockholders with less than a majority of voting power, there was a lack of clarity on whether the corporation should treat such stockholders as controlling and apply the MFW framework to ensure that transactions involving such stockholders received business judgment rule protection. Courts exercised significant discretion to decide whether a corporate transaction involved a controlling stockholder — and therefore the appropriate standard of review — on an after-the-fact, case-by-case basis.

For example, the Delaware Court of Chancery held in *FrontFour Capital Group LLC v. Taube CA* in 2019 that two brothers were controlling stockholders, even though they jointly owned less than 15% of the corporation and were subject to "echo voting" requirements mandating that they vote their shares proportionally with other stockholders.[3]

Amendment

S.B. 21 specifically defines when a corporation has a controlling stockholder, so that this fact, and the procedural guidelines and judicial standard of review for a proposed transaction, can be identified and addressed in advance. S.B. 21 amends Section 144 to define a "controlling stockholder" as a stockholder who, together with their affiliates and associates, (a) owns or controls a majority of the corporation's outstanding voting power; or (b) has "power functionally equivalent" to a stockholder with majority voting power by virtue of owning or controlling at least one-third of the corporation's outstanding voting power, and "power to exercise managerial authority" over the corporation's business and affairs.

If a stockholder falls below both thresholds, their interest in a corporate transaction will not trigger entire fairness review or the requirement for cleansing approvals; rather, the transaction will remain in "duty-of-care land" and be subject to business judgment rule protection.

Defining "Disinterested" Directors and Stockholders

Prior Framework

The DGCL did not previously define "disinterested" directors or stockholders. The effectiveness of a corporation's cleansing procedures, and therefore the standard of review applicable to conflicted transactions, depends on the informed approval of such persons.

Amendment

S.B. 21 defines "disinterested directors" as those who are not parties to a corporation's act or transaction, and do not have a "material interest in the act or transaction or a material relationship with a person" who has such an interest. It defines "disinterested stockholders" as those who do not have a "material interest in the act or transaction or a material relationship" with a person who has such an interest.

S.B. 21 also expressly provides that (1) a director who is not a party to a corporate transaction will be presumed disinterested if the board makes a determination to this effect; (2) a director who is not a party to a corporate transaction will be presumed disinterested if the director meets the criteria to be an independent director according to a national securities exchange on which the corporation is listed; and (3) a director's nomination or election to the board by an interested stockholder will not, by itself, constitute evidence that the director has an interest in a transaction.

Limiting the Scope of Books-and-Records Requests

Prior Framework

Section 220 of the DGCL provides that stockholders have the right to inspect a corporation's books and records. Previously, stockholders were only required to show that they had a "proper purpose" to exercise this right.

The DGCL did not define "books and records" or "proper purpose." As a result, potential plaintiffs and attorneys have frequently used Section 220 as a tool to search for opportunities to challenge corporate actions with the benefit of retrospect, including by demanding to review broad categories of material such as directors' and officers' emails and text messages in a manner that could prove overly burdensome.

Amendment

S.B. 21 restricts stockholders' access to a corporation's books and records in several respects, including the following.

1. It defines "books and records" as a list of specific materials, including organizational documents, meeting minutes, materials provided to directors in connection with board or committee actions, and financial statements and communications with company stockholders for the preceding three years, among other things;
2. It requires the stockholder's demand to describe, "with reasonable particularity," their purpose and the records they wish to inspect; and
3. It mandates that the books and records sought be "specifically related" to the stockholder's purpose.

In the event a corporation fails to maintain certain records, such as financial statements or board meeting minutes, S.B. 21 permits stockholders to demand access to a broader set of materials.

Key Takeaways for Founder-Led Corporations

Founder-led corporations, which often involve entrepreneurs who are both large stockholders and management-level insiders, stand to be affected by S.B. 21 in various ways.

Given the steadily increasing popularity of founder-led public companies over the past two decades,

and the disproportionately high contributions of such companies to the valuations of major U.S. indices, we review several key takeaways of S.B. 21 from the perspective of these companies in particular.

Directors and Officers Continue to Have Fiduciary Duties

Directors and officers of a Delaware corporation continue to have fiduciary duties to the corporation and its stockholders, regardless of whether the director or officer is also a controlling stockholder. Nothing in S.B. 21 changes that fact.

When a founder is a director and/or an officer of their company, and the company engages in an act or transaction in which the founder has a conflict, Section 144's safe harbor will apply only if appropriate cleansing procedures are followed or the transaction is fair to the company. If the founder is not also a controlling stockholder, appropriate cleansing procedures include approval by the corporation's disinterested directors or disinterested stockholders.

Many Founders Continue to Be Controlling Stockholders

S.B. 21's bright-line controlling stockholder standard excludes stockholders — including those with large holdings — if they neither control a majority of the stockholder vote nor exercise managerial authority in a corporation.

In practice, this exclusion will likely benefit institutional and passive investors more than active corporate founders, who continue to qualify as controlling stockholders if they hold majority voting power or voting power greater than 33.33%, the latter of which is sufficient to be a controlling stockholder if the founder also has managerial authority.

There are many examples of public-company founders whose stockholder voting power exceeds these thresholds, whether through the application of multitiered capital structures or otherwise.

Procedural Requirements for Controlling Founder Transactions Are Simpler and Clearer

When a corporation engages in an act or transaction involving a founder who is a controlling stockholder, the requisite cleansing procedures under Section 144 will generally include approval by a disinterested and duly empowered board committee or the corporation's disinterested stockholders. For take-private transactions, the requisite cleansing procedures will require the approval of both constituencies.

S.B. 21 thereby simplifies and clarifies the procedural requirements for conflicted controlling founder transactions in at least three respects.

First, the bright-line definition of "controlling stockholders" provides certainty as to when Section 144's heightened procedural requirements — such as forming a special board committee — are necessary.

Second, it makes the requisite cleansing procedures less onerous compared to the status quo, because many transactions would only need to satisfy one of the MFW framework's two procedural prongs.

Third, it defines when directors and stockholders are disinterested for purposes of obtaining cleansing approvals, including by expressly stating that a controlling founder's appointment of a director to the board, on its own, is not disqualifying.

Founders' Monetary Liability for Stockholder Actions Is Limited

Founders often wield significant power, and sometimes controlling power, when acting in their capacity as voting stockholders. S.B. 21 expressly limits the remedies that can be sought against founders who act in a controlling stockholder capacity, foreclosing recent uncertainty that has arisen under Delaware case law.

Absent a showing that the founder breached their duty of loyalty, acted in bad faith, obtained an

improper personal benefit, or engaged in intentional misconduct or a knowing violation of law, the DGCL empowers them to exercise their stockholder vote in their sole discretion without monetary liability for a breach of the duty of care to the corporation or its other stockholders.

Concluding Thoughts

S.B. 21 is now law. Although the bill's specific amendments to the DGCL have proven somewhat divisive, one of its basic purposes is to provide greater clarity and predictability in the rules that apply to director, officer and stockholder conduct in a variety of circumstances.

This is not only laudable but also consistent with Delaware's historical practice of reviewing and revising its corporate law to be responsive to stakeholder demands and practical realities. Founder-led corporations share certain characteristics that may be particularly relevant to S.B. 21's reforms, and individual companies should assess how their governance practices are likely to be affected.

Andrew D. Garelick is a partner, and Nathaniel F. Sussman and Cy Emeka Ray are associates, at Munger Tolles & Olson LLP.

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[1] See [In re: Sears Hometown & Outlet Stores Inc. S'holder Litig.](#) , 309 A.3d 474, 512 (Del. Ch. 2024) ("when exercising voting power affirmatively to change the status quo, a controlling stockholder owes . . . a fiduciary duty of care that requires that the controller not harm the corporation or its minority stockholders through grossly negligent action").

[2] MFW refers to the Delaware Supreme Court's decision in [Kahn v. M&F Worldwide Corp.](#) , 88 A.3d 635 (Del. 2014), which established that transactions involving a controlling stockholder can qualify for business judgment rule protection — rather than being subject to the stricter entire fairness review—if they meet two procedural safeguards: (1) approval by an independent, adequately empowered special committee; and (2) an uncoerced and informed majority-of-the-minority stockholder vote.

[3] [FrontFour Capital Grp. LLC v. Taube](#) , C.A. No. 2019-0100, 2019 WL 1313408, at *21 (Del. Ch. Mar. 22, 2019).

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DXC Technology Dodges Investor Suit Over Integration Issues

By **Katryna Perera**

Law360 (March 28, 2025, 3:08 PM EDT) -- A Virginia federal judge has tossed an investor suit alleging that DXC Technology Co. and its top brass overhyped efforts to reduce restructuring and integration costs after acquiring several companies, finding that the plaintiffs failed to adequately allege any actionable false statements or knowledge of wrongdoing by the individual defendants.

U.S. District Judge Anthony J. Trenga issued an **opinion and order** on Thursday agreeing with DXC that the investors have failed to plead any actionable misstatements or omissions and that many of the challenged statements in the operative complaint are puffery or forward-looking.

The judge found that a group of statements concerning DXC's plans to reduce "transition, separation, and integration" expenses in the future were all forward-looking, especially because DXC did go on to significantly cut those expenses, as acknowledged in the complaint.

Another group of statements about the status of reducing transition, separation and integration costs with "vague references" to future plans to continue cost-cutting efforts was also tossed as inactionable, along with a group of statements that DXC was wrapping up integration projects "correctly," according to the order.

"A vast majority of these statements are loosely optimistic statements that are so vague, so lacking in specificity, or so clearly constituting the opinions of the speaker, that, if not within the [Private Securities Litigation Reform Act's] safe harbor, no reasonable investor could find them important to the total mix of information available," the order states. "Moreover, many of them are also true."

Judge Trenga also found that the investors failed to plead scienter. The judge said the complaint does not suggest a "compelling reason" for the defendants to commit fraud since DXC initiated a billion-dollar stock repurchase during the class period, and there are no allegations of insider stock sales or any other malicious motive for committing the alleged fraud.

Additionally, the judge noted that while there is "no doubt" that DXC was not fully integrated, the individual defendants also never told investors that the company was fully integrated.

"It is also undisputed that during the class period DXC saw improvements to its [free cash flow] and revenue, and within the context of the company's overall performance, the former employee statements, statements of integration progress, or comments about the success of integration do not sufficiently establish a 'strong inference' of scienter," the order states.

In a statement to Law360 on Friday, Jamie Wine of Latham & Watkins LLP, counsel for the defendants, said: "We are gratified by this good win for a great client. The court got it right in finding that the plaintiff's allegations fail on both the facts and the law, and in dismissing this meritless case without leave to amend."

Counsel for the investors did not immediately respond to requests for comment Friday.

The suit, most recently amended in December after consolidation, alleged DXC and its executives made misleading statements regarding the company's ability to integrate the business systems of the numerous companies it has acquired over the past several years.

The complaint alleged that in 2024, DXC's new CEO, Raul Fernandez, who is not a defendant in the suit, admitted that previous restructurings did not set a fully integrated baseline for profitable growth because the systems acquired over time were "never integrated, never deduped," and acknowledged that the company was "not [a] fully functional organization."

DXC stock prices plunged from \$19.88 to \$16.52 per share as the news broke, according to the suit.

But the defendants **argued** in their dismissal motion that they "did their best" to restructure the company amid the complex transactions and that Fernandez's analysis of these efforts did not suggest fraud.

The investors are represented by Susan R. Podolsky of Law Offices of Susan R. Podolsky, and Jennifer L. Joost, Richard A. Russo Jr., Nathan A. Hasiuk, Austin W. Manning, Lyndsey B. Campbell of Kessler Topaz Meltzer & Check LLP.

DXC and the individual defendants are represented by Stephen P. Barry, Jamie L. Wine, Kevin M. McDonough, Melange T. Gavin, Nicholas Rosellini and Genevieve Zimmerman of Latham & Watkins LLP.

The case is In re DXC Technology Company Securities Litigation, case number 1:24-cv-01351, in the U.S. District Court for the Eastern District of Virginia.

–Additional reporting by Sydney Price. Editing by Amy French.

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GM's Cruise Must Face Trimmed Securities Fraud Suit

By **Linda Chiem**

Law360 (March 28, 2025, 8:48 PM EDT) -- A Michigan federal judge on Friday trimmed a proposed class action alleging General Motors and its self-driving car unit Cruise LLC misrepresented the technological capabilities of its autonomous vehicles, but said the investor plaintiffs plausibly alleged that some Cruise executives made recklessly false statements.

U.S. District Judge Shalina D. Kumar partly granted GM's **motion to dismiss** certain claims in a securities fraud suit from investor plaintiffs led by the Hollywood Police Officers' Retirement System and the Plymouth County Retirement Association, keeping alive claims against Cruise and its former top executives.

The investor plaintiffs filed suit following an October 2023 accident involving a San Francisco pedestrian who was struck by another vehicle, then subsequently hit and dragged by a Cruise AV for 20 feet. In the aftermath, Cruise's operating permits in the Golden State were **suspended** and regulators hit the company with fines after learning that Cruise **withheld crucial information** and video footage of the accident. The investor plaintiffs alleged they suffered substantial losses after the truth about Cruise's AVs and the pedestrian accident came to light.

Judge Kumar **determined Friday** that GM consistently explained that "fully driverless" and "fully autonomous" meant that Cruise's AVs operated without a human safety driver in the vehicle, so the investor plaintiffs haven't sufficiently alleged that such statements were outright false.

"In sum, reasonable investors would have interpreted the 'fully driverless' statements to mean that Cruise AVs could drive without a safety driver in the vehicle, and nothing plausibly shows that they would have interpreted such statements to mean that Cruise AVs could operate without human input," Judge Kumar said.

Additionally, the judge said the plaintiffs didn't have enough facts supporting their allegation that certain executives falsely stated that Cruise AVs were "safer than a human driver."

"Even if the court assumed that 'safer than a human driver' meant that Cruise AVs drove more safely than human drivers based on both 'safe driving behavior' and 'safe driving results,' the complaint contains no allegations allowing a comparison of the driving behavior and driving results between Cruise AVs and human drivers," Judge Kumar said. "Although the complaint provides details about how Cruise AVs tend to drive 'erratically,' it is entirely plausible that human drivers drive just as erratically in the same or different ways."

However, the investor plaintiffs can forge ahead with their claims that former Cruise CEO Kyle Vogt and former Cruise COO Wayne G. West misrepresented the level of autonomy that Cruise AVs actually had.

The National Highway Traffic Safety Administration, the nation's auto safety regulator, carmakers and developers of autonomous vehicle technology follow standards set by the engineering organization SAE International defining six tiers of vehicle automation. They range from Level 0, with no automation, to Level 5, with full vehicle autonomy.

The investor plaintiffs alleged the executives touted Cruise AVs as having Level 4 autonomy — "recklessly disregarding the statements' falsity" — when the AVs didn't even meet Level 4 technical requirements because they would frequently fail in the middle of traffic, block emergency vehicles, require physical retrieval, and stall out on roads.

"The allegations provide a picture of Vogt as manager who knew 'every inch' of Cruise's AV technology progress, keeping apprised in multiple ways of specific details regarding the nature and extent of Cruise AV remote assistance, failures and malfunctions, and risky driving behavior," Judge Kumar said.

"The allegations collectively and cogently show that he directed Cruise 'off course' — by either ignoring or refusing to acknowledge numerous signs that Cruise AVs frequently both relied on remote operator intervention and executed improper [dynamic driving tasks] fallbacks, while attempting to minimize his employees' and the media's concerns about these deficiencies and to protect from scrutiny a technology that was key to both Cruise and GM," the judge continued.

West was also deeply involved in and intimately knew about Cruise's AV technology and operations, Judge Kumar noted.

"As Cruise's COO who paid particular attention to Cruise's operations, including AV reliability, and who managed and received detailed information through various means about the frequent alleged failures, malfunctions, and risky driving behavior of Cruise AVs, West likely had deep knowledge or at least ample notice about how Cruise AVs were allegedly executing improper DDT fallbacks and relied on remote operator intervention," Judge Kumar said. "Given this, his work with Vogt to address widespread internal concerns about the AVs' unsafe driving, and his departure from Cruise as a direct result of his involvement in the October 2 [2023] crash and Cruise's response to it, it is reasonable to infer that West at least recklessly disregarded the falsity of his 'Level 4' statements."

Cruise in November 2024 reached a deferred prosecution agreement with the U.S. Department of Justice, agreeing to pay a **\$500,000 criminal fine** over its botched response to the accident. Cruise had withheld the full video footage of the incident taken from the AV's onboard cameras — initially handing over a shorter video that didn't show the AV's pullover maneuver that resulted in the pedestrian being dragged.

Autonomous vehicle companies are required to submit all accident reports involving their cars to the NHTSA. But Cruise's first two written reports, which were submitted Oct. 3 and Oct. 10, 2023, did not even mention the AV's pullover maneuver and the pedestrian being dragged approximately 20 feet, according to a **third-party review** conducted by Quinn Emanuel Urquhart & Sullivan LLP for GM and Cruise.

Cruise in September 2024 also agreed to pay a **\$1.5 million civil penalty** to the NHTSA over the accident. Cruise in June 2024 agreed to pay a separate **\$112,500 penalty** to California regulators, and promised to disclose additional data on any collisions.

Counsel or representatives for the parties could not be immediately reached for comment Friday.

The investors are represented by Carol C. Villegas, Jake Bissell-Linsk, Guillaume Buell, Matthew J. Grier and Adam Federer of Labaton Keller Sucharow LLP, Matthew Henzi and Cynthia Billings-Dunn of Asher Kelly PLLC, and Robert D. Klausner and Stuart Kaufman of Klausner Kaufman Jensen & Levinson PA.

Cruise is represented by Reid Schar, Stephen L. Ascher and Jacob P. Wentzel of Jenner & Block LLP.

GM is represented by Daniel J. Kramer, Andrew J. Ehrlich, Richard C. Tarlowe and Kristina A. Bunting of Paul Weiss Rifkind Wharton & Garrison LLP, and Stephanie A. Douglas and Roger P. Meyers of Bush Seyferth PLLC.

The case is In re: General Motors Company Securities Litigation, case number 4:23-cv-13132, in the U.S. District Court for the Eastern District of Michigan.

--Additional reporting by Jonathan Capriel, Rae Ann Varona and Sydney Price. Editing by Kelly Duncan.



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Purdue Lawsuit Injunction Extended Ahead Of Plan Hearings

By **Vince Sullivan**

Law360 (March 28, 2025, 7:11 PM EDT) -- Bankrupt drugmaker Purdue Pharma LP received a further extension of a bar on litigation against the company and its owners in the Sackler family as the debtor pursues a late May approval of a disclosure statement describing a Chapter 11 plan premised on a \$7.4 billion settlement of opioid claims.

During a hearing Friday in New York, Purdue attorney Marshall S. Huebner of Davis Polk & Wardwell LLP said the company is working to get its newest plan confirmed as quickly as possible as it undertakes the "extraordinary progress" toward finalizing the documents connected to the proposed plan and settlement.

"One of the great tragedies in this case is the unconscionable amount of time that victims and institutions have had to wait for their distributions," he said.

To that end, Huebner said Purdue is close to finalization of master and government settlement agreements that cover deals reached with the Sacklers to have direct claims against them by third parties released in exchange for \$6.5 billion of payments over several years.

Those documents are expected to be filed by April 10 to open a 30-day window for government entities, including 48 states and the District of Columbia, to indicate whether they support the proposed settlements, Huebner said.

The government entities' election in that opt-in period is not a vote on the Chapter 11 plan itself, but rather an informational decision that allows Purdue to understand the level of support for the plan.

"We all need certainty before actually proceeding with the disclosure statement and the plan that the states are in [support of it], in the numbers that are required to move forward," Huebner told the court.

A matter of extraordinary importance to the plan process has been resolved, Huebner said, as the U.S. Department of Justice and the Office of the U.S. Trustee have **agreed to the release provisions** of the proposed plan, including the third-party release mechanics that were reworked in light of the U.S. Supreme Court's decision in June that disallowed nonconsensual releases of third-party claims against non-debtors.

To comply with that ruling, the most recent plan includes an opt-in mechanism for creditors to decide to grant the releases, rather than the debtor's first confirmed plan — which was overturned by the high court's ruling — that dragged along non-consenting creditors into granting the releases because of the widespread support for the plan among the creditor body.

"Those issues are now behind us, which is just terrific," Huebner said.

Purdue will know by May 20 if it is ready to go forward with approval of the disclosure statement, which is scheduled for hearing on May 22.

U.S. Bankruptcy Judge Sean H. Lane granted the motion to extend the injunction and the mediation period so that the plan documents could be finalized. The new window runs through May 27.

Purdue **filed for bankruptcy in September 2019** and obtained **confirmation of a Chapter 11 plan** two years later that was premised on a settlement with the members of the Sackler family who own the business. Under that plan, the Sacklers were set to contribute \$4.5 billion into an opioid settlement trust in exchange for releases of claims against them held by third parties. The court confirmed the plan and releases, despite some creditors opposing the granting of the releases to non-debtors.

The U.S. Trustee and a handful of state attorneys general appealed the plan confirmation to the New York federal court, which **reversed the confirmation order** and found that the bankruptcy code doesn't permit nonconsensual releases of non-debtors by third parties. The Second Circuit **reversed that decision**, and the U.S. Trustee proceeded alone in its appeal of the plan to the Supreme Court after the opposing states agreed to the terms of the plan with an increased Sackler contribution.

In June, the **justices ruled in Harrington v. Purdue Pharma** that nonconsensual releases like those included in Purdue's confirmed plan were not permitted, and sent the debtor back to the bankruptcy court to fashion a new plan. Since then, Purdue, the Sacklers and various creditor bodies have been in mediation to come up with a new plan that jibes with the decision of the Supreme Court.

Last week, the debtor filed an updated plan based on a **\$7.4 billion settlement** that will see the Sacklers obtain releases through an opt-in mechanism in which creditors will have to take an affirmative action to grant releases of their direct claims against the Sacklers. The settlement will be funded by a \$6.5 billion contribution from the Sacklers over time, as well as a \$900 million contribution from Purdue itself. Creditors who choose not to opt in to the releases will be free to prosecute their claims against the Sacklers, according to the plan documents.

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

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

--Editing by Melissa Treolo.



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3rd Circ. Preview: April Arguments Feature Class Action Rows

By **P.J. D'Annunzio**

Law360 (March 28, 2025, 4:39 PM EDT) -- The Third Circuit's April argument lineup springs into action with securities litigation brought by Walmart investors claiming they were misled about the government's opioid investigation into the company, and a bid to upend an attorney fee award stemming from the settlement of data breach litigation against convenience store chain Wawa.

The court will also hear arguments on whether the Chapter 11 proceedings involving talc supplier Whittaker Clark & Daniels Inc. should be paused; whether the federal government can continue to negotiate drug prices with pharmaceutical companies; the proper venue for the state of New Jersey's water toxicity litigation against Dow Chemical; and whether an organization seeking to open a safe injection site in Philadelphia qualifies as a religious group.

Here are the highlights of the court's April calendar.

Talc Claimants Ask to Halt Whittaker Clark & Daniels Ch. 11

Talc litigation claimants involved in lawsuits against Whittaker Clark & Daniels over asbestos-containing products have asked the Third Circuit to halt the company's bankruptcy, arguing it was improperly initiated to evade a multimillion-dollar judgment.

The talc claimants argued in their brief to the appellate court that WCD's directors filed for **Chapter 11** in New Jersey to avoid paying a \$29 million judgment in South Carolina, where a judge ordered the appointment of a receiver for the company.

"The South Carolina court had vested the receiver with exclusive authority to manage WCD's affairs—including by making any decisions regarding bankruptcy—and the petition should have been dismissed. In denying the receiver's motion to dismiss, the bankruptcy court committed several legal errors, any one of which warrants reversal," the claimants said.

WCD claimed in its brief that the board of directors had authority to vote for bankruptcy and did so in good faith, rejecting the argument that the receiver had total control over the company.

"State law governs who may approve filing for bankruptcy. Because WCD is a New Jersey corporation, New Jersey law controls, and it gives that power to the company's board of directors. The petition was authorized. The appointment of a receiver did not change that," the company's brief said. "When an out-of-state receiver wants to act in New Jersey, he must ask a New Jersey court to appoint him as an ancillary receiver. But the receiver here ignored this essential step."

Argument is scheduled for April 1.

The case is In re: Whittaker Clark & Daniels, case number 24-2210

Pharma Companies Want Drug Pricing Challenge Revived

Pharmaceutical giants Novo Nordisk and Novartis are challenging a court ruling preserving the Centers for Medicare & Medicaid Services' ability to negotiate drug prices with pharmaceutical companies, arguing that the program constitutes illegal taking.

The drugmakers argued that the **government** violated the Inflation Reduction Act by not sticking to the 10-product limit the statute allows for controlling prices.

"Instead of carrying out that mandate, CMS has imposed price controls on groups of products — more than 15 products in total — aggregating together six different Novo Nordisk products as a single 'negotiation-eligible drug' merely because they contain the same 'active ingredient,'" Novo Nordisk's brief said.

The government replied that if the pharmaceutical companies didn't like the way it does business, they could go elsewhere.

"Under the IRA's drug price negotiation program, the Centers for Medicare & Medicaid Services can now negotiate the prices that Medicare will pay for certain high-expenditure drugs. A manufacturer that disagrees with the program terms or with the price the government is willing to pay is under no legal obligation to participate in the program," the government said in its brief.

Argument is scheduled for April 8.

The case is Novo Nordisk Inc. et al., v. Secretary, U.S. Department of Health and Human Services et al., case number 24-2510.

Safe Injection Group Fights for Religious Designation

A group with plans to open a safe injection site in Philadelphia where people with opioid addictions can use drugs under supervision is arguing that it is a religious organization that the federal government cannot interfere with.

Safehouse's appeal comes after a district court ruled that the organization was not protected by the Religious Freedom Restoration Act because it sought to allow illegal activity on its premises, handing a win to the federal government, which seeks to prevent the establishment of the safe injection site in the city.

"Safehouse's board members grieve for every life lost to overdose. They believe, based on their deeply held religious convictions, that they have a duty to do everything possible to keep those individuals alive, even for one more day," Safehouse's brief said. "Their religious beliefs include a call to give shelter to the vulnerable and to treat them with dignity and humanity."

The government alleged that Safehouse **had no religious affiliations** and was not entitled to RFRA protection.

"Safehouse cites no case holding that a nonreligious entity can engage in the exercise of religion under RFRA or the free exercise clause, and the only decision on that question of which we are aware properly rejected that notion," the government said in its appellate brief.

Argument is scheduled for April 9.

The case is U.S. v. Safehouse et al., case number 24-2027

Objector Wants Wawa Data Litigation Atty Fee Award Revisited

A member of the Wawa data breach class action settlement is hoping the Third Circuit will grant his request to modify a **\$3.2 million attorney fee award**, which he alleged was the product of side deals among the attorneys.

Theodore Frank, an attorney himself, alleged that the lawyers in the litigation crafted the settlement with their own self-interest in mind. He also claimed in his brief to the Third Circuit that the class action system was inherently susceptible to such behavior.

"Although the class members have a direct financial stake in common fund fee requests, the size of each class member's stake provides 'an insufficient incentive to contest' an overreaching fee request 'because the cost of contesting exceeds the objector's pro rata benefit,'" Frank said in his brief.

Wawa said in its brief that negotiations and changes made to the fee agreement were a normal part of the process.

"Changes in settlement agreements and attorney's fee awards in response to objectors are simply a sign that the process provided in Rule 23 worked as intended," Wawa's brief said. "Frank's aspersions about the settlement negotiations are unfounded. As the district court found with respect to the fee award, these changes at most remedied factors not fully considered by counsel."

Argument is scheduled for April 10.

The case In Re: Wawa Data Security Litigation, case number 24-1874

Dow Says Water Contamination Case Is a Federal Matter

Dow Chemical wants the Third Circuit to keep in federal court the New Jersey attorney general's suit against it over its chemical products causing groundwater contamination, claiming the case was properly removed as Dow was a private entity working with the government.

In its brief, Dow claimed that the **lower court** was wrong to conclude the action should be sent back, arguing that because the chemicals at issue were used on military bases, removal was proper under the federal officer removal statute.

"Dow readily satisfied all of the elements necessary for federal officer removal — the point of which is to incentivize private actors to assist the federal government by shielding them from litigation in state court," Dow said in its brief.

The attorney general argued that the contamination by the alleged cancer-causing chemicals occurred in New Jersey, making it a state court matter. The attorney general also rejected Dow's argument that it qualified for protection under the federal officer removal statute.

"It does not exist to protect a private company from the traditional authority of the state courts merely because, at one time or another, it sold some of its products to the federal government or to a federal contractor," the attorney general's brief said.

Argument is scheduled for April 15.

The case is Attorney General, New Jersey et al. v. Dow Chemical Co. et al., case number 24-1753.

Walmart Investors Seek Redo in Case Over SEC Statements

Walmart shareholders have asked the Third Circuit to revive their securities class action against the big box chain, claiming that the company failed to disclose to investors that it had been under investigation by the federal government for opioid distribution.

The investors' **suit was dismissed** by the lower court, which found that Walmart did not make false or misleading statements about the company's status in Securities and Exchange Commission filings. The investors claimed in their appellate brief that an omission was enough to sustain a claim.

"Defendants' failure to disclose the investigations, given their attestation to having disclosed all reasonably possible material liabilities, was therefore misleading and is actionable pursuant to Section 10(b) of the Securities Exchange Act of 1934," the investors said.

Walmart said in its brief that the government's investigation never amounted to anything, but that the company did inform investors anyway.

"Walmart cautioned investors that the company faced investigations due to its controlled substance dispensing practices and that Walmart could provide no assurance as to any liability it might incur," the company's brief said. "The warned-of investigation never led to charges: Two months later, DOJ agreed with Walmart's position and informed the company that it would not be indicted. To this day, DOJ has not prosecuted Walmart nor any of its executives for the company's opioid dispensing

practices."

Argument is scheduled for April 16.

The case is In re: Walmart Inc. Securities Litigation et al., case number 24-1818

--Additional reporting by Vince Sullivan, Gianna Ferrarin, James Boyle, Juan-Carlos Rodriguez, and Katryna Perera. Editing by Robert Rudinger.

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Bitcoin Ponzi Scheme Suit Shouldn't Be Tossed, Judge Says

By **Hailey Konnath**

Law360 (March 28, 2025, 10:08 PM EDT) -- A Delaware federal judge on Friday recommended denying motions to dismiss from former executives of bitcoin mining company VBit Technologies Corp. looking to ditch an investor proposed class action, rejecting the executives' qualms with how they were served and the plausibility of the claims.

In a report and recommendation, U.S. Magistrate Judge Sherry R. Fallon said the trio of motions should be rejected. In particular, she said that at this stage in the litigation, the claims have been sufficiently pled and should proceed.

"The allegations in the [first amended complaint], when viewed in the light most favorable to the plaintiffs, sufficiently plead ... involvement in an alleged Ponzi scheme to defraud investors, proximately causing economic loss," the judge said.

The motions were filed by VBit's former operations director, Phuong D. Vo; former Chief Technology Officer Sean Tu; and former Vice President of Marketing Jin Gao. They are among a long list of defendants accused of **selling unregistered securities** and running a Ponzi scheme that paid out promised bitcoin as new investors bought into the scheme.

Among other things, Judge Fallon rejected jurisdictional arguments from Vo and Gao, who she said were trying to distance themselves from the Delaware-based VBit corporate entities. The Securities Act and the Exchange Act allow for nationwide service of process, the judge noted.

"Courts within this circuit have found this provision to mean that personal jurisdiction exists even if the defendant lacks specific contacts with the district court where the plaintiff brings the claim as long as the defendant has sufficient contacts with the United States," Judge Fallon said. "Therefore, the analysis centers on whether defendants Vo and Gao have minimum contacts with the United States, not Delaware."

Ultimately, Vo and Gao, who live in Pennsylvania, do have sufficient contacts with the United States, she said. And they could have argued that litigating in Delaware would be too much of a burden, but they didn't, she said.

Gao also argued that he wasn't properly served because the process server left the complaint and summons on his doorstep and didn't directly deliver them to anyone. But Judge Fallon noted that Gao also admitted that there is no likelihood he would accept personal service of the complaint because he usually doesn't answer the door when the doorbell rings "unless I am expecting someone." Gao was also served with an amended version of the complaint, she said.

"Gao has notice of this suit," she said. "It would exalt form over substance to require plaintiffs to make further attempts at personal service on Gao who admitted he does not answer his doorbell unless he is expecting a guest."

Similarly, Tu has argued that he didn't know about the suit until a copy of the entry of his default in appearance was delivered to him by a parcel service. But as an officer of the company, Tu was subject to service of process through "service on the company's registered agent," Judge Fallon said.

She also said that Tu requested that the case be consolidated with another pending case or stayed

until that case is resolved, but those motions have not been properly docketed or briefed. Tu is representing himself.

Plaintiff Parker Pelham sued in 2023, looking to represent all investors who bought allegedly unregistered securities from VBit in the form of investment contracts that promised the sale, leasing and servicing of specialized computer equipment for bitcoin mining.

According to the complaint, VBit and the other named defendants used the high profitability of bitcoin mining to prey on investors and recruit them to buy bitcoin mining packages. The company and its executives made false statements and promises about the returns investors would receive from the mining work and how their funds were being used, the investors allege.

Pelham says that in 2022 he found he could not withdraw bitcoin from his virtual wallet, which was in an online dashboard hosted by the defendants. The company blamed the delay on technical issues, but Pelham said that "it soon became apparent that something was seriously wrong."

That's when Pelham found out his wallet was a "facade" and the company was actually involved in "cloud mining." That's a form of cryptocurrency mining where customers' computing power, or "hash rate," is pooled together, and the overseers earn a pro-rata share of any profits based on the amount of hash rate power rented, according to the complaint. The operation has nothing to do with any equipment or products sold.

The lead plaintiff is Alisha McKellar.

Tu and counsel for the other parties didn't immediately respond to requests for comment late Friday.

The investors are represented by Laurence M. Rosen, Phillip Kim and Ha Sung Kim of The Rosen Law Firm PA and Brian E. Farnan and Michael J. Farnan of Farnan LLP.

Vo is represented by Travis S. Hunter of Richards Layton & Finger PA and Mitchell S. Kim of Buchalter PC.

Gao is represented by Samuel T. Hirzel II and Emily A. Letcher of Heyman Enerio Gattuso & Hirzel LLP and Scott M. Ratchick and John C. Guin of Chamberlain Hrdlicka White Williams & Aughtry.

Tu is representing himself.

The case is Parker Pelham et al. v. VBit Technologies Corp. et al., case number 1:23-cv-00162, in the U.S. District Court for the District of Delaware.

--Additional reporting by Katryna Perera. Editing by Brian Baresch.