

Class Action

April 1, 2025, 10:06 AM PDT

VMware, Investors Get Final OK for \$103 Million Settlement, Fees

VMware Inc.'s nearly \$103 million settlement of investor claims that it manipulated its revenue accounting warrants final approval, a federal court ruled.

Judge Edward J. Davila also gave a green light to a 25% attorneys' fee request—nearly \$26 million—for the investors' counsel. The approvals Monday wrap up a suit that's been underway since 2020 in the US District Court for the Northern District of California.

- The investors alleged that the cloud computing company and its leaders misleadingly indicated that it was meeting its revenue expectations for fiscal years 2019 and 2020, and that two executives sold tens of millions of dollars worth of stock while the price was inflated—allegations that VMware denies
- The accord was announced in October 2024
- Lead counsel for the investors spent more than 26,660 hours on the case, with a “lodestar” or cross-check value of about \$17 million, Davila said

Robbins Geller Rudman & Dowd LLP was lead counsel for the investors. Debevoise & Plimpton LLP represented VMware and the individual defendants.

The case is Lamartina v. VMware, Inc. , N.D. Cal., No. 5:20-cv-02182, 3/31/25 .

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Tesla May Face Lawsuit from NYC Pension Funds Over Musk's Leadership

 [nytimes.com/2025/04/01/us/nyc-pension-funds-elon-musk-doge.html](https://www.nytimes.com/2025/04/01/us/nyc-pension-funds-elon-musk-doge.html)

Jeffery C. Mays

April 1, 2025



New York City Pension Funds Plan to Sue Tesla Over Musk's DOGE Leadership

Brad Lander, the comptroller, said Elon Musk's actions on behalf of the Trump administration had hurt Tesla's stock price.

There were demonstrations at Tesla dealerships across the United States on Saturday.Credit...Saul Martinez for The New York Times

The head of New York City's pension funds called for a shareholder lawsuit against Tesla, accusing Elon Musk, its chief executive, of causing the company's shares to plunge because of his actions to slash spending and the federal work force as head of the Trump administration's cost-cutting effort.

In a letter sent late Monday to the New York City Law Department and reviewed by The New York Times, Brad Lander, the comptroller who oversees the city's five public pension funds, said the highly contested cost-cutting measures by Mr. Musk's initiative, the Department of Government Efficiency, are hurting Tesla's stock.

He accused Mr. Musk, the world's richest person, of "effectively quitting his job at Tesla" and "promoting policies" that have been harmful to Tesla's business.

"As the market has learned the truth, bit by bit, that Musk has in fact abandoned Tesla in favor of DOGE, where he was taking actions that alienated Tesla's consumer base and causing Tesla's sales to severely decline, the share price has dropped in response," Mr. Lander wrote in a letter to Muriel Goode-Trufant, the corporation counsel for New York City. The letter was seen as a likely precursor to a lawsuit because Ms. Goode-Trufant is the lawyer for the pension funds.

As a result, the letter said, the value of the pension system's Tesla holdings has dropped by 34 percent from Dec. 31 to March 28, to \$831 million from \$1.26 billion.

Mr. Lander, in an interview, said that Tesla had emphasized the importance of Mr. Musk's involvement to the electric car maker's success, but had falsely represented that he spends "significant time on the company and is highly active" in its management. He said that he hoped the lawsuit will help recover some of the losses and compel Tesla to make policy and governance changes.

"No other corporate board allows the C.E.O. to barely show up for work," said Mr. Lander, who is running for mayor in the June 24 Democratic primary and has pledged to protect the city from Trump administration policies that could harm it.

Tesla did not immediately respond to a request for comment. Mr. Musk has acknowledged that his work for DOGE has hurt the company. Tesla has faced vandalism of its dealerships, an almost 50 percent decline in its share price and car owners (including celebrities) who are selling their Teslas because they do not want to be associated with Mr. Musk.

"What they're trying to do is put massive pressure on me, and Tesla I guess, to you know, I don't know, stop doing this," Mr. Musk said at a town hall in Wisconsin over the weekend. "My Tesla stock and the stock of everyone who holds Tesla has gone, went roughly in half. I mean it's a big deal."

The pension funds have raised issues with Mr. Musk's management of Tesla in the past. In 2024, they joined with other investors to call for Tesla shareholders to reject Mr. Musk's compensation package, raising concerns that he was "dramatically overcommitted" given his positions as the head of X, formerly known as Twitter, along with SpaceX and other companies.

The pension funds are also suing the Fox Corporation for abandoning its responsibility to shareholders by broadcasting false information about the 2020 presidential election.

Securities Law

April 1, 2025, 10:50 AM PDT

Matt Levine's Money Stuff: Is DOGE Securities Fraud?

Opinion

April Fools

Today is April 1, so 10% of the news that you read will be fake. Be careful out there! I confess that I enjoyed today's issue of *Petition*, a newsletter of bankruptcy and liability management, fake quoting Treasury Secretary Scott Bessent:

Starting next week we will commence a tender offer to purchase up to \$20 trillion of Treasury securities maturing after 2030 for 50 cents on the dollar. Furthermore, we will transfer ownership of our national parks and other federal lands to an unrestricted subsidiary, and investors participating in the exchange will also receive their pro rata share of a \$5 trillion PIK interest first lien term loan due in 2075 secured by our nation's wondrous natural assets.

There's also a bit about the Trump memecoin. I confess that when I started reading it I was like "oh right this is the [Mar-a-Lago Accord](#) , normal stuff." What even is reality anyway.

Everything is securities fraud

On that note:

The head of New York City's pension funds called for a shareholder lawsuit against Tesla, accusing Elon Musk, its chief executive, of causing the company's shares to plunge because of his actions to slash spending and the federal work force as head of the Trump administration's cost-cutting effort.

In a letter sent late Monday to the New York City Law Department and reviewed by The New York Times, Brad Lander, the comptroller who oversees the city's five public pension funds, said the highly contested cost-cutting measures by Mr. Musk's initiative, the Department of Government Efficiency, are hurting Tesla's stock.

He accused Mr. Musk, the world's richest person, of "effectively quitting his job at Tesla" and "promoting policies" that have been harmful to Tesla's business. ...

As a result, the letter said, the value of the pension system's Tesla holdings has dropped by 34 percent from Dec. 31 to March 28, to \$831 million from \$1.26 billion.

This is my own fault – I am constantly writing that “ [everything is securities fraud](#) ” – but probably the most frequent reader question that I have gotten over the last couple of months is “can Tesla shareholders sue for securities fraud because Elon Musk is doing DOGE stuff and hurting the stock?” And, uhhhhhhhhhhhhhh. This is not a successful lawsuit, or a lawsuit at all; it’s just a politician musing about suing. There are lots of ways for this to come to nothing. But it is the case that Tesla, unlike the rest of Musk’s empire, is a public company, which means that:

It has a stock price that can go down, and

- The stock is not owned solely by carefully vetted Elon Musk fans: Anyone can buy it, and lots of index-y investors, including New York City pension funds, do.

So here you go. The theory of “everything is securities fraud” is:

1. A company does a bad thing.

- 2. The stock goes down.
- 3. The company somehow misled shareholders about the bad thing, so they bought the stock when it was high and have losses now that it went down.

Tesla’s stock is down year-to-date, so you can check that box. What is the bad thing? Well, from this report, there are two possible bad things. One is that Lander thinks that Musk is not putting in enough hours at Tesla, Tesla’s stock is down because of his lack of effort, and Tesla has lied to shareholders about Musk’s involvement. Here’s the relevant risk factor in Tesla’s securities filings:

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

This does not strike me as a good theory of securities fraud. Like (1) that’s pretty good disclosure that Musk will be distracted and (2) if this ever went to trial there would be some pretty tedious testimony from Musk about how hard he still works at Tesla, how he never sleeps or has fun but only builds cars and dismantles government agencies. I just feel like an “Elon Musk isn’t doing enough work” theory is going to be a hard sell. Elon Musk is never on firmer ground than when he is complaining about how hard he works.

The other theory is that Musk, in his government role, is “promoting policies” that are bad for business, both in the sense that the policies (tariffs, less support for electric vehicles) are bad for business and in the sense that the people who like electric cars (liberals, Europeans) tend to dislike many of Musk’s (and Trump’s) policies, so Musk’s government involvement has been bad for sales. That strikes me as more [factually plausible](#).

But I am not sure what the *fraud* is here. In an everything-is-securities-fraud case, you want to have some argument that, not only did the company do a bad thing, but it misled you about the bad thing. Elon Musk has not been particularly secretive about his political engagement; “I bought Tesla stock because I was deceived about Elon Musk’s politics” feels like a tough argument. Still, in everything-is-securities-fraud cases, you don’t have to have *much* of an argument on this front. “We continue to monitor our public narrative and brand,” says Tesla’s annual report, “and tailor our marketing efforts accordingly, including through investments in customer education and advertising as necessary”; maybe you could argue that it hasn’t done that monitoring and tailoring for DOGE.

I still think this is weak, but [we talked last year](#) about a similar lawsuit against Target Corp. In 2023, Target did a Pride Month marketing event; there was a conservative backlash and boycott, and the stock went down. Shareholders – actually conservative activists, but anyone can buy shares of a public company – sued, arguing that the marketing event was securities fraud. This struck me as extremely implausible: Target obviously was not secretive about its Pride Month marketing event (it was a marketing event), and its annual report included a risk factor very specifically saying that “Target’s responses to crises and our position or perceived lack of position on environmental, social, and governance (ESG) matters ... could harm our reputation ... and can result in consumer boycotts.”

Target asked a federal judge to dismiss the case, but he let it go forward, finding that “Defendants’ general warning in their risk disclosure could be materially misleading because it was not specifically tailored to the risks from their 2023 Pride Month Campaign.” By that standard, the fact that Tesla’s securities filings don’t specifically say “Elon Musk’s work with DOGE and his alignment with the Trump administration could lead to a consumer backlash against our cars” could count as securities fraud. I don’t think this is right! It’s obviously wrong! But it’s arguably what the law is, or at least what some judges think the law is, and you mostly get to choose where you sue.

There’s a reason I write about “everything is securities fraud” all the time. It is *weird* to filter US political and legal life through securities fraud; it is *weird* to try to find ways to fit political disagreements into the framework of securities fraud. I mean, it’s fine when my readers email me about it – I sort of ask for it! – but it’s weird when actual politicians survey their range of potential actions and think “ah yes securities fraud lawsuit.” I [wrote last year](#) that “the thesis of ‘everything is securities fraud’ is that US law is somehow more responsive to financial-market claims than it is to other, substantive claims.” Or I wrote [way back in 2016](#) :

I find all of this so weird because of how it *elevates* finance. [Various cases] imply that we are not entitled to be protected from pollution as *citizens*, or as *humans*. [Another] implies that we are not entitled to be told the truth as *citizens*. (Which: is true!) Rather, in each case, we are only entitled to be protected from lies as *shareholders*. The great harm of pollution, or of political dishonesty, is that it might lower the share prices of the companies we own.

There are a lot of people who do not like what Elon Musk is doing with DOGE, and approximately none of them don't like it *because of what it is doing to Tesla's stock price*. But the stock price is what might make it securities fraud.

The OpenAI thing

Plausibly there are two models of corporate governance:

1. In the good-governance model, the chief executive officer works for the board of directors, who work for the shareholders. The directors monitor the CEO to hold her to account; if she is no longer the best person for the job, they fire her and get someone else. The board is active, robustly debating corporate strategy and involving itself in the details of operations; it demands a lot of information from management to fulfill its supervisory role. Meanwhile the shareholders keep an eye on the board, and if performance suffers an activist shareholder will try to round up shareholder votes to replace the board.

- 2. In the good-CEO model, the chief executive officer is a visionary superstar whose special skills and surprising insights are the main source of value for the company, and she should be allowed to do whatever she wants. Everything that she does is, *by definition*, good for the company; her errors are volitional and are the portals of discovery. The company has a board of directors, but their job is to sit quietly, give the CEO advice if (and only if) she asks for it, and approve her pay package. There are shareholders, but they don't ask too many questions either: They know that it's a privilege to be along for the ride with the visionary CEO.

My view is that both models can work, in different circumstances. Sometimes the CEO really *is* that good, really is the guiding visionary of the company, and it's embarrassing and counterproductive for the board or shareholders to micromanage her decisions. Often the CEO is fine, is a professional hired to do a job, and it's perfectly right for the owners of the company to keep an eye on her and make sure she's doing a good job.

The first model is traditionally the ideal for big public companies; the second model is traditionally the ideal for tech startups. (And mostly for big public tech companies that are still run by their founders.) Venture capital investors compete to be "founder-friendly," startup boards are gentle and advisory, and it's a big deal – and often requires the CEO's cooperation – when a startup board fires its founder-CEO.

And then there is a lot of confusion when you try to apply one model where the other model is appropriate. This describes approximately everything I've ever written about Elon Musk. But also, the Wall Street Journal has an excerpt from Keach Hagey's new book covering "The Secrets and Misdirection Behind Sam Altman's Firing From OpenAI," and it seems obvious that everyone was just confused about this. Altman, the visionary founder-CEO, was not going to worry about conflicts of interest, or even tell his board about them:

One night in the summer of 2023, an OpenAI board member overheard a person at a dinner party discussing OpenAI's Startup Fund. The fund was launched in 2021 to invest in AI-related startups, and OpenAI had announced it would be "managed" by OpenAI. But the board member was overhearing complaints that the profits from the fund weren't going to OpenAI investors.

This was news to the board, so they asked Altman. Over months, directors learned that Altman owned the fund personally. OpenAI executives first said it had been for tax reasons, then eventually explained Altman had set up the fund because it was faster and only a "temporary" arrangement. OpenAI said Altman earned no fees or profits from the fund—an unusual arrangement.

He also didn't bother telling the board about OpenAI's high-profile product launches, because that was none of the board's business and they could read about it in the newspaper like everyone else:

They also hadn't been alerted the previous fall when OpenAI released ChatGPT, at the time considered a "research preview" that used existing technology, but that ended up taking the world by storm.

There is also a controversy about how Altman told one board member that a second board member had said that a third board member should leave the board: the sort of thing that would obviously be annoying to the board members, but that seems impossibly boring and trivial when you try to explain it to anyone else, so I won't.

Anyway the board didn't like all of this, so it fired the CEO and replaced him with the chief technology officer. And then everyone pretty much immediately realized "oh wait his special magic is what creates the value of this company," and they rushed to reverse themselves and apologize.

It is very understandable; it is just *mistaken*. Zvi Mowshowitz writes:

My conclusion, which I still believe, was that Sam Altman had engaged in a variety of unacceptable conduct that merited his firing. ...

If you lie to board members about other board members in an attempt to gain control over the board, I assert that the board should fire you, pretty much no matter what.

No! Wrong! Not *no matter what*! In a normal company with good governance, absolutely. Lying to the board is the main bad thing that the CEO can do, from a certain perspective. But there are definitely some companies – Elon Musk runs like eight of them, but also OpenAI – where, if you lie to board members about other board members in an attempt to gain control over the board, the board members you lie about should probably say "I'm sure that deep down this is our fault, we're sorry we made you lie about us, we'll see ourselves out."

To be clear, I am very sympathetic to the OpenAI board's confusion. This was not a simple dumb mistake. They did not think "we are the normal board of a normal public company, and we have to supervise our CEO to make sure that he pursues shareholder value effectively." This was a much weirder and more reasonable mistake. They thought "we are the board of a *nonprofit* set up to pursue the difficult and risky mission of *achieving artificial general intelligence for the benefit of humanity*, and we have to supervise our CEO to make sure he does *that*." Lying to the board seems quite bad as a matter of, you know, AI misalignment.

It was very understandable that the OpenAI board thought all of this, [because it was formally true](#) : It's what OpenAI's founding documents and public communications said. But like 48 hours of contact with their shareholders – who they probably didn't even think were shareholders! – persuaded them otherwise. Nope, hot startup, superstar CEO, nothing you can do.

Elsewhere:

OpenAI has raised \$40bn in new funding from SoftBank and other investors, valuing the ChatGPT maker at \$300bn as it becomes one of the best-funded private start-ups in the world.

During the brief Altman interregnum, some OpenAI investors [supposedly said](#) they were writing their shares down to zero. If Altman is the difference between a \$300 billion valuation and a zero valuation, I'm sorry, but he gets to lie to the board all he wants.

Goldman bonuses

Just the other day, [I wrote that](#) "my model used to be that investment banks were socialist paradises run for the benefit of their workers, but that is increasingly untrue." Now investment banks look more like normal public companies run for the benefit of their shareholders. My thinking on this is particularly colored by changes at Goldman Sachs Group Inc., where I used to work. Goldman has long prided itself on a "partnership" culture, but its current chief executive officer, David Solomon, has tried to remake it as a more normal public company that puts shareholders first and is run by the CEO, not by a loose consensus of partners. The partners, understandably, complain about this sometimes. [There are limits to this, though](#) :

Goldman Sachs Group Inc.'s \$80 million retention bonuses for the firm's top two leaders have drawn another prominent critic, with Institutional Shareholder Services urging investors to reject the rewards at an annual meeting.

The incentives for Chief Executive Officer David Solomon and President John Waldron "lack rigorous, pre-set performance criteria, which is particularly concerning for off-cycle awards with such large values," the proxy adviser wrote in note to clients Monday. It accused the board of "poor practice" for adding new incentives before a prior program is finished.

In a separate recommendation late last week, Glass Lewis described the latest bonuses as "excessive."

Goldman Sachs's board has urged shareholders to endorse the incentives in an advisory vote at its April 23 meeting, with the firm citing "fierce" competition for talent. The package of restricted stock would reward the pair for sticking around five more years.

Obviously you cannot judge *Solomon's* pay by the normal standards of public company governance. When he needs more money, you have to give it to him!

Who among us?

Last month I [made fun of Citigroup Inc.](#) for its habit – unattractive in a bank – of crediting customers with wildly wrong amounts of money, often due to bad computer interface design. [For instance](#), Citi once "almost shifted about \$6 billion to a customer's account by accident after a staffer handling the transfer copied and pasted the account number into a field for the dollar figure." That one wasn't that bad. It had "a could-happen-to-anyone flavor," I wrote. Any system like that is going to have a field for an account and a field for an amount, and those words rhyme and both fields are filled in with numbers; it would be weird if no one ever got confused.

Anyway here's this:

A Prince George's County substitute teacher was paid more than \$7 million in 2022 – and two months passed before the school system recouped the funds. ...

The audit, dated March 25 and sent to the legislature's Joint Audit and Evaluation Committee, said the 2022 overpayment for the substitute teacher occurred when a school system employee mistakenly entered the teacher's identification number in the "hours" field. That led to the teacher being paid for approximately 73,000 work days, rather than three.

School system officials didn't realize the overpayment had occurred until more than 50 days later. They recovered the funds within a few days, the audit said.

I would read a 5,000-word hour-by-hour account of those 50 days. Presumably nothing particularly interesting happened at the school's administrative offices for most of that time – they didn't know they had overpaid – though surely the *discovery* of the problem was exciting.

But the teacher! Imagine getting \$7 million for three days of substitute teaching! Like you have the immediate question of "do I call someone or ...," but this person apparently answered that one in the negative. And then you have the second question of "do I move this into Bitcoin and flee the country," but again no. Between those two extremes you get pretty much "well I will buy myself a nice dinner and wait to see what happens." Presumably you have some deadline in your mind, like, "if they haven't asked for this money back within a year I am pretty sure I get to keep it." And then every day you check your email nervously, holding your breath, sure that today is the day they ask for the money back but still holding out a little hope that they won't. Probably the Citi customers are more blasé about their mistaken transfers.

Things happen

SoftBank Seeks Record \$16.5 Billion Loan for AI Growth in US. DeepMind slows down research releases to keep competitive edge in AI race. Ex-Deutsche Bank Executive Claims He Was Fired for Whistleblowing . Inside the California Insurance Safety-Net System That Lost a Million-Dollar Check. CaaStle CEO Hunsicker Resigns Over Fraud Claim as Firm Teeters. Ultra-Luxe Food Supplier Thrives on Cravings for Snow Crab and Wagyu Beef. Hooters Files for Bankruptcy to Seek Revival. Newsmax Becomes a Meme Stock With 1,160% Post-IPO Surge.

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- 1. There are various imaginable fiduciary duty lawsuits under state law, which have the flavor “the CEO is doing bad stuff” rather than the everything-is-securities-fraud flavor “the CEO is doing bad stuff and lying about it.” Those cases tend to be harder – courts tend not to second-guess companies’ business judgment in most cases – and Tesla’s move to Texas probably makes it even harder to bring a case like that. Still it would be funny if someone tried, just to give the Texas business courts a workout.
- 2. That’s probably exaggerated; there probably are some apolitical Tesla shareholders who don’t like the stock being down. But they’re not the ones talking about suing.
- 3. Both ways, to be clear. People regularly want him to do good governance stuff, when he’s obviously an imperial superstar CEO. But also, he regularly wants to do imperial superstar CEO stuff in circumstances – public-company mergers and acquisitions ! the US federal government! – where good governance is obviously called for.

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[Securities Law](#)

April 1, 2025, 10:03AM PDT

Musk's DOGE Work Hurts Tesla Shareholders, NYC Comptroller Says

New York City Comptroller **Brad Lander**, the investment adviser to the city's five pension funds, accused Tesla Inc. of misrepresenting chief executive officer Elon Musk's involvement in the company.

Lander said that Tesla made material misstatements to shareholders by maintaining Musk is spending significant time on the company despite his job as the head of President Donald Trump's Department of Government Efficiency, the body charged with slashing federal spending.

Tesla stock has plunged since Musk has become the head of DOGE, hurting shareholders, Lander said. In less than three months, New York City's \$285 billion pensions have lost more than \$300 million as Tesla stock has lost almost 40%, Lander said.



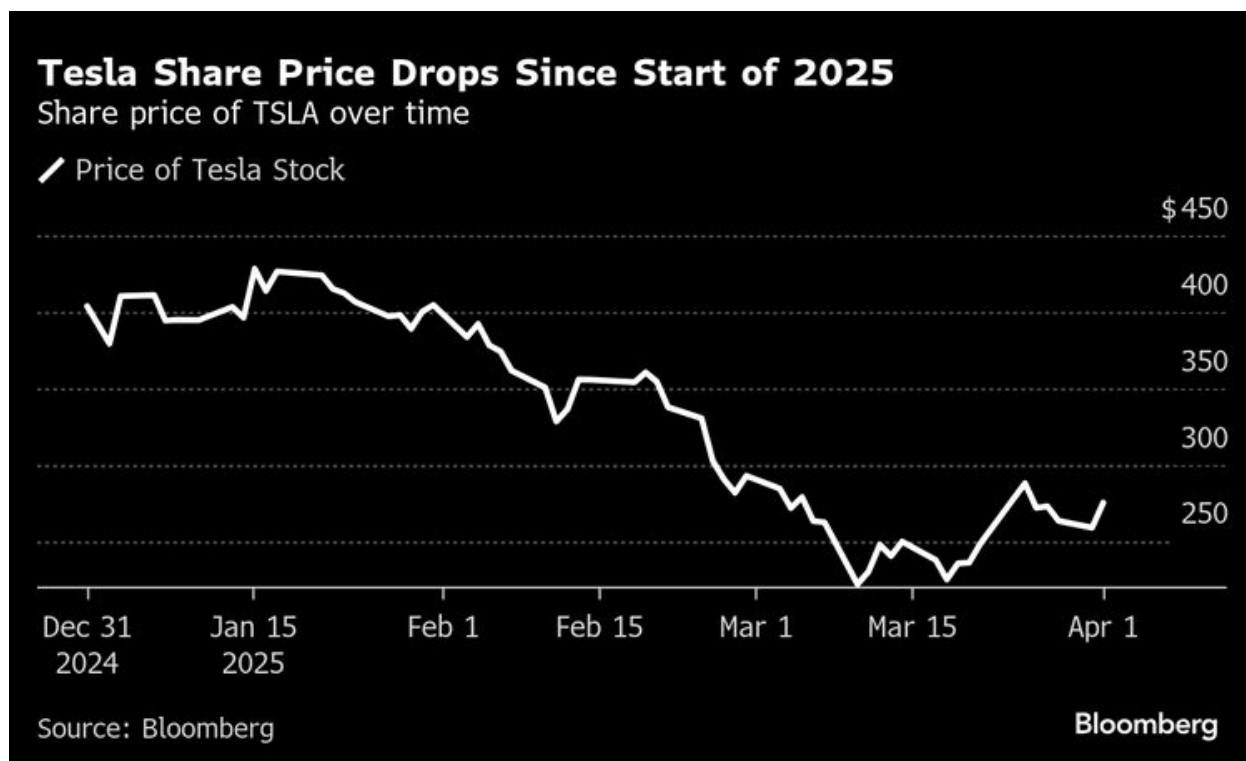
Brad Lander

Photographer: Christopher Goodney/Bloomberg

"Tesla shareholders don't have a full time CEO paying attention to the company and their interests," Lander said at a news conference on Tuesday. He is one of roughly a dozen Democrats running to be mayor of New York.

Tesla has drawn a [flurry of shareholder lawsuits](#) challenging everything from Musk's pay package to diverting Tesla resources in his 2022 effort to acquire Twitter Inc. The company has also drawn lawsuits ranging from fatal crashes blamed on the company's Autopilot system to allegations of racism against workers.

Read More: [Elon Musk's Pile of Lawsuits Runs From Autopilot to Toxic Speech](#)



In a December 2024 US Securities and Exchange Commission filing, Tesla said it was “highly dependent on the services of Elon Musk” and that he spends “significant time with Tesla.”

Lander accused Musk of abandoning Tesla in favor of DOGE and alienating the company’s customers, causing severe declines in the car company’s sales.

Lander called on the New York City Law Department, which is authorized to be the legal representative for the pension funds, to back a shareholder lawsuit against Tesla.

“Given the New York City pension systems’ longstanding expression of concerns about corporate governance and the need for a full-time CEO, and Tesla’s misrepresentations regarding Musk’s role at DOGE, we are well-placed to commence and lead this potential litigation,” Lander wrote in a March 31 letter to Muriel Goode-Trufant, managing attorney for the city, according to a copy of the correspondence obtained through a public records request.

A spokesman for Mayor Eric Adams didn’t immediately respond to a request for comment. A spokesperson for Tesla didn’t immediately respond to a request for comment.

Prior Actions

New York City’s pensions have previously led shareholder campaigns over governance reforms at Tesla. At the company’s 2024 annual meeting, the city pensions and seven other investors urged shareholders to reject Musk’s \$47 billion compensation package and vote against the reelection of Musk’s brother Kimbal and James Murdoch, Rupert Murdoch’s son, to Tesla’s board.

“Even as Tesla’s performance is floundering, the board has yet to ensure that Tesla has a full-time CEO who is adequately focused on the long-term sustainable success of our company,” Lander wrote in an SEC filing.

If the city’s Law Department pursues litigation against Tesla’s board, the pension funds can seek financial damages to cover losses and as well as governance changes. These outcomes would be preferable to divestment, which would lock in losses, Lander said.

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Class Action

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Murdochs Take New Shot at Ending Election Case With New Judge

- Different judge let suit advance over on-air disinformation
- Ruling can't 'survive contact with the evidence,' Murdochs say

Rupert Murdoch is trying a new tactic to avoid a trial of allegations that he's personally to blame for a \$787.5 million defamation settlement over Fox News coverage of the 2020 presidential election and its aftermath.

The media mogul, his son Lachlan, and other current and former Fox Corp. board members asked a judge Monday to revisit a decision by a different judge who let the litigation move forward. The consolidated lawsuit, brought by pension funds and other investors, stems from Fox's record eve-of-trial accord with Dominion Voting Systems Inc., the largest-ever settlement in a defamation case. A parallel \$2.7 billion case brought by another election tech company, Smartmatic Corp., is still pending.

The shareholder suit, filed in Delaware's Chancery Court, says the Murdochs and other corporate leaders knowingly authorized on-air disinformation—by hosts who echoed President Donald Trump's lies about voting machine makers—to avoid losing audience share as other conservative media outlets told viewers what they wanted to hear. The case seeks to shift the company's losses onto the Fox board members, who also include former US House Speaker Paul Ryan.

Vice Chancellor J. Travis Laster in December rejected their initial bid to end the case. Although the lawsuit involves shareholder derivative claims that technically belong to the company—putting them within the board's purview—at least half of Fox's corporate directors were too beholden to the Murdochs to make an impartial decision about suing them, Laster said.

After the litigation was reassigned in February to the elite business court's newest judge, Vice Chancellor Bonnie W. David, the Murdochs and other board members challenged that ruling. Although one director may have seemed closely linked to Rupert Murdoch based on their mutual membership in an Australian-American group, those "paper-thin allegations" can't "survive contact with the evidence," they said, seeking permission to move for summary judgment.

"Should the motion be granted, the complaint would likely be dismissed—conserving the millions of dollars it will cost to defend the case," their court filing said. "There is much to be conserved by a prompt and tailored summary judgment effort, and nothing to be lost."

Unlike in federal court, there's no automatic right to seek summary judgment in Delaware, where judges have the discretion to permit or refuse requests like the Fox board's.

The board members are represented by Richards, Layton & Finger PA and Wachtell Lipton Rosen & Katz. Most of the investors are represented by Friedlander & Gorris PA, Cohen Milstein Sellers & Toll PLLC, Lieff Cabraser Heimann & Bernstein LLP. Oregon, a co-plaintiff, is represented by its Justice Department.

The case is In re Fox Corp. Deriv. Litig. , Del. Ch., No. 2023-0418, motion filed 3/31/25 .

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Syneos Health Investors Scolded Over Pandemic Recovery Pleading

Syneos Health Inc. investors will have one final chance to state securities fraud claims over the Covid-19 pandemic's effects after delivering a second impermissible "puzzle pleading," a federal judge ruled.

Judge Arun Subramanian of the US District Court for the Southern District of New York declined March 28 to dismiss the proposed class action with finality because, he said, "it's unclear whether or not there's a viable case lurking underneath the surface." Subramanian said he was giving specific guidance for the next version of the complaint "because apparently" his "prior instructions weren't clear enough."

- The investors alleged that the biopharmaceutical company made fraudulent positive statements about its business before revealing that its operations had been in disarray, causing a steep stock drop
- The most recent version of the complaint "didn't come close to addressing" the problems the court identified with the previous one, Subramanian said in dismissing the claims
- In the next version of the complaint, ignoring the defendants' arguments for dismissal "will be at the plaintiffs' peril," he said

DiCello Levitt LLP is lead counsel for the investors. Sullivan & Cromwell LLP represents Syneos.

The case is *Kempen Int'l Funds v. Syneos Health, Inc.*, 2025 BL 104362, S.D.N.Y., No. 23-cv-8848, 3/28/25 .

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BioVie Investors Advance Lawsuit Over Alzheimer's Drug Trial

- Drugmaker allegedly wasn't transparent about difficulties
- Investors successfully plead securities fraud, court says

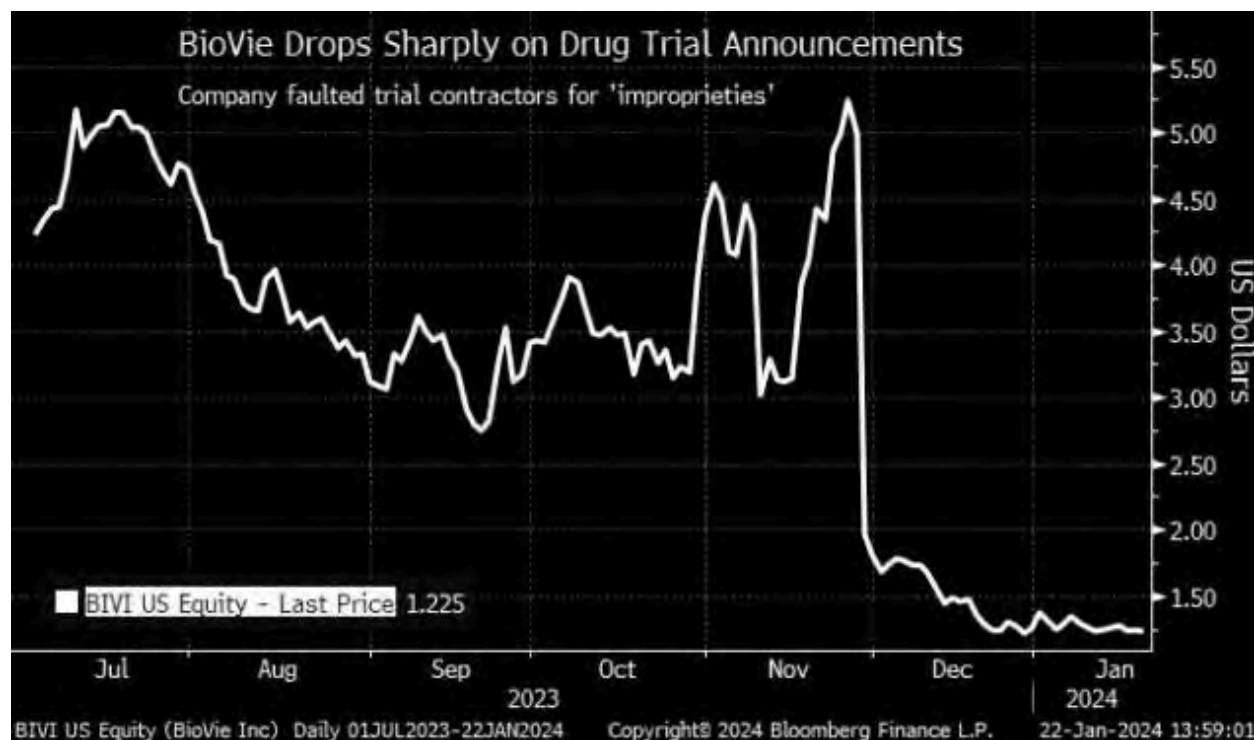
BioVie Inc. investors adequately pleaded securities fraud claims over statements about the progress of a clinical trial for the company's lead drug candidate, a federal court ruled.

The investors can proceed with proposed class claims that BioVie misrepresented enrollment numbers and circumstances for its Phase 3 study of Alzheimer's Disease treatment Bezisterim, Judge Miranda M. Du said March 28 for the US District Court for the District of Nevada. The investors also showed some statements about the data collection timeline, blinded data, and risks may have been false or misleading, Du said.

The investors allege BioVie began the study at a time when the Covid-19 pandemic impaired its oversight of trial locations run by contractors. Instead of alerting investors to the risks involved, the company allegedly offered optimistic updates.

A November 2023 announcement of potential scientific misconduct at six sites, and an announcement later the same month of "significant deviation from protocol" at 15 sites, sent the stock price sharply down, the investors say. Once suspect patients and sites were excluded from the results, the study allegedly fell short of statistical significance.

The stock declined 29% on Nov. 9, 2023, and 61% on Nov. 29, 2023. The latter was the stock's steepest drop since 2016, according to data compiled by Bloomberg.



The investors also adequately alleged the necessary level of intent for securities fraud, Du said.

A derivative suit with similar allegations against company leaders, also in the District of Nevada, has been on pause while the dismissal request in the proposed class action was pending.

Bezisterim is still a drug candidate, currently under study for the treatment of Alzheimer's, Parkinson's Disease, and long Covid, according to the company's website.

Levi & Korsinsky LLP is lead counsel for the investors. Snell & Wilmer LLP and Baker & Hostetler LLP represent BioVie.

The case is *In re Biovie Inc. Sec. Litig.*, 2025 BL 105100, D. Nev., No. 3:24-cv-00035, 3/27/25.

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[Securities Law News](#)

March 31, 2025, 6:22 AM PDT; Updated: March 31, 2025, 9:22 AM PDT

GM's Cruise Must Battle Investors' Driverless Vehicle Claims (1)

- Cruise and its ex-CEO plausibly misrepresented a 2023 crash
- Investors didn't adequately allege GM knew of autonomy level

General Motors Co. subsidiary Cruise LLC must defend investor allegations it misrepresented its driverless cars' autonomy before a robotaxi dragged a pedestrian 20 feet in 2023.

It's plausible that Cruise and its cofounder intentionally misdirected investors after the accident "to cover up the truth" of the crash and its implications, said Judge Shalina D. Kumar for the US District Court for the Eastern District of Michigan.

But the GM investors failed to plead statements the cars were "fully driverless" reasonably misled them into believing there's no human input, Kumar said as she partially granted automotive leaders' motions to dismiss March 28.

Investors plausibly alleged Cruise, co-founder and former CEO Kyle Vogt, and former chief operating officer Gil West knowingly or recklessly deceived them over vehicles' autonomy level, Kumar said. The former leaders allegedly said that Cruise cars had "Level 4" autonomy—a level of high automation as defined by the Society for Automotive Engineers Taxonomy—when they relied on remote operators in certain situations.

The plaintiffs failed to allege the level of intent or reckless disregard to bring securities fraud claims over autonomy levels against GM and its leaders, she said.

Investors sued after information about the crash became clearer toward the end of 2023: It was revealed the car dragged the pedestrian, the California Department of Motor Vehicles was suspending the robotaxis' permits, federal authorities were investigating, and Cruise was recalling its fleet among other changes while looking into the incident, Kumar said. GM share prices slid multiple times as information came to light, she said.

Top Cruise executives learned details of the 2023 accident within hours, said lead plaintiff City of Hollywood Police Officers' Retirement System and named plaintiff Plymouth County. But the leaders decided to initially mislead the public by sharing partial video footage and statements that the robotaxi had come to a complete stop after colliding with the pedestrian, investors say.

Shareholders successfully pled that former Cruise CEO Dan Ammann's 2021 statement misled investors that the cars "can operate without a human in the loop now," but not that he did so with intent or recklessness, Kumar said.

And the plaintiffs' claims against all the defendants over Cruise's commercialization prospects survived because the companies and executives didn't dispute them in their opening briefs, Kumar said.

The proposed class would include those who got GM stock from Feb. 24, 2021, through Nov. 8, 2023.

Labaton Keller Sucharow LLP, lead counsel for the investors, didn't immediately respond to a request for comment. Asher Kelly PLLC is liaison counsel. Klausner, Kaufman, Jensen & Levinson is additional counsel for the lead plaintiff.

Bush Seyferth PLLC represents all of the defendants. Paul, Weiss, Rifkind, Wharton & Garrison LLP represents GM and two of its current and one former executive. Jenner & Block LLP represents Cruise, West, and Ammann. Kecker, Van Nest & Peters LLP represents Vogt. None of these firms immediately responded to requests seeking comment.

The case is In re General Motors Co. Sec. Litig. , E.D. Mich., No. 23-13132, 3/28/25 .

(Updates with context throughout.)

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Securities Law

April 1, 2025, 10:57 AM PDT

Elliott Wins Cash Payout for Leading Santander Deal Challenge

- **Lawsuit took aim at bank's \$13 billion auto loan unit buyout**
- **Elliott gets \$500,000 for negotiating \$162 million settlement**

Elliott International LP will take home \$500,000—less than the record \$1.6 million it sought—for its role in a court case that led to a \$162 million settlement between Banco Santander SA and its shareholders.

A Delaware judge handed Elliott the payout in a ruling made public Tuesday, saying it deserved credit for backing litigation over the Spanish bank's \$12.7 billion take-private deal for its US auto loan division. Before the transaction, which cashed out the 20% stake in Santander Consumer USA Holdings Inc. owned by the public, the fund manager was its largest minority investor.

"Elliott devoted extraordinary time and expertise to building, advancing, and resolving the case," Vice Chancellor Lori W. Will wrote for Delaware's Chancery Court. "Elliott's exceptional work merits an equally exceptional award—albeit one less than Elliott seeks."

The legal accord was reached on the eve of trial in September, though its terms weren't disclosed for a month. It resolved claims that Santander affiliates and the loan unit's board manipulated the transaction to keep billions in pandemic-related profits away from public investors. The detente cut short a bruising battle over Santander's use of a self-deleting messaging app, Signal, which has been in the crosshairs of banking industry regulators.

Elliott's lawsuit, filed in 2022, said Santander sought to capture excess capital reserves stemming from pandemic-related stimulus payments that improved US consumer credit, leading to fewer loan defaults. Will in December approved the settlement, including \$3.8 million in expense reimbursement for Elliott and \$26 million in legal fees for three shareholder firms that led the case.

Her ruling on Elliott's request—initially issued Monday—said the investment firm deserved more than the usual modest payment after playing a "drastically" more active role than most lead plaintiffs in shareholder cases. "Elliott spearheaded efforts during the pre-complaint investigation, fact and expert discovery, trial preparations, and settlement negotiations," the judge said.

But although the lawsuit yielded the elite business court's second-largest class action settlement ever, Elliott's request was still excessive, according to the ruling. A payment of \$500,000, "on top of Elliott's pro rata recovery and the reimbursement of its expenses, will compensate it for the burdens it took on," Will said.

The payment will come out of the legal fees given to the shareholder firms, not directly from Santander, according to the ruling.

Elliott is represented by Bernstein Litowitz Berger & Grossmann LLP and Kessler Topaz Meltzer & Check LLP. The Central Laborers Pension Fund, which co-led the litigation, is represented by Block & Leviton LLP. Santander is represented by Ross Aronstam & Moritz LLP and Wachtell, Lipton, Rosen & Katz.

The case is In re Santander Consumer USA Holdings Inc. S'holder Litig. , Del. Ch., No. 2022-0689, 4/1/25 .

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Mullen Automotive Advances Spoofing Suit Against Broker-Dealers

Mullen Automotive Inc. and two of its investors can proceed with market manipulation claims against three broker-dealers for actions that allegedly drove down the electric vehicle maker's stock price, a federal court ruled.

IMC Financial Markets, Clear Street Markets LLC and an affiliate, and UBS Securities LLC are the firms that must continue to face the claims under the March 28 ruling of the US District Court for the Southern District of New York. Mullen and the investors adequately alleged federal securities fraud claims and New York state common law fraud claims, Judge Louis L. Stanton said.

- The defendants, including a number of unidentified "John Does," allegedly engaged in a "spoofing" scheme in which they would place, and then cancel, false "baiting orders" using high-speed algorithms, creating a false signal of a downward stock price trend
- Mullen and the two investors adequately pleaded manipulative acts, fraudulent intent, and a causative link to their losses, Stanton said

Kasowitz Benson Torres LLP represent Mullen and the two investors, who aren't suing on behalf of a proposed class. Morrison & Foerster LLP represents Clear Street. Cahill Gordon & Reindel LLP represents UBS. Paul Hastings represents IMC.

The case is Mullen Automotive, Inc. v. IMC Fin. Markets , S.D.N.Y., No. 1:23-cv-10637, 3/28/25 .

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Avalara Investors Get Some Claims Over Take-Private Deal Revived

A case over Avalara Inc.'s \$8.4 billion sale to a private equity firm needs another look to test the soundness of its proxy misstatement claims, the Ninth Circuit said Monday.

The tax software company's investors successfully pleaded that two parts of the proxy statement's discussion of the proposed sale were misleading because of omissions, the US Court of Appeals for the Ninth Circuit said in an unpublished opinion. The appeals court sent the case back to the lower court for an analysis of the omissions' materiality and other issues.

- Lead investor Martin Sohovich alleged that several false statements tainted the proxy statement issued prior to Avalara's August 2022 sale to Vista Equity Partners Management LLC
- The US District Court for the Western District of Washington said in March 2024 that none of the targeted statements were false or misleading
- But that ruling was incorrect as to a section about growth metrics and a section about a proxy advisory firm's recommendation in favor of the sale, said Judges Ronald M. Gould and Jacqueline H. Nguyen of the Ninth Circuit, joined by Judge Richard D. Bennett of the District of Maryland

Pomerantz LLP represented Sohovich. Fennemore Craig PC and Kirkland & Ellis LLP represented Avalara.

The case is Sohovich v. Avalara, Inc. , 9th Cir., No. 24-1646, unpublished 3/31/25 .

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Class Action

April 1, 2025, 9:16 AM PDT

Axsome Must Face Securities Fraud Suit Over Migraine Drug Delays

Axsome Therapeutics Inc. investors can proceed with a proposed class action alleging the drugmaker misled them about a migraine treatment's progress toward FDA approval, a federal court ruled.

The investors adequately alleged that Axsome and two of its executives made positive statements about the timeline in conflict with what they knew about manufacturing equipment problems and the resulting supply of the drug candidate, Judge Lorna G. Schofield said Monday for the US District Court for the Southern District of New York. But three other executives are out of the suit, she said.

- The investors sued following the company's announcement that the US Food and Drug Administration had concerns about the manufacturing process for the drug, AXS-07, a revelation that allegedly caused a 22% stock drop
- The court dismissed an earlier version of the complaint because of a problem with the then-plaintiff's ability to sue
- An anonymous former employee's account is reliable enough to support allegations of fraudulent intent in the new version of the complaint, said Schofield, who oversees a similar shareholder derivative suit that's paused while the proposed class action proceeds

Pomerantz LLP and the Rosen Law Firm PA are lead counsel for the investors. Morgan, Lewis & Bockius LLP represents Axsome and the individual defendants.

The case is *In re Axsome Therapeutics, Inc. Sec. Litig.*, 2025 BL 107412, S.D.N.Y., No. 22-cv-3925, 3/31/25.

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Latham & Watkins Attorney Pulls a 'Hat Trick,' Winning Three Cases in One Day

 [law.com/newyorklawjournal/2025/03/31/latham--watkins-attorney-pulls-a-hat-trick-winning-three-cases-in-one-day](https://www.law.com/newyorklawjournal/2025/03/31/latham--watkins-attorney-pulls-a-hat-trick-winning-three-cases-in-one-day)

Alyssa Aquino

March 31, 2025

A top Latham & Watkins attorney recently achieved a career high when he scored back-to-back-to-back victories in three very different cases across multiple courts in one day.

While attorneys are usually juggling multiple cases in multiple jurisdictions at a time, rarely are those cases decided on the same day. Until he experienced a same-day "threepeat" on March 19, Jeff Hammel had only known of lawyers winning two cases in one day, at most.

"It's sort of wildly improbable that all the decisions would come out on the same day," said Hammel, who co-leads Latham & Watkins' New York Litigation & Trial Department.

Observing Hammel's very good day, a colleague likened the statistically unlikely chain of events to a "hat trick," which occurs when hockey players score three goals in one game. That comparison struck Hammel, a lifelong hockey fan.

"I like thinking about getting a hat trick because certainly when I played, I did not get many hat tricks," Hammel joked. "So this was nice."

The label, of course, has stuck, with Andy Clubok, the global chair of Latham's Securities Litigation & Professional Liability Practice, drawing his own comparison in an emailed statement.

"Jeff truly exemplifies the exceptional talent and strategic acumen that define Latham's securities litigation powerhouse. Winning three motions to dismiss in a single day, in three different courts, for three different clients is the sort of 'hat trick' that perhaps only one of Jeff's hockey heroes, Rangers star Mark Messier, could rival," Clubok said.

Here are the cases, and how Hammel won them:

Goal 1: *Oakland County Employees' Retirement System v. Sotera Health Co.*

The first of Hammel's hat trick played out in the Ohio federal court, which had been overseeing a shareholder suit against Sotera Health Co. that spun out of a products liability case involving its subsidiary, Sterigenics.

That subsidiary had been pummeled by litigation from hundreds of people over a carcinogen, ethylene oxide, that Sterigenics used to sterilize medical equipment in an Illinois facility. The first case saw jurors award \$363 million to a woman who said the ethylene oxide emissions caused her breast cancer. Sterigenics later resolved the bulk of the cases for \$408 million.

Sotera's stock price dropped after the jury award came out, sparking litigation from shareholders who alleged the company had misled them on the sufficiency of its environmental controls and the extent of its legal exposure.

The shareholder case was lengthy, with the amended complaint clocking in at 208 pages, and the suit had gone before a recently appointed judge—U.S. District Judge Charles Fleming of the Northern District of Ohio—who had yet, to Hammel's knowledge, to hear a securities case. But what made the suit stand out for Hammel was the theory of liability.

"That the company, by defending itself and losing in court, somehow committed securities fraud is just an unusual theory that we searched high and low and couldn't find much precedent for it, which, on the one hand, was good for us—we got to argue that the other side was presenting a unique theory. On the other hand, we didn't find a lot of precedent," he said.

Judge Fleming dismissed the case, finding that Sotera's statements on the emissions case were inactionable opinions regarding the success of the litigation, not statements of fact.

"I think it will enable companies, when they are defending themselves, to have some reassurance that even if the defense isn't successful, because not every defense will be, even if it's a colorable and valid defense, that they're not going to get whipsawed with a securities claim... as long as they do what Sotera did, which is make all of the appropriate disclosures along the way," Hammel said.

Sotera's Latham team was led by BJ Trach, Nicholas Siciliano and Hammel and joined by associates Renatta Gorski, Danny Dvorak and Marissa Perry.

Goal 2: *Zawatsky v. Vroom Inc.*

The rest of Hammel's threepeat continued in New York City, with the Manhattan federal court dismissing a case against Vroom Inc. over its \$468 million initial public offering and follow-on secondary offering.

Both offerings occurred in 2020, as the COVID-19 pandemic had forced consumers indoors and online, a boon for Vroom, an online car dealer. But the tides turned and Vroom, once valued at \$2.5 billion, declared bankruptcy in 2024.

After the bust, shareholders accused Vroom of misleading them on the pandemic's impact on business. Those types of claims aren't atypical—research shows that the pandemic remains a common theme among securities class actions, even years after the worst of the emergency. But the *Vroom* case stood out for Hammel based on the number of public statements that shareholders claimed to be untrue.

“They challenged almost every public statement that the company had made over a multi-year period,” Hammel said.

While judges may take their time saying what they need to say—and U.S. District Judge Paul Gardephe wound up issuing a 74-page opinion explaining why he was dismissing the case—lawyers have their limits.

“Trying to address all of that breadth in the amount of space and time we have—and in a way that doesn’t just make the reader’s eyes glaze over—that was a challenge,” Hammel said.

A Vroom representative said in a statement that the company was very pleased with the dismissal.

"From the start of the lawsuit, the Latham team has given us outstanding strategic advice and guidance, and we are grateful they are on our side," the representative said.

Jason Hegt and Hammel co-led the Latham team representing Vroom Automotive. Alexis Kellert Godfrey, Justin Kirschner and Larry Hong were the associates on the case.

Goal 3: *In re dLocal Securities Litigation*

Rounding out Hammel’s big day was the dismissal of an investor case against the cross-border payments company dLocal Inc.

The first Uruguayan company to reach the \$1 billion valuation needed for unicorn status, dLocal provides payment processing services for merchants in emerging markets. After its initial public offering in 2021, the company raised its valuation to \$6 billion.

But dLocal and the banks that underwrote the IPO were hit with a shareholder complaint after an investigative firm highlighted discrepancies in dLocal’s IPO documents that the firm said were indicators of fraud. dLocal has refuted the firm’s findings.

Participants in the IPO later filed suit in the Supreme Court of the State of New York, alleging that dLocal had given the false impression of “skyrocketing growth” in its offering documents. But New York Supreme Court Justice Andrea Masley dismissed the case, rejecting claims that the company had offered half-truths.

Hammel declined to speak on the record about the *dLocal* case. He led the Latham team, which was representing the underwriters, with Jooyoung Yeu.

Class Action

April 1, 2025, 5:46 AM PDT; Updated: April 1, 2025, 8:24 AM PDT

Rite Aid Beats Investor Suit Over Lost Prescription Client (2)

- Judge said no duty to say losing Virginia Medicaid servicer
- Investor suing brass of Rite Aid, which emerged from bankruptcy

Rite Aid Corp. management defeated investor allegations it concealed its pharmacy benefit management division was losing its biggest health plan customer before the stock's biggest selloff since the start of the pandemic.

None of the alleged misstatements nor the supposed omission of losing Virginia Premier—a former Medicaid servicer—were actionable to carry securities fraud claims, Judge Kelley B. Hodge said for the US District Court for the Eastern District of Pennsylvania. She granted Rite Aid current and former leaders' motion to dismiss the lawsuit Monday, ordering the court to close the case.

The proposed class action alleged Rite Aid, which recently exited bankruptcy as a privately held company, misled investors by not disclosing pharmaceutical services subsidiary Elixir would lose the Virginia health coverage provider—then its largest client that serviced over 300,000 people, Hodge said. After the company purportedly learned about losing that Virginia Medicare and Medicaid servicer, among other clients, Rite Aid continued to misrepresent Elixir's business prospects, the most recent complaint alleged.

The day Rite Aid announced disappointing second quarter of 2023 financial results for Elixir, the company's stock dropped 28%, Hodge said—it's biggest tumble to that point since March 2020, according to data compiled by Bloomberg. Another investor subsequently sued, initiating this action.

But the alleged misstatements around known losses, growth, and new Elixir hires that the lead plaintiff pointed to either weren't sufficiently pleaded to be false when made or amounted to inactionable puffery, Hodge said. And the judge said there wasn't a duty to disclose the loss of Virginia Premier during a 2022 call with investors, tossing the omission claim.

Hodge also said that lead plaintiff Steven L. Diamond failed to allege an inference of intent or reckless disregard by the Rite Aid leaders to deceive investors.

Rite Aid filed for Chapter 11 bankruptcy in 2023 while it contended at least a thousand lawsuits alleging a role in the US opioid crisis. It averted liquidation last summer, finalizing a plan to lose \$2 billion in debt and give control of the company to key creditors, and emerged from bankruptcy last fall. Rite Aid sold Elixir as part of its turnaround.

Diamond voluntarily dismissed the company as it underwent restructuring. He kept the case alive as to Rite Aid CEO Matt Schroeder and former executives Heyward Donigan and Chris DuPaul.

Pomerantz LLP is lead counsel and The Rosen Law Firm PA is liaison counsel for the proposed class, which would've covered those who invested from Dec. 21, 2021, through Sept. 28, 2022. Davis Polk & Wardwell LLP and Hangley Aronchick Segal Pudlin & Schiller were representing defendants. None of these firms immediately responded to emails seeking comment.

The case is *In re Rite Aid Corp. Sec. Litig.*, E.D. Pa., No. 2:22-cv-04201, closed 3/31/25 .

(Updates with context throughout.)

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Roblox Beats Investor Suit Over Age Metrics After Record Selloff

- Investors didn't sufficiently tie stock drop to age metrics
- Judge lets investors try again with suit over direct listing

Roblox Corp. defeated investor allegations that blamed a record stock drop on the gaming company overhyping its ability to "age up" its young user base after it became publicly listed.

Investors didn't sufficiently allege that Roblox's public statements contradicted metrics that tracked the percentage of platform users under the age of 13 or its impact on the number of in-game purchases, Judge Richard Seeborg said while granting the company's motion to dismiss the lawsuit.

The investors also didn't adequately allege a 2022 plummet in the company's stock price was tied to revelations about the percentage of Roblox users over the age of 13, the US District Court for the Northern District of California judge said March 28.

Potential investors had been concerned about the age of Roblox users going into and after its direct listing in 2021, Seeborg said. Roblox, which grew popular during the Covid-19 pandemic, has come under pressure to implement better controls against kids' online spending and to limit exposure of those under age 13 to explicit content, predators, and bullying.

The lawsuit's allegations, relying on five confidential former Roblox employees, "inconsistently refer" to the user age metrics, Seeborg said. "Without greater clarity and specificity, and/or a stronger factual basis to conclude the confidential witnesses had knowledge of actual metrics contradicting the company's public statements, plaintiffs have not plausibly alleged falsity," he said.

The proposed class would cover those who invested in Roblox from March 10, 2021—the day of its direct listing—through Feb. 15, 2022. Roblox's share prices fell more than 26% on Feb. 16, 2022, the stock's biggest drop to that point, according to data compiled by Bloomberg.

While plaintiffs alleged the stock price collapsed the day after the company reported disappointing in-game purchasing growth in an earnings announcement, they didn't sufficiently plead the market learned "that any of the company's prior statements regarding the age of users was false," Seeborg said.

“Indeed, Roblox continues to assert that all of the challenged statements were true when made,” he said.

Seeborg is letting the investors, who first sued Roblox in 2023, file an amended complaint.

The gaming company made several safety changes to its platform in 2024, including barring children under the age of 13 from online social hangout spaces, Bloomberg News previously reported. Bloomberg News reported in February that the US Securities and Exchange Commission was investigating Roblox.

The Arkansas Teacher Retirement System and DeKalb County Pension Fund are the lead investor plaintiffs in the case. Labaton Keller Sucharow LLP, which didn’t immediately respond to an email for comment, is their lead counsel and Hagens Berman Sobol Shapiro LLP is liaison counsel.

Freshfields US LLP represents Roblox, its CEO, and two former executives. An attorney declined to comment via email.

The case is DeKalb Cnty. Pension Fund v. Roblox Corp. , N.D. Cal., No. 23-CV-06618, dismissed 3/28/25 .

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[Securities Law News](#)

March 31, 2025, 1:10 PM PDT; Updated: March 31, 2025, 4:35 PM PDT

Hertz Investor Groups Shed Suit Over Stock Short-Swing Claim (1)

A Hertz Global Holdings Inc. shareholder's allegations that a post-bankruptcy stockholder wrongly collected \$127 million off short-swing transactions was tossed by a federal court Monday.

The plaintiff's matching of the partnership's sales with Hertz's own stock repurchases would produce "absurd results" in a broad application of liability, Chief Judge Laura Taylor Swain of the US District Court for the Southern District of New York said in her order. Plaintiff Andrew Roth has filed "numerous" claims across the country "premised on this legal theory," she said, and so far each court has rejected his bid "to expand liability to issuer transactions."

- Hertz's Chapter 11 reorganization plan gave defendant CK Amarillo LP control of almost 42% of the rental car company's shares, making it a beneficial owner, Roth said. Amarillo LP sold shares in November 2021 before Hertz OKed a buyback of \$2 billion that month, Swain said
- Section 16(b) of the Securities Exchange Act of 1934 allows a company to recover "short swing" profits—money made off buying and selling stock within a six-month period—from statutory insiders
- Swain said Roth's reading of the statute flouts its history; she's not letting him amend his complaint

Ostrager Chong Flaherty & Broitman PC represents Roth. Kirkland & Ellis LLP represents Amarillo LP and related entities. Neither of these firms responded to emails seeking comment. Jones Day represents Hertz, a nominal defendant that is not accused of wrongdoing in this derivative action, and declined to comment.

The case is Roth v. CK Amarillo LP , S.D.N.Y., No. 1:24-cv-00706, closed 3/31/25 .

(Updates with a decline to comment in the sixth paragraph.)

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Lyft Assault, Safety Reforms Get Final Court OK to Settle Suit

- Uber settled a securities class suit alleging similar issues
- Reforms to include several parts and to last three years

Lyft Inc.'s agreement to implement several safety-related internal reforms for a period of three years warrants final approval as a derivative suit settlement, a federal court ruled.

The decision by Judge Haywood S. Gilliam Jr. March 28 ends litigation against Lyft directors and executives, on behalf of the company, over their alleged failure to adequately address sexual and physical assaults against passengers and safety issues for drivers.

But Gilliam didn't approve \$700,000 in fees for the shareholders' attorneys, shaving the amount to \$600,000. "First, there has been relatively little litigation in this case," he said. Second, Gilliam saw "numerous examples of unreasonable billing," he said.

Uber Technologies Inc. has also been involved in investor litigation over some of the same issues, settling a class action for \$200 million in a deal announced days before Lyft's.

Lyft's internal reforms, detailed in a document submitted with the request for preliminary approval in July 2024, include several components. The company would further publicize some passenger safety changes it has already made, including one app feature to alert 911 silently and another to call a representative.

It would amend its business conduct code for employees and add a member to a compliance committee as a "voice for driver and user safety." And it would adopt policies affecting officers and directors, including subjecting executives' incentive compensation to clawbacks "in the event of material negative restatements" and limiting directors to service on only one other company board without the Lyft board's approval.

The Brown Law Firm PC and Levi & Korsinsky LLP are lead counsel for the investors. Latham & Watkins LLP and Richards, Layton & Finger PA represent the individual defendants and nominal defendant Lyft.

The case is *In re Lyft Inc. Derivative Litig.*, N.D. Cal., No. 4:20-cv-09257, 3/28/25 .

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Baxter International Sued Over Retirement Plan Investment Option

- **COURT:** N.D. Ill.
- **TRACK DOCKET:** [No. 1:25-cv-03368](#) (Bloomberg Law subscription)

Baxter International Inc.'s \$4.3 billion retirement plan is plagued by a poorly performing stable value fund that carries unnecessary risk while offering paltry returns, a former employee alleged in a new lawsuit.

The Baxter plan's stable value fund held guaranteed investment contracts with multiple insurance companies that allowed those companies to reap a "windfall" at the expense of workers' retirement savings, the employee said in a proposed class action complaint filed March 28 in the US District Court for the Northern District of Illinois.

Stable value funds are conservative investments meant to provide a modest, guaranteed rate of return while protecting against losses. Plaintiff Charles Clinton says Baxter's stable value fund, which held more than \$473 million as of 2023, carried too much risk, paid too little in returns, and primarily benefited the insurance companies that provided the fund's underlying investments.

"A prudent fiduciary would not have included this underperforming investment option that also carried significantly more risk than other investment options that had similar goals," Clinton said in the complaint, which brings claims under the Employee Retirement Income Security Act.

Several employers have been sued in recent months over the stable value funds in their retirement plans, including JPMorgan Chase Bank NA, Hackensack Meridan Health Inc., and Sentara Health.

Baxter, an Illinois-based health-care company, didn't immediately respond to a request for comment. Its retirement plan covers more than 29,000 people, according to the lawsuit.

Capozzi Adler PC represents Clinton and the proposed class.

The case is Clinton v. Baxter Int'l Inc. , N.D. Ill., No. 1:25-cv-03368, complaint 3/28/25 .

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Schenker Again Beats Would-be Class Suit Over 401(k) Plan Fees

- Judge rejects challenge to fund share classes, performance
- Hundreds of retirement fee suits have spurred mixed results

Schenker Inc. again defeated a lawsuit challenging the fees and investment options in the transportation and logistics company's 401(k) plan, after a federal judge said the case rested on conclusory allegations and lacked valid benchmarks.

The lawsuit criticizes the plan's growth fund from Wells Fargo & Co. as a poor performer, but the complaint doesn't include allegations about Schenker's process for selecting this fund, Judge Araceli Martínez-Olguín said in a March 28 opinion. The plaintiff also failed to compare the Wells Fargo funds to other investments with the same aims, risks, or potential rewards, Martínez-Olguín said for the US District Court for the Northern District of California.

The judge also dismissed claims targeting plan investments that plaintiff Diego Partida said should have been offered in lower-cost share classes. It's uncontested that the plan's share classes were less expensive because of a revenue sharing arrangement that was used to offset the plan's recordkeeping expenses, Martínez-Olguín said.

Partida's proposed class action says the Schenker retirement plan offered poorly performing and overly expensive investment options when identical versions of the same funds were available at lower cost. He also accuses Schenker of failing to appropriately monitor financial adviser Greenleaf Advisors LLC, which allegedly received "much more" money from Schenker than it received from other clients.

Hundreds of lawsuits challenging retirement plan fees have been filed over the past few years, and federal appeals court rulings have been mixed.

The Third, Fifth, and Ninth circuits revived lawsuits against Wesco Distribution Inc., United Surgical Partners International Inc., Salesforce Inc., and Trader Joe's Co. while the Second, Eighth, Tenth, and D.C. circuits issued employer-friendly decisions favoring Deloitte LLP, Montefiore Medical Center, MidAmerican Energy Co., O'Reilly Automotive Inc., Barrick Gold, and Georgetown University.

The Sixth and Seventh circuits have issued a variety of rulings in cases involving CommonSpirit Health, TriHealth Inc., Parker-Hannifin Corp., Oshkosh Corp. and Northwestern University.

Martínez-Olguín first dismissed the case against Schenker in 2024; unlike here, that dismissal was without prejudice to refile. Wells Fargo and Greenleaf aren't parties to the case.

Tower Legal Group and Sharman Law Firm LLC represents Partida. Morgan, Lewis & Bockius LLP represents Schenker.

The case is Partida v. Schenker Inc. , 2025 BL 106341, N.D. Cal., No. 3:22-cv-09192, 3/28/25 .

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Retail & Consumer industry

J&J vows to keep fighting talc cases after settlement deal denied

Healthcare titan had \$9bn fund to resolve claims but bankruptcy judge rejected terms



J&J has spent years trying to use the US bankruptcy system to reach a binding final settlement with claimants who say they got cancer from talcum powder © REUTERS

Sujeet Indap in New York

Published 3 HOURS AGO



Johnson & Johnson said it would continue fighting thousands of lawsuits that alleged its talc powder caused cancer, after a US judge on Monday rejected a third attempt to settle the class-action claims through the bankruptcy system.

“With the bankruptcy option now foreclosed, we will return to the tort system to defeat the meritless claims and deny plaintiffs’ counsel of any recovery,” Erik Hass, head of J&J’s litigation group, said on a Tuesday morning conference call with analysts.

The New Jersey-based company has spent years trying to devise a deal where it could use the US bankruptcy code to reach a binding final settlement with alleged talc powder victims while keeping the parent company, whose market cap is around \$400bn, out of bankruptcy.

[J&J](#) shares fell by more than 4 per cent in pre-market trading on Tuesday. On the conference call, J&J chief executive officer Joaquin Duato reaffirmed its 2025 profit guidance despite the adverse ruling. The company also reversed a \$7bn accounting reserve it had previously made in anticipation of approval of the bankruptcy settlement.

J&J packaged its talc liabilities in a subsidiary known as Red River Talc for its latest Chapter 11 filing. Red River entered bankruptcy with \$9bn funded from the parent company to pay claimants, and the vast majority of plaintiffs had agreed to the terms.

But Judge Christopher López of US Bankruptcy Court in Houston rejected the deal on Monday, finding the 83 per cent support by claimants was not credible because of evidence that some lawyers may have improperly voted on behalf of victims. The bankruptcy court also found the settlement's so-called third party releases — allowing some entities outside the bankruptcy case to avoid future lawsuits — were improper. The ruling followed a two-week evidentiary trial earlier this year.

The latest bankruptcy filing, like the previous two, was opposed by a group of dissident plaintiff law firms as well as the Office of the US Trustee, a [Department of Justice](#) unit which safeguards public interest in bankruptcy cases.

J&J has long maintained its talc was not carcinogenic and noted it has prevailed in 16 of 17 trials asserting ovarian cancer liability over the last 11 years.

“The plaintiffs bar had their opportunity to accept an unprecedented resolution. Instead, they squandered the moment, believing that we could be coerced into settling for egregiously large amounts outside of the bankruptcy system. They were and are sorely mistaken,” said Haas, the J&J lawyer.

J&J, with a market capitalisation of \$400bn, has struggled to convince judges to allow it to resolve its talc liability through bankruptcy. In its original 2021 Chapter 11 filing, a federal appeals court eventually ruled J&J was too wealthy to utilise the bankruptcy process.

Judge López noted the dismissal of the latest bankruptcy petition could prove difficult for all parties. Alleged victims “may unfortunately continue to die while all of this gets sorted out,” he said.

US judge rejects J&J's \$10 billion baby powder settlement

 [reuters.com/sustainability/boards-policy-regulation/us-judge-rejects-jjs-10-billion-baby-powder-settlement-2025-04-01](https://www.reuters.com/sustainability/boards-policy-regulation/us-judge-rejects-jjs-10-billion-baby-powder-settlement-2025-04-01)

Dietrich Knauth

April 1, 2025

The firm has been attempting to resolve thousands of cases by placing a subsidiary into bankruptcy.

- J&J proposal would have ended lawsuits linking baby powder to ovarian cancer
- J&J's two previous attempts at a bankruptcy deal failed in other courts
- Opponents argue J&J not in financial distress, should face lawsuits in court

NEW YORK, March 31 (Reuters) - A U.S. bankruptcy judge on Monday rejected Johnson & Johnson's (JNJ.N) , opens new tab \$10 billion proposal to end tens of thousands of lawsuits alleging that its baby powder and other talc products cause ovarian cancer, marking the third time the company's bankruptcy strategy has failed in court.

J&J has been attempting to resolve the lawsuits through a subsidiary company's bankruptcy, after two previous bankruptcy attempts failed in other courts.

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But the judge overseeing its case, U.S. Bankruptcy Judge Christopher Lopez in Houston, said that the company did not belong in bankruptcy.

"While the Court's decision is not an easy one, it is the right one," Lopez wrote.

Lopez said J&J's proposed settlement did not have sufficient support from women who alleged J&J products caused their cancer. It also went too far in releasing legal claims against entities that had not filed for bankruptcy themselves, including retailers that sold J&J products and Kenvue, a consumer health business that J&J spun off in 2023. The proposal had too many problems to be fixed in bankruptcy, Lopez wrote.

J&J said in a statement that it would not appeal, but also that it had no intention of settling the claims and would instead "return to the tort system to litigate and defeat these meritless talc claims."

Andy Birchfield, an attorney who represents plaintiffs opposed to the bankruptcy settlement, said that J&J's bankruptcy strategy was "nothing more than a bad-faith maneuver to avoid full accountability."

"With this ruling, we are now moving forward without delay to trial, where our clients will finally have the chance to present their cases before a jury and obtain the justice they deserve," Birchfield said.

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

J&J had argued that the third proposal, in Texas bankruptcy court, should succeed because there was more money on the table and the deal was supported by a majority of cancer victims who voted on it.

"UNNECESSARILY RUSHED"

Lopez criticized the votes that J&J collected from plaintiffs' attorneys, saying there were serious flaws in votes cast both for and against the plan. J&J collected 90,000 votes, saying it had 83% of plaintiffs' support, but Lopez said that "at least half should not be counted." Some lawyers voted on their clients' behalf without having clear authority to do so, and others said they had obtained their clients' consent but did not present proof that they had spoken with them, Lopez said.

J&J "unnecessarily rushed" the votes, and plaintiffs' lawyers testified that they were forced to cast votes on their clients' behalf instead of allowing them to vote directly, according to Lopez's opinion.

Opponents of the deal, including attorneys for some cancer victims and a government bankruptcy watchdog, had argued that the third bankruptcy, like the first two, should be dismissed because the company is not in "financial distress." A wealthy company like J&J should not use bankruptcy to prevent cancer victims from having their day in court, opponents said.

J&J faces lawsuits from over 60,000 claimants alleging that its baby powder and other talc products contained asbestos and caused ovarian cancer. The settlement would have ended those lawsuits and prevented similar lawsuits from being filed in the future.

J&J, which began selling Johnson's baby powder in 1894, says that its products are safe, do not contain asbestos, and do not cause cancer. J&J stopped selling talc-based baby powder in the U.S. in 2020, switching to a cornstarch product.

Before its third bankruptcy attempt, which sought to settle claims that its talc products caused ovarian and other gynecological cancers, J&J had separately settled lawsuits alleging that they caused mesothelioma, a rare form of cancer associated with asbestos exposure.

J&J had estimated that ovarian cancer patients would receive between \$75,000 and \$150,000 under the settlement, although the exact amounts depended on the severity of a patient's injury and the number of current and future claims that were ultimately covered by the settlement.

Reporting by Dietrich Knauth; Editing by Alexia Garamfalvi, Stephen Coates and Shri Navaratnam

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9th Circuit to weigh free speech challenge to California's social media parental consent law

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A 9th U.S. Circuit Court of Appeals panel will consider First Amendment arguments Wednesday about whether to preliminarily enjoin parts of a California law that would bar social media companies from sending unsolicited notifications to minors without the consent of a parent or guardian.

The law, SB 976 - which would affect Silicon Valley companies like Alphabet Inc., which owns YouTube; and Meta Platforms Inc., which operates Facebook and Instagram - was put on hold by an appellate panel in January pending appeal.

It is the latest battle between California and Silicon Valley companies. Last August, a different 9th Circuit panel affirmed a key part of a district judge's injunction of another state law, the California Age-Appropriate Design Code Act, that required technology companies to assess their risks to children.

Senior U.S. District Judge Edward J. Davila blocked portions of SB 976 but denied a facial challenge to the rest.

The preliminary injunction of the state law will be considered by a 9th Circuit panel consisting of Judge Ryan D. Nelson, Senior 9th Circuit Judge Michael Daly Hawkins, and Senior Judge William A. Flecher. *NetChoice LLC v. Bonta*, 25-146 (9th Circ., filed Jan. 2, 2025).

The statute seeks to impose new requirements on social media companies due to state legislators' concerns that children are being harmed because addictive feeds keep them up late at night or distract them during school hours.

"The district court is the first federal court in the country to uphold a law requiring minors to secure parental consent to view protected speech on social media websites," wrote Scott A. Keller, a partner with Lehotsky Keller Cohn LLP who represents a trade organization for the social media companies.

"The district court declared that 'personalized feeds are not necessarily a form of social media platforms' speech, so restricting personalized feeds does not restrict access to those platforms' speech.' That outlier holding flouts Supreme Court and Circuit precedent," he continued.

"And it could allow the government to ban personalized feeds entirely - even for adults - across a wide range of traditional and online media," Keller added.

Deputy Attorney General Christopher J. Kissel said the trade group, NetChoice LLC, has not made its case.

"The Supreme Court has never held that restrictions on the kinds of feeds at issue in this litigation are subject to First Amendment scrutiny," he wrote. "Enjoining additional provisions of SB 976 would prevent the government from pursuing its compelling public interest in protecting children's health."

The case has drawn amicus briefs from both sides.

Aaron D. Mackey, an attorney with the Electronic Frontier Foundation, wrote that the law should be subject to strict scrutiny because it imposes content-based burdens on social media users' ability to speak or read speech online.

"The statute also burdens all internet users' First Amendment rights because the age-verification scheme it requires will block some adults and minors from accessing lawful speech in the first place, make it impossible for them to speak anonymously on these services, and increase their risk of privacy invasions," he wrote.

California's position was supported by 24 other states and the District of Columbia, many of which have lawsuits pending against Meta Platforms for practices that are harmful to children. The brief is bipartisan, with signatories including liberal Democratic states and conservative Republican states.

"In recent years, social media companies have adopted sophisticated machine learning algorithms that have made social media more addictive for minors," New York Solicitor General Kwame N. Akosah wrote for the amici states.

"Minors are particularly susceptible to these addictive patterns because an individual's brain is still developing an ability to regulate time management, attention, and impulse control well into their early twenties," Akosah added.

The states argue the case is not ripe because California's age-verification requirement will not go into effect until 2027, adding that "the Supreme Court has never held that online age assurance categorically violates the First Amendment."

Keller countered in a reply brief that California "never addresses the irreparable harm these constitutional violations create. Even a momentary loss of websites' rights to curate and display personalized feeds - or users' rights to access them - 'unquestionably constitutes irreparable injury.'"

#384702

US Education Department closure imperils law school finances, deans say

 [reuters.com/legal/government/us-education-department-closure-imperils-law-school-finances-deans-say-2025-03-31](https://www.reuters.com/legal/government/us-education-department-closure-imperils-law-school-finances-deans-say-2025-03-31)

Karen Sloan

March 31, 2025

A person walks in front of the Department of Education building, in Washington, U.S., February 4, 2025. REUTERS/Kevin Lamarque/File Photo Purchase Licensing Rights, opens new tab

March 31 (Reuters) - The Trump administration's recent moves to shutter the U.S.

Department of Education and shift management of the \$1.6 trillion federal student loan program to the Small Business Administration threaten to disrupt the flow of money vital to law school operations, deans and other legal education experts said.

The Education Department, which currently manages the federal student loan program, said on March 11 that it would lay off nearly half its staff — 1,300 workers. On March 20, Trump signed an executive order , opens new tab intended to dismantle that department. The following day, Trump said the federal student loan program would shift to the SBA, which also announced that it would eliminate 43% of its workforce.

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Potential delays in the disbursement of federal student loans and the possible resurgence of the costlier private student loan market could result from the upheaval of the Education Department, said University of Utah Law Dean Elizabeth Kronk Warner.

The Education Department, when asked for comment on the impact of the changes, pointed to a March 23 appearance by Secretary Linda McMahon on CNN's State of the Union in which she said the administration is looking to place programs where they can "operate very efficiently."

The SBA, in a prepared statement, said on March 24 that it is "working closely with the White House, Department of Education, and Congress to finalize a plan for the strategic transfer of responsibilities related to the student loan program."

University of California, Irvine School of Law Dean Austen Parrish said the SBA's inexperience handling the massive student loan program could be problematic.

"Small business loans aren't the same as managing a student loan portfolio," Parrish said, adding that students rely on federal loans for housing and food in addition to tuition.

More than three-quarters of law students (76%) take out loans to cover their tuition and living expenses, Education Department data show. Public and private law schools use that tuition money to fund their operations, and students' financing must be in place when the school year starts in August or September.

Should federal loan disbursements be delayed, law schools would likely have to scramble to extend their financing deadlines, said Utah's Warner.

Delays could force students to seek out private loans, which tend to come with higher interest rates and may not be available to lower-income students, Warner said. Any disruption in student loans could also push law students toward schools with lower tuition, Warner added, and some may decide not to attend at all if their loan repayment costs are higher than expected.

Among the looming questions for law schools are whether the SBA will have enough staff to properly run and oversee the program and if it will design a new system for administering loans or stick with the existing one, said New York Law School Dean Anthony Crowell.

The federal government lends an estimated \$6 billion to \$7 billion annually to Juris Doctor students, said Chris Chapman, executive director of AccessLex Institute, which advocates for affordable legal education. Chapman ran the institute's previous incarnation as a private graduate student loan lender.

Law students graduate with an average \$161,300 in loans — more than any other professional or graduate-level program outside of medicine, Education Department data shows.

The majority of public and private law schools are funded almost entirely through student loan tuition, said higher education expert Robert Shireman, a fellow at The Century Foundation, a progressive think tank. Unlike science and medical programs, they typically receive neither large public and private grants nor supplemental funding from their universities, Shireman said.

Deep staffing cuts at both the Education Department and the SBA are likely to impact how effectively and efficiently the federal student loan program functions, Chapman said.

He pointed to widespread technical issues and delays in 2024 when the Education Department updated its Free Application for Federal Student Aid, which students use to apply for loans.

"If you try to run something with half the people you had the day before, there's probably going to be some hiccups," Chapman said.

Read more:

The divide in law: ethics, profit, and the Trump administration's influence

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It is extraordinary what is happening to our honorable profession when law firms like *Paul Weiss* and *Skadden, Arps* are willing to give up everything our profession stands for to put profits first. In return for donating hours of legal work to be directed by the Trump administration, these firms seek to avoid Trump's executive orders prohibiting them from appearing in federal courts or entering federal buildings. Rather than fight to uphold morality, justice and constitutional law, profits have given way to the new administration.

The New York law firm *Paul Weiss* was accused by the Trump administration of employing an unethical attorney and wrongly engaging in diversity, equity, and inclusion (DEI) when hiring staff. To avoid any restrictions, the law firm agreed to give \$40 million in legal services to be directed by the Trump Administration. Thereafter, the New York law firm of *Skadden, Arps* agreed to give \$100 million in legal services to be directed by the Trump Administration. These law firms were considered to provide exemplary legal work and to honor our judicial system. Within the past few weeks, President Trump sent out a directive to staff members and agency heads that law firms must be held accountable for representing his enemies like Hillary Clinton, George Soros, and others. Because of this, other law firms fearful of these executive orders are considering following suit. But acquiescing to the Trump administration is nothing more than an embarrassment to our legal profession and the entire judicial system.

In contrast, four major law firms, *Perkins Coie*, *Jenner & Block*, *Covington & Burling*, and *WilmerHale* had the integrity and guts to lead the legal opposition against attacks by the Trump Administration on our profession. Perkins Coie was accused of representing people like Hillary Clinton and defending constitutional laws. These firms were attacked by the White House for "dishonest and dangerous activity," and the Trump administration went as far as instructing all federal departments to cancel any contracts with any clients these firms represent. In addition, WilmerHale was targeted because its former member, Robert Mueller, led an investigation into Trump's 2016 campaign and its alleged activities with Russian officials. Ironically, Mueller was appointed special counsel by Trump's then-deputy attorney general. These law firms fought the Trump administration by seeking protection from the courts.

District Courts have done the right thing in response to Trump's Executive Orders. District Court Judge Beryl Howell (Obama appointee) issued a temporary restraining order (TRO) blocking the executive order against Perkins Coie. District Court Judge Richard Leon (George W. Bush appointee) issued a TRO blocking the WilmerHale firms' access to federal

buildings and officials. District Court Judge John Bates (George W. Bush appointee) issued a TRO blocking parts of the executive order against Jenner & Block from entering federal buildings and other issues.

Yet, our judiciary is also under attack - judges are now being threatened with impeachment if their ruling is contrary to the wishes of the Trump administration. House Representative Andy Ogles of Tennessee filed impeachment articles against District Court Judge Theodore Chuang from Maryland - with many more to come.

It is a new day for our legal rights, legal representation, and living under the rule of law. Indeed, Vice-President JD Vance, a lawyer, expressly stated that judges "aren't allowed" to interfere with the Trump administration's "legitimate power."

Our new Attorney General, Pamela Bondi, is supposed to lead our country to uphold the rule of law with ethics and a just judicial system - for all citizens. One has to wonder why the Attorney General has become a puppet to the White House. It is causing many law firms and companies to follow the Trump administration directive to dispose of DEI policies to include diverse people regardless of their gender, ethnicity, or skin color. In fact, the new EEOC Chairperson, Andrea Lucas, sent memos to major firms that DEI practices could be unlawful and demanded written reports from the firms.

The Trump administration is not only going after private law firms but also against federal prosecutors who have passed up private practice for public service for the people of our country. Numerous extraordinary Justice Department attorneys have been treated as poorly as law firms, having been directed who and who not to prosecute. Many stood up against the Trump administration, including *Danielle Sassoon*, acting U.S. Attorney for the Southern District of New York, who refused to drop Mayor Eric Adam's criminal case and wrote a detailed letter explaining her refusal and why she would resign instead. The same is true of *Elizabeth Oyer*, in D.C., who was fired by the Trump administration for refusing to grant certain pardon requests. In addition, *Tessa Gorman*, the U.S. Attorney for the Western District of Washington, was removed by the Trump administration because she stood up for fair justice. These are just a few of the many DOJ lawyers fired or forced to resign because of their belief in the rule of law and fair justice.

When we were admitted to the legal bar, we took a formal oath to follow the law and use the law to assist people or companies, using our judicial system to seek justice, whether it be on the plaintiff side, the defense side or to petition our government. This is especially true for people who do not have a voice in our judicial system. To allow this new administration and its mix of right-wing members of Congress and oligarchs to threaten our legal profession and judges with impeachment is just short of tearing up our constitution and creating chaos in our society.

Our profession, both in private practice and those working for the government, are now being put in a position of having to make critical ethical decisions. Do we put profits and ethics aside, or do we stand with those who put integrity and respect for the judicial branch ahead of those who cower and are afraid of the new "rules" of practice set by the Trump administration? The choice is clear to any ethical and responsible attorney.

#384703

Submit your own column for publication to Diana Bosetti

Amicus Brief Supporting Perkins Coie Gets 170 Signatures so Far, but Few Am Law 100 Firms

 [law.com/nationallawjournal/2025/03/31/amicus-brief-supporting-perkins-coie-gets-170-signatures-so-far-but-few-am-law-100-firms](https://www.law.com/nationallawjournal/2025/03/31/amicus-brief-supporting-perkins-coie-gets-170-signatures-so-far-but-few-am-law-100-firms)

Amanda O'Brien

March 31, 2025

From the moment Perkins Coie first sued the Trump administration to block an executive order against the law firm, rumors of an amicus brief to support the firm's case have swirled through the legal community.

Now, sources with knowledge of the situation say, the law firm amicus brief, partly coordinated by Munger Tolles & Olson, may be filed in federal court later this week. As of Sunday, the brief had about 170 signatures, but only a handful of Am Law 100 firms were among them, sources say. Representatives of Munger Tolles have not returned messages seeking comment on the amicus.

There are still a group of large firms that are considering signing, but they are conditional on a certain percentage of other large firms signing onto the amicus brief.

Already, boutiques and midsize firms have been more willing to issue public statements in support of the firms being targeted by the presidential administration. That trend is also playing out among the signatories of the amicus brief, sources say.

According to sources who have seen and signed the brief, speaking anonymously since the brief is not currently filed, the filing argues Trump's executive orders violate the Constitution, noting violations of the rights to free speech, due process and the right to counsel of one's choice, as well as the separation of powers.

Sources added that the briefing makes mention of John Adams representing the British soldiers charged with starting the Boston massacre, stressing the importance of being able to represent unpopular clients.

Sources privy to the signatory process indicated that potential signers were sent a general email about what signing the document meant, and outlined a process for those who were concerned with risk or who wanted to edit the amicus, directing them to a mediator.

While the Am Law 100 signers are still not known at this point, some of the midsize signatories of the amicus have posted their decision to act online, particularly on LinkedIn, with signers including Kecker, Van Nest & Peters and Hansen Bridgett.

In a statement emailed to Law.com, Kristina Lawson, managing partner of Hansen Bridgett, explained why her firm signed onto the brief.

“We must have the courage to act boldly in defense of the rule of law and ensure all lawyers can fulfill their responsibilities free from intimidation or fear,” Lawson said. “Silence and neutrality are not options. We proudly stand alongside other firms who are speaking up against lawless actions, and I urge others to do the same.”

Other boutiques and midsize firms that have also spoken out against the president's executive orders include New York-founded Hecker Fink; Washington-founded ZwillGen; Oakland, California-based The Norton Law Firm; San Francisco-based litigation boutique Kecker, Van Nest & Peters; New York-based Selendy Gay; and Jay Edelson, the founder of Chicago-based Edelson PC.

Partners at Am Law 100-ranked firms have remained reluctant to speak publicly, concerned that their firm could see the next executive order from President Donald Trump.

law firm associates from firms of all sizes have been tracking Big Law's actions in response to the executive orders and have spoken out on their own.

A Reddit page is currently home to a tracker looking at how large law firms are responding to Trump's targeting of the profession, posted on March 29.

Meanwhile, over 1,700 associates have anonymously signed onto an open letter demanding their firms condemn the administration's executive orders, and some associates are beginning to organize a recruiting strike against their firms by refusing to voluntarily take on law school recruiting interviews.

Two associates from Skadden, Arps, Meagher, Slate & Flom, Rachel Cohen and Brenna Trout Frey, have also made their displeasure with Big Law public, posting their resignation letters on LinkedIn and expressing disappointment in the firm's silence and eventual deal with the Trump administration.

A third associate, departing from Wilmer Cutler Pickering Hale and Dorr, also posted his parting letter to the firm online—right before Trump issued an executive order against the firm and the firm filed suit to block it. The associate implored large law firms to speak up against the administration's actions.

“I implore all of us to cherish and defend the delicate pillars of our constitutional republic. We must resist their erosion lest we suddenly find ourselves in a brave new world devoid of the ‘law of rules,’” the letter, authored by associate Gilbert Orbea, reads. “Please fight back. Please speak up. We owe it to future generations.”

Doug Emhoff's Law Firm Is Said to Be Trump's Next Target

 [nytimes.com/2025/04/01/us/politics/trump-law-firm-doug-emhoff-wilkie-farr-gallagher.html](https://www.nytimes.com/2025/04/01/us/politics/trump-law-firm-doug-emhoff-wilkie-farr-gallagher.html)

Michael S. Schmidt, Maggie Haberman

April 1, 2025



SKIP ADVERTISEMENT

The firm, Willkie Farr & Gallagher, also employs a top investigator for the congressional committee that documented President Trump's role in the Jan. 6, 2021, attack on the U.S. Capitol.



Willkie Farr & Gallagher may be among President Trump's next targets of a punitive executive order.Credit...Andrew Kelly/Reuters





By Michael S. Schmidt and Maggie Haberman

Updated 9:41 a.m. ET

The law firm that employs Doug Emhoff, former Vice President Kamala Harris's husband, has learned that it is among the next firms that Mr. Trump plans to use his power to punish, according to four people briefed on the matter.

The firm, Willkie Farr & Gallagher, also employs a top investigator for the congressional committee that documented President Trump's role in the Jan. 6, 2021, attack on the U.S. Capitol, and a litigator who spearheaded a lawsuit that two Georgia election workers brought against Rudolph W. Giuliani. Mr. Giuliani was found in that case to have defamed the women as he tried to help Mr. Trump overturn his defeat in the 2020 presidential election, and was ordered to pay the women \$148 million.

Mr. Trump has issued executive orders targeting other law firms that employ people he sees as hostile to him, and it was unclear how Willkie planned to respond to such an action.

Two other firms hit with executive orders have agreed to deals with Mr. Trump in exchange for him rescinding or heading off the orders, drawing criticism from those who see them as capitulating to strong-arm tactics by the president. Three other firms that have fought Mr. Trump's orders in court have been quickly granted restraining orders.

SKIP ADVERTISEMENT

The three judges who stepped in to put the orders on hold said that they were alarmed by them and concerned that they were unconstitutional. But Mr. Trump appears undeterred in his campaign to exact retribution from firms he views as enemies. The president has celebrated his effort, saying more firms are lining up to make deals with him.

The four people briefed on the discussions between the White House and the firm spoke on the condition of anonymity because they did not want to be identified discussing a matter that is supposed to remain confidential.

Image



Doug Emhoff in Washington last year. Credit... Bonnie Cash for The New York Times

In January, a week after Mr. Trump was sworn in, Wilkie announced that it was hiring Mr. Emhoff.

In 2023, the firm had hired Tim Heaphy, who served as the chief investigative counsel on the House select committee that examined the Jan. 6, 2021, attack on the Capitol. Mr. Heaphy conducted many of the committee's important interviews and often sat directly behind lawmakers at the panel's highly publicized hearings.

While the firm has ties to Mr. Trump's perceived enemies, it represented Mr. Trump in the 1990s during one of his company's bankruptcy proceedings. The firm also successfully helped Mr. Trump's close ally, Thomas Barrack, win acquittal in a federal case in 2022, and it represents X, the social media platform owned by the presidential adviser Elon Musk.



LAW SCHOOLS

Georgetown Law Student Group Calls Skadden Cowards, Opts Out Of Recruitment Event

Georgetown continues to be ranked #1 in cojones.

By Chris Williams on March 31, 2025 3:16 pm



When given the opportunity to choose between principles and safety, Skadden's groveling negotiation skills let the world know where they stood. The legal community has been responding in kind. Rachel Cohen's call from inside the house showed that Skadden associates weren't fans of the capitulation. As it turns out, neither are potential associates! A group of students at Georgetown Law, the D.C. school with a Jesuit history that made headlines for making a religious case for DEI, recently told Skadden that they can take their money elsewhere:



Mar 31, 2025 at 5:45 AM



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Corporate investment and usage in generative AI technologies continues to accelerate. This article offers eight specific tips to consider when creating an AI usage policy.

By Practical Guidance Thought Leaders

...abandon its commitments to diversity, equity, and inclusion, Dean William Treanor stood firm, calling the university's commitment to these principles a moral and educational imperative. DEI initiatives are not talking points or marketing tools; they are critical efforts to correct longstanding societal harms. By allowing candidates from systemically marginalized populations an equal opportunity to compete, diversity initiatives promote merit-based hiring. To suggest otherwise is to blame marginalized people for their own marginalization.

Now that's great advocacy for diversity — [the ABA should be taking notes.](#)

Earlier: [Georgetown Law To Ed Martin: F All The Way Off](#)



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Learn legal trust accounting best practices to ensure compliance and protect client funds. Discover expert tips to set your firm up for success.

By Mary Elizabeth Hammond

Chris Williams became a social media manager and assistant editor for Above the Law in June 2021. Prior to joining the staff, he moonlighted as a minor Memelord™ in the Facebook group [Law School Memes for Edgy T1ds](#). He endured Missouri long enough to graduate from Washington University in St. Louis School of Law. He is a former boatbuilder who cannot swim, [a published author on critical race theory, philosophy, and humor](#), and has a love for cycling that occasionally annoys his peers. You can reach him by email at cwilliams@abovethelaw.com and by tweet at [@WritesForRent](#).



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The Next Chapter In Legal Tech Innovation: Introducing Protégé™



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



FirstEnergy asks regulators to raise rates by \$183 million. Auditors say \$8.5 million

[cleveland.com/open/2025/04/firstenergy-asks-regulators-to-raise-rates-by-183-million-auditors-say-85-million.html](https://www.cleveland.com/open/2025/04/firstenergy-asks-regulators-to-raise-rates-by-183-million-auditors-say-85-million.html)

By Jake Zuckerman, jzuckerman@cleveland.com

April 1, 2025



FirstEnergy's former headquarters in downtown Akron. Rich Exner, [cleveland.com](https://www.cleveland.com)

COLUMBUS, Ohio – FirstEnergy's request to increase prices on customers could end up costing the scandal-tarred Akron utility millions.

Last year, the company filed a case with state regulators seeking a \$183 million revenue increase, according to the company's most recent estimates. State auditors hired by the Public Utilities Commission of Ohio, however, recommended a far more modest \$8.5 million boost.

And a state agency representing ordinary electric customers said regulators should forget an increase altogether and instead lower electric rates by \$132 million per year for FirstEnergy's 2 million Northeast Ohio customers.

The specific requested increases vary between FirstEnergy's three utilities. Of FirstEnergy's most recent filings, a residential Cleveland Electric Illuminating Co. customer using 1,000 kilowatt hours per month would see a \$13 (7.5%) monthly increase. For an Ohio Edison customer, it's a \$3 increase (1.8%). For a Toledo Edison customer, it's a \$1.57 (1%) increase.

The five gubernatorial appointees serving as PUCO commissioners will need to sort out the clash over an evidentiary hearing and eventual ruling in the coming months.

The fight is playing out within the first comprehensive review of FirstEnergy's electric rates since 2007. And it comes as ex-CEO Chuck Jones and another executive await trial on charges that they bribed the most recent PUCO chairman with \$4.3 million in 2019 to, in part, absolve the company of its legal obligation to undergo a rate review in 2024. They have pleaded not guilty.

The first of three public hearings to gather consumer testimony on the request is scheduled at 5 p.m. Thursday at the Cleveland Public Library, Learning Commons Space, 325 Superior Ave., Cleveland, OH 44114. Similar hearings are scheduled in Akron and Toledo.

The ask

In May 2024, FirstEnergy cited "significant capital investments" in the grid and additional costs to maintain the system as driving factors requiring new charges for customers.

As beneficiaries of government-backed monopolies, utilities must win approval from regulators at the PUCO before passing most new charges to customers.

While 17 years have passed since FirstEnergy last increased its rates, state regulators have allowed the company to recover billions in costs from customers via a series of surcharges on monthly bills to cover its capital investments. Political opponents of the utilities say their going so long without a rate review is a telltale sign they're overearning, and the bill surcharges enable the company to cut down on its operating costs without sharing the savings with customers.

FirstEnergy asked to increase rates of each of its three utilities in Ohio – Ohio Edison (by \$46.5 million), Toledo Edison (\$7.6 million), and Cleveland Electric Illuminating Co. (\$129.3 million), according to new estimates the company provided the PUCO in March.

Company spokeswoman Hannah Catlett said the cost increases reflect FirstEnergy investments in different technologies that have reduced the size and length of power outages.

Regulators' thoughts

The five PUCO commissioners haven't yet made any ruling on the rate case.

However, the agency retained Blue Ridge Consulting Services to audit FirstEnergy's request. The auditors' 280-page report recommends a significantly pared down version of what FirstEnergy requested.

For Ohio Edison and Toledo Edison, the auditors recommended rate decreases of \$18.7 million and \$26.9 million, respectively. For Cleveland Electric Illuminating Co., the auditors recommended a rate increase of \$54 million, which is \$80.4 million less than what the company asked for.

However, FirstEnergy filed written objections to the auditors' findings on technical grounds.

And ratepayers?

The Ohio Consumers' Counsel, a state agency that represents residential ratepayers' interests at the PUCO, filed arguments in late March seeking a rate decrease from the company. Both the Northeast Ohio Public Energy Council and Northwest Ohio Aggregation Coalition joined in those briefs.

Most of their arguments boil down to technical details of utility operations and accounting practices.

However, the ratepayer advocates pointed to something of an elephant in the room: ex-FirstEnergy CEO Chuck Jones and senior vice president of external affairs Mike Dowling await both state and federal trials on accusations they paid a \$4.3 million bribe to then-PUCO chairman Sam Randazzo.

Both sets of prosecutors say the money, paid in January 2019 and shortly before Randazzo was appointed to the role, led a quid pro quo bribery scheme in which Randazzo would absolve FirstEnergy of its previous agreement with the PUCO to undergo a rate review in 2024. Court documents and text messages released in the investigations show the two executives and others at FirstEnergy privately referred to the rate review as its "Ohio hole" that put downward pressure on its stock price.

The two executives have pleaded not guilty and await trial. Randazzo died by suicide as he awaited state and federal trial on similar charges, though his business entity used in the scheme pleaded guilty after his death. FirstEnergy, in an agreement with prosecutors filed in federal court, admitted as a corporation to bribing Randazzo and paid a \$230 million penalty and agreed to cooperate with investigators.

The Consumers' Counsel argued that neither FirstEnergy nor the PUCO has explained how what FirstEnergy believed would be a substantial rate decrease for the company squares with its request for a significant rate increase. Agency lawyers argued the company's self-professed corruption should effectively be priced into its rates, and they requested a management audit of the company.

PUCO spokesman Matt Schilling declined to answer whether the PUCO commissioners have authority to bake such allegations into electric rates, saying the parties will likely litigate it at a coming hearing.

“Consumers need affordable and reliable utility service,” said Maureen Willis, executive director of the office of the Consumers’ Counsel. “The PUCO should do its part by ordering a rate decrease, not a rate increase, for FirstEnergy’s 1.2 million consumers.”



Stories by Jake Zuckerman

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



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Evolv Falls as Sales Probe Uncovers Misconduct, Misstatements

Evolv Technologies said it won't file its 2024 annual report on time after an investigation that found sales-related accounting errors and misconduct.

- Some sales, including to one of its largest channel partners, had extra-contractual terms not disclosed to accounting staff or auditors
- Certain employees engaged in misconduct and withheld information from the audit committee and PwC
- Internal complaints were raised as early as July 2024 but not escalated
- "The Committee determined that the vast majority of this revenue was prematurely rather than incorrectly recognized"
- Management identified material weaknesses in internal controls in addition to previously disclosed material weaknesses
- Expects to file its 3Q 2024 10-Q by May 19
- Shares fell about 5% premarket
- NOTE: Evolv CFO Resigns After Investigation Finds Accounting Issues

To view the source of this information, click [here](#)

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<https://www.wsj.com/business/deals/elon-musks-megadeal-between-x-and-xai-breaks-wall-streets-rulebook-191b2706>

BUSINESS | DEALS

Elon Musk's Megadeal Between X and xAI Breaks Wall Street's Rulebook

The tech titan can follow his own rules when he is combining two companies he owns, but the merger is still raising dealmaker eyebrows

By [Ben Glickman](#) [Follow](#) and [Lauren Thomas](#) [Follow](#)

April 1, 2025 9:00 am ET



Elon Musk's merger of X and xAI values the combined company at over \$110 billion. PHOTO: VINCENT ALBAN/REUTERS

[Elon Musk](#) struck what could be considered the biggest deal of the year, and he broke all the normal rules.

Musk's [splashy merger](#) of the social-media company X and his artificial-intelligence startup xAI values the combined company at over \$110 billion. That would be a blockbuster deal on Wall Street. But this one is unorthodox, even by Musk's standards, for a whole host of reasons.

The valuation was surprising and so was how the companies got there. Only one set of advisers worked for both sides, when a deal of this size would normally

take armies. In short, the unusual process resulted in a megadeal few public companies could get away with.

That deal consists of a \$33 billion price tag for X, alongside a \$80 billion valuation for xAI.

The new \$80 billion valuation figure for xAI is a big jump from just four months ago, when the company was valued at [\\$50 billion in its last fundraising](#). The new level was set as part of the merger talks, not in a new funding round.

“It’s funny money,” said Andrew Verstein, professor of law at the University of California, Los Angeles, Law School. “It’s like using Monopoly money to buy Pokémon cards.”

The deal is an all-stock transaction, so no cash is expected to change hands. X and xAI shares will be traded for stock in a new holding company, meaning the companies essentially agreed on an exchange rate for their shares.

The advisers worked both sides

Also unusually in this deal, the same advisers worked on both sides of the transaction: [Morgan Stanley](#) and Sullivan & Cromwell.

Typically, separate bankers and lawyers work with a buyer and a seller, and in negotiations they are jostling for the best possible deal for their respective client. There would also likely be some sort of market check to ensure there aren’t any other possible bidders.

Morgan Stanley landed its role after advising and helping to finance [Musk’s original \\$44 billion acquisition of Twitter](#).

At Sullivan & Cromwell, lawyers Mike Ringler and Peter Jones led the X/xAI negotiations, having [joined the firm about a year ago](#) from Skadden, Arps, Slate, Meagher & Flom. The duo had advised Musk on his Twitter deal while at Skadden.

For those advisers, it was more about keeping their relationship with Musk and his empire, rather than landing a big deal fee.

Other Wall Street bankers and lawyers said Monday that they weren't lamenting over missing the deal. (They are more excited by the next-biggest deal of the year, Google's [\\$32 billion acquisition](#) of cybersecurity startup Wiz.)

A reason that xAI is merging with X is because the X platform offers real-time and proprietary data, people familiar with the matter said. PHOTO: CARLOS BARRIA/REUTERS

A deal a public company couldn't do

The size of the deal is unusual for private companies. Even when Musk used his [Tesla](#) business in 2016 to buy his solar-energy company SolarCity, both were publicly traded businesses.

Massive corporate tie-ups tend to be between public companies. And public shareholders aren't shy about suing when they don't think they got the best possible deal. Litigation around deals is common, especially in Delaware, where the lion's share of large companies are incorporated.

If this were a public-company merger, shareholders on each side would demand that independent directors and advisers determine the proper valuations.

But xAI and X likely aren't at risk from litigation, observers say. Business courts in Nevada, where both companies are incorporated, tend to be less protective of shareholders, according to Dorothy Lund, a professor at Columbia Law School. Musk has moved to keep his companies out of Delaware after his [multibillion-dollar pay package](#) from Tesla was rejected by a judge there.

Problems generally arise when shareholders on one side of a deal think they are overpaying or getting shortchanged. But X and xAI share several investors, so that isn't a big issue here. And, many of the investors are backers of Musk more broadly, making it unlikely they would want to complain even if they didn't like the transaction, said people familiar with the deal.

Several investors cheered the deal, including in X posts.

Unfortunately for dealmakers, this particular transaction may not offer the best sign that M&A activity is generally on the rise, after the start to 2025 [was lacking in megadeals](#).

If anything, bankers said, it could offer a sign that there will be more deals for social-media companies or similar internet platforms looking to bolster their data sets for artificial intelligence.

A big reason that xAI is merging with X is because the X platform offers real-time and proprietary data (hundreds of millions of active users posting on the platform), people familiar with the matter said.

Write to Ben Glickman at ben.glickman@wsj.com and Lauren Thomas at lauren.thomas@wsj.com

Videos

Crypto ownership and custodial wallets: Owning without owning?

 [reuters.com/legal/transactional/crypto-ownership-custodial-wallets-owning-without-owning-2025-03-31](https://www.reuters.com/legal/transactional/crypto-ownership-custodial-wallets-owning-without-owning-2025-03-31)

Joseph Cioffi, Massimo Giugliano, Adam Levy

March 31, 2025

Representations of cryptocurrencies are seen in this illustration, August 10, 2022.

REUTERS/Dado Ruvic/Illustration/File Photo Purchase Licensing Rights, opens new tab

March 31, 2025 - Over the last decade, year over year, hackers have stolen billions of dollars in cryptocurrencies. Last month, another of the world's largest cryptocurrency exchanges was hacked in what has been called the largest crypto heist in history. The exchange was Bybit, based in Dubai, and the hackers, which according to a public announcement by the FBI are linked to North Korea, ran away with \$1.5 billion in Ethereum (ETH).

Unsurprisingly, crypto holders fear being swept up by the next hack and seek government safeguards and fortified technology. After all, unlike cash deposits or securities, digital assets held on an exchange are not afforded protections by the Federal Deposit Insurance Corporation or the Securities Investor Protection Corporation. And robust countermeasures are needed to offset the growing sophistication and tech of the fraudsters.

However, the issue of who owns digital assets — which comes to the forefront when they are stolen, lost or diminished — is a threshold matter that must be considered by any crypto investor that stores digital assets with a third-party platform. Below is a discussion on the factors courts have considered to resolve the ownership issue.

A wallet primer

Cryptocurrencies are "stored" in wallets, a software program or hardware device that functionally acts like (but is not truly) a bank account for digital assets. "Hot" wallets connect to the internet and are ready for transactions. "Cold" wallets are off-line devices generally considered more secure for long-term crypto storage.

Wallets work by creating the information needed to transact on a blockchain network, including, most basically, a public address and a private key. The public address is used to receive digital assets from others. The private key, similar to a password, is needed for a user to authorize transactions involving the wallet's assets (if lost, the stored assets may become inaccessible forever).

"Custodial wallets" are where a third party — such as an exchange like Binance or Kraken — manages a wallet containing customer assets and maintains control over the private keys. These wallets are popular for their convenience and ease of use. Having said that,

decentralized exchanges (DEXs) are growing in popularity and do not require users to surrender control of private keys, but these exchanges can be more difficult to navigate.

All crypto transactions include a "signature," i.e., the hexadecimal numbers created when a wallet user authorizes a transaction. "Multi-signature" wallets, for added security, require two or more people to authorize a transaction.

Fluid ownership factors

In varying contexts and jurisdictions, disputes have arisen over ownership of digital assets held by third-party custodians on behalf of their customers.

Although the law remains in flux, courts have focused on a handful of key factors, including: (i) whether account agreements specify who owns the assets, (ii) whether the custodian can freely use the assets, (iii) whether the assets are maintained in a segregated or commingled basis, and (iv) who controls the wallet's private keys.

'Crypto winter' bankruptcy decisions

In the Celsius bankruptcy case, for example, the Bankruptcy Court for the Southern District of New York issued a decision in early 2023 concluding that the over \$4 billion in assets deposited by customers in so-called "Earn Accounts" belonged to the Celsius estate, to the shock and dismay of Celsius customers. The Court's decision was based on the express language of the relevant terms of use, which granted Celsius "all right and title to such Digital Assets, including ownership rights."

In contrast, in the BlockFi bankruptcy case, the Bankruptcy Court for the District of New Jersey determined, also in 2023, that \$300 million in digital assets held in "Custodial Omnibus Wallets" were not property of the debtors' estate and could be repaid to BlockFi's customers. Unlike in Celsius, the applicable terms of service stated that "title to the cryptocurrency held in your BlockFi Wallet shall at all times remain with you and shall not transfer to BlockFi."

Similar disputes overseas

In Cryptopia, a liquidation proceeding involving a New Zealand based crypto exchange, the High Court of New Zealand (functioning as a trial-level court) issued a judgment in 2020 concluding that a single hot wallet holding digital assets on behalf of accountholders created an express trust for those accountholders.

Based on language favorable to accountholders in the relevant terms and conditions, the High Court found that the assets were co-owned by the accountholders, despite that the exchange maintained exclusive control over the wallet's private keys.

Forfeiture proceedings and a bit about ByBit

Criminal forfeiture proceedings are becoming a new forum for crypto ownership disputes. In such proceedings, parties have sought to lay claim to digital assets recovered by the government by alleging control of the private keys of customer wallets. Others have pointed to terms of service language and traced the stolen assets back to their individual wallets using public ledgers.

If assets are ever recovered from the ByBit hack, similar ownership issues could arise. There, the hack took place during a routine transfer of ETH from an ETH multi-signature cold wallet to a hot wallet. ByBit controlled the private keys of the wallets, and customer assets were commingled in them, but the terms and conditions do not address the issue of ownership quite as clearly as in Celsius and BlockFi.

Regulatory guidance remains scant

There is little federal guidance on the issue of ownership of assets held in custodial wallets. That could soon change, as the new administration has signaled a willingness to support the crypto industry, including through the executive order seeking to create a "Strategic Bitcoin Reserve as well as a Digital Asset Stockpile."

In January, the Securities and Exchange Commission rescinded part of Staff Accounting Bulletin (SAB) No. 121 [\[link\]](#), opens new tab, which was widely panned by the crypto industry for requiring certain custodians to report customer assets on their balance sheets as both an asset and a liability. SAB 121 [\[link\]](#), opens new tab was understood to have increased capital reserve requirements and, consequently, discouraged companies from offering custodial services.

Requiring firms to keep customer assets on their balance sheets was also thought by some to increase the risk that digital assets are deemed part of a debtor's estate in the event of a bankruptcy.

Conclusion

Custodial wallets are popular and for good reason, as they are easy and convenient to use. In fact, of the more than half a billion crypto holders worldwide, many are likely using custodial wallets without even realizing it. But as discussed, ownership issues could arise if their custodian becomes insolvent, or if the assets are stolen during a cyberattack and are recovered, or some other unforeseen circumstances occur.

The body of law pertaining to legal ownership of digital assets held in custodial wallets remains small and in flux. Yet, the factors discussed above will likely remain paramount. How a court may apply these or other factors will depend on the particular facts and will be

influenced by the ever evolving legal landscape of owning digital assets.

At a minimum, industry participants should review the applicable terms and conditions related to any custodial wallets in which they have an interest and consider their options for long-term crypto storage.

Joseph Cioffi is a regular contributing columnist on consumer and commercial financing for Reuters Legal News and Westlaw Today.

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DocGo Can't Nix Investor Suit Over 'Indisputably False' Claims

By **Dorothy Atkins**

Law360 (March 31, 2025, 4:56 PM EDT) -- A New York federal judge has trimmed a proposed class action alleging that mobile medical provider DocGo and its top brass misled stockholders before its \$432 million migrant-services contract with New York City faced public scrutiny, but the judge found that claims stemming from the former CEO's "indisputably false" statements can proceed.

In a 51-page **order** Friday, U.S. District Judge Katherine Polk Failla noted that the latest rendition of the securities class action complaint bases some of its claims on certain "indisputably false" statements that former DocGo CEO Anthony Capone made about his educational history and DocGo's efforts to sign migrants up for New York State Medicaid.

Although the company claimed in its defense that Capone's educational history is immaterial to the company's performance in the stock market, the judge noted that Capone repeatedly tied his educational background to DocGo's capabilities, so it's plausible that a reasonable investor would view this information as altering the "total mix" of information available.

"The wrinkle here — and the reason why defendants' arguments ultimately fail — is that Capone strove to tether his educational background directly to DocGo's technological capabilities," the order said.

The judge ruled that those claims can proceed, as well as allegations stemming from false statements Capone made regarding DocGo's efforts to sign migrants up for New York State Medicaid.

"In point of fact, DocGo's own representatives admitted within a few weeks of Capone's statements that the company (i) had no such ability to sign migrants up for Medicaid; (ii) did not enroll or sign up anyone for Medicaid; and (iii) had no ability to obtain assignment as a primary care provider through this (apparently non-existent) signup process," the order said. "UnitedHealthcare then administered the coup de grâce by stating that it had no contract in New York with DocGo."

However, the judge agreed to toss other securities fraud claims, including all claims against two DocGo executives, Stan Vashovsky and Andre Oberholzer.

The ruling keeps alive in part a proposed securities class action that was initially filed in **October 2023** by investor Joe Naclerio and which is now being pursued by Genesee County Employees' Retirement System, a Flint, Michigan-based pension fund.

The Manhattan-based DocGo was initially formed as a so-called blank check company whose goal was to raise money from investors ahead of its initial public offering in 2020 after which it combined with the private company Ambulnz.

But the suit alleges that after its IPO, DocGo and its top brass publicly overstated the efficacy of its mobile health and medical transportation services, which purportedly helped it secure a \$432 million no-bid contract with the New York City Department of Housing Preservation and Development to provide services to asylum-seeking migrants in conjunction with the city's practice of relocating migrants.

At the time, the city contract was the largest DocGo had ever received from a government body and nearly matched DocGo's total reported revenue for 2022, according to court documents.

But the pension fund claimed the company and executives' alleged misstatements inflated DocGo's stock prices, which fell after multiple news outlets called into question the legitimacy of the business's services and caused New York elected officials to demand that the company improve its services.

The investors also alleged that while he served as CEO of the company, Capone misrepresented his educational history and falsely claimed that it provided the backbone of the company's "unique technological prowess," according to court documents. Capone purportedly lied about earning a master's degree in computational learning theory from Clarkson University and falsely claimed he graduated summa cum laude from SUNY College at Potsdam with degrees in computer science, philosophy and law, when he didn't, the suit alleged.

As DocGo was facing mounting public scrutiny, Capone reassured investors that the company was not facing a "revenue cliff" after the city contract ended and purportedly further misled investors during a live August 2023 interview about the company's prospect of securing an alleged \$4 billion, five-year U.S. Customs and Border Protection contract, as well as DocGo's efforts to sign migrants up for New York State Medicaid.

The latest rendition of the lawsuit asserts securities fraud claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 as well as related federal regulations. But in June, DocGo, Vashovsky and Oberholzer filed a motion to dismiss, asking the judge to throw out the litigation for good. Shortly after that Capone joined the motion, and in August, the pension fund **opposed** the dismissal bids.

On Friday, Judge Failla tossed all claims against Vashovsky and Oberholzer, finding that the lawsuit failed to allege that the pair acted with requisite scienter — even if the executives didn't correct or monitor Capone's alleged public misstatements — because there's no allegation that the two executives definitively knew Capone's statements were false.

The judge also tossed scheme liability allegations, as well as certain Section 10(b) claims against Capone and DocGo and a Section 20(a) claim against DocGo.

The judge also found that some of Capone's statements regarding the CPB contract and its value are actionable as false or misleading, since Capone said the deal was worth \$4 billion, when it was in fact valued at around \$2 billion.

However, the judge said statements regarding DocGo's "credibility" of winning the deal are inactionable puffery, and although his CPB deal statements may have been false, the suit doesn't sufficiently allege that Capone had a "strong" inference of scienter as to those CBP statements.

Nevertheless, the judge kept alive other securities fraud claims against Capone and DocGo stemming from Capone's misstatements regarding his education and the company's Medicaid work that were made during the class period. In light of her ruling, Judge Failla ordered Capone and DocGo to answer the allegations by April 25, and she required the parties to submit a proposed case management plan by May 2.

DocGo said in a statement Monday that the company is pleased that the court "dismissed much of this lawsuit at its earliest stages."

"We do not comment on active litigation and look forward to defending the remaining claims in due course," the statement said.

The pension fund's counsel declined to comment Monday, and counsel for Capone didn't immediately respond to a request for comment.

The pension fund is represented by Christopher M. Wood, Samuel H. Rudman and David A. Rosenfeld of Robbins Geller Rudman & Dowd LLP and Thomas C. Michaud of VanOverbeke Michaud & Timmony PC.

DocGo, Stan Vashovsky and Andre Oberholzer are represented by Jason J. Mendro of Gibson Dunn &

Crutcher LLP.

Anthony Capone is represented by Evan I. Cohen of Finn Dixon & Herling LLP.

The case is Genesee County Employees' Retirement System v. DocGo Inc. et al., case number 1:23-cv-09476, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Theresa Schliep and Katryna Perera. Editing by Rich Mills.

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Vizio Stockholders Open Challenge To \$2.3B Walmart Merger

By **Jeff Montgomery**

Law360 (March 31, 2025, 8:41 PM EDT) -- A Vizio Inc. stockholder launched a class challenge Monday to the smart-TV company's \$11.50 per share, \$2.3 billion, sale to Walmart Inc., accusing insiders — including Vizio CEO and controller William Wang — of wiring up a deal unfair to common stockholders.

Walmart offered to acquire Vizio in February 2024, and the deal was completed in December. The **complaint**, led by stockholder Robert Garfield, alleged that the deal assured Wang substantial equity in Walmart without assuring that public stockholders shared in the merger benefits.

Wang and other members of Vizio's management began holding what were described as "secret" meetings with Walmart's management in 2023, the complaint said. Wong held 100% of the company's 10-votes per share Class B stock, and 86.3% of shareholder voting power overall.

"By the time Wang finally notified the Vizio board of directors of his and management's conversations with Walmart in August 2023, Walmart was already prepared to make an offer to acquire the company, which was conditioned on retaining Wang" and Chief Operating Officer Ben Wong.

Alleged in the three-count action are separate breach of fiduciary duty counts naming Wang as controlling shareholder, Vizio's board of directors and Vizio's officers.

A three-member purportedly independent special committee lacked authority to manage Wang's conflicts or reject proposals, according to the complaint. J.P. Morgan Securities LLC, meanwhile, was chosen as the special committee's financial adviser despite the firm's service as adviser to the full board for months in "clandestine" negotiations with the big retailer.

Along the way, the complaint said, Wang and Wong ran the process and capped negotiations after notifying Walmart that Vizio would agree to \$11.50 per share in exchange for an exclusivity agreement.

Walmart had been Vizio's largest customer since 2008, the complaint said. A Vizio transactions committee "requested" in January 2024 that Wang not discuss post-closing terms of employment and compensation with Walmart. The request was described as "acknowledging the conflict that had infected Wang's unilateral discussions with Walmart since January 2023."

Wang received an unspecified number of Walmart restricted stock units in addition to salary and benefits. Nothing in the company's books and records shows a market check or request for a higher price for Vizio, however.

The deal went through by written consent of major shareholders, without a general or minority stockholder vote.

Named in the suit are Wang, who founded Vizio's corporate predecessor, Wong and five other Vizio directors.

At least as of Walmart's Aug 15, 2024 offer of \$9.25 per share, the complaint said, Wang's and Wong's interests differed from those of the company's public shareholders. Walmart made clear that securing Wang and Wong's future employment at Walmart was a critical component of any potential

merger, the complaint said.

Board members formed what was described as a "toothless" transaction committee the same month, with Wang continuing to attend meetings. Other strategic buyers communicated with Vizio, but negotiations allegedly focused on Walmart and securing an increase in its offer.

During the process, the complaint noted, J.P. Morgan continued seeking separate, "non-ratable benefits" for Wang despite its wider responsibilities. By November 2023, Vizio's transaction recommended retaining Wilson Sonsini Goodrich & Rosati as counsel to the company.

Wilson Sonsini recommended that after signing of the merger agreement Vizio should retain an ability to receive offers from third parties, noting the absences of a wide search for offers before entering exclusive arrangements with Walmart.

JP Morgan's preliminary valuation of Vizio, however, considered only the \$11.50 offered by Walmart in mid-December, an 8.9% premium to the company's 52-week high. Board members approved the deal on Feb. 19.

According to the complaint, Wang and Wong received unfair benefits from the deal, after an unfair, multiply conflicted process.

Vizio Inc. stockholder Robert Garfield is represented by Kimberly A. Evans, Lindsay K. Facenda, Daniel M. Baker, Robert Erikson Jason Leviton and Nathan Abelman of Block & Leviton LLP.

Counsel information for Walmart was not immediately available.

The case is Robert Garfield v. William Wang et al., case number 2025-0314, in the Court of Chancery of the State of Delaware.

--Editing by Rich Mills.

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Investor Hits Solaris With Suit Over Merger Details

By **Tom Lotshaw**

Law360 (March 31, 2025, 2:03 PM EDT) -- Houston-based oil and gas company Solaris Energy Infrastructure Inc. misled investors about the value of a mobile turbine rental business it acquired last year, according to a proposed class action filed Friday.

In the complaint, investor Stephen Pirello said Solaris and its executives touted Mobile Energy Rentals LLC as a premier distributed power solutions provider with diversified earnings that offered Solaris a compelling opportunity to enter a large and growing market, and acquired the business for \$60 million cash, the repayment of about \$71 million in debt and approximately 16.5 million shares last September.

According to Pirello, Solaris misrepresented MER to investors, and its stock fell by nearly 17%, or \$4.15 per share, after more details about the business were published earlier this month.

"As a result of defendants' wrongful acts and omissions, and the precipitous decline in the market value of the company's securities, plaintiff and other class members have suffered significant losses and damages," Pirello said.

The complaint references various statements Solaris made in press releases and quarterly reports as well as a March 17 report by Morpheus Research.

According to Pirello, Morpheus Research reported that MER had limited revenue of only about \$2.5 million and was based out of a condo with no employees, no turbines and no real track record in the market at the end of 2023, had a co-owner with felony convictions, and had recently acquired nearly all its turbines through debt Solaris agreed to repay, deriving more than 95% of its revenue from a single customer.

The suit names Solaris, its CEO, William A. Zartler, and its CFO, Kyle S. Ramachandran, claiming their misrepresentations and omissions caused Pirello and other investors to purchase shares of its stock at artificially inflated prices. It aims to represent all investors who purchased or acquired Solaris stock between July 9, 2024, and March 17, 2025.

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

Pirello is represented by Sammy Ford IV and Davis Metzger of Ahman Zavitsanos & Mensing PLLC, Charles H. Lineman of Glancy Prongay & Murray LLP and Frank R. Cruz.

Counsel information for Solaris could not immediately be determined.

The case is Stephen Pirello et al. v. Solaris Energy Infrastructure et al., case number 4:25-cv-01455, in the U.S. District Court for the Southern District of Texas.

--Editing by Patrick Reagan.



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9th Circ. Revives Investor Suit Over \$8B Avalara Sale

By **Jessica Corso**

Law360 (March 31, 2025, 8:46 PM EDT) -- The Ninth Circuit on Monday partially revived a proposed class action accusing tax software company Avalara Inc. of underselling investors on its future prospects before taking the company private in an \$8.4 billion deal.

A three-judge panel of the court largely upheld U.S. District Judge Marsha Pechman's decision to dismiss the case brought by investor Martin Sohovich but said Avalara may have downplayed concerns with the acquisition expressed in a report by the proxy advisory firm Institutional Shareholder Services.

"That some of the report's unfavorable excerpts were filed by a third party, in a separate SEC filing, does not render Avalara's statements about the report not false or misleading," the panel wrote in an unsigned opinion.

Judge Pechman threw out the lawsuit **last year**, declining to give Sohovich another chance at amending a case that accused Avalara of downplaying its future profitability in order to win investor approval of its \$8.4 billion buyout by investment firm Vista Equity Partners Management LLC **in 2022**.

Sohovich said Avalara and its board of directors made multiple misleading statements in order to get shareholders to approve a deal that would see them bought out for \$93.50 per share, compared to the \$109 per share target price allegedly set by the company's own financial adviser.

But Avalara said the price was fair because the sale of its business came after a 50% decline in its stock price over the previous two years and the loss of its most significant European business partner.

The Ninth Circuit said many of the company's statements in the lead-up to the purchase, including those on the damage that its European business had sustained, were puffery and not objectively false or misleading.

But the ISS report, although it did ultimately recommend the sale, may have contained criticisms of certain aspects of the deal that didn't make it into Avalara's statements, the Ninth Circuit said. The circuit court ordered the lower court judge to address the ISS report on remand.

The circuit court also ordered the district court judge to take a closer look at allegations that the company failed to discuss inorganic growth through mergers and acquisitions in the lead-up to the sale, as Sohovich said the company had always done in years prior. The appellate panel revived those inorganic growth claims as well, saying Sohovich's allegations "plausibly suggests that the omission — and the lack of notice about such omission — could materially mislead a reasonable investor."

Representatives for Sohovich and Avalara did not immediately respond to a request for comment Monday.

Circuit Court Judges Ronald Gould and Jacqueline Nguyen and U.S. District Judge Richard Bennett sat on the panel for the Ninth Circuit.

Sohovich is represented by Tamar A. Weinrib and Jeremy A. Lieberman of Pomerantz LLP and Duncan Turner of Badgley Mullins Turner PLLC.

Avalara and its executives are represented by Jay Lefkowitz, John Del Monaco and Mike Rusie of Kirkland & Ellis LLP and James Savitt and Jacob Freeman of Fennemore Craig PC.

The case is Martin Sohovich v. Avalara Inc. et al., case number 24-1646, in the U.S. Court of Appeals for the Ninth Circuit.

--Editing by Stephen Berg.

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Del. Legal Overhaul Won't Scuttle Key Rulings, Expert Says

By **Jeff Montgomery**

Law360 (March 31, 2025, 8:12 PM EDT) -- A longtime expert on Delaware's general corporation law disputed on Monday predictions that a recently signed legislative overhaul will upend dozens of important precedents in the state.

The remarks by Lawrence A. Hamermesh, a retired Widener University Law School professor, followed comments by Columbia Law School professor Eric Talley **last week** that 36 or more important Court of Chancery or Delaware Supreme Court rulings will likely be overturned by S.B. 21, introduced on Feb. 17 and passed by lawmakers and signed by Gov. Matt Meyer 37 days later.

Supporters — including Gov. Meyer as well as the state's Corporation Law Council and all but a handful of lawmakers — said lawmakers had to act fast to counter recent court rulings that were expected to trigger a wave of corporate charter relocations to other states. A further exodus would have jeopardized a major general fund revenue source, state officials said.

"Obviously, some Supreme Court opinions and holdings are being overturned, intentionally and openly, by S.B. 21," said Hamermesh, who in addition to his Widener career is a former private practitioner and former executive director of the Institute for Law & Economics at the University of Pennsylvania Carey Law School.

"But the suggestion that S.B. 21 recklessly knocks out long-standing precedent is just not correct," he added. "Unfortunately, the truth is detailed and not terribly exciting."

Last week, Eric L. Talley, an Isidor and Seville Sulzbacher professor at Columbia Law School, said that "Delaware has changed itself in a pretty significant way to be much more controller-friendly" with the enactment of S.B. 21.

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 and corporate franchise fees provide a fifth of its general fund revenues. The measure nevertheless drew heavy support from Democrats and Republicans alike in both chambers, at a time otherwise often characterized by partisan friction.

Ann M. Lipton, Tulane Law School's Michael M. Fleishman professor in business law and entrepreneurship, said in an email on Monday she believes the legislation "definitely overturns multiple decisions at least on its face, though in some ways we may have to wait for further interpretation."

Among other features, Lipton said, the bill's passage "loosens the standards for committee independence in a manner that goes beyond most Delaware law as it's been developed for years, changes how independence is evaluated (again, multiple Delaware decisions over several years), and may change the informational requirements for shareholder votes as it has been described for many years."

Talley told Law360 that some of the latest lists of potentially invalidated cases, compiled by others, are inconsistent with legislative testimony. He added that sorting everything out "will probably be messy," last years and "almost certainly will not rapidly achieve the degree of clarity" that S.B. 21 proponents might have wished.

"Some of my peers think my list is too small, and that it should count other cases. Others think it's too large and should eliminate some. Still, others think that the number is about right, but they'd choose different cases. This Goldiloxian discourse habitually carries over to the courts, too — and to some extent, there are many, many debates that will clearly get dumped on the courts about how or whether S.B. 21 overturns my and others' lists of precedents," Tally said, adding: "If anyone told the General Assembly that SB21 would be limited intervention, I would beg to differ."

The measure did nullify the state Supreme Court's Match.com ruling last year, which found all approval requirements for conflicted controller deals have to meet the court's 2014 standards in *Kahn v M&F Worldwide*, Hamermesh noted.

That decision dictates approval by independent special committee members and independent stockholders. Vice Chancellor Morgan T. Zurn previously found that Match.com had justified the use of a less onerous fairness test for its 2019 reverse-spinoff from Barry Diller-controlled IAC Interactive.

Among the issues making nullification of cases complicated, Hamermesh said, are the facts that:

- Key cases regarding satisfaction of stock exchange requirements for director independence aren't conclusive, as S.B. 21 isn't binding under longstanding presumptions in existing case law and can be rebutted with "substantial and particularized facts"
- Precedent requiring a "holistic" approach to entire fairness, with the legislation confirming that references to "fair as to the corporation and its stockholders" are "intended to be consistent with the entire fairness doctrine developed in the common law"

Not eliminated, Hamermesh said, is precedent making clear that courts have the ability to impose liability where independent directors do not act in good faith and with due care."

"S.B. 21 confirms, not nullifies, the proposition that an independent board committee must satisfy its duty of care, which under long-standing Delaware case law requires acting without gross negligence," Hamermesh said.

Among the other rulings not contradicted by S.B. 21, Hamermesh said, include:

- Application of "enhanced scrutiny" to a case based on inadequate or insufficient disclosures to stockholders
- A holding that the plaintiff-friendly entire fairness standard applies initially to a stock-for-stock merger with a controlling stockholder
- Confirmation that courts can use "compelling need" or "functional equivalent" standards to order production of additional materials

--Editing by Philip Shea.

Correction: This story corrected a misidentified speaker in a comment.

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'Let's Go Brandon' Coin Buyers Class Partially Certified

By **Katryna Perera**

Law360 (March 31, 2025, 3:47 PM EDT) -- A Florida federal judge partially certified a class of purchasers of meme-inspired cryptocurrency LGBCoin in a suit alleging the price of the tokens cratered after its much-hyped plan to sponsor the coin's eponymous NASCAR driver fell apart.

U.S. District Judge Paul G. Byron issued an **order** on Friday certifying a class of buyers solely related to their claims of the sale of unregistered securities but not their claims of unjust enrichment, finding the plaintiffs failed to establish or provide a proper argument for predominance for the unjust enrichment claims.

And even if they had properly provided an argument, Judge Byron said the plaintiffs still would not satisfy the predominance requirement because they seek to certify a nationwide class while their unjust enrichment claims arise under state law.

"Plaintiffs make no attempt to identify what state laws apply to the potential class members' unjust enrichment claims, nor do they identify whether there is a homogeneity or manageable variation among such states' laws," the judge wrote. "Specifically, plaintiffs have not shown an absence of actual conflicts amongst the relevant states' laws, nor have they provided the court with a choice-of-law analysis."

"Absent this information, the court is unable to determine whether 'the legal questions governing each class members' claims are predominantly subject to generalized proof,'" the order says.

However, the judge found that the proposed class meets all the necessary requirements for the suit's claim that LGBCoin is an unregistered security, and he certified a class of all individuals who purchased the cryptocurrency between Nov. 2, 2021, and March 15, 2022.

The judge also rejected the defendants' arguments that the plaintiffs lack standing to sue and that LGBCoin should not be considered a security.

The token at issue in the suit was inspired by the "Let's Go Brandon" meme, when a TV news reporter mistakenly described profane chanting directed at President Joe Biden during a NASCAR event as "Let's go, Brandon" in support of a racer.

The buyers — led by Sandra Bader, Eric De Ford and Shawn R. Key — claim they purchased the coin in part because the project touted an upcoming announcement of a NASCAR partnership. However, the buyers said they suffered losses when the deal never materialized and the token's price dropped near zero. The suit has been amended three times since its April 2022 filing, and previously named NASCAR as a party before the stock car racing company won dismissal.

The LGBCoin purchasers claim the cryptocurrency was created in part by hedge fund CEO James Koutoulas, whom the investors described as a Republican influencer.

In a statement to Law360 on Monday, Koutoulas said he is pleased that Judge Byron denied certification as to the suit's unjust enrichment claims but "surprised" by the court's certification on the unregistered securities claims given the U.S. Securities and Exchange Commission's February statement that meme coins "do not involve the offer and sale of securities under the federal securities laws."

Counsel for the buyers did not immediately respond to requests for comment on Monday.

The **staff statement** from the SEC's Division of Corporation Finance on Feb. 27 told the public that meme coins, described as speculative assets based on cultural zeitgeist with little functionality, were akin to collectibles and outside the SEC's domain. The staff statement made clear that, while meme coin participants do not need to register with the agency, "accordingly, neither meme coin purchasers nor holders are protected by the federal securities laws."

The buyers are represented by Aaron M. Zigler, Nidya S. Gutierrez, Lawrence V. Ashe and Kevin McCormack of Zigler Law Group LLC and John T. Jasnoch and Sean T. Masson of Scott + Scott Attorneys at Law LLP.

Koutoulas and the other defendants are represented by Nicole Martell of Di Pietro Partners PLLC.

The case is De Ford v. Koutoulas et al., case number 6:22-cv-00652, in the U.S. District Court for the Middle District of Florida.

--Additional reporting by Aislinn Keely. Editing by Marygrace Anderson.

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Mich. Judge Trims Chevy Volt Battery Defect Class Action

By **Danielle Ferguson**

Law360 (March 31, 2025, 5:15 PM EDT) -- A Michigan federal judge has said drivers who allege General Motors sold defective hybrids that sometimes turn off while driving do not have the standing to bring claims on behalf of states in which they do not live or haven't been injured, while noting the district is divided on when to make such a decision.

In a roughly 160-page ruling Friday, U.S. District Judge Jonathan J.C. Grey cut claims from a proposed class action from plaintiffs across 20 states alleging GM's Chevrolet Volts have a defective battery engine control module, while allowing certain state claims to proceed.

Jason Miller and 19 other named plaintiffs on behalf of a proposed class **alleged** their model year 2016 to 2019 Chevrolet Volts — which are covered by an eight-year, 100,000-mile warranty — had problems charging, failed to start reliably and sometimes stopped suddenly. They allege the defect is an over-sensitivity to voltage instability or improperly soldered connections within the battery energy control module, which also keeps the battery charged and regulates its temperature.

The drivers alleged GM marketed the Volt as a safe and cost-saving alternative to traditional gas-powered vehicles despite knowing of the defect and not having a sufficient supply of parts to address warranty claims.

The drivers sought to bring claims for breach of contract, unjust enrichment and violation of the Magnuson-Moss Warranty Act on behalf of a nationwide class and 20 state subclasses.

GM sought to dismiss the allegations in **August 2023**.

Judge Grey noted in his Friday opinion that the Sixth Circuit and U.S. Supreme Court haven't directly addressed the issue of when a court should consider whether named plaintiffs can sue under laws of states in which they have not suffered an injury or do not live. The Eastern District of Michigan is split on the timing, Judge Grey said, noting that some courts have dismissed nationwide class claims for lack of standing at the motion to dismiss stage — like here — and others have saved it for class certification.

Here, Judge Grey said, the plaintiffs raise nationwide claims rooted in state laws, therefore, they cannot show an injury under the laws of the 30 states not represented by the named plaintiffs.

The judge was not persuaded by arguments that the standing issue should be punted to the class certification stage, pointing to a 2023 Sixth Circuit opinion **Fox v. Saginaw County** . In Fox, **an appellate panel** unraveled class certification for homeowners who alleged counties improperly kept the proceeds of their tax-foreclosed home sales after finding the juridical link doctrine the federal district court used to certify the class of property owners didn't align with the 1996 U.S. Supreme Court ruling **Lewis v. Casey** requiring a plaintiff to show actual injury.

While the cases are not analogous, Judge Grey said Fox is instructive as to when the court should address standing here. The Fox decision stated that a court must concern itself with the standing of the named plaintiffs, Judge Grey said in further explaining his decision.

"Plaintiffs' ability to maintain certain claims against GM is an issue of standing, and the Sixth Circuit's analysis in Fox v. Saginaw County guides this Court toward addressing standing now rather than

later," Judge Grey wrote.

Judge Grey dismissed general claims based on allegations that GM misrepresented the vehicles' safety and capabilities, saying the drivers did not provide specific examples or tie those statements to their alleged injuries. Judge Grey also said several state statutory claims could not proceed on a negligent or fraudulent misrepresentation theory, but allowed some state law misrepresentation claims to continue.

GM advertisements or statements offering consumers transportation if their vehicle required warranty repairs also do not support drivers' claim of misrepresentation as the statements did not "guarantee" transportation, Judge Grey said.

The judge also rejected drivers' claims that GM calling the vehicles "industry-leading" is fraudulent, calling the advertising phrase "puffery," which does not support an actionable claim. The drivers did not provide specific statements that GM promised a "safe" and "reliable" vehicle, either, Judge Grey said.

"Because plaintiffs fail to specify fraudulent statements that GM made about the safety and reliability of the Class Vehicles, plaintiffs' unsupported references to GM's marketing cannot support an affirmative fraud claim," Judge Grey said.

Judge Grey allowed claims that GM concealed information about the module defect to continue. The drivers pled "precisely" that GM should have disclosed the vehicles had a potentially defective battery engine control module and what that defect could cause, along with allegations that GM sold more vehicles at a higher price than what consumers would have paid had they known about the defect, Judge Grey said.

Judge Grey found that the drivers also adequately alleged GM knew about the defect prior to the sales of the class vehicles, referencing a technical service bulletin that was sent out to technicians and described the issues alleged in the lawsuit. Drivers who purchased their vehicles before the 2018 bulletin cannot rely on it for allegations of pre-sale knowledge, however, the judge said.

Judge Grey dismissed state common law fraudulent concealment and certain state unfair practices claims that were based on the drivers' allegations that GM didn't perform warranty repairs or provide transportation, noting the drivers did not argue that GM had a pre-sale knowledge of its alleged inability to do the repairs.

Judge Grey found that just one named plaintiff plausibly alleged that GM had a duty to disclose under Pennsylvania and Kansas state laws. Miller, who purchased his vehicle in Pennsylvania and lived in Kansas, plausibly alleged GM had pre-sale knowledge of the defect that it did not disclose and the risks associated with the alleged defect, the judge said.

Other state laws require different relationships between the parties that the other named drivers did not directly have with GM to support their duty to disclose allegations, according to the order. For example, in Arizona, a duty to disclose exists in transactions where the plaintiff and defendant are dealing directly with one another, and the drivers in that state purchased from a dealership they didn't allege was controlled by GM.

Judge Grey dismissed some claims that GM breached the warranty, saying various named plaintiffs hadn't plausibly alleged the repairs did not work or that the promises the drivers alleged GM made — such as courtesy transportation for repairs — weren't actually guaranteed by the warranty.

The judge allowed one named plaintiff to proceed on her breach of express warranty claim for payments for repairs that GM should have covered under the warranty and allowed several named plaintiffs who alleged the warranty repairs didn't work to also continue pursuing their breach of express warranty claims.

The judge dismissed several states' implied warranty claims because they were time-barred but allowed those brought under Alabama, California, South Carolina and Missouri law to continue.

Judge Grey declined to dismiss breach of contract claims, rejecting GM's argument that they were

duplicative of the breach of warranty claims.

Judge Grey did agree with GM that the drivers cannot maintain an unjust enrichment claims. The judge also dismissed several state-based unfair trade practices and consumer protection claims.

The plaintiffs are represented by Tricia Herzfeld, Joe P. Leniski, Jr., Anthony Orlandi and Daniel P. Hull of Herzfeld Suetholz Gastel Leniski and Wall PLLC, Tiffany R. Ellis of Peiffer Kane Carr Conway & Wise LLP, Matthew D. Alison and Jason B. Aamodt of Indian and Environmental Law Group PLLC and Paul F. Novak of Weitz & Luxenberg PC.

General Motors is represented by Krista L. Lenart, Janet L. Conigliaro and Kyle M. Asher of Dykema Gossett PLLC.

The case is Miller v. General Motors LLC, case number 2:22-cv-12739, in the U.S. District Court for the Eastern District of Michigan.

--Editing by Kelly Duncan.

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Trader Joe's Scores Win In Chocolate Heavy Metals Case

By **Lauren Berg**

Law360 (March 31, 2025, 7:20 PM EDT) -- Consumers alleging dark chocolate sold by Trader Joe's contains unsafe levels of lead and cadmium cannot pursue some of their state law claims because information about the presence of heavy metals in chocolate has been reasonably available to consumers for decades, a California federal judge ruled.

U.S. District Judge Ruth Bermudez Montenegro, in a March 27 **order**, granted Trader Joe's Co.'s motion for summary judgment, which asks the court to find that the company "did not have exclusive knowledge that the dark chocolate bars contained or had a material risk of containing heavy metals," which is a requirement of the applicable New York, Washington and Illinois state consumer protection laws.

Judge Montenegro agreed with Trader Joe's assertion that the presence of or risk of the presence of heavy metals in dark chocolate products was information that consumers could reasonably obtain because it has been widely publicized for decades, the order stated.

The consumers' claims, which were consolidated in April 2023, say Trader Joe's failed to disclose the chocolate products at issue have a risk of containing heavy metals — not that it failed to disclose a specific amount of heavy metals, high levels of metals or that the levels exceeded some kind of regulatory threshold, according to the order. If that was the case, the information might not be reasonably obtained by consumers, the judge noted.

Trader Joe's submitted articles from as early as 2002 reporting that numerous companies found the presence of heavy metals in their chocolate products, the order said. And the judge rejected the consumers' argument that this information was not reasonably obtainable because the named plaintiffs were not aware that the products they bought contained any level of heavy metals.

"Whether information on the presence of heavy metals in the products was reasonably obtainable (or easily discoverable) does not depend on what individual plaintiffs were or were not aware of ... or whether defendant disclosed test results to individual customer inquiries," Judge Montenegro said.

"Rather, it turns on what information was reasonably obtainable or easily discoverable by consumers about the presence of heavy metals in dark chocolate," she said.

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

The dispute kicked off in January 2023 when **customers hit Trade Joe's** with 10 class action complaints accusing the company of failing to disclose lead and cadmium in dark chocolate products, based in part on findings by Consumer Reports showing that lead and cadmium levels exceeded California's regulatory standards.

After the cases were consolidated, Trader Joe's in June 2023 **moved to dismiss** the claims, arguing it had no duty to disclose the metals as they fall well within the regulatory threshold for safe consumption.

Judge Montenegro largely **granted the motion** in March 2024, dismissing five out of nine claims — claims for violations of California's Unfair Competition Law, False Advertising Law and Consumer Legal Remedies Act, as well as common law claims for breach of implied warranty and unjust

enrichment.

She did allow claims for violations of Washington's Unfair Business Practices and Consumer Protection Act, the Illinois Consumer Fraud and Deceptive Business Practices Act and two claims under New York General Business Law to go forward.

She also gave the plaintiffs a chance to file an amended complaint, but the consumers decided to stick with the trimmed version, according to last week's order.

In her dismissal order, Judge Montenegro found that the complaint does not plausibly allege a safety hazard, saying there is a "disconnect" between the allegations of the general harms posed by heavy metals and whether the levels contained in the products are unreasonably hazardous.

"Plaintiffs cannot just say heavy metals can be unhealthy and these products contain some level of heavy metals," the judge stated. "They have to connect the health risks alleged to the levels of heavy metals in these products and they have to be significant enough to be unfit for human consumption or an unreasonable safety hazard."

The buyers' lead counsel are Jack Fitzgerald, Melanie R. Monroe, Trevor Flynn and Peter Grazul of Fitzgerald Monroe Flynn PC, Rebecca A. Peterson and Lori G. Feldman of George Feldman McDonald PLLC, and Jason P. Sultzer of Sultzer & Lipari PLLC.

Trader Joe's is represented by Dawn Sestito, Danielle R. Feuer and Martha Hutton of O'Melveny & Myers LLP.

The case is In re Trader Joe's Co. Dark Chocolate Litigation, case number 3:23-cv-00061, in the U.S. District Court for the Southern District of California.

--Additional reporting by Gianna Ferrarin and Mike Curley. Editing by Kristen Becker.

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Class Says Sunoco Pipeline Leaked Jet Fuel Into Groundwater

By **Ryan Harroff**

Law360 (March 31, 2025, 7:26 PM EDT) -- Sunoco has been hit with a proposed class action alleging that it allowed its Twin Oaks Pipeline in Pennsylvania to spring a "massive and still unquantified leak of jet fuel and petroleum products" that have seeped into groundwater in the Philadelphia metropolitan area.

Daniel and Katherine La Hart brought their proposed class claims Thursday against Sunoco Pipeline LP as well as Energy Transfer LP and Energy Transfer (R&M) LLC in the Philadelphia County Court of Common Pleas. According to the **complaint**, the environment surrounding the Twin Oaks Pipeline and residents' property values have already taken substantial hits from the purported leak, and harm will increase even as remediation efforts take place.

"The pipeline leak has uprooted the affected community and has already caused certain residences within the community to be unlivable, amounting to an effective taking of family homes by defendants," the suit said. "Defendants have already purchased one home in the residential Mt. Eyre Manor neighborhood for the purpose of drilling monitoring and/or recovery wells, right in the middle of the neighborhood, and seek to drill more wells and conduct more disruptive activities in the neighborhood for remediation purposes."

According to the complaint, Mt. Eyre Manor and other neighborhoods in the Upper Makefield Township area affected by the spill rely on private well water for things like cooking, bathing, washing clothes and watering lawns. Additionally, the suit said testing in the area has shown that the air people are breathing is also contaminated by the spillage.

The La Harts seek to represent a class of all Pennsylvania residents who owned, rented or resided in properties within a mile of the pipeline leak as far back as Sept. 1, 2023.

The pipeline leak has allegedly "caused an exigent threat" to the people living in the area, the suit said. The scope of that threat is unknown, according to the complaint, as the full size of the leak and its spread have purportedly not been determined.

In addition to their purported failure to prevent the leak, Sunoco and the Energy Transfer entities allegedly failed to respond to the leak in a reasonable fashion. When residents began to report strange odors in September 2023, the suit said the companies sent out a technician and a contractor who conducted a "lackadaisical" investigation that only looked at the most immediate area surrounding where the odor was reported, missing the leak that was purportedly "mere feet" from where they looked.

More allegedly poor investigations were conducted for multiple subsequent odor complaints, the suit said, but the leak was not discovered until January of this year. The La Harts assert that the damage was worsened by the companies' alleged recklessness and negligence in overseeing and managing the pipeline.

The suit laid out claims for negligence, strict liability, nuisance, trespass, emotional distress and medical monitoring on behalf of the proposed class. The La Harts seek compensatory and punitive damages with interest, environmental restoration, medical monitoring, injunctive relief and attorney fees.

Shannon Carson, counsel for the La Harts and the proposed class, told Law360 on Monday that he and his team are proud to represent the residents affected by the purported contamination and "will do everything in our power to obtain justice."

"It is unfair for our clients to be harmed by the fact that a jet fuel pipeline owned and operated by the defendants has leaked and polluted their neighborhood, underground aquifer, and private wells, as a result of defendants' conduct as alleged in the lawsuit," Carson said.

Representatives for the companies did not immediately respond to requests for comment.

The La Harts are represented by Shannon Carson, Y. Michael Twersky and Joseph E. Samuel Jr. of Berger Montague PC.

Counsel information for Sunoco and the Energy Transfer entities was not immediately available.

The case is Daniel La Hart et al. v. Sunoco Pipeline LP et al., case number 250303655, in the Philadelphia County Court of Common Pleas.

--Editing by Rich Mills.

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Agencies Shouldn't Hear PFAS Class Claims, Conn. Court Told

By **Brian Steele**

Law360 (March 31, 2025, 7:48 PM EDT) -- A Connecticut state judge should not dismiss most of a putative class action alleging that Aquarion Water Co. knowingly sold water contaminated with "forever chemicals" because the Eversource Energy unit is wrong that the claims should go before state regulators first, according to the plaintiffs.

The three named plaintiffs, all Aquarion customers, said in a Friday **filing** opposing the company's dismissal bid that since they are seeking damages and attorney fees that are unavailable through an agency process, they are not required to exhaust administrative remedies before suing. Aquarion in December **asked** the state court to dump three product liability claims from the four-count suit and defer to the state Department of Public Health and the Public Utilities Regulatory Authority, but the plaintiffs described that route as "inadequate" and "futile."

"Under such circumstances, Connecticut law is clear that the exhaustion of remedies doctrine does not apply: the Connecticut Supreme Court has repeatedly held that where a party seeks relief that no administrative agency is authorized to provide, the party will be allowed to resort to the courts in the first instance," the plaintiffs' memorandum said.

If the court tosses two counts for breach of implied warranty and one for strict liability from an amended complaint that customers Deborah Vincent, Kate Losey and Courtney Ritchotte filed Oct. 29, it would leave only a claim for violation of the Connecticut Unfair Trade Practices Act.

According to the plaintiffs, Aquarion provides water to more than 750,000 people in 72 cities and towns in Connecticut, Massachusetts and New Hampshire. The complaint alleged that the company's 2019 testing of around 70 public water systems in Connecticut found PFAS chemicals in the public water supply in dozens of communities, and the suit seeks damages for a proposed class of state citizens who bought or ingested water with detectable levels of the substances.

In seeking dismissal, Aquarion noted that the plaintiffs do not point to anyone who suffered physical harm from using the water and do not allege that the water "failed to perform any of the myriad functions" for which it is intended. The company also said that neither state nor federal environmental and health regulators had set maximum PFAS levels until an Environmental Protection Agency rule went into effect in June 2024, and the rule "gives public water systems until 2029 to implement solutions" if the levels are exceeded.

The dismissal bid said the plaintiffs were trying to bypass the state-level procedures run by the Public Utilities Regulatory Authority and Department of Public Health and suggested that they could have gone to the Connecticut Department of Consumer Protection or the state attorney general's office with their complaints, as well.

But the plaintiffs pointed to the Connecticut Supreme Court's 1982 decision in **Griswold v. Union Labor Life Ins. Co.** , which held that "[w]hether prior recourse to the agency will be required will depend on the injury alleged and the administrative remedy available," their filing said.

While Public Utilities Regulatory Authority can craft orders to remedy an "unsafe condition," it cannot award damages for past economic losses, and neither can the Department of Public Health, the Department of Consumer Protection or the attorney general's office, which does not represent individuals, according to the plaintiffs.

"Since *Griswold*, the Supreme Court and Connecticut lower courts have repeatedly, unequivocally reaffirmed that where a party seeks relief that no administrative agency is authorized to provide, the party will be allowed to resort to the courts in the first instance," the plaintiffs said.

Counsel for the plaintiffs did not immediately respond to requests for comment Monday.

The customers are represented by David S. Golub, Ian W. Sloss, Johnathan Seredynski, Krystyna Gancoss and Kate Sayed of Silver Golub & Teitell LLP.

Aquarion is represented by Kevin W. Hadfield and Timothy J. Fazio of Manning Gross & Massenburg LLP and Amy Leete Van Dyke of Eversource Energy.

The case is *Vincent et al. v. Aquarion Water Co.*, case number UWY-CV24-6076640-S, on the Complex Litigation Docket of the Connecticut Superior Court at Waterbury.

--Editing by Rich Mills.

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Firms Must Embrace Alternative Billing Models Or Fall Behind

By **William Brewer** (March 31, 2025, 4:02 PM EDT)

For decades, BigLaw has resisted change to its economic model, clinging to the familiar formula: workers × hours × billable rate = profits.

Hourly billing has long been the lifeblood of corporate law firms. Partners command hourly rates of thousands of dollars; associates bill in six-minute increments; and clients foot the bill for every research session, memo draft and document review.

But this era is ending. Technology is rewriting the script, and artificial intelligence is revolutionizing legal work. AI-powered tools can analyze contracts, conduct legal research and perform due diligence in seconds — tasks that once took junior associates days to complete. Today, AI can process massive volumes of data in the time it takes a lawyer to grab a coffee.



William Brewer

Further, the Big Four accounting firms are now muscling into the market.

Suffice it to say, the status quo is no longer an option.

Law firms face a choice: Evolve, or fade into irrelevance. To stay competitive, they must ditch the billable hour, embrace AI and accelerate their digital transformation — before it's too late.

The Hourly Billing Model: A Relic Under Siege?

Decades ago, I was among those who wrongly predicted the "death of the billable hour."

The billable hour has long been an edifice to inefficiency. I believed that a better-informed generation of clients would want to pay for outcomes, not hours. At first, few agreed.

But as CEOs became more concerned about legal spending, a consensus would eventually form: Any day now, economic rationality would smash the moribund, misaligned system. After all, decades ago, Steven Brill and "The American Lawyer" were regularly reporting on the insanity of economic relationships that reward endurance over efficiency and more.

Though the prediction was wrong then, it may now be accurate.

In conjunction with a forthcoming research paper, "Fighting the Hypothetical: Why Law Firms Should Rethink the Billable Hour in the Generative AI Era," legal scholar Nancy Rapoport and Legal Decoder CEO Joseph Tiano state that AI will "highlight the need for significant changes in how legal services are structured, delivered, and priced," and force firms to abandon outdated economic structures.

Hopefully, they're right.

Corporate clients have the option to cling to the old model — utilizing hourly fee arrangements — but they are now liberated to demand something more: alternative fee arrangements, or AFAs, that can better suit their needs.

The traditional model — associates racking up hours — may not survive in an AI-powered world. A

2023 Goldman Sachs report estimated that 44% of legal tasks can be automated.[1] AI already conducts legal research, analyzes contracts and performs due diligence in seconds — tasks that once took junior lawyers days.

AI efficiency exposes the fatal flaw of the billable hour leverage matrix on which BigLaw has been built: When work speeds up, revenue shrinks. And clients are noticing. A 2024 Association of Corporate Counsel survey found that 58% of legal departments expect to reduce reliance on outside firms due to AI's efficiency.[2]

Rethinking Legal Fees: Value-Based Pricing

For forward-thinking firms, this is an opportunity. Instead of bloated teams focused on repetitive tasks, AI should enable firms to run leaner and shift the focus of lawyers to high-value work like litigation strategy, client counseling and complex deal structuring.

This is a win for young lawyers. Instead of spending years buried in document review and research, they can engage in substantive legal work earlier in their careers. AI can reduce burnout — a critical issue given that 37% of junior associates, and 51% of mid- and senior-level associates, reported that they experienced burnout in 2024, according to a Bloomberg Law survey.[3]

With AI eliminating inefficiencies, the traditional hourly model becomes indefensible. Many corporate clients, already frustrated by sky-high legal costs, can now demand outcome-based pricing — success-based fees, performance holdbacks or fixed-price services.

Law firms should embrace alternative fee structures to afford greater accountability and reward productivity. The model invests lawyers in their client's outcomes and protects that client's legal resources. The process aligns the interests of law firms and their clients, as attorneys are often paid a minimal fee up front, and earn incentives based on the success of the outcome.

It is a win-win situation.

Critics note that the hourly billing system can reward inefficiency and, from a lawyer's perspective, penalize swift victory. If law firms fail to accommodate the shifting reality on "pay for performance," they should lose clients to new competitors.

Those competitors will include the Big Four. KPMG International recently became the first of the Big Four accounting firms to enter the U.S. legal market when the Arizona Supreme Court **granted** it a license to operate as an alternative business structure. This allows KPMG to establish KPMG Law US as an independent law firm.

KPMG's expansion into the law business will accelerate the industry's move toward technology-driven legal solutions. KPMG is viewed as an innovator in AI, data analytics and automation in its audit and consulting services. Now, those same tools will be applied to the legal sector, streamlining contract management, compliance and risk assessments.

But there's a bigger picture here. KPMG and similar players aren't competing for the same work as specialty firms that largely abandoned hourly billing some time ago. They're taking over the commodity work that the corporate law firms have relied on for years.

KPMG Law's approach offers the opportunity for clients to pay for legal solutions, not for the process of getting there.

As more companies seek legal services that prioritize outcomes over hours, the firms that embrace this new paradigm will gain a decisive competitive advantage. Those who resist will lose ground to tech-savvy boutiques, Big Four firms and legal startups that aren't shackled by tradition.

From Awareness Comes Understanding: Implementing AFAs

Law firms can follow a few key steps to implement AFAs — to the benefit of their practice and clients. Not all cases are suited for alternative — or value — fee arrangements. Firms should analyze their caseload to determine where AFAs align with client needs and risk tolerance.

Oftentimes, clients that are defendants in major cases may prefer to maintain the hourly fee model — there is perceived, but not always justified, risk in a payout for a defensive win, and some clients struggle with defining the outcome for which they will pay a performance-based fee.

Transparency is key. Agreements should outline the scope of work, payment terms and conditions. This ensures both parties understand cost expectations.

Firms must use historical billing data and legal analytics to price AFAs accurately. In collaboration with clients, firms should engage in fee discussions that present goals, possible outcomes and costs. Many clients prefer the predictability that comes with AFAs, and the ability to reduce their up-front costs.

The key is to streamline workflows, invest in automation and align tasks effectively to maintain productivity. The process begins with an audit of the firm's internal resources and workflows.

To stay abreast of market opportunities and impacts to their bottom line, law firms should track metrics such as profit margins, outcomes and client satisfaction. This will help refine pricing models and client options.

Firms should be aware of certain challenges if they are new to AFAs. Plan for unpredictability, as there will always be matters that take longer to resolve or require unexpected investments.

As noted, client expectations should be established on the front end of the process, so both sides have a clear expectation of the engagement and goals for success. Firms sometimes have to set boundaries, or scope, with clients.

Finally, there should be added emphasis on data analytics and efficient case management systems to ensure smooth operations and an unlimited focus on case strategy.

By implementing AFAs strategically, law firms enhance client relationships, differentiate themselves in the market and ensure financial stability — all while delivering legal services more effectively.

Golden Age Is Here — For Those Who Adapt

BigLaw must evolve now to stay ahead. The firms that embrace AI, ditch the billable hour and redefine their value proposition will thrive.

This is the dawn of a golden age. Technology holds the promise of less drudgery, expanded access to justice, and firms empowered to deliver sharper, faster and more strategic legal services.

Change isn't coming — it's here. And the firms that are embracing it won't just survive. They'll set the standard for the future.

William A. Brewer III is a founding partner at Brewer, Attorneys & Counselors.

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SEC Closed Inquiry Into Hawk Meme Coin, Promoter Says

By **Aislinn Keely**

Law360 (March 31, 2025, 6:17 PM EDT) -- The U.S. Securities and Exchange Commission has closed an investigation into the celebrity promoter of the viral "Hawk Tuah" meme coin Haliey Welch, Welch's attorney told Law360 on Monday.

James Sallah of Sallah Astarita & Cox told Law360 that the regulator has closed an inquiry into Welch and the offering with no findings or sanctions against her. The SEC declined to comment on the existence of an investigation on Monday. It's not clear whether the SEC is reviewing others' involvement in the project.

Welch, who emerged as an internet celebrity after a viral street interview that saw her use the phrase "hawk tuah" in reference to a sex act, was the face of the \$HAWK meme coin.

The crypto token's market value surged upon Welch's announcement of it in December 2024, but took a steep dive in the hours that followed. A group of buyers later brought a **proposed securities class action** in New York federal court over their losses, though the action does not name Welch and targets the developers of the project.

According to Sallah, the SEC is no longer scrutinizing Welch's involvement with the project.

The SEC's Division of Corporation Finance published a **staff statement** last month clarifying that meme coins, or crypto tokens inspired by internet jokes, current events and trends, were not securities requiring registration with the commission. The tokens' value are often derived from collective market sentiment and appear more like collectibles, the statement noted.

--Editing by Emily Kokoll.

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