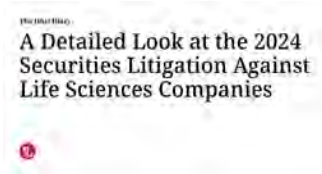


A Detailed Look at the 2024 Securities Litigation Against Life Sciences Companies

K [dandodiary.com/2025/04/articles/securities-litigation/a-detailed-look-at-the-2024-securities-litigation-against-life-sciences-companies](https://www.dandodiary.com/2025/04/articles/securities-litigation/a-detailed-look-at-the-2024-securities-litigation-against-life-sciences-companies)

Kevin LaCroix

April 1, 2025



Long-time observers of securities class action litigation filing patterns know well that life sciences companies are frequent targets of securities suit, reflecting a litigation frequency pattern that has been well-established for years. While in more recent years the overall number of securities suits filed against life sciences has shown a marginal decline, in 2024, the number of securities suits filed against life sciences companies increased to the highest level in several years, according to the latest annual report from the Sidley law firm. A copy of the law firm's recent memo, entitled "Securities Class Actions in the Life Sciences Sector: 2024 Annual Survey" can be found [here](#). A two-page summary of the report can be found [here](#).

According to the report, there were 44 new securities class action lawsuits filed against companies in the life sciences sector in 2024, compared to 34 in 2023, representing a year over year increase of about 29%. The 44 securities suits filed against life sciences companies in 2024 is the highest annual number of filings since 2021, when there were 49 suits filed.

Interestingly, the number of suits filed against life sciences companies increased in 2024 despite the decrease during the year of COVID-related securities suits against life sciences companies relative to recent years. The number of COVID-related suits against life sciences companies has declined since the 2020-2022 time period, when there were six or seven new filings against life sciences companies per year. By contrast, during 2024, there were only two COVID-related suits filed against life sciences companies – one against a company developing a vaccine and the other against a company with an approved vaccine facing poor sales as demand declined.

Of the 44 new actions filed against life sciences companies in 2024, 25 were filed against companies with drugs or devices in the developmental stage, representing over half of the total number of filings during the year. This proportion of cases against developmental stage

companies is in line with filing patterns in recent prior years, although it differs somewhat from the 2023 pattern, when less than half of the life sciences suit filings involved developmental stage companies. The majority of the cases against developmental stage companies arise from setbacks the company faced in the final stages of the regulatory approval process.

Nineteen of the new securities suits filed against life sciences in 2024 involved companies with mature products, representing about 43% of 2024 filings. The report notes that “the majority of these new filings arise from setbacks not unique to life sciences companies, such as disappointing sales performance. In previous years, we had seen a greater concentration of cases arising from regulatory action,” particularly in regulated areas of marketing and billing.”

While plaintiffs’ lawyers often are quick to file securities cases against life sciences companies that experience setbacks, the reality is that many of these lawsuits are unsuccessful, a pattern that remained in effect in 2024. During 2024, there were 41 federal district court decisions on motions to dismiss or motions for summary judgment and involving life sciences companies, in which the companies won dismissals in 59% of the cases (24 out of 41). The 59% success rate in 2024 was below the 68% success rate in 2023, though in line with success rates in recent years in which the success rate has fluctuated in the 50-60% range. The 41 cases that the district courts decided in 2024 is a notably higher number than was the case in recent years.

During 2024, the defendant company success rate in federal district court rulings was similar between companies with pre-approval drugs or devices and those with post-approval drugs or devices. Indeed, companies with post-approval drugs or devices prevailed slightly more frequently – companies prevailed in 57% of pre-approval cases (13 out of 26) and 61% of post-approval cases (11 out of 18). By contrast, in most prior years, the defendants generally fared better in cases involving pre-approval drugs or devices than in mature products cases, apparently reflecting “plaintiffs’ challenges in establishing falsity and scienter in cases where the statements they attack concern inherently unknowable events – the outcome of trials and of the FDA process.”

In addition to the favorable track record in federal district courts, life sciences companies also fare well in the appellate courts in 2024, with affirmance of the dismissal in six cases and affirmance of the district court’s grant of summary judgment in the remaining two cases. The report notes that “none of the appellate decisions broke new ground, and five of the eight [appellate decisions] were unpublished.”

The report itself is quite lengthy and quite detailed, full of interesting information, and merits a reading at length and in full.

SECURITIES LITIGATION AGAINST LIFE SCIENCES COMPANIES: 2024

SIDLEY

Securities class actions against life sciences companies are mostly second-order problems. The first-order problem is a business or regulatory setback that, when disclosed by the company or a third party, triggers a stock price decline. Following the decline, plaintiffs' class-action attorneys search the company's previous public statements and seek to identify inconsistencies between past positive comments and the current negative development. In most cases, plaintiffs' attorneys then seek to show that any arguable inconsistency amounts to fraud—that is, they will claim that the earlier statement was knowingly or recklessly false or misleading. When the challenged statement appears in a public offering document (that is, a registration statement or prospectus), plaintiffs need only show that the statement was materially false or misleading, not that it was made with scienter or caused their losses.

Under the Private Securities Litigation Reform Act of 1995, securities fraud plaintiffs must meet heightened pleading standards to survive a motion to dismiss, and they are not entitled to discovery while the motion is pending. As a result, securities defendants file motions to dismiss in virtually every case. These motions are generally lengthy and complex. For the most part, federal courts consider the motions carefully and hold plaintiffs to the demanding statutory pleading requirements. In 2024, life sciences companies succeeded in 59% of the motions to dismiss they filed.

Five Takeaways from New Complaints Filed in 2024

1. Plaintiffs filed 44 new class actions against publicly traded life sciences companies in 2024. This marks an upward trend from 2023, with 34 new class actions against life sciences companies, and 2022, with 37 new class actions.
2. The number of new filings related to COVID-19 has tailed off since its peak in 2020–2022. In those years, we saw six or seven new filings per year, nearly all in the pre-approval (or pre-EUA) stage. By contrast, in 2023 only three new COVID-19 complaints were filed. In 2024, the number dropped to two—one against a company developing a vaccine and the other against a company with an approved vaccine facing poor sales as demand declined.
3. Geographically, the cases are concentrated in three regions, corresponding to three federal appellate circuits:
 - Fourteen new cases in the Ninth Circuit, which includes California
 - Nine new cases in the Second Circuit, which includes New York
 - Eight new cases in the First Circuit, which includes Massachusetts

There were far fewer filings in the Third Circuit than in previous years—only three new cases.

4. Nineteen of the new cases (43%) were filed against companies with mature products. This is a slight decline from 53% in 2023, but higher than in earlier years. Companies with mature products have historically had less success in winning dismissal than companies with pre-approval products—although as noted below, that trend too has reversed this year.
5. The majority of new filings against companies with mature products arise from setbacks not unique to life sciences companies, principally sales performance. In previous years, we have seen a greater concentration of cases arising from regulatory issues, particularly alleged improprieties in regulated areas of marketing and billing.

Six Takeaways from New Decisions Issued in 2024

THE NUMBERS: TWO TAKEAWAYS

1. Success rate of 59% in the district courts, consistent with past trends

District courts issued 41 new decisions on motions to dismiss or motions for summary judgment filed by life sciences companies. Defendants were successful in over half—24 of 41, or 59%. That is consistent with the success rate in previous years, which has fluctuated in the 50–60% range.

Companies won affirmance of dismissal in all eight of the cases in which appellate courts issued rulings. But none of the appellate decisions breaks new ground, and five of the eight were unpublished.

2. Companies with mature products fared as well as those seeking FDA approval

In most years, companies fare better in the pre-approval cases than in mature products cases. The trend appears to reflect plaintiffs' challenges in establishing falsity and scienter in cases where the statements they attack concern inherently unknowable events—the outcome of trials and the FDA approval process. This year, however, marked a departure from that trend. Companies prevailed in 57% of the pre-approval cases (13 out of 23) and 61% of the mature product cases (11 out of 18).

THE SUBSTANCE: FOUR TAKEAWAYS

1. Decisions on interim FDA communications after submission of an NDA provide pointers on recurring disclosure issues

In five cases, companies received negative feedback while an NDA or BLA was pending. The guidance that emerges from the decisions is that once this has occurred, companies are on safer ground when they stick to discussing clinical trial results, the strength of the application, and approval prospects generally. Companies are in more dangerous territory when they directly characterize the FDA's position, and in particular when they say that the FDA is aligned with their own views of outstanding issues. If at all possible, companies should avoid direct characterization of the FDA's position or communications.

2. Decisions arising from issuance of Forms 483 provide additional disclosure guidance

In six decisions, companies received Forms 483, either before or after products had been approved. The decisions are largely unified in holding that companies have no standalone duty to disclose a Form 483. But the decisions also strongly suggest that a company faces peril if it does not review and revise its risk disclosures and other statements it routinely makes about contingent events after receiving a Form 483.

3. Decisions in product launch cases yield mixed results

Three decisions address setbacks at the product launch stage, principally related to coverage hurdles. The results in the launch cases were mixed. The companies prevailed in two cases; the courts there closely read the challenged statements and analyzed them in the context of reasonable investors' expectations. But in the third case, Biogen suffered an eleventh-hour reversal of fortune in litigation arising from the launch of its controversial Alzheimer's disease drug, Aduhelm.

4. Several 2024 decisions display courts' appropriately nuanced view of scienter

In three decisions, courts concluded that plaintiffs had adequately alleged falsity but dismissed on scienter grounds. In all three cases, plaintiffs had also established that defendants were aware of facts purportedly inconsistent with the challenged statements. All three courts held that this was not enough. Scienter requires an intent to defraud, and that is more than simply knowledge of purportedly contrary facts. To plead scienter, plaintiffs must establish what defendants believed and intended. Defendants may be aware of problems with a product but still believe that their optimistic statements about it are true—because they have confidence the problems can be addressed, even if others at the company believe otherwise.



NYC Comptroller Pushes for Tesla Suit as Stock Hits Pensions (1)

New York City Comptroller **Brad Lander** is pushing for the city to file a shareholder lawsuit against Tesla Inc., alleging the automaker misstated how much CEO Elon Musk's work for the Trump administration has pulled him away from 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 so-called Department of Government Efficiency, the new entity charged with slashing federal spending. Lander serves as the investment adviser to the city's five pension funds.

Tesla stock has plunged since Musk has become a nearly ubiquitous figure in Trump's second presidency, with Americans protesting at its car dealerships and sales falling sharply in Europe. 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.



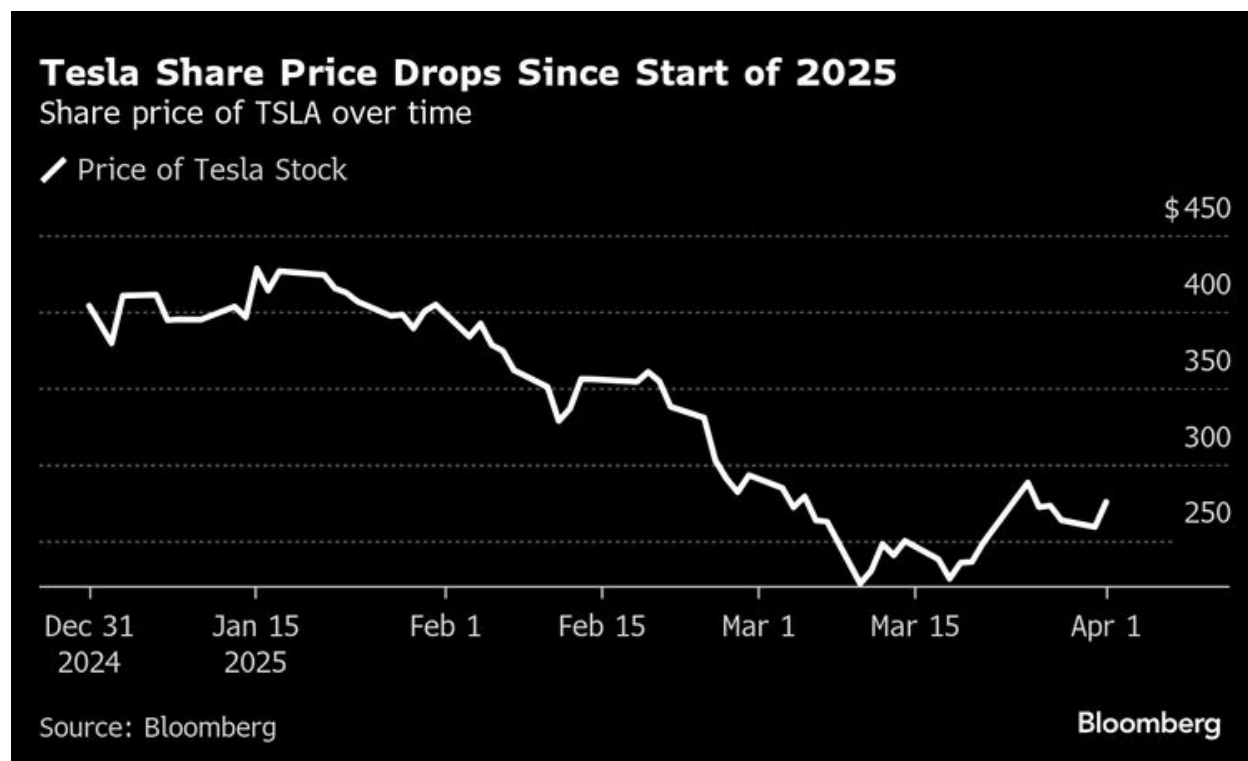
Brad Lander

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](#)



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.

A spokesperson for Mayor Eric Adams — who is facing off against Lander and other rivals as he seeks reelection — signaled little interest in pursuing such a lawsuit, saying the comptroller is publicly pushing the city to do so in order to bypass the pensions' board of directors and attract political attention.

“We also respect the pension boards in place to provide input on matters such as these,” said Liz Garcia, a spokeswoman for Adams. “It’s a shame Comptroller Lander doesn’t share the same respect and is attempting to bypass the boards for political gain.”

Although the mayor and comptroller are members of the pension boards, power resides with trustees representing politically formidable public employee unions. The city's Law Department is reviewing the possibility of a case, but hasn't made a decision, according to a person familiar with the matter.

Adams last year was charged by the Justice Department for alleged bribery and campaign finance violations. After Trump took office this year his administration has moved to jettison the case.

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.

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.”

“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.

(Adds comment from mayor’s spokesperson in 11th paragraph)

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Estée Lauder Investors Advance Suit Over Gray-Market China Sales

The Estée Lauder Companies Inc. must defend against securities fraud allegations that the cosmetic giant concealed relying on gray-market sales in China during the Covid-19 pandemic.

The lead plaintiffs plausibly alleged then-executives at least recklessly disregarded they were deceiving investors while disseminating purported half-truths about its success in Asia, Judge Arun Subramanian said while denying the company's motion to dismiss Monday. The US District Court for the Southern District of New York judge said the consolidated amended class action complaint successfully pleaded "several misleading omissions," and even alleged forward-looking statements and opinions were "mired in half-truths."

- Subramanian said there's "little doubt" the gray-market sales were at least improper, making this case like ones where companies overhyped sales without mentioning misconduct provided a boost
- Gray markets are unsustainable, he said, so Estée Lauder plausibly should've expected Chinese authorities to catch up
- "When China cracked down on the illicit activity in 2022, Estée Lauder's sales—and its stock price—cratered," Subramanian said

Macomb County Employees' Retirement System, Macomb County Retiree Health Care Fund, and Wayne County Employees' Retirement System's are lead plaintiffs. Labaton Keller Sucharow LLP is lead counsel and VanOverbeke, Michaud & Timmony PC is liaison counsel for the proposed class, which would include those who got stock from Feb. 3, 2022, through Oct. 31, 2023.

Weil, Gotshal & Manges LLP represents Estée Lauder, former CEO Fabrizio Freda, and CFO Tracey Travis.

None of these firms immediately responded to emails seeking comment.

The case is In re The Estée Lauder Co., Inc. Sec. Litig. , S.D.N.Y., No. 1:23-cv-10669, 3/31/25 .

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Litigation

April 1, 2025, 12:46 PM PDT

Mattel Strikes \$17 Million Deal in Sleeper Death Investors' Suit

- Settlement also requires corporate governance changes
- About 4.7 million Rock 'n Play Sleepers sold before recall

Mattel Inc.'s board and senior leadership will pay, through their insurers, almost \$17 million to resolve long-running shareholder litigation over infant deaths and injuries allegedly linked to the Fisher-Price Rock 'n Play Sleeper.

The Delaware Chancery Court approved the settlement Tuesday; as is typical in derivative cases, the money will be paid into the corporate coffers, rather than directly to shareholders. The \$16.9 million insurance payout will cover over 70% of the costs Mattel and its Fisher-Price Inc. unit incurred to resolve consumer claims over the same product, Vice Chancellor Morgan T. Zurn said in a bench ruling.

While "the cash settlement is meaningful," corporate governance changes mandated by the accord offer "negligible improvements," she said. She called them "clarifications, codifications, or embellishments" of what the company had already enacted.

The settlement requires recognition of Mattel's head of product quality and safety as a formal member of the company's global management team. Additional changes include amending the charter of the board's governance and social responsibility committee to require it to review product safety and regulatory compliance issues with management.

The money is a significant recovery for the company considering its out-of-pocket expenses from litigating and settling related consumer claims in a separate court, Brad Sorrels of Wilson Sonsini Goodrich & Rosati PC, representing Mattel and its board, told Zurn during the hearing.

The corporate governance changes clarify reforms Mattel made after the recall was announced in 2019, which included creating an executive position in charge of product quality and safety, he said. The settlement clarifies reporting obligations for the head of product quality and safety, as well as the board's governance and social responsibility committee.

"As you can imagine, Mattel did not sit on its hands in the intervening period," Sorrels said. "It's in the parent trust business. All its products are for infants and young children."

Consolidated Litigation

Investors claimed in the consolidated derivative litigation that Mattel spent years hiding deadly problems with the Rock 'n Play Sleeper before finally recalling it in 2019 after over 30 deaths and injuries. About 4.7 million units were sold between 2009 and 2019; the US Consumer Product Safety Commission reissued the recall in January 2023 after additional deaths were reported.

The product's inclined design increased the risk that an infant's head could slip into a dangerous position, tilt to constrict the windpipe, or cause the infant to become pressed against side-padding that blocked airflow, according to a brief supporting the settlement.

On Feb. 28, the US District Court for the Western District of New York gave final approval to a separate settlement in which Mattel and its subsidiary Fisher-Price Inc. agreed to pay \$19 million to resolve consumer claims over the Sleepers. Last week, the Delaware Superior Court resolved several issues in an insurance coverage dispute between Mattel and its insurers.

While the lawyers representing the investors had sought a \$3.5 million attorneys' fee award, Zurn only approved \$1.86 million, saying the litigation hadn't progressed far enough to merit a larger award. She also approved \$5,000 incentive fee awards for the investors leading the case.

The investors leading the litigation are represented by Cooch & Taylor PA, Faruqi & Faruqi LLP, Rigrodksy Law PA, and the Grabar Law Office.

The case is *In re Mattel Inc. Rock 'n Play S'holder Derivative Litig.*, Del. Ch., No. 2020-0552, settlement hearing 4/1/25 .

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NBA Legend Shaquille O'Neal Inks \$1.7M Settlement Over FTX Promotion

 [law.com/nationallawjournal/2025/04/01/nba-legend-shaquille-oneal-inks-17m-settlement-over-ftx-promotion](https://www.law.com/nationallawjournal/2025/04/01/nba-legend-shaquille-oneal-inks-17m-settlement-over-ftx-promotion)

Michael A. Mora

April 2, 2025

What You Need to Know

- Shaq's \$1.7 million settlement is the largest individual promoter payout in the FTX litigation.
- O'Neal evaded service for months before finally being served outside his Georgia home.
- A federal judge approved an \$11 million settlement in a separate NFT-related case involving O'Neal.

What began as a months-long pursuit to serve court papers to Shaquille O'Neal—the 7'1" NBA Hall of Famer, sports analyst and entertainer—over a class action lawsuit for promoting the collapsed cryptocurrency exchange FTX has resulted in the signing Tuesday of a \$1.7 million settlement.

Adam Moskowitz, the managing partner at the [Moskowitz Law Firm](#) in Coconut Grove, Florida, and David Boies, chairman emeritus of [Boies Schiller Flexner](#) in New York, are lead counsel for the class of investors who lost billions of dollars in FTX and sought to hold those allegedly involved financially accountable.

"It's the largest individual promoter payment to date in this case," Moskowitz said in an interview. "But much less than the billions of dollars of damages that we are seeking against the remaining promoters, like Gisele Bündchen and Tom Brady."

Christopher E. Knight, the managing shareholder at [Fowler White Burnett](#), who is based in the Am Law 100 firm's Miami office and is on O'Neal's legal team along with his colleagues Brian D. Elias and Alexandra L. Tifford, declined to comment.

Back in February 2022, O'Neal hosted a carnival event called "Shaq's Fun House Los Angeles Presented by FTX," [featuring music superstars](#) Dwayne "Lil Wayne" Carter and DJ Diplo, where he allegedly promoted FTX. However, one month after FTX began to topple, O'Neal allegedly downplayed his role as an ambassador at the carnival event and in other instances.

In November 2022, FTX investors sued FTX founder Samuel Bankman-Fried, along with more than a dozen athletes and celebrity defendants who promoted the since-bankrupt FTX Trading Ltd. Among the celebrity brand ambassadors for FTX were Gisele Bündchen, one of the world's highest-paid models; her ex-husband and NFL quarterback, Tom Brady; and the creator of the television show "Seinfeld," Larry David.

However, O'Neal avoided service in what Moskowitz called a "silly service sideshow," allegedly sneaking out of the TNT studio after providing sharp analysis on a nationally broadcast NBA game. Finally, O'Neal was served as he was leaving his Georgia home in an SUV, which was captured on a home video camera.

The server delivered the FTX complaint and a separate proposed class action lawsuit related to the Astrals Project. Notably, U.S. District Senior Judge Federico Moreno of the Southern District of Florida granted final approval Tuesday of an \$11 million settlement in the Astrals litigation involving O'Neal's role in promoting Astrals non-fungible tokens.

Moskowitz has led the charge in obtaining several other settlements from high-profile figures in crypto litigation, including NASCAR driver Landon Cassill and ex-NFL star Rob Gronkowski, who allegedly promoted the since-collapsed cryptocurrency platform Voyager, and NBA player Jimmy Butler and crypto influencer Ben Armstrong, who allegedly promoted Binance.

However, Moskowitz said, there is still more work to be done. He is also joined in that pursuit by his partner, Joseph M. Kaye, and litigators José Ferrer and Desiree Fenandez of Mark Migdal Hayden in Miami.

"O'Neal is not admitting to doing anything wrong, but he agreed to stand up and help his fans that relied on him for promoting FTX and Astrals," Moskowitz said. "As far as Astrals, there are hundreds of other NFTs that have failed, have gone bankrupt and those victims of fraud have no avenues of recovery. So, someone like O'Neal should be commended."

[Securities Law News](#)

April 1, 2025, 5:46 AM PDT; Updated: April 1, 2025, 1:38 PM PDT

Rite Aid Beats Investor Suit Over Lost Prescription Client (3)

- 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. Neither firm immediately responded to emails seeking comment. Davis Polk & Wardwell LLP, which declined to comment in an email, and Hangley Aronchick Segal Pudlin & Schiller were representing defendants.

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

(Updates ninth paragraph to reflect Davis Polk declined to comment in the ninth paragraph.)

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Verizon Defeats Investor Claims Over ESG Statements, Lead Cables

Verizon Communications Inc. investors failed to sufficiently allege the company misled them about worker and environmental safety in light of its allegedly toxic lead-encased cables, a federal court ruled.

The investors didn't show actionable, false statements or fraudulent intent, but may re-plead their claims, Judge Edward S. Kiel said Monday for the US District Court for the District of New Jersey. Kiel's decision coincides with a Western District of Louisiana judgment from the same day in favor of another telecommunications company, Lumen Technologies Inc., over largely the same issues.

- Investors sued Verizon, Lumen, and AT&T Inc. over allegedly toxic, often buried, lead cable inherited from the former Bell System regional telephone network
- The suits followed Wall Street Journal articles on the public health and environmental risks associated with the leftover cables, saying the revelations caused stock-price declines
- The Verizon investors alleged the company knew for a long time but concealed, "that its copper network includes lead-sheathed cables" and also hid the enormous attendant risks

Kessler Topaz Meltzer & Check LLP and Grant & Eisenhofer are lead counsel for the investors. Jones Day and Gibbons PC represent Verizon.

The case is *Stichting Pensioenfonds Metaal en Techniek v. Verizon Commc'ns, Inc.*, 2025 BL 107666, D.N.J., No. 23-cv-05218, 3/31/25.

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Lumen Escapes Investor Lawsuit Over Lead Cable, ESG Statements

Lumen Technologies Inc. investors can't proceed with a proposed class action alleging the telecommunications company and its leaders misled them about its lead-covered cable infrastructure, a federal court ruled.

Judge Terry A. Doughty of the US District Court for the Western District of Louisiana on Monday adopted a magistrate judge's recommendation to dismiss the case with finality. The magistrate's report, issued March 14, concluded that none of the challenged statements—including those touting environmental, safety, and health compliance initiatives—were false when made.

- The suit was among several against telecom companies over allegedly toxic, often buried, lead cable inherited from the former Bell System regional telephone network, including a case against Verizon Communications Inc. that was dismissed on Monday with a chance to re-plead
- Lumen investors sued in the wake of Wall Street Journal articles on the public health and environmental risks associated with the leftover cables and ensuing stock-price declines
- The complaint “effectively concedes” that before the articles, “the telecom industry had every good reason to believe that the best practice was to leave the lead in place, undisturbed,” meaning Lumen's statements weren't misleading or made with fraudulent intent, Magistrate Judge Kayla Dye McClusky said in her recent report

Pomerantz LLP was lead counsel for the investors. Kean Miller LLP and A&O Shearman represented Lumen, formerly known as CenturyLink Inc.

The case is *In re Lumen Techs. Inc. Sec. Litig. II*, W.D. La., No. 3:23-cv-01290, 3/31/25.

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Discover Dodges Investor Suit Over Compliance Program Statements

- Judge said vague statements too general to be misleading
- But is letting investors ask to file amended complaint

Discover Financial Services beat investor allegations it concealed compliance issues, with a federal court ruling “vague and aspirational statements” about the online banking company’s risk management are insufficient to bring securities fraud claims.

In context, the alleged misstatements about Discover’s compliance efforts were too general to be misleading to a reasonable investor, forward-looking, or mere puffery, Judge Martha M. Pacold said in an opinion Monday dismissing the investors’ complaint. The US District Court for the Northern District of Illinois judge also said the lead plaintiffs failed to allege company leaders perpetuated a scheme to defraud investors based on Discover deciding to prioritize some aspect of its business or pursue a stock repurchase program.

“Decisions that ‘might reflect bad business judgment or even mismanagement’ do not necessarily rise to securities fraud,” she said.

Pacold said the investors could ask to file an amended complaint by the end of the month.

“We are pleased with the court’s well-reasoned and thoughtful decision,” attorney Todd G. Cosenza of Willkie Farr & Gallagher LLP, which represents certain Discover directors from the class period, said in an email.

Investors sued Discover after the company revealed in 2023 it had misclassified certain credit card accounts for about 15 years due to a compliance failure, sending the stock price dropping 16% in a day, Pacold said—its most significant drop to that point since March 2020, according to data compiled by Bloomberg. A year prior, share prices had slid 9% the day after Discover said it was halting its stock repurchase program due to an internal investigation related to its student loan servicing practices and other compliance matters, she said.

This came amid other crack downs from financial watchdogs for Discover's banking and student loan practices, including the Federal Deposit Insurance Corporation and Consumer Financial Protection Bureau, as highlighted in the most recent amended complaint.

Discover agreed to settle a class action lawsuit over the misclassification last year, saying the \$1.2 billion it had set aside for liability should cover the matter.

Capital One Financial Corp., which is targeting a massive \$35 billion acquisition of Discover, said last month it was "well-positioned" to get the deal approved by regulators. Shareholders approved the deal in February.

Lead plaintiffs are KBC Asset Management NV, New York City Employees' Retirement System, New York City Police Pension Fund, New York City Fire Department Pension Fund, and Teachers' Retirement System of the City of New York. Motley Rice LLC and Lieff Cabraser Heimann & Bernstein LLP are co-lead counsel for the proposed class, which would cover those who got stock from Feb. 21, 2019, through Jan. 17, 2024. Sullivan & Cromwell LLP represents Discover. Different current and former officers and directors have various counsel.

None of these firms, besides Willkie Farr & Gallagher, immediately responded to emails seeking comment.

The case is KBC Asset Mgmt. NV v. Discover Fin. Serv's , N.D. Ill., No. 1:23-cv-06788, dismissed 3/31/25 .

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Class Action

April 2, 2025, 5:49 AM PDT

Cedars-Sinai Retirement Fee Challenge Settles for \$2.97 Million

- Deal comes after judge denied request for class certification
- Plan's administrative fees, fund share classes at issue

Cedars-Sinai Medical Center Inc. signed a \$2.97 million class settlement with workers challenging the Los Angeles hospital's retirement plan fees and investment options.

The proposed deal would benefit about 25,000 people covered by the Cedars-Sinai plan since June 2017. It represents about 34% of the workers' total potential damages in the case, according to a motion for preliminary settlement approval filed Tuesday in the US District Court for the Central District of California.

The deal is subject to approval from Judge Josephine L. Staton, who last year declined to certify the matter as a class action. The would-be class representatives don't have claims that are typical of the class because they invested only in the plan's stable value fund and can't adequately mount a challenge to the other investments at issue in the lawsuit, she said in the opinion.

The lawsuit, which Staton previously declined to dismiss, challenges the annual recordkeeping fee levels in the hospital's retirement plan, which workers said were excessive at about \$106 per person. The plan also offers poorly performing investments and funds in overly expensive share classes, along with an imprudent stable value fund, according to the lawsuit.

Hundreds of lawsuits challenging retirement plan fees have been filed in federal courts over the past few years. Dozens of employers sued during this period have signed class settlement agreements, including several health systems: Henry Ford Health System for \$5 million, Bronson Healthcare Group Inc. for \$3 million, Beth Israel Deaconess Medical Center for \$2.9 million, CentraCare Health System Inc. for \$800,000, Munson Healthcare for \$600,000, and Baystate Health Inc. for \$500,000, among others.

The Cedars-Sinai workers are represented by Christina Humphrey Law PC and Bradley Grombacher LLP, which are authorized to seek one-third of the settlement amount as attorneys' fees.

Davis Wright Tremaine LLP represents the hospital.

The case is Arevalo v. Cedars-Sinai Med. Ctr. , C.D. Cal., No. 5:23-cv-01124, settlement motion 4/1/25 .

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Segerdahl Employee Stock Plan Class Action Fails After Trial

- Company sold for depressed price in 2016, suit alleged
- Judge sides with defendants on all claims after trial

Employees of an Illinois printing company failed to prove at trial that company directors and Greatbanc Trust Co. breached their legal duties in connection with a buyout of their employee stock ownership plan.

Judge Andrea R. Wood ruled for the defendants on all remaining claims asserted by the 464-person class action, holding after a 14-day trial that certain Segerdahl Corp. executives and directors didn't act as fiduciaries of the workers' plan in the course of orchestrating a 2016 transaction in which the company was sold from the plan to an investment firm. And Greatbanc, which served as trustee and had fiduciary obligations to the plan, didn't breach its duties under the Employee Retirement Income Security Act, Wood said Monday for the US District Court for the Northern District of Illinois.

Plaintiff Bruce Rush lodged a number of criticisms over how the transaction was carried out, objecting in particular to the decision to share the company's valuation reports with potential buyers. Wood wasn't persuaded, saying this decision was properly informed by "experienced business judgment" and didn't lead to a lower purchase price.

Wood was similarly skeptical that the stock plan would have gotten a better price had the negotiations gone more to Rush's liking, saying the evidence shows a "protracted negotiation among numerous sophisticated parties to sell a company for the highest price to which the one willing buyer would agree."

"Rush has failed to show by a preponderance of the evidence that any Defendant other than GreatBanc was a fiduciary; that even if they were fiduciaries, any Defendant breached a duty of prudence or loyalty; or that even if there had been a breach, it caused harm to the ESOP," she said.

The lawsuit challenges a 2016 transaction in which Segerdahl, an Illinois printing company with more than 700 employees, was sold from the company's ESOP to an investment firm for about \$265 million in a transaction overseen by Greatbanc. Plan participants claimed that only a portion of that purchase price actually went to the ESOP, with the rest diverted to company executives and other insiders.

Rush said the transaction stemmed from a “deeply flawed process” in shopping the company to potential buyers. The defendants intentionally avoided marketing the company to its competitors, causing the ESOP to receive an artificially low price for its stock, according to the lawsuit.

Wood’s prior rulings allowed some claims to go to trial and certified the dispute as a class action.

Schneider Wallace Cottrell Konecky LLP and Law Offices of Michael M. Mulder represent the class. Jackson Lewis PC represents the defendants.

The case is Rush v. Greatbanc Tr. Co. , 2025 BL 108341, N.D. Ill., No. 1:19-cv-00738, 3/31/25 .

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Fairfax Insurer Sues Berkley Unit Over Shareholder Settlement

- **COURT:** E.D. Mich.
- **TRACK DOCKET:** [2:25-cv-10932](#)

A “bump-up exclusion” in an excess policy bars coverage for a \$9 million settlement of a shareholder class action related to IT firm Covisint’s merger with OpenText Corp., a Fairfax Financial Holdings Ltd. insurance unit said in a complaint.

The oft-contested clause limits insurance coverage for settlements in acquisition-related cases brought by shareholders seeking damages that could be characterized as an increase in the purchase price for the target company. Insurers and policyholders have frequently disagreed on the scope of such clauses, and one dispute is pending before Delaware’s high court.

Allied World National Assurance Co., which provided excess D&O coverage, sued W. R. Berkley Corp. unit Berkley Insurance Co. and several former Covisint executives in the US District Court for the Eastern District of Michigan on Tuesday.

Berkley covered Covisint under a third-level excess policy that specifically afforded coverage for claims against the company’s executives where other indemnity is unavailable.

According to the complaint, while Allied World and the primary insurer covered defense costs but denied coverage due to the bump-up provision, Berkley agreed to fund the settlement.

However, the complaint said, Berkley told Allied World it disagreed with the coverage position and said Allied World should contribute the portion of the settlement that falls within policy limits.

“The only damages sought in the Murphy Action represent an increase in price or consideration for the Covisint shares owned by the putative class members,” so the settlement wasn’t a covered loss under its policy, Allied World said.

Allied World is asking the court to rule that it has no duty to indemnify Covisint’s former executives for the settlement.

Contact information for Berkley wasn’t immediately available.

Dykema Gossett PLLC represents Allied World.

The case is Allied World Nat'l Assurance Co. v. Berkley Ins. Co. , E.D. Mich., No. 2:25-cv-10932, 4/1/25 .

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\$9B for ovarian cancer claims rejected by judge; J&J heads back to court

 legalnewsline.com/stories/670748127-9b-for-ovarian-cancer-claims-rejected-by-judge-j-j-heads-back-to-court

John O'Brien

April 2, 2025

Asbestos

Lopez | <https://winterbankruptcy.byu.edu/>

HOUSTON (Legal Newsline) - A "heavily negotiated" plan to end tens of thousands of ovarian cancer claims with a \$9 billion fund that has "significant support" can't be confirmed, a Houston bankruptcy judge has ruled.

Judge Christopher Lopez cited voting issues and releases from liability of third parties on March 31 in rejecting Johnson & Johnson's attempt to settle 90,000 claims that talc was used in its Baby Powder and caused ovarian and other cancers.

"Today's decision highlights the broken tort system in the United States," said Erik Haas, worldwide vice president of litigation at J&J..

Proponents of the plan said they had the support of more than 75% of claimants and last year, after bumping the fund up \$1.1 billion, had the backing of most plaintiff firms. J&J was hoping to use a spinoff company, Red River Talc, that was designed to go bankrupt to pay claimants through a trust rather than in various courtrooms that are clogged with so many lawsuits the plaintiffs might never see their day in court.

Lopez said he could not certify the votes of claimants based on how the case played out.

"First, the pre-petition vote cannot be certified," he wrote. "Plaintiffs' firms voted tens of thousands of claims without either hearing directly from their clients or having the requisite authority to do so.

"They did not do it in bad faith. One firm was put in a bad spot due to solicitation issues that were not its fault. Others improperly relied on general language in engagement letters in hopes of getting this plan over the 75% threshold."

Having a vote count before the bankruptcy petition was filed, plus an "unreasonably" short voting time for many of the claimants, "was all done to get to 75% at any cost," Lopez wrote.

In response, Johnson & Johnson put out a press release announcing its "return to tort system to defeat meritless talc claims." The company says it is 16-1 in ovarian cancer cases in the last 11 years.

It is one of the reasons plaintiffs lawyers supported the plan, which was estimated to give claimants twice more than what they would on average recover in civil courts. Other gynecological cancer claims were deemed worthless, but those claimants would have obtained something from the bankruptcy trust.

"The disclosures made under oath in the Red River bankruptcy affirmed that the talc litigation is a plaintiff-lawyer driven fake tort, premised on junk science and fueled by third-party litigation financing including from foreign sovereign wealth funds," J&J said.

"Consequently, the company has no intent to settle or pay plaintiff lawyers on such meritless claims."

The firm Beasley Allen was most critical of the voting process. It sued a former business partner, the Smith Law Firm, for flip-flopping after J&J offered more money and motioned several times to have votes from other firms discounted because of how they were collected. It even asked for a new vote. The Smith firm was motivated to accept the plan to repay \$240 million a litigation funder provided, Beasley Allen said.

When OnderLaw tried to add a master ballot of its clients' votes earlier this year, Beasley Allen, through its the Coalition of Counsel for Justice for Talc Claimants, objected.

"The firm's apparent change of heart, however well-intentioned it may be, cannot suffice to permit a late ballot - particularly when it comes, without any timing justification, on the literal eve of a two-week trial," the Coalition wrote.

"The motion makes no mention of ever having contacted these claimants about how to cast their votes. It does not state whether they were made aware that OnderLaw... was attempting to have their votes cast after the deadline."

Beasley Allen was one of the few holdouts among plaintiffs firms. It is co-lead counsel in a federal multidistrict litigation in New Jersey, where it will be entitled to a share of a possible common fees fund.

J&J's extra offer included \$650 million for lawyers in the Houston bankruptcy.

"The Court has unfortunately allowed a couple of law firms with financially conflicted motives, who have conceded they have not recovered a dime for their clients in a decade of litigation, to defeat the overwhelming desire of claimants," Haas said.

Next up are motions to exclude plaintiff experts and disqualify lead counsel in the New Jersey MDL.

Class Action

April 2, 2025, 2:00 AM PDT

J&J's Failed Bid to End Talc Suits Is Bankruptcy Voting Lesson

Deep Dive

- Rushing bankruptcy vote process can torpedo mass tort plan
- Ruling shows limits of bankruptcy's special asbestos statute

A Johnson & Johnson unit's latest dismissal from the bankruptcy court system shows how complex voting issues and overly broad litigation shields can derail momentum when trying to resolve mass tort liability.

US Bankruptcy Judge Christopher Lopez's March 31 ruling that cancer victims' vote on a \$9 billion talc litigation settlement was flawed highlights the limits on companies' use of a specific asbestos-related bankruptcy statute to divert liability. But it also offers a potential road map for businesses and practitioners of what to avoid with a mass tort bankruptcy.

The issues Lopez pinpointed will "reverberate throughout the aggregate litigation ecosystem," said Samir Parikh, a bankruptcy law professor at Wake Forest University.

J&J was trying for the third time to use a subsidiary, Red River Talc LLC, to resolve tens of thousands of lawsuits brought by women who say the company's talc-based products, including baby powder, contained asbestos that caused cancer. J&J has maintained its products are safe and said it will return to the tort system to litigate and defeat "meritless talc claims."

"This ruling recognizes that the plan put forth by Red River and J&J was fundamentally flawed, from the irregular and rushed voting procedures to the impermissible nonconsensual third-party releases," said Otterbourg PC attorney and former bankruptcy judge Melanie Cyganowski. She represents a group of law firms for claimants who opposed Red River Talc's bankruptcy proposal.

"The Court rightly concluded that the process was driven more by a desire to meet an arbitrary threshold than by a commitment to ensuring claimants' rights," she said in an email.

Voting Issues

Lopez took issue with attorneys who voted on behalf of clients, a switch of how a significant number of votes were recorded, and a short voting timeline for thousands of creditors. He also rejected nonconsensual liability releases for related nonbankrupt entities and an overbroad injunction against other units.

Bankruptcy law requires 75% approval from a voting class of asbestos-related claimants to resolve a company's asbestos liabilities.

"The biggest thing I took away from his opinion is that the voting process in mass tort cases can be extremely flawed," Parikh said. "This case reveals that dirty secret and is arguably emblematic of a much larger process concern."

J&J defended its voting process and said lawyers opposing the deal were motivated by their own financial interests.

Securing votes is challenging in cases with thousands of claimants, years-long proceedings, and a lack of communication with clients, Parikh said.

"The timeline can be rushed and the 75% voting bar is quite high," he said. "These pressures seem to push some attorneys to delude themselves into thinking they have the authority to vote on behalf of their clients. But the error is obvious once the process is spotlighted."

Lopez's opinion shows that vote calculation must be done with "special care," said Melissa Jacoby, a University of North Carolina law professor and author of "Unjust Debts: How Our Bankruptcy System Makes America More Unequal."

"I hope that this analysis invites lawyers to rethink additional issues around mass tort voting, including classification and giving more severe claims their weighted voting rights that the Bankruptcy Code requires," Jacoby said.

Brian Glasser of Bailey & Glasser LLP, co-counsel for the coalition of plaintiffs' firms that opposed the plan, said the ruling shows that mass tort vote solicitation should be supervised by a court so it has the highest standards of transparency and legitimacy.

"If you want to do a pre-packaged mass tort bankruptcy, you need to vote as clean as Caesar's wife," Glasser said.

Asbestos-Related Rules

Lopez's ruling also shows the 1994 law permitting certain litigation protections in asbestos-related bankruptcies isn't "a blank check for widespread nonconsensual releases of third parties," Jacoby said.

Section 524(g) of the bankruptcy code enables a debtor to channel all current and future asbestos claims into a trust for compensation.

Some argue last year's US Supreme Court decision in *Harrington v. Purdue Pharma LP*, which barred nonconsensual liability releases for nonbankrupt entities, didn't apply to cases that invoked section 524(g), but that's too simplistic a reading, Jacoby said.

"The provision is not all or nothing, but requires careful application of the elements in 524(g) to the facts of particular releases," she added. "That's what the court did here."

Lopez's decision will have "implications for the arguments and analysis in other pending and future cases that include asbestos claims," Jacoby said.

No Two-Step Finding

Lopez's ruling contrasts with that of the US Court of Appeals for the Third Circuit, which in 2023 ruled that J&J unit LTL Management LLC wasn't in financial distress when it filed for bankruptcy. The appeals court rejected LTL's bankruptcy because of a funding agreement it had with J&J that allowed it payment rights to the tune of \$61.5 billion.

Lopez, who dismissed the bankruptcy Monday instead of allowing for a new plan and vote, took a different approach. He focused on the facts of the case, including a potentially long wait for claimants if the voting process restarts, rather than the validity of the controversial legal strategy that J&J was trying to implement, colloquially called the Texas Two-Step.

The judge didn't find Red River Talc filed bankruptcy in bad faith and didn't rule out the use of divisional mergers, which are key to the Two-Step, Emory University bankruptcy professor Lindsey Simon said in an email.

He made clear there's nothing wrong with that type of bankruptcy, she noted.

"Bankruptcy can be used to settle mass torts," Simon said. "He doesn't go through the financial distress standard. He doesn't issue a sweeping ruling that the case 'must be dismissed as a bad faith filing.' It's much more pragmatic and tied to the specific facts."

—With assistance from Alex Wolf.

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Critical Mass With Law.com's Amanda Bronstad: A Texas Judge Dismissed J&J's Third Talc Bankruptcy, Citing Voting 'Irregularities.' Judge in Hair Relaxer MDL Warns, 'You're Undermining My Authority'



law.com/2025/04/02/critical-mass-with-lawcoms-amanda-bronstad-a-texas-judge-dismissed-jjs-third-talc-bankruptcy-citing-voting-irregularities-judge-in-hair-relaxer-mdl-warns-youre-undermining-my-authority

Amanda Bronstad

April 2, 2025

Welcome to **Law.com Class Actions: Critical Mass**, a weekly briefing for class action and mass tort attorneys.

This week: **U.S. Bankruptcy Judge Christopher Lopez** dismissed **Johnson & Johnson's** third talc bankruptcy, citing "significant" irregularities in the vote for its \$10 billion confirmation plan. **U.S. District Judge Mary Rowland**, in the hair relaxer multidistrict litigation, cautioned a defense attorney for attempting to negotiate with her. Find out which firm represents **Procter & Gamble** in a greenwashing class action over **Charmin** toilet paper.

I'm . Feel free to reach out to me with your input. My email is abronstad@alm.com. Follow me on [LinkedIn](#) or X: [@abronstadlaw](#).

Melanie Cyganowski of Otterbourg. Courtesy photo

Talc Judge's 'Incredible Patience and Fortitude'

A judge in Texas dismissed **Johnson & Johnson's** third talcum powder bankruptcy, citing "substantial" irregularities in the vote that garnered 83% support for its \$10 billion confirmation plan.

Here's my report on **U.S. Bankruptcy Judge Christopher Lopez's** March 31 ruling, which dismissed Johnson & Johnson subsidiary **Red River Talc's** Chapter 11 case. Lopez concluded that the way in which several plaintiffs' firms voted in support of the plan "does not pass muster" because they hadn't gotten the approval of their 25,000 talc clients. He specifically mentioned **Watts Law Firm**, **Pulaski Kherkher** and **Andrews & Thornton**, but noted that **OnderLaw** "did it right." He also said the solicitation process did not give clients enough time to decide their vote.

Further, he pointed to other problems, such as the plan's injunction order that would prevent suits against hundreds of retailers, and the nonconsensual third-party releases that were at issue in the **U.S. Supreme Court's** 2024 decision in *Harrington v. Purdue Pharma*.

Johnson & Johnson vowed not to settle, reversing \$7 billion placed in reserve for the bankruptcy plan. Adam Silverstein(**Otterbourg**) a lawyer for the coalition opposing the plan, said, “J&J tried to wear down victims through delay tactics, legal loopholes, and backroom deals.” He worked with a team that involved Otterbourg’s David Castleman, Melanie Cyganowskiand Sunni Beville; **Bailey & Glasser** partners Brian Glasserand David Selby; and **Lawson & Moshenberg**’s Nick Lawsonand Avi Moshenberg.

Here’s what other lawyers had to say about the decision:

- Majed Nachawati(**Nachawati Law Group**), whose client was on the claimants committee supporting the plan: *“I was surprised on one hand due to the substantial support of the deal, despite how imperfect it may have been for all parties, that Judge Lopez dismissed the bankruptcy when it would have been the largest tort resolved in the bankruptcy system in U.S. History—however, Judge Lopez followed the law based on the facts and did the right thing in dismissing the bankruptcy for cause. That says a lot about the character of Judge Lopez despite the pressure that many judges have on them in cases that are highly publicized.”*

- Daniel Lapinski(**Motley Rice**), plaintiffs’ steering committee in the talc MDL: *“From the outset, we believed there were issues with the voting processes and broad releases related to this case.”*

- Chris Placitella(**Cohen, Placitella & Roth**), liaison counsel in the talc MDL: *“There were a lot of difficult issues addressed during this trial. The judge demonstrated incredible patience and fortitude working well past 6 p.m. almost every night. We still remain hopeful that the parties can put aside their differences and find a global solution acceptable to everyone involved.”*

U.S. District Judge Mary M. Rowland of the Northern District of Illinois. Photo: Diego M. Radzinski/ALM

‘Do You Understand That We’re Not Negotiating?’

A federal judge overseeing nearly 10,000 lawsuits tying hair relaxers to cancer dressed down defense attorney Barry Thompson (**Baker McKenzie**) at a hearing addressing the proposed bellwether trial plan after he appeared to negotiate with her.

U.S. District Judge Mary Rowland, a 2019 appointee of **President Donald Trump** in the **Northern District of Illinois**, pushed back after defendants wrote a footnote in a brief suggesting they would waive their right to have the trials in their original courts if she accepted their proposal, which allowed for eight more months of discovery.

“Do you understand that we’re not negotiating?” Rowland asked at the Feb. 13 hearing. “You’re undermining my authority. And right now, Article III judges, we’re very protective of our authority.”

Rowland’s remarks reflected growing concern among the bench about judicial attacks and intimidation spurred primarily by Trump, Elon Musk and others.

Back in court on March 27, Rowland addressed other issues, such as discovery, which defense attorney Lori Leskin(**Arnold & Porter**) said had already reduced the docket by 20% in early vetting. She told Rowland:

“This process has flushed that out, absolutely in a way that it should, which are the cases that have merit and completed a PFS [plaintiff fact sheet] and provided dates of injuries, product use and details are still here.”

David Lender, with Weil, Gotshal & Manges, at their New York offices. November 13, 2019.

Who Got the Work?

Procter & Gamble brought in **Weil Gotshal**’s litigation co-chairman David Lender and counsel Aaron Curtisto to represent it in a greenwashing class action over its “Keep Forests as Forests” campaign and the “Protect-Grow-Restore” logo on its **Charmin** toilet paper. The suit, filed Jan. 16 in **U.S. District Court** for the **Western District of Washington** and flagged by **Law.com Radar**, claims Procter & Gamble sources Charmin from a Canadian forest. John Goldmark (**Davis Wright**) stepped in earlier in the case to represent Procter & Gamble, which faces another Charmin lawsuit, according to Law.com Radar, filed on Monday in **U.S. District Court** for the **Southern District of New York**.

Here’s what else is happening:

Roundup Appeal: **Monsanto** argued on March 27 to throw out a \$175 million Roundup verdict. John Hare (**Marshall Dennehey**) told the **Pennsylvania Superior Court** to follow the lead of the **U.S. Court of Appeals for the Third Circuit** in finding that federal law preempted the failure-to-warn claims on Roundup’s label. Charles “Chip” Becker(**Kline & Specter**), for plaintiff Ernest Caranci, defended the 2023 verdict in the **Philadelphia Court of Common Pleas**, where Roundup trials have shifted away in favor of venues in Georgia, Missouri and Illinois.

DOJ Statement: Despite the switch to the Trump administration, the **U.S. Justice Department**’s antitrust lawyers issued a statement of interest supporting plaintiffs in the litigation accusing major health insurers of unlawful price-fixing through an algorithmic

service by the tech firm **MultiPlan**, now known as **Claritev**. The March 27 statement said the defendants, which include **Aetna** and **Cigna**, had made “errors of law” in finding a common pricing algorithm violated Section 1 of the Sherman Act. The defendants have moved to dismiss the litigation before U.S. District Judge **Matthew Kennelly**, in the **Northern District of Illinois**.

Wildfire Win: Another jury in Multnomah County’s **4th Judicial District Court** awarded more than \$36 million to seven plaintiffs, represented by **PWRFL**, suing **PacifiCorp** over 2020 wildfires that hit Oregon, according to Courtroom View Network’s coverage of the trial. A 2023 jury in a class action brought on behalf of 5,000 wildfire victims found PacifiCorp liable and determined that any future verdicts should add another .25 multiplier in punitive damages to the award for noneconomic damages. So far, other juries have awarded \$270 million in compensatory damages. Monday’s verdict could also increase given that Oregon law automatically doubles economic damages.

Thanks for reading Critical Mass! My colleague, Aleeza Furman, will be filling in for me next week.

Another TikTok 'Blackout Challenge': Death Confronts the Limits of CDA Section 230 Immunity

 [law.com/newyorklawjournal/2025/04/02/another-tiktok-blackout-challenge-death-confronts-the-limits-of-cda-section-230-immunity](https://www.law.com/newyorklawjournal/2025/04/02/another-tiktok-blackout-challenge-death-confronts-the-limits-of-cda-section-230-immunity)

Carla Varriale-Barker

April 2, 2025

TikTok and other apps; Credit: Confidence/Adobe Stock

Not long after the United States Court of Appeals for the Third Circuit considered whether Communications Decency Act, 47 U.S.C. Section 230 ("Section 230") immunized TikTok, Inc. ("TikTok") for sharing the "Blackout Challenge" via its algorithm, regardless of whether it was directed to a child's "For You" page, another child has died after attempting a social media challenge.

The recent victim was a 13-year-old Southern California boy who was found unresponsive in his room. His death is being investigated to determine if it was related to a "choking challenge," like the one that claimed a ten-year old Pennsylvania girl who died by self-asphyxiation after trying to recreate the "Blackout Challenge."

The "Blackout Challenge" invites participants to record their efforts to choke themselves using an array of common objects, such as purse strings and belts, until they pass out. The participants then post their efforts on TikTok.

In *Anderson v. TikTok, Inc.*, 116 F.4th 180 (Third Circuit 2024), notwithstanding the fact that the decedent was only ten years old, TikTok selected and delivered the "Blackout Challenge" to her "For You" page via TikTok's customized algorithm. The algorithm placed the video on her "For You" page (where TikTok recommends and promotes videos posted by third parties).

By the time the decedent viewed the "Blackout Challenge," TikTok knew its algorithm was directing the content to children. The "Blackout Challenge" had previously been implicated in the death of several children, some of whom were younger than 12 years old.

Her estate sued TikTok and its parent company and asserted product liability and negligence causes of action. However, TikTok took no action to curtail its dissemination, postulating that it was immunized because it was a mere publisher or provider of the information.

The Third Circuit did not agree. TikTok argued that it was protected by the immunity conferred by Section 230 because the "Blackout Challenge" was content from another provider, and Section 230 typically immunizes an internet service provider like TikTok from

sharing another party's expressive conduct, however it is not immunized for *its own* expressive conduct or speech.

The court held that the content delivered an algorithm to her "For You" page and was not "content provided by another." Instead, TikTok's algorithm curated the content and presented the content to her. This transformed TikTok's recommendation into TikTok's own expressive activity. Consequently, TikTok's liability did not turn on information provided by third parties because TikTok made a choice about the content recommended and promoted to specific users and by doing so, it engaged in its own "speech." Therefore, the algorithm created potential liability for TikTok without regard for Section 230 immunity.

The concurring opinion by Circuit Judge Matey went even further in its rejection of TikTok's argument and it may provide a rubric for future cases involving Section 230.

"TikTok reads Section 230 of the Communications Decency Act...to permit causal indifference to the death of ten-year-old girl. It is a position that has become popular among a host of purveyors of pornography, self-mutilation, and exploitation, one that smuggles constitutional conception of a "free trade in ideas" into a digital "cauldron of illicit loves" that leap and boil with no oversight, no accountability, no remedy....[b]ut it is not found in the words Congress wrote in Section 230, in the context Congress acted, in the history of common carriage regulations, or in the centuries of tradition informing the limited immunity from liability enjoyed by publishers and distributors of 'content.'"

The latest death attributed to the "Blackout Challenge" is a cautionary tale for parents and social media platforms like TikTok. Parents must be aware that parental controls cannot prevent children from accessing salacious and potentially deadly material via social media. For platforms like TikTok, Section 230 may no longer be an absolute defense.

The immunity conferred by Section 230 for hosting content increasingly faces greater scrutiny, particularly given the use of "machine-learning algorithms" to predict what content will keep and attract users (regardless of their age or their capacity to understand what they are viewing).

The concern about imposing liability for conduct that lacked culpability or about unfairly punishing emerging industries, such as the Internet, may be less compelling, particularly in the face of children's deaths. The boundaries of Section 230 will continue to be scrutinized by the Courts; its broad immunity is no longer child's play.

is a shareholder at Segal McCambridge. She can be reached at CVarriale@SMSM.com

Litigation

April 1, 2025, 1:47 PM PDT

Law Professors Back Meta's Fair Use Bid in AI Copyright Lawsuit

- **Training AI is transformative, fair use, IP professors argue**
- **Professors say pirated data doesn't affect legal analysis**

Meta Platforms Inc.'s effort to defeat a copyright lawsuit over training its AI model received a boost from a group of law professors who argue Meta's copying of books constitutes fair use.

Case law supports Meta's argument that copying made in the course of creating new knowledge is transformative, four law professors wrote in a proposed amicus brief filed Monday in the US District Court for the Northern District of California.

"Rejecting existing precedent about the fairness of intermediate uses—internal copying designed to produce a noninfringing output—would be harmful to the copyright system as a whole, which is designed to encourage the production of new knowledge and new works," wrote IP professors from Harvard Law School, Boston University School of Law, Santa Clara University School of Law, and Emory University.

The move follows Meta's March 24 motion for summary judgment and a similar filing made by Anthropic PBC in a separate suit brought by another group of authors.

Authors including Sarah Silverman and Richard Kadrey filed a proposed class action against Meta in July 2023, accusing the company of infringing their copyrights by using copies of their works to train its Llama generative AI model. The authors claim Meta violated the Digital Millennium Copyright Act by stripping details including author names survived Meta's motion to dismiss in March.

The same month, the authors moved for summary judgment on their claim of direct infringement, and Meta moved for summary judgment on all claims. Meta argued all four factors of the fair use analysis—purpose of the use, nature of the copyrighted work, reasonableness of the use, and market effects—weigh in its favor.

The ultimate test of fair use is whether allowing the use would promote copyright law's goal of promoting knowledge, the law professors said. The authors incorrectly assert the use of pirated data isn't eligible for fair use, the proposed brief says, but "Fair use, like copyright as a whole, 'is not a privilege reserved for the well-behaved.'"

Courts have held that significant amounts of copying to create new tools is transformative under the first fair use factor, the law professors said, citing cases that blessed copying printed library books to create a search engine index and copying the code of webpages to make a search engine index.

Further, the market for authorizing non-expressive internal use of their works isn't within the scope of copyright owners' rights, the law professors said, so there's no cognizable harm to authors when they're deprived of exclusivity over those uses.

For example, "a new Yellow Pages directory or other taxonomy may organize unprotected data so well that previous versions are no longer attractive to readers," the brief said, "but copyright does not protect against that kind of market loss."

Licensing data to train models is unworkable because of the exceptionally large number of works and owners at stake, the law professors said, pointing to a failed regime for a digital library started by Google.

Harvard Professor Rebecca Tushnet and Chris K. Ridder of Ridder, Costa & Johnstone LLP signed the amicus brief and the motion for leave to file.

Cooley LLP, Cleary Gottlieb Steen & Hamilton LLP, and Paul, Weiss, Rifkind, Wharton & Garrison LLP represent Meta.

Boies Schiller Flexner LLP, Joseph Saveri Law Firm LLP, DiCello Levitt LLP, Lieff Cabraser Heimann & Bernsetein LLP, Cafferty Clobes Meriwether & Sprengel LLP, and Cowan, DeBaets, Abrahams & Sheppard LLP represent the authors.

The case is *Kadrey v. Meta Platforms Inc.*, N.D. Cal., No. 23-cv-03417, motion for leave to file amicus curiae brief filed 3/31/25 .

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Litigation

April 1, 2025, 1:56 PM PDT

Goldstein Challenges Statute of Limitations Pauses in Tax Case

- **Blames accountants for failure to report some taxable income**
- **Says government had evidence contradicting agent's claims**

SCOTUSblog founder Tom Goldstein filed a motion on Monday asking a federal court in Maryland to invalidate two orders suspending the statute of limitations for certain alleged offenses related to the 2016 tax year.

The motion, filed in the US District Court for the District of Maryland, says that declarations submitted in support of certain applications to suspend the statute of limitations for the alleged offenses were based on "material misrepresentations and outright falsehoods."

Courts are authorized by law to suspend a statute of limitations period while the government seeks a foreign government's assistance to gather evidence located abroad. Such orders are issued ex parte, meaning without the knowledge of the defense, but are disclosed post-indictment. At that point, a court may hold an evidentiary hearing, and if the court decides to invalidate the order, the statute of limitations isn't tolled.

The limitations period for willful tax violations is, at most, six years.

According to Goldstein, the applications submitted by the government relied on false claims about a \$500,000 payment from the Malaysian government—which Goldstein used to repay a gambling loan—and transactions involving his Montenegrin bank accounts.

The applications also included what Goldstein says are demonstrably false claims that he hired and paid four alleged romantic interests for no-show jobs. They did meaningful work for reasonable wages, according to the filing and attached exhibits.

Goldstein denies that he failed to disclose the existence of his Montenegrin accounts to the IRS. He told his office managers to inform his accountants about those transactions, but the accountants failed to disclose them "through their own negligence," the motion says.

He admitted there was "a small portion of the funds" in the Montenegro accounts that wasn't declared as income and says he attempted to resolve that outstanding liability civilly in May 2021.

Emails attached to the filing appear to corroborate Goldstein's account.

The motion attributes many of the alleged misrepresentations to a single IRS special agent who was working the case.

Goldstein claims the government had overwhelming evidence showing that he consistently instructed his law firm's staff and accountants to correctly characterize personal expenses.

He also claims there is no evidence that he willfully evaded taxes by redirecting income from his law firm to cover personal expenses.

He received certain payments from law firms that weren't properly reported, but Goldstein said it wasn't his fault. In one case, the payor law firm provided Goldstein's law firm with a 1099 showing the funds that were sent directly to his personal account, but his accountants failed to report it as income. In another instance, the payor law firm failed to provide required tax documentation to Goldstein's firm.

His motion also asks the court to order disclosure of relevant grand jury materials before any evidentiary hearing.

The case is before Judge Lydia Kay Griggsby. Goldstein faces four counts of tax evasion, ten counts of assisting the preparation of false tax returns, five counts of willful failure to pay taxes, and three counts of false statements on a loan application.

Goldstein is represented by Munger, Tolles & Olson LLP.

The case is United States v. Goldstein , D. Md., No. 8:25-cr-00006, motion 4/1/25 .

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The Big Read Paul Weiss

How Trump is exploiting Big Law's identity crisis

Firms like Paul Weiss have hired star lawyers to expand in dealmaking. Fear of losing business has made them less willing to have a fight with the government

Amelia Pollard, James Fontanella-Khan and Sujeet Indap in New York and **Stefania Palma** in Washington

Published YESTERDAY



In the mid-1980s, Arthur Liman was almost certainly the most acclaimed corporate lawyer in America.

As a star dealmaker at Paul, Weiss, Rifkind, Wharton & Garrison, Liman negotiated on behalf of corporate raiders such as Ron Perelman and defended “junk bond king” Michael Milken in federal court.

But he also won a reputation as a dedicated part-time public servant. Liman led high-profile investigations into the Attica prison riot in the 1970s and of President Ronald Reagan’s Iran-Contra scandal in the 1980s.

Rising through the ranks at that time was Brad Karp, a Harvard law graduate who joined Paul Weiss in 1985. A quarter-century later, Karp would take the helm of the firm, which has since grown to 1,200 lawyers strong. He explicitly moulded it in Liman's image: a decisive presence across corporate law practices, with lawyers who carry an ethos of public service, seriousness and sobriety.

Yet within a few days last month, that carefully constructed edifice was challenged at its core.

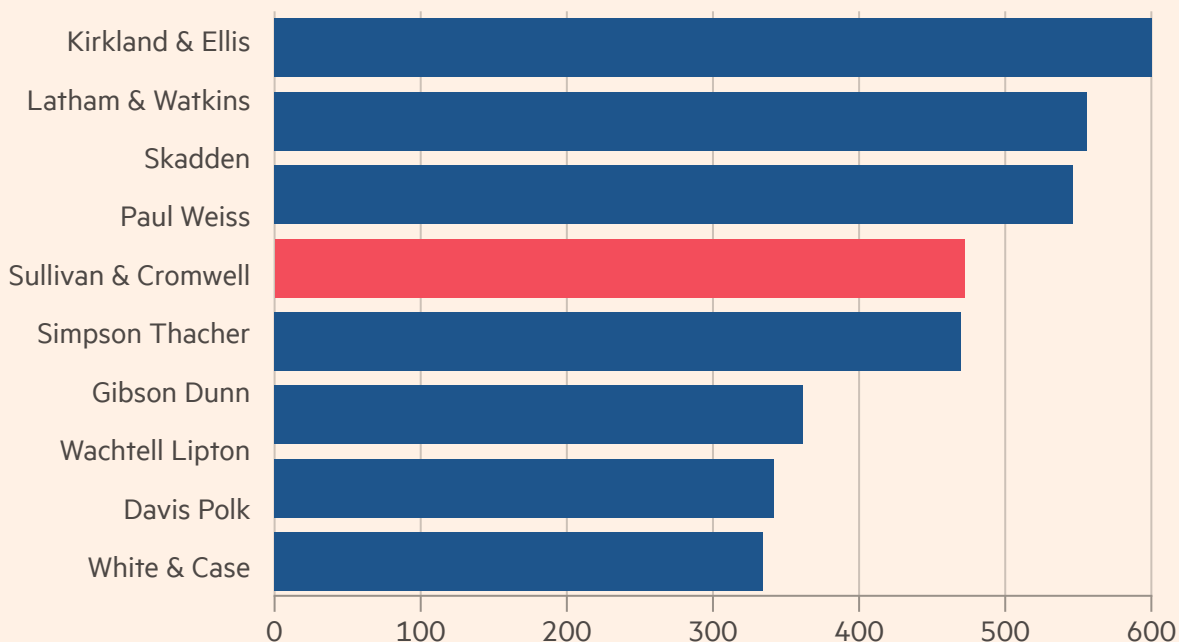
President Donald Trump issued an executive order that in effect banned Paul Weiss from appearing in federal courts and cases over claims that its work on progressive causes undermined the judicial system and that its pro-diversity hiring policies were illegal. The edict threatened the survival of Paul Weiss, Karp claimed.

Paul Weiss is not the only firm to have been targeted by the Trump administration, and judges have since frozen critical parts of similar orders against Jenner & Block, WilmerHale and Perkins Coie for being illegal.

But rather than litigate, Karp cut a deal with Trump that cancelled the executive order in exchange for concessions including \$40mn worth of pro bono legal services on issues important to the president.

Paul Weiss is one of the top law firms in dealmaking

M&A deal value in the Americas (2024, \$bn)



FINANCIAL TIMES

Source: Mergermarket

The deal Karp signed sent shockwaves through the American legal establishment because it highlights the growing identity crisis among many of the larger law firms — especially those with a strong connection to Wall Street.

The Financial Times spoke to 35 corporate lawyers and legal insiders for this story, although many requested anonymity due to concerns about retaliation from the president and his associates.

Within Paul Weiss, some lawyers in the litigation department — once its key strength — were disturbed to see a powerful institution swiftly cede the high ground, especially one that had the firepower within its own ranks to fight, say people with direct knowledge of the matter. But many of the lawyers in its ascendant mergers and acquisitions and private equity groups were relieved. Ultimately, there was unanimity among the senior management to settle.

Over the past two decades, dealmaking has become a much more important part of the business models of many of the larger firms, buoyed in part by the explosive growth of the private equity industry and hedge funds. This shift has brought with it a coterie of star lawyers and pay packages that mirror those of their Wall Street clients.

The threats from the Trump administration are playing into this culture clash between the litigation business — where some lawyers would take it as a point of pride to be seen standing up to the government — and the deals lawyers, who tend to be more focused on the short-term flow of transactions and whose incentives are to keep out of the government's crosshairs.

The dilemma that Paul Weiss faced is now being felt in other parts of the industry as Trump broadens his assault on the sector. While some such as Perkins Coie, Jenner & Block and WilmerHale have resisted, others have not; Skadden Arps, an arch-rival to Paul Weiss for many of its corporate clients, reached a deal with Trump to offer \$100mn worth of pro bono services to avoid being hit by an executive order.

On Tuesday, Willkie Farr & Gallagher reached a similar agreement to the one Skadden struck, becoming the third major firm to forge a deal with the White House.



Members of the US Senate committee investigating the 1980s Iran-Contra affair, including chief counsel Arthur Liman, centre, huddle during a break in hearings © Bettmann Archive/Getty Images

The industry is divided over how to respond. While a large number of small and medium-sized firms are willing to support Perkins Coie in its legal effort to fight sanctions imposed by the Trump administration, the Financial Times revealed at the weekend that not one of [the 20 top law firms](#) in the US — most of which have large dealmaking businesses — has so far given their “unconditional support” to the effort.

Although Paul Weiss was the first elite law firm to buckle to Trump’s demands, several leaders from rival firms told the Financial Times privately that they would cut similar deals if targeted with an executive order.

Karp told his colleagues that there was “no right answer” to the administration’s threats. “It is very easy for commentators to judge our actions from the sidelines,” he wrote in an email. “But no one in the wider world can appreciate how stressful it is to confront an executive order like this until one is directed at you.”

But by making his choice, Karp seemed to tacitly concede that exalted law firms can no longer reconcile the disparate values that his mentor had championed decades earlier.

“Arthur Liman saw the law as a noble profession and not just as a commercial enterprise,” Karp said in a 2019 interview with American Lawyer magazine. “He inculcated in me the belief that giving back to the community and safeguarding the rule of law is an essential part of what it means to be a lawyer.”

Since his first day back in the Oval Office, Trump has targeted perceived threats to his interests and worldview, singling out academic institutions like Columbia University and cultural institutions such as the Kennedy Center. Then in February, just one month into his second term, the president set his sights on Big Law.

The White House first went after Covington & Burling, a prominent firm in Washington known for its regulatory work. Trump then issued an executive order against Perkins Coie, citing its representation of Hillary Clinton and George Soros, before zeroing in on Paul Weiss.

For Karp, who has chaired Paul Weiss since 2008, the attack has represented a brutal personal reversal. An outspoken Wall Street supporter of the Democratic party, he had helped raise millions of dollars for Kamala Harris. Had she won, Karp was in the running to be US attorney-general, the highest ranking lawyer in America, according to multiple Democratic party operatives and donors.

His decision to cut a deal with the man he had worked tirelessly to keep out of office does not represent an ideological shift, according to people briefed on the matter. In Karp's mind, the livelihoods of his thousands of employees were at stake.



Brad Karp, chair of Paul Weiss, in his office in New York. Under his leadership, the law firm has often been a ruthless advocate for the powerful © Joshua Bright/New York Times/Redux/eyevine



Demonstrators in Washington protest against the Trump administration in February. Some argue that Paul Weiss would have been the best-placed firm to take the fight to Trump © Jacquelyn Martin/AP

One person close to Karp says the decision was excruciatingly painful for the 65-year-old: "He wasn't just thinking about his own interests, he did it for the thousands of people who work there: the secretaries, the associates, the young partners who would have their financial lives adversely affected if the deal did not go through."

Shortly after Trump targeted Perkins Coie and Covington, Karp contacted the heads of several law firms to try to organise support for them. The response was almost non-existent, and also failed to materialise when the White House issued an executive order against Paul Weiss.

“Disappointingly, far from support, we learned that certain other firms were seeking to exploit our vulnerabilities by aggressively soliciting our clients and recruiting our attorneys,” he wrote in the email to employees of the firm after he reached a deal with Trump.

Once Karp realised there was no united front to fight the executive order, the pressure grew to find an alternative solution. Some clients warned the firm’s partners that unless the matter was resolved swiftly, they would move their business elsewhere. Rumours swirled that competitors were circling Paul Weiss’s top talent, ready to pounce whenever the opportunity arose.

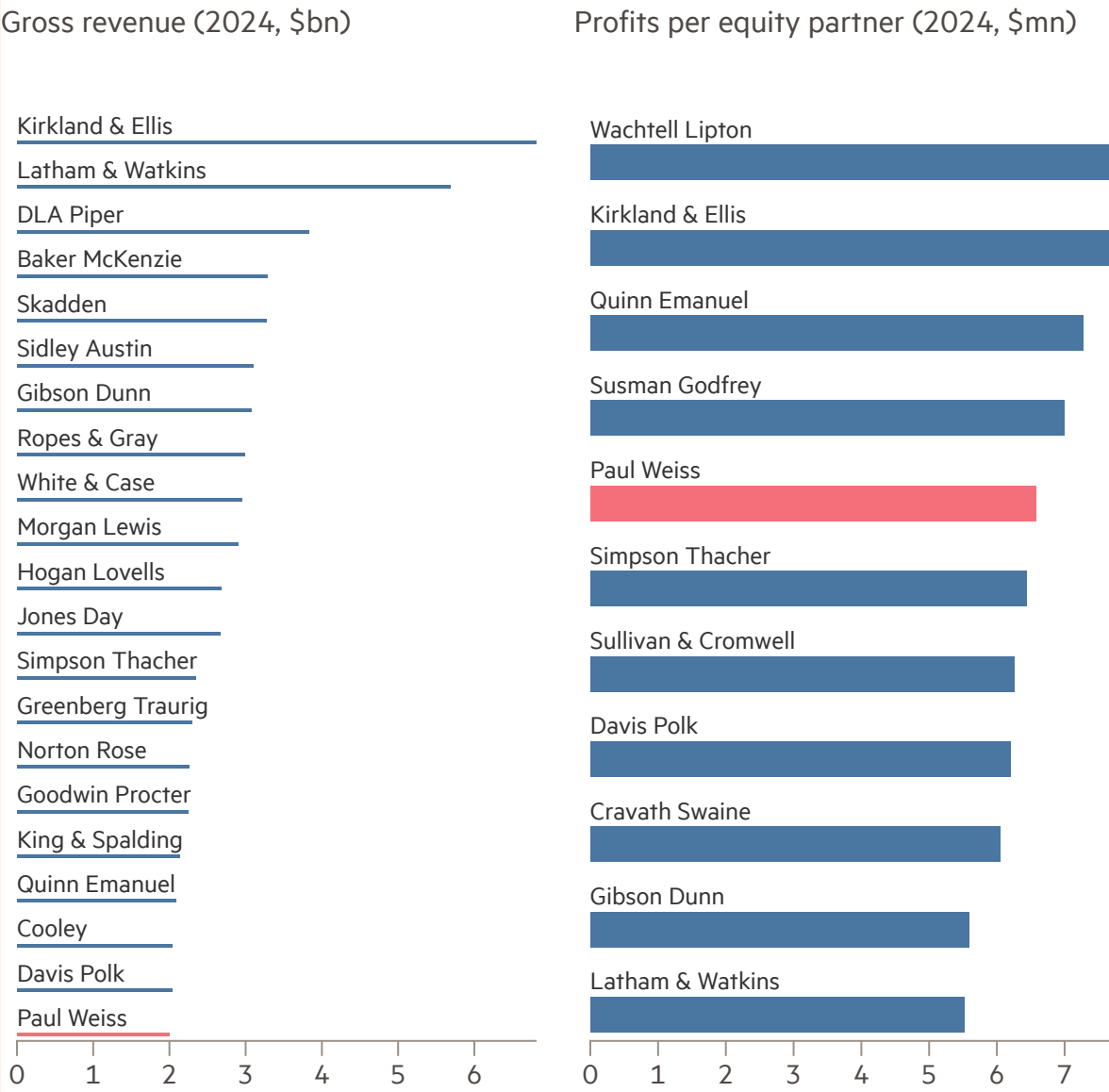
Under mounting pressure, Karp travelled to Washington in mid-March to meet Trump to plead for clemency. During the meeting at the Oval Office, in a move that was not expected by Karp, the president patched in on speaker Robert Giuffra, the co-chair of rival firm Sullivan & Cromwell and a Trump donor, to help hammer out a truce.

Karp swallowed his pride and agreed to the terms imposed by Trump. People close to Karp said that Paul Weiss did not actually make any big concession but agreed that the symbolism of what went down at the White House, while demeaning, was ultimately pragmatic.

“We’ve used Paul Weiss forever and . . . we would have had to seek new counsel if they didn’t settle,” says a person working at a company that regularly hires Paul Weiss and has ties with the federal government. “Brad did the right thing, although we realise it must have been humiliating for him and the legal industry . . . the problem isn’t Brad but it’s Trump.”

Yet Paul Weiss’s need to strike a deal with the administration in the first place is in part a symptom of how the law firm has morphed in recent decades into a mainstay of Wall Street, with salaries and culture to match.

Big Law: leading US firms in revenue and profits



FINANCIAL TIMES

Source: The American Lawyer

Paul Weiss is one of a handful of firms that has created a thriving free-agent market for lawyers. Partners a decade ago would make perhaps \$3mn or \$4mn a year and would enjoy lifetime employment and generous pensions.

With the growth of private equity firms, hard-knuckled hedge funds and a regular churn of multibillion-dollar corporate acquisitions, a small set of lawyers now command eight-figure pay packages and have no reluctance about jumping firms for the highest bidder. Karp played the poaching game as aggressively as anyone.

Since Karp took over, Paul Weiss has evolved into a transactional powerhouse attracting top-tier corporate lawyers from rivals, such as the star dealmaker Scott Barshay, who joined from Cravath, Swaine & Moore to propel Paul Weiss's M&A business.

But today's lavishly paid top talent are less likely to display allegiance. "Karp saw a clear and present [danger] that star partners there would defect to other peer firms and take very lucrative business with them," says John Coffee, a professor at Columbia Law School. "M&A stars are unique and carry the keys to Fort Knox with them." People close to Barshay say he had no intention to leave regardless of the decision.

One lawyer who has gone up against Paul Weiss put it more bluntly: "There's too much fucking money. When a Big Law partnership is \$2mn a year, people can have some principles because the fall isn't so bad." The calculation changes entirely, the person says, "when they are making \$20mn a year".

Under Karp's leadership, the firm has often been a ruthless advocate for the powerful. Its biggest clients include Apollo Global Management and Goldman Sachs, while it has also represented members of the Sackler family, who founded Purdue Pharma, the pharmaceutical behemoth that has been accused by prosecutors of stoking the US opioid crisis.

Indeed, one of the considerations for the firm was its stable of private equity clients, many of whom are Republicans. As one partner puts it, if the firm only acted for clients whose ethics they agreed with then they would have no clients.

Some in the industry see Paul Weiss's concession to Trump as a compromise of its values.

The firm's history is steeped in contributions to dismantling segregation, defending reproductive and LGBT+ rights, and challenging the death penalty, and it maintains an image of strong social consciousness.

Given all that, many of the lawyers and people working in adjacent industries who spoke to the FT say it would have been the best-placed firm to set an example by taking the fight to Trump.



Anti-Trump activists demonstrate outside the office of Paul Weiss in Manhattan last month. During the president's first term, leaders at the law firm had stood up to the administration © Jimin Kim/SOPA/Shutterstock

“As lawyers, we need to be really stepping up and doing just the opposite of what the administration wants,” says Jessie Weber, managing partner at Brown Goldstein & Levy, a mid-sized firm with a big civil rights practice. “But certainly, it will take the whole legal community stepping into that role, and that’s what I hope to see.”

During Trump’s first term, leaders at Paul Weiss stood up to the administration. Karp himself [co-wrote an op-ed](#) in 2018 accusing the government of violating the law.

Around that time, a team of Paul Weiss lawyers volunteered to provide counsel travellers from countries affected by the administration’s Muslim ban, says Erin Elmouji, a partner at Mancuso Brightman who previously worked at Paul Weiss.

“Standing up for the underprivileged and the voiceless is something Paul Weiss has committed to over and over again over the years,” she says. Reaching a deal with the White House “has made it a lot harder for other firms and organisations to stand up and fight [governmental over-reach], which is essential to preserve the independence of the legal system”.

Some critics of Karp’s deal say that in the long term, the cost of settling will outweigh the short-term benefits.

Reaching an agreement with Trump raises the question of whether Paul Weiss can independently advocate for the positions of its clients, Elmouji says, and ultimately makes the law firm vulnerable to further demands from the administration.

“Would you really hire Paul Weiss to go to war against the government?” says one lawyer at a rival firm. “Would you hire Karp to go up against the DoJ [Department of Justice] right now, when he just folded when his own interests were at stake?”

A litigator who has close ties with many colleagues at Paul Weiss rejects this as half of the firm’s business involves interacting regularly with federal and state regulatory agencies. “Under the Trump administration, when he says you’re an enemy, he’s going to make sure that everyone is retributive and vengeful towards you, and anything Paul Weiss wanted by way of relief from these regulators they would not get. It would have destroyed them even if they were purely a litigation firm.”

Coffee argues that “by training, instinct and personality” the firm will still “fight fiercely any suit it brings, including against the government”.

“But it may be reluctant to sue Trump personally after this settlement,” he adds. “Its clients know it and respect it.”

There is little sign of pressure letting up. The Equal Employment Opportunity Commission has sent letters to 20 large law firms, most of which were large corporate firms similar to Paul Weiss, asking them to describe their diversity, equity and inclusion policies.

Lawyers at many of those firms say they are sympathetic to Karp’s decision and admit their firms could soon similarly bow to Trump in an effort to preserve their businesses.



The president and his attorney-general, Pam Bondi, in Washington last month. Some law firms admit they could also be forced to bow to Trump's pressure © Daniel Torok/White House/Planet Pix/ZUMA/Shutterstock



The offices of Perkins Coie and Jenner & Block in New York. Their decision to push back against the White House will test whether signing a deal with Trump is the right thing to do © Melissa Bender/NurPhoto/Shutterstock

“Most firm leaders would do exactly what Brad did,” says a chair from one of the country’s top law firms. “We — and I talk to everyone — are all incredibly grateful because it allows the industry, it gives us a blueprint, to resolve things in a constructive way.”

“No one is willing to go on the record because everyone’s concerned. I don’t want to pop my head up because you don’t know how it’s going to get smacked. But that’s very different from saying we don’t support what was done.”

Another corporate adviser is more blunt: “It was a mafia-like shakedown . . . There was no choice. Do you have a choice whether to pay the mob?”

Perkins Coie, WilmerHale and Jenner & Block will test whether signing a deal with Trump is the right thing to do.

The temporary victory in court of the three firms “may give Paul Weiss a reason to reconsider its approach”, says Ryan Goodman, professor at the New York University School of Law. “That will be even more likely if their reputation emerges stronger for having put up this fight.”

As for Paul Weiss, even if its business model remains intact, there is still the risk it has irreparably sacrificed its singular moral authority among elite law firms.

“The Paul Weiss of Arthur Liman would have handled this differently,” says one well-known New York litigator who works closely with the firm and has long admired it. “It’s a different firm now . . . that’s either an explanation or excuse.”

But one contemporary of Liman argues that part of being a good lawyer is understanding that discretion, sometimes, is the better part of valour.

“Arthur Liman loved Paul Weiss,” the person says, “and I think he would have done everything possible to keep Paul Weiss alive.”

Additional reporting by Suzi Ring and Joe Miller

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April 1, 2025, 1:57 PM PDT; Updated: April 1, 2025, 3:44 PM PDT

Trump Strikes Deal With Willkie, Law Firm of Doug Emhoff (2)

- Willkie is third major firm to reach agreement with White House
- Emhoff said to have urged firm leaders to fight back

Willkie Farr & Gallagher is committing at least \$100 million in pro bono work to causes aligned to "conservative ideals," President Donald Trump said Tuesday.

Willkie is the third major law firm to strike a deal with Trump, following similar pledges by Paul Weiss Rifkind Wharton & Garrison and Skadden, Arps, Slate, Meagher & Flom. It comes as the president has issued a string of executive orders targeting firms for their ties to Trump's perceived enemies and work on causes he opposes.

"We reached an agreement with President Trump and his administration on matters of great importance to our firm," Thomas Cerabino, the firm's chairman, is quoted on Truth Social as saying. "The substance of that agreement is consistent with our Firm's views on access to legal representation by clients including pro bono clients."

Willkie earlier this year hired Doug Emhoff, who is married to former Vice President Kamala Harris. Like other Big Law firms, it has handled pro bono cases that could be seen as antagonistic to Trump. The firm represented Georgia election workers who won a \$148 million defamation verdict against Rudy Giuliani, a former lawyer for Trump, and has won victories protecting gender-affirming care in public health plans.

The causes to be supported by Willkie under the deal include aiding veterans, ensuring "fairness in the justice system," and combating antisemitism, according to Trump's post. The deal marks \$240 million total that private sector law firms have committed to support Trump goals in exchange for avoiding a punitive executive order.

Willkie's leaders defended the deal Tuesday in a firmwide email viewed by Bloomberg Law.

"We were invited to contact the Administration on Sunday, and they outlined a proposed alternative to receiving an Executive Order," the firm's executive committee members said in the email. "In making this difficult decision, we concluded, after due consideration of the implications of each possible course of action, that accepting the Administration's final proposal was the path that best serves our clients' needs and protects the Firm's various stakeholders, avoiding potentially grave consequences."



Phil Kuntz

Emhoff told Willkie's leadership he disagreed with their seeking a deal with the Trump administration, according to a source familiar with the situation. He told them they should instead fight against an order targeting the firm.

Emhoff on Tuesday, before the deal was announced, participated in an event at Georgetown Law School.

"The rule of law is under attack," he told students at the event. "Democracy is under attack. And so, all of us lawyers need to do what we can to push back on that."

Trump's post also stated Willkie will affirm a commitment to "merit based hiring" and will refrain from "illegal DEI discrimination." The firm agreed to engage an independent outside counsel to advise the firm in complying with antidiscrimination laws, according to Trump's post.

The president said the firm "will not deny representation to clients such as members of politically disenfranchised groups and government officials employees and advisors who have not historically received legal representation from major national law firms."

The deal is based on three principles, Willkie's leaders said in the firmwide email.

“First, we will continue to follow the law related to our employment practices,” they said. “Second, we will continue to represent clients on both sides of the aisle and with a wide range of ideological views. Third, we will continue to represent underrepresented individuals and groups that are not only important to the Administration, but to Willkie—this includes veterans, Gold Star families and victims of religious discrimination.”

Willkie employs about 1,200 lawyers in 15 offices all over the world. It jumped nearly 20 spots on the list of largest US law firms from 2019 to 2023, according to data from The American Lawyer. No other firm gained as much ground during that time without completing a merger.

(Updated with additional reporting throughout.)

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Scrutiny Updates – FCPA Professor

fcpprofessor.com/scrutiny-updates-6

April 2, 2025



Boston Scientific

As highlighted in this prior post, Boston Scientific has been under FCPA scrutiny since early 2022. In its recent annual report (March 19th) the company disclosed:

“Like many healthcare companies, the Company receives inquiries and has ongoing discussions with governmental agencies with respect to the Company’s operations, such as the Securities and Exchange Commission (SEC), the Department of Justice (DOJ) and foreign regulators, including its operations in Vietnam with respect to alleged Foreign Corrupt Practices Act (FCPA) violations the Company received in March 2022. The Company has received related subpoenas for documents from the DOJ and the SEC with respect to the Vietnam matter, and is cooperating with the government while investigating these allegations. From time to time, the Company also self-discloses potential concerns to regulators. In the course of Vietnam-related discussions with the DOJ and SEC, the Company has disclosed that it is investigating other potential concerns in Vietnam and other countries.”

Medtronic

The company’s most recent quarterly filing (February 25th) states:

“The Company has regular and ongoing interactions with governmental agencies, and its practice is to cooperate with such inquiries. In addition, from time to time, the Company self-discloses potential concerns to governmental regulators. Like many in the medical device industry or with international operations, the Company engages in periodic discussions with the U.S. Securities and Exchange Commission, U.S. Department of Justice, and various authorities in China regarding certain activities in certain foreign countries, including China. The Company is committed to regularly evaluating and, as appropriate, strengthening its anti-corruption compliance programs and practices. Any possible future determination that certain of our operations and activities, and/or those of our third-party distributors, are not in compliance with existing laws could result in the imposition of fines, penalties, and equitable remedies in the United States or in other jurisdictions. The Company has not recorded an expense in connection with these matters because any potential loss is not currently probable and reasonably estimable. Additionally, the Company is unable to reasonably estimate the range of loss, if any, that may result from these matters.”

Johnson & Johnson

The company’s recent annual report (March 12th) states:

“In July 2018, the Public Prosecution Service in Rio de Janeiro and representatives from the Brazilian antitrust authority CADE inspected the offices of more than 30 companies including Johnson & Johnson do Brasil Indústria e Comércio de Produtos para Saúde Ltda. The authorities appear to be investigating allegations of possible anti-competitive behavior and possible improper payments in the medical device industry. The Company continues to respond to inquiries regarding the Foreign Corrupt Practices Act from the United States Department of Justice (DOJ) and the United States Securities and Exchange Commission. The Company has been informed DOJ has closed its investigation.”

Securities Law

April 2, 2025, 9:53 AM PDT

Matt Levine's Money Stuff: Stablecoins Are Growing Up

Circle IPO

I have always thought of stablecoins as basically unregulated non-interest-paying crypto banks. The idea of a stablecoin is that there is a company, the stablecoin issuer, and you send the company dollars, and it gives you back tokens ("stablecoins"). Each token is supposed to be worth a dollar, and if you hand the issuer back a token it will hand you back a dollar. But mostly you hold onto the stablecoins and the issuer holds onto your dollars. You both arguably benefit from this:

You can use the tokens like dollars on in crypto applications, where actual dollars are hard to use: The stablecoins live natively on various crypto blockchains, can be sent over the blockchain, can be used in smart contracts, etc., in ways that don't really work with dollars held in bank accounts.

- The issuer has the dollars, which it can invest in super-safe short-dated US Treasury bills, *or anything else*, to make money. It doesn't pay you any interest; any profit it makes from its investing is the issuer's to keep.

But yesterday Circle Internet Group Inc., the big US-based issuer of the USDC stablecoin, [filed publicly for an initial public offering](#). It has previously filed confidentially, but its prospectus is available now. It is an interesting read, and it has caused me to update my model of stablecoins in two respects:

1. Circle is not an unregulated bank; it is a tech front-end for US banks and asset managers.

- 2. I am not as sure as I once was about "non-interest-paying."

On the first point. One way to do the stablecoin issuing model is to issue stablecoins, take dollars, and use the dollars to invest in whatever you want. If you are a big stablecoin issuer in even a moderately high interest-rate environment, "whatever you want" should definitely be exclusively US Treasury bills, because you can earn piles of money with no risk and continue living a really good life. But we have talked about how Tether, the biggest stablecoin issuer, has [sometimes](#) had more [peculiar tastes](#). Never mind that, though. The point is that you have some money, you have to invest it in some stuff, you decide what the stuff will be and you go out and buy it.

That's not quite how Circle invests. Circle does not go out and buy stuff with its depositors' money: Circle takes that money and deposits it in (1) banks and (2) a Treasury money market fund run by BlackRock Inc. From the prospectus:

Prior to January 2023, USDC reserves were limited to cash balances held at banks, U.S. Treasury securities with maturities of 100 days or less, and the Circle Reserve Fund. Since January 2023, USDC reserves have been limited to cash balances held at banks and the Circle Reserve Fund. ...

As of December 31, 2024, approximately 85% of USDC reserves are held in the Circle Reserve Fund. ... The Circle Reserve Fund is a government money market fund pursuant to Rule 2a-7 under the 1940 Act, holding a portfolio of U.S. Treasury securities with remaining maturities of three months or less, overnight U.S. Treasury repurchase agreements, and cash. ...

The Circle Reserve Fund is managed by BlackRock. It is only available to Circle, and Circle is the only shareholder of the Circle Reserve Fund. ... The Circle Reserve Fund invests at least 99.5% of its total assets in cash, U.S. Treasury bills, notes, and other obligations issued or guaranteed as to principal and interest by the U.S. Treasury, and repurchase agreements secured by such obligations or cash, with any securities generally maturing in 397 days or less and the portfolio having a dollar-weighted average maturity of 60 days or less and a dollar-weighted average life of 120 days or less.

That is: Before 2023, Circle invested some customer money directly in Treasury bills, but it has stopped. Now some of the money is in bank accounts, but most of it is in a money market account at BlackRock. *BlackRock* invests the money in Treasury bills, but BlackRock is BlackRock. It is a giant regulated US financial institution that runs money market funds.

Tether is, arguably, a new kind of financial institution, a big company that convinced people to give it money that it can then invest however it wants. Circle is a *fintech*; it is a technology platform that takes money from customers and funnels it directly to regulated financial institutions, without doing direct investing of its own. This is probably more regulatorily soothing than the unregulated banking model.

On the second point. BlackRock and the banks pay interest to Circle, which does not pay interest to holders of its stablecoin. (It does pass some of the interest on to Coinbase Global Inc., the crypto exchange, for distributing USDC.) Seems like a nice business. But Circle has other products:

Circle Tokenized Funds are regulated yield-bearing investments for collateral use in capital markets. We believe that certain major trading firms have moved, and will increasingly move away from, using stablecoins as collateral in favor of TMMFs [*tokenized money market funds*]. However, other TMMF issuers may be limited in their ability to provide significant instantaneous redeemability for equivalent underlying assets. We believe that the ability of a well-regulated stablecoin such as USDC to provide near-instantaneous redemption can offer a substantial advantage for this emerging trend of using TMMFs as collateral for margin trading on various digital asset trading platforms, maximizing capital efficiency in the flows between settlement assets and collateral and at the same time, reducing counterparty execution risk. Moreover, TMMF issuers typically operate on a single blockchain or have limited interoperability across different blockchain platforms. By integrating TMMFs with Circle's existing infrastructure, we expect to enhance interoperability and enable investors to quickly transition between TMMFs and stablecoins, allowing traders to hold their assets in TMMFs while accruing yield and then be able to instantaneously convert into Circle stablecoins, which can then be used to purchase other digital assets on third party platforms.

I think the way to read that is roughly “institutional crypto trading firms are not going to hold all their cash in non-interest-bearing stablecoins, so we are offering them interest-bearing stablecoins.” (Technically: interest-bearing tokenized money market funds that are instantly convertible to stablecoins to do trades.) We have [talked](#) a [few times](#) about tokenized money market funds, which are in every relevant respect interest-bearing stablecoins. As we have discussed, there is some regulatory complexity here: Money market funds are securities, so you have to comply with US securities laws to issue interest-bearing stablecoins. But, you know, *BlackRock* can do that; that’s fine. Circle can probably do it, can combine the two elements of (1) operating a US regulated money market fund and (2) operating it as a useful stablecoin.

I am sure that, with crypto roaring back and with regulators increasingly friendly to crypto, that will be a good business. But the old model of stablecoins is a *ludicrous* business: You take tens of billions of dollars from institutional investors, you invest it however you want, and you keep all the interest. That was great, but it probably can’t last.

No cap, ur portfolio is fire!

Well here’s this:

“Low-key gonna break down ur investment plan rn,” the Arta assistant says, responding to a client’s query on his investment portfolio. “No cap, ur portfolio is fire!”

Yes. “No cap,” explains the Wall Street Journal, “is an assurance that the statement that preceded or followed it is indeed factual.” Fire means good. Low-key gonna tell u my reaction to this paragraph rn: No cap, it is not fire. But *de gustibus non est disputandum* and I am pretty old. Perhaps there are millions of people who would appreciate a robot low-key telling them that their portfolios are fire, if that is indeed factual. I suppose that is Arta’s bet:

Artificial intelligence is coming to the world of investment advice, and it can speak in Gen Z slang.

That is the pitch from Arta Finance, a wealth-management startup led by an ex-Google executive and backed by the former chief executive of Swiss-banking stalwart UBS. Arta is rolling out an AI assistant that can dispense financial advice in spoken conversations—and in any preferred tone and argot. Even for the 20-something millionaire set. ...

The AI tool won’t recommend any investments that don’t match customers’ stated appetite for taking risks. And it definitely won’t trade on its own without the users’ consent—it isn’t that kind of artificial intelligence. But it can walk through the pros and cons of specific stocks, point out cost-saving tax strategies and offer advice on how someone might tweak their investment strategy if they take a pay cut.

I am an absolute sucker for stories like this, stories of applying artificial intelligence to all of the work of financial advice that *isn't* picking stocks. [My view](#) is that there are two approaches to AI in finance. One is the approach of quantitative hedge funds: You build deep learning models to analyze financial data and try to predict which stocks will go up, so you can buy them. The other is the large language model approach: You ask a chatbot what stocks to buy, and it ingests financial *language* and comes up with plausible *language* in response to your question. Intermediating stock picks through a language model seems weirdly indirect, but it has the advantage of explaining its reasoning and perhaps importing "tacit domain knowledge" from human-written financial research.

It also has the advantage of chatting with you. Recommending investments that will beat the market is a quite *small* part of the business of financial advising. (How could it be otherwise? Beating the market is hard.) A larger part is, you know, picking up the phone when you call, and giving you advice about taxes and charitable giving, and, when the market is down and you are panicking, reassuring you that volatility is a normal part of life and that you shouldn't dump everything now. "No cap, ur portfolio is fire" can be a useful thing for a financial adviser to tell you, whether or not it is indeed factual. We [talked last year](#) about a retail financial advising chatbot named Bridget, and I wrote:

When you call your actual human broker for advice about what stocks to buy, you don't expect her to tell you the stocks that will go up. You expect her to share research and earnings call transcripts with you, build themed portfolios, that sort of thing. Maybe she'll give you a tip about a stock she likes, but you understand that it won't necessarily work out. You understand that she's a flawed human being answering the phone at your brokerage, and that if she could reliably pick the stocks that go up, she'd be doing something else.

That's probably true of the chatbot too: If Bridget could reliably pick the stocks that go up, *she'd* be working at a hedge fund.

Similarly, an obviously viable use case for AI in finance is something like "translating technical information from domain experts into plain English for normal customers," and it is only a slight further step to "translating technical information from domain experts into ornate slangy English for customers with weird senses of humor."

I suppose you can combine the two approaches. Build a model that is really good at picking stocks and also chats with you in normal, or other, language. Here's Arta's website, which suggests it might do that:

It takes more than just a ChatGPT wrapper to make AI work for wealth. Arta combines the unique strengths of various AI methodologies - from agentic systems to function calling and RAG to non-generative AI approaches like machine learning and convex optimization. Arta AI has the ability to bring in the specific models that are appropriate for the task.

Unfortunately now I am imagining a quant analyst at Citadel building a machine learning model that (1) is very good at predicting which stocks will go up but (2) outputs its recommendations in Gen Z slang. "Your GameStop short is low-key sus, bestie, no cap, that stock is fire," it tells Ken Griffin, and he closes the chat window and says "absolutely not."

Also this is only slightly related, but on the theme of “financial advice for young people,” last Thursday I [wrote about](#) Robinhood’s possible transition from “gambling app for 20somethings” to “retirement planning provider for 40somethings,” and I asked:

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

A reader pointed out that the answers are probably Venmo and Cash App.

What are bid/ask spreads in private credit secondary markets like?

One way to distinguish “private credit” from the thing that is not private credit – not “public credit,” really, but the broadly syndicated loan market – is that private credit lenders make relationship-based loans that they plan to [hold to maturity](#), while syndicated loans trade in a pretty active market. This distinction has always seemed pretty fragile. If big financial firms are accumulating billions of dollars of financial assets, they’re just going to trade, come on. I wrote in [October 2023](#) that “sometime within the next, like, three years, I am going to be writing about a story like ‘Company X is launching a marketplace to allow private credit lenders to trade loans.’” In the intervening year and a half I have [written](#) several [times](#) about companies working on those marketplaces.

In credit, though, before you get all-to-all electronic trading platforms, you get bank traders’ pricing runs. Here’s a PitchBook story about private credit runs:

A list of bids and offers on private credit loans by a major Wall Street bank might suggest an evolutionary moment for the private credit market, long promoted by lenders as a buy-and-hold asset class, where loans do not trade.

While the existence of potential trading of some private credit unitranche loans is a far cry from the deep aftermarket liquidity found in the broadly syndicated loan market, a list sent out by JPMorgan and reviewed by LCD showed 38 private credit investments, with each loan including a bid and an offer. The table, entitled “JPM Secondary Private Credit,” was dated as of March 31, 2025. ...

Banks and private credit firms other than JPMorgan send out similar lists of credits they’re willing to buy or sell, according to market sources. However, sources noted that some secondary trades are facilitated on a bespoke and exclusive basis, with GPs selling out parcels of loans they agented or buying out other lenders’ holdings in credits they want to consolidate their positions in.

Prices include Finastra at 99/100.5, Galway 98/100, Medallia 94/97, CoreWeave 102/107, “perhaps reflecting repayment expectations following the company’s recent IPO.” A bid/ask spread of 5 percentage points does seem kind of wide compared to public credit, but pretty tight compared to “hold to maturity.”

Climate disclosures

A couple of weeks ago I wrote a column with the title "[You Need Regulators to Deregulate](#) ." The idea was:

1. Before President Donald Trump took office, there were various federal rules, statutes and regulations. (I mentioned in particular the Foreign Corrupt Practices Act, a longstanding statute banning bribery, and also all of the rules of the US Consumer Financial Protection Bureau.)
- 2. Trump's administration doesn't like many of those rules and would like to get rid of them.
- 3. There are normal ways to get rid of rules: You ask Congress to repeal statutes, you have administrative agencies rescind rules or issue new ones, etc.
- 4. For various reasons – Congress *wouldn't* repeal the bribery rules; the CFPB sent everyone home – Trump's administration doesn't want to get rid of the rules in the normal procedural ways.
- 5. Instead it has announced, or in some cases just hinted, that those rules won't be enforced anymore.
- 6. They're still valid and binding, though. If you violate those rules someone might sue you, or some future federal government (or this one for that matter) might bring a case against you.
- 7. This is not a satisfactory situation to a lot of the more rule-abiding regulated entities – banks, for instance – who have asked the Trump administration to *reopen* the CFPB (which they dislike) so it can get to work actually repealing its rules.

The US Securities and Exchange Commission is in a slightly different situation. Roughly speaking:

1. In the Biden administration, the SEC issued a bunch of aggressive new rules that the financial industry hates.
- 2. The industry sued the SEC, saying that all of those rules are not valid.
- 3. In many cases courts were sympathetic to these objections, in some cases ruling against the SEC, which then appealed.
- 4. Then Trump was elected.

Now what? One possibility is that the SEC can just tell the courts "never mind" and the rules are gone. Another possibility is that those rules are on the books, the cases or appeals are still pending, and the only ways to officially get rid of the rules are (1) to follow the SEC's own rulemaking process and repeal them or (2) to lose a final judgment in court.

In 2022, the SEC issued a 510-page proposal to require US public companies to make climate-related disclosures. We [talked about it at the time](#) ; it was hugely controversial. It went through a long notice-and-comment rulemaking process, and last year the SEC issued a final rule. There were lawsuits, and appeals were consolidated at one appeals court. Last Thursday, the SEC “voted to end its defense of the rules requiring disclosure of climate-related risks and greenhouse gas emissions”:

SEC staff sent a letter to the court stating that the Commission withdraws its defense of the rules and that Commission counsel are no longer authorized to advance the arguments in the brief the Commission had filed.

So ... you probably don't have to follow the rules? (Not legal advice.) But they are still technically the rules, though the SEC has stayed their effectiveness pending the court review. The court can still make a decision. If it decides “actually these rules are totally valid,” then it can just say that? I think? Even if the SEC is no longer authorized to argue that? I don't know? SEC Commissioner Caroline Crenshaw objected:

The Administrative Procedure Act (APA) governs the process by which we make rules. The APA prescribes a careful, considered framework that applies both to the promulgation of new rules and the rescission of existing ones. There are no backdoors or shortcuts. But that is exactly what the Commission attempts today.

By its letter, we are apparently letting the Climate-Related Disclosures Rule stand but are withdrawing from its defense in court. This leaves other parties, including the court, in a strange and perhaps untenable situation. In effect, the majority of the Commission is crossing their fingers and rooting for the demise of this rule, while they eat popcorn on the sidelines. The court should not take the bait.

Rather, the SEC should do its job. It should defend its existing rule in litigation. If the agency chooses not to defend that rule, then it should ask the court to stay the litigation while the agency comes up with a rule that it is prepared to defend (be it by rescission or otherwise, but certainly in accordance with APA mandates). At the very least, if the court continues without the Commission's participation, it should appoint counsel to do what the agency will not - vigorously advocate in the litigation on behalf of investors, issuers and the markets.

The Commission's actions are inconsistent with the APA, historical practice, and they embody bad governance. We do not have license to wholesale abandon agency action simply because the now-constituted Commission would not have supported the rule when it passed. The new majority cannot now rewrite history to change the outcome of a properly held Commission vote.

I think that's right? I mean, even six months ago, I would have bet that courts would eventually strike down the climate rules; I never really thought of these rules as *binding rules*. They were a sort of expressive statement by the Gary Gensler SEC that the current US federal courts would never allow to go into effect. Still they *are*, still, technically, legally enacted federal rules. The SEC can follow the usual legal processes to revoke them, but revoking rules is almost as hard and legalistic as enacting them. Or it can be like “ehhh the court is going to strike them down, and we don't like them anymore anyway, so let's not spend any more time on this,” which is probably a rational choice but not exactly a *legal* one.

Everything is seating charts

Elsewhere in [the legal realism of financial regulation](#) :

Regulators of major US banks including JPMorgan Chase & Co., Morgan Stanley and Citigroup Inc. may be forced to fight for desks as the Office of the Comptroller of the Currency pulls staff back to a Times Square skyscraper – without enough space for them.

“Due to a workspace shortage at your location, you will not participate in a seat selection process to have an assigned workspace,” according to an email sent Friday to unionized staff and seen by Bloomberg News.

The “hoteling” system used to book workspace will be suspended “for an indefinite period of time,” staffers were told, and until additional space is found, places to work “will be available on a daily first-come, first-serve basis.”

Everyone’s assumption seems to be that the goal of government return-to-office mandates is to encourage voluntary attrition, and I suppose that having to fight for a desk would make me want to quit. We [talked last month](#) about an English court ruling finding that giving an employee a bad desk constitutes “unfair constructive dismissal,” but I don’t think US civil service law works that way.

Things happen

Wall Street Trading Desks Warn S&P 500 Selloff [Will Get Worse](#) . Tesla Sales Slump to Lowest Since 2022 Amid [Anti-Musk Backlash](#) . Andreessen Horowitz in talks to help buy out TikTok’s Chinese owners. China Restricts Companies From [Investing in US](#) as Tensions Rise. “Finance industry “slippage” on 1.5C ‘will make a material difference’ to how [hot and unlivable](#) the planet gets.” Deutsche Bank’s asset manager fined €25mn over greenwashing scandal. A Big Coal Plant Was Just Imploded to Make Way for an AI Data Center. Goldman Is Opening Up [Private Equity Deals](#) to Rich Individuals. The Dark Money Behind Duke Basketball. “Javice’s attorneys had said she shouldn’t wear an ankle bracelet because her main source of income is teaching Pilates in South Florida.” “We investigated the potential impact of trade tariffs on the sales of European supercars, and in particular, Lamborghini.” “It would be the equivalent of buying SeaWorld and complaining it’s too wet.”

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- 1. The actual distribution and redemption mechanisms tend not to be open to everyone; the issuer distributes its tokens through crypto companies, exchanges, etc., and only redeems from those institutional customers, with some exceptions. It would be sort of an administrative and know-your-customer mess if

stablecoin issuers regularly faced individuals. Circle says: "We do not directly face individuals (other than by redeeming USDC and EURC in our role as the redeemer of last resort)," but "nonetheless, Circle Internet Financial Europe SAS is obligated to honor, and does honor, all properly presented redemption requests for USDC and EURC (other than when prohibited by law or court order or instances where fraud is suspected), which obligation we refer to as our role as the 'redeemer of last resort.'"

- 2. Separately stablecoins are increasingly subject to regulation, though full bank capital regulation seems a ways off. On that note, Circle's balance sheet shows \$45.8 billion of assets and \$570.5 million of stockholders' equity, which crudely works out to a capital ratio of about 1.2%. That's very low for a bank (though high for a money market fund), but it's not a fair comparison: Circle's \$43.7 billion of "deposits from stablecoin holders" are (slightly more than) matched by \$43.9 billion of "cash and cash equivalents segregated for the benefit of stablecoin holders," held at regulated entities (banks, BlackRock) in accounts for the benefit of holders. "There is not complete certainty in a stablecoin holder's claim to reserve assets in the event of bankruptcy or insolvency," says Circle in a risk factor, but they're trying their best.
- 3. It hasn't quite done it yet, but: "To serve this objective, on January 21, 2025, we acquired Hashnote and its TMMF, USYC, which is a tokenized product offered in reliance upon an exemption to the registration requirements of the Securities Act. USYC serves as an onchain representation of the shares in Hashnote International Short Duration Yield Fund Ltd. ('SDYF') and is intended primarily for use as collateral on digital asset trading platforms. Unlike payment stablecoins that offer no yield, TMMFs like USYC offer yield to the token holders that is generated from its invested assets consisting primarily of reverse repurchase agreements on U.S. government and government-backed securities and short-term U.S. Treasury securities. According to RWA.xyz, USYC is the largest onchain TMMF in terms of assets under management, with approximately \$1.6 billion in assets under management as of December 31, 2024. We believe that leveraging Hashnote's existing traction and momentum will enable us to enter the rapidly emerging TMMF space with a well-established tokenized stable yield product, enhancing our leading position within the overall digital asset capital markets. On February 13, 2025, we received approval to issue USYC and offer Circle Mint accounts out of Bermuda under our existing Digital Assets Business Act ('DABA') License granted by the Bermuda Monetary Authority ('BMA'). We plan to integrate USYC into the Circle stablecoin network, offering eligible customers the ability to move between the non-yield bearing Circle payment stablecoins and USYC at the settlement speed of the blockchain."

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Tesla quarterly sales plunge as Musk backlash grows

 [reuters.com/business/autos-transportation/tesla-set-report-drop-q1-deliveries-weak-demand-musk-backlash-2025-04-02](https://www.reuters.com/business/autos-transportation/tesla-set-report-drop-q1-deliveries-weak-demand-musk-backlash-2025-04-02)

Akash Sriram, Abhirup Roy

April 2, 2025

The Tesla logo is seen on a car at the Paris Games Week (PGW), a trade fair for video games in Paris, France, October 27, 2024. REUTERS/Sarah Meyssonier/File Photo
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- Tesla's sales drop to the weakest in nearly three years
- Sales fall linked to Musk's political stance, growing competition
- Decline was more pronounced than analysts' expectations
- Tesla faces competition from BYD, Volkswagen, and BMW

April 2 (Reuters) - Tesla's (TSLA.O) , opens new tab quarterly sales plunged 13% to the weakest in nearly three years, hurt by a backlash against CEO Elon Musk's politics, rising global competition, and people waiting for a refresh to its highest-selling electric vehicle Model Y.

The stumbling sales indicate that the one-time leading brand is reeling from the fallout of the company delaying launches for years, and Musk's foray into politics in the United States and Europe.

Tesla shares fell 2% in early trading on Wednesday. But they reversed course to trade up more than 5% after Politico reported that Musk was planning to step down from his role as an advisor to U.S. President Donald Trump soon, as administration insiders increasingly view the billionaire as a political liability.

"Exactly what the stock needed," said Stock Trader Network Chief Strategist Dennis Dick, who has a position in the stock, referring to the report. "Shareholders are hoping Musk will now have the time to focus on rebuilding the Tesla brand."

Musk's role in spearheading federal cost-cutting in the United States and support of far-right parties in Germany and other nations, have produced a sharp response across the world.

Protests have spiked, and Tesla cars and dealerships globally have become targets for vandalism. Some Tesla owners have been looking to disassociate themselves from Musk and data has shown many are trading in their vehicles.

On Tuesday, a left-leaning judge won a seat on the state of Wisconsin's highest court even after Musk spent more than \$20 million backing her opponent in the race that led to protests from residents declaring that democracy was "not for sale."

Tesla posted weak sales in numerous European markets and in China, even as consumers continued to opt for EVs.

In the January-March period, the company globally recorded a bigger-than-expected drop in sales to 336,681 vehicles, down from 386,810 units a year ago.

The expectation was for a 3.7% drop to 372,410 vehicles delivered, according to an average estimate of 15 analysts from Visible Alpha - but in recent days analysts had braced for even worse figures, following Tesla's first-ever annual sales decline in 2024.

"The brand crisis issues are clearly having a negative impact on Tesla ... there is no debate," Tesla bull Dan Ives, an analyst at Wedbush Securities, said in a note, adding the delivery numbers "were a disaster."

The company has lost about 45% of its value since mid-December. That follows a record high after Trump's election win when investors expected Musk's close ties to the White House to ease regulatory pressure over its self-driving taxi program.

Y REFRESH

Last year, Musk forecast 20% to 30% sales growth in 2025, promising to launch an affordable vehicle in the first half of the year and banking on demand for its newest vehicle, the Cybertruck.

While little is known about the progress on rolling out the cheaper vehicle, demand for the pricey Cybertruck - with its polarizing design and quality concerns - has been weak.

Musk did not reiterate the growth forecast on the January earnings call, saying Tesla would return to growth this year.

Tesla began offering the refreshed Model Y SUV with a new look and updated features in China late February, and in the U.S. and Europe last month. Investors are waiting to see if demand for that can counter competition from Chinese rivals including BYD (002594.SZ)

 , opens new tab, (1211.HK)  , opens new tab.

Tesla said on Wednesday that retooling production lines for the refresh across all four of its factories led to the loss of several weeks of production during the quarter.

After enjoying a leading position among EV makers for years, Tesla is set to be unseated by BYD for the first time this year with a 15.7% market share, ahead of Tesla's 15.3%, according to Counterpoint Research.

"I'm skeptical about demand for the new Model Y from a couple of perspectives, even though there's still a fair amount of growth for electric vehicles, the market is slowing down," said Thomas Martin, senior portfolio manager at Tesla investor Globalt Investments.

Tesla's sales in key European markets fell again in March, with numbers dropping for a third straight month in France and Sweden.

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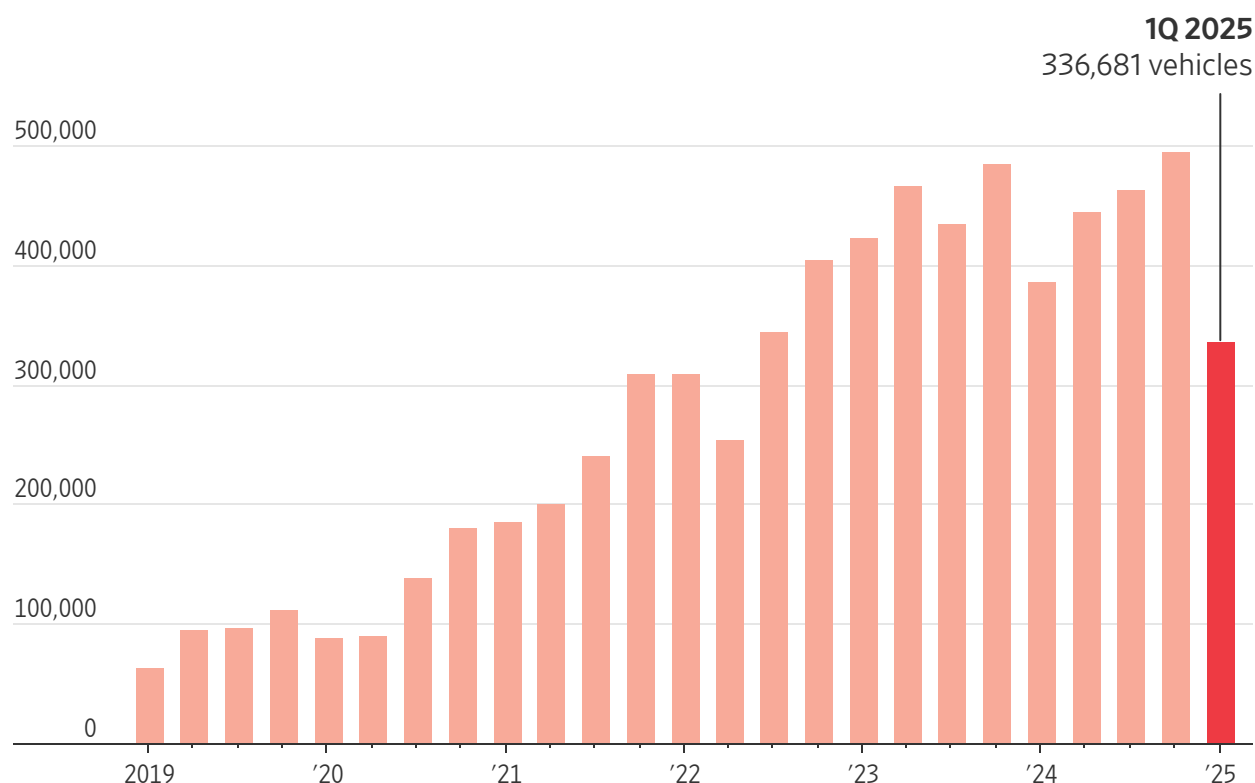
Tesla's Global Vehicle Deliveries Sank 13% in First Quarter

Recent surveys have shown an erosion in the brand's appeal, especially among Democrats in the U.S.

By [Becky Peterson](#) [Follow](#)

Updated April 2, 2025 10:20 am ET

Tesla vehicle deliveries, quarterly



Source: the company

[Tesla's](#) TSLA -2.12% ▼ global vehicle deliveries fell 13% in the first quarter, further evidence that [a growing consumer backlash](#) against the brand and Chief Executive [Elon Musk](#) is hurting the automaker's business.

The final quarterly tally of 336,681 missed analysts' expectations of 396,960 deliveries, according to Visible Alpha.

Tesla shares fell about 2% in morning trading Wednesday following the release of the January-to-March figures, continuing a selloff that has seen shares fall by as much as 45% since the start of the year.

Musk's active role in the Trump administration and vocal support for [far-right parties in Europe](#) has made Tesla a target of political protests and boycotts in recent months, including in some cases by once-loyal Tesla owners.

Stock-price performance

Tesla



Recent surveys have shown an erosion in the brand's appeal, especially among Democrats in the U.S. Some Wall Street analysts have downgraded Tesla shares based in part on the growing animosity for the brand.

Global vehicle deliveries were weighed down by significant declines in some of Tesla's biggest markets, data from governments and research firms show. The company doesn't break out regional results.

Sales from Tesla China, which exports to foreign markets, fell 49%

in February but fared better in March after it started delivering the refreshed Model Y in China, according to the China Passenger Car Association. The company sold 78,828 China-made vehicles in the month, down 11% from the same period last year.

Despite the decline, Tesla climbed back into third place by sales in the Chinese car market, after dropping out of the top five in February.

In Germany, home to Tesla's European factory, new-vehicle registrations fell 76.3% in February compared with the same period last year, according to the

country's Motor Transport Authority.

In the U.S., sales fell 2% in the first two months of the year, according to research firm Wards Intelligence.

U.S. sales results posted by major automakers on Tuesday were mixed. [General Motors](#) and [Hyundai Motor](#) had strong gains—up 17% and 11%, respectively—while [Ford Motor's](#) sales fell 1% and Jeep maker [Stellantis's](#) deliveries dropped 12%.

Beyond any fallout from the controversy surrounding Musk, analysts say Tesla faces other headwinds.

Traditional automakers including General Motors and Kia have rolled out new electric vehicles, which has reduced Tesla's market share even as EV sales grow. Also, the March release of Tesla's refreshed Model Y SUV may have led potential buyers to postpone their purchases until later in the year, analysts said.



Tesla shares have declined as much as 45% since the start of the year. PHOTO: ODD ANDERSEN/AGENCE FRANCE-PRESSE/GETTY IMAGES

Last year, Tesla [reported its first annual decline](#) in more than a decade, with global deliveries falling 1%. While a surge of promotional deals grew sales in the fourth quarter, it wasn't enough to make up for significant declines in the first half of the year.

In California, where Teslas are among the best selling vehicles, new vehicle registrations of Teslas fell 11.6% in the state in 2024.

Tesla's share price has swung wildly in recent months. The stock nearly doubled in the weeks after President Trump's election, sending its market capitalization to [a high of \\$1.5 trillion](#) in mid-December. In the weeks after the inauguration, the share returned to pre-election levels.

Musk has spent much of the past few months in Washington, D.C., working closely with Trump to cut federal jobs and slash spending through the Department of Government Efficiency.

Across the U.S. and Europe, Tesla properties have become sites of political protests and occasional acts of vandalism, including in mid-March at a site in Las Vegas where Molotov cocktails were used to [set fire to five Tesla vehicles](#) at a repair shop.

Musk has sought to [refocus investor attention](#) away from car sales and onto its driver-assistance software, which it calls Full Self-Driving (Supervised), and its Optimus humanoid robot—technologies he has claimed could one day boost the automaker's market value to [as high as \\$30 trillion](#). The development of those innovations is still largely funded by Tesla's car business.

Some Wall Street analysts say Musk's proximity to Trump will aid the CEO's businesses, including through federal regulations that simplify Tesla's path to deploying autonomous vehicles nationwide.

"In our view, Tesla's softer auto deliveries are emblematic of a company in the transition from an automotive 'pure play' to a highly diversified play on AI and robotics," Morgan Stanley analyst Adam Jonas wrote on March 20.

Tesla has said that it plans to start offering autonomous ride-hailing services in June near its headquarters in Austin, Texas, and that it plans to roll out a similar service in California by the end of the year.

Write to Becky Peterson at becky.peterson@wsj.com

Videos

Tesla is sitting on \$200 million worth of Cybertruck inventory

electrek.co/2025/04/01/tesla-is-sitting-on-200-million-worth-of-cybertruck-inventory/

Fred Lambert

April 1, 2025



 104 Comments



Tesla has about \$200 million worth of Cybertrucks in inventory in the US, as the truck is extremely difficult to sell.

A year and a half into production, Cybertruck production has ramped up, and inventory is building up.

Last year, Tesla could blame low Cybertruck deliveries on the production ramp, the more expensive Foundation Series, and the lack of access to the \$7,500 tax credit.

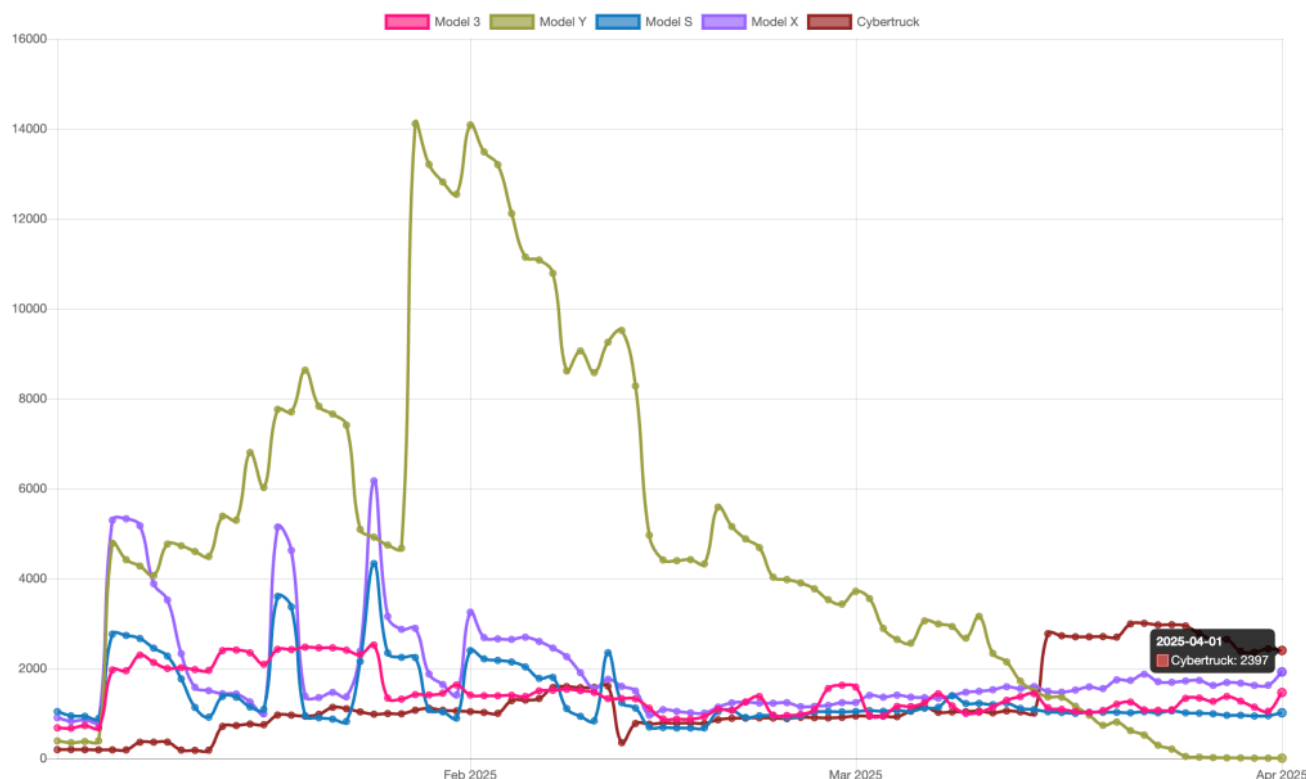
All of those excuses are not available to Tesla this year. The Cybertruck is simply proving challenging to sell, and the automaker has to throttle down production to avoid building up too much inventory.

This proved problematic in March as Tesla had to put a containment hold on the Cybertruck in anticipation of a recall of units produced to date over a trim falling off the truck.

At the production level, the fix was introduced on March 21st and Tesla still needs to fix Cybertrucks delivered to customers.

In the meantime, Tesla finds itself holding more Cybertruck inventory than ever, with almost 2,400 Cybertrucks in new inventory available (via Tesla-Info):

Individual model numbers



That's around \$200 million worth of Cybertrucks.

With Tesla having issues selling new Cybertrucks, the automaker is reportedly not taking any as trade-ins. Many Cybertruck owners reported trying to trade-in the truck for a new vehicle and they were told that the automaker currently doesn't accept its own vehicle as a trade-in.

Some owners who have had their trucks in service for extended periods of time are also trying to get Tesla to take the truck back, but the company is forcing them to go through the Lemon Law process.

It's not surprising to see Tesla not wanting to take back used Cybertrucks as their prices are falling fast.

Used Cybertruck prices are down 55% year over year, 13% over the last three months, and 6% over the last month.

As Tesla doesn't take the Cybertruck as a trade-in, other used car dealers are also reticent about buying the vehicle. They have been known to give low-ball offers to potential sellers as they wait to see where the price will stabilize.

Electrek's Take

Top comment by Chris PNW

★ Liked by 24 people

The CyberTruck may represent the moment Tesla officially 'Jumped the Shark'. Another example where Elon Musk overrode the technical professionals of a company to demand features/functionality that doomed the product from the start.

In other companies, code he produced was determined to be so flawed that real coders were brought in to rewrite the programming. For the CyberTruck, it was reported Tesla engineers and designers were forced to adopt Elon's vision for the vehicle despite being told about predictable problems.

Just goes to show, **All money corrupts, and big money corrupts bigly.**

[View all comments](#)

I think we are far from the bottom. With this kind of inventory on hand, I expect Tesla to introduce discounts. The company is likely waiting to completely sell off its Foundation Series inventory before giving bigger discounts on the regular version.

Then, Tesla is expected to launch the RWD at a cheaper price, which is also likely to affect used prices.

That's all while Tesla is already throttling down Cybertruck production.

I am really curious to see where this vehicle program is going. I know many have already written it off, but who knows? Maybe it can improve it with a mid-cycle update next year, and it can make a comeback?

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Tesla Inc

Tesla suffers worst quarter since 2022 as deliveries tumble

Company loses crown of world's best-selling electric-vehicle maker to China's BYD



Tesla is banking on a revival in demand after launching its redesigned Model Y in China in February and Europe last month © Adek Berry/AFP via Getty Images

Kana Inagaki in London and **Stephen Morris** in San Francisco

Published 2 HOURS AGO | Updated 06:49



Tesla's deliveries tumbled in the first three months of this year, marking its worst quarter since 2022, as the electric-vehicle maker faced a consumer backlash in Europe, fierce competition in China and a delayed revamp of its flagship model.

The US group, led by [Elon Musk](#), delivered 336,681 cars in the first quarter, far fewer than the 390,000 forecast by analysts and 387,000 in the same period last year.

The figure lagged behind that of China's BYD, which has regained its crown as the world's best-selling electric-vehicle maker after this week reporting [sales of 416,388 EVs](#) in the same period.

[Tesla's](#) shares were down 6.3 per cent in early trading in New York on Wednesday.

Tesla deliveries fall 13% in first quarter

Sales by quarter ('000)

■ Tesla ■ BYD

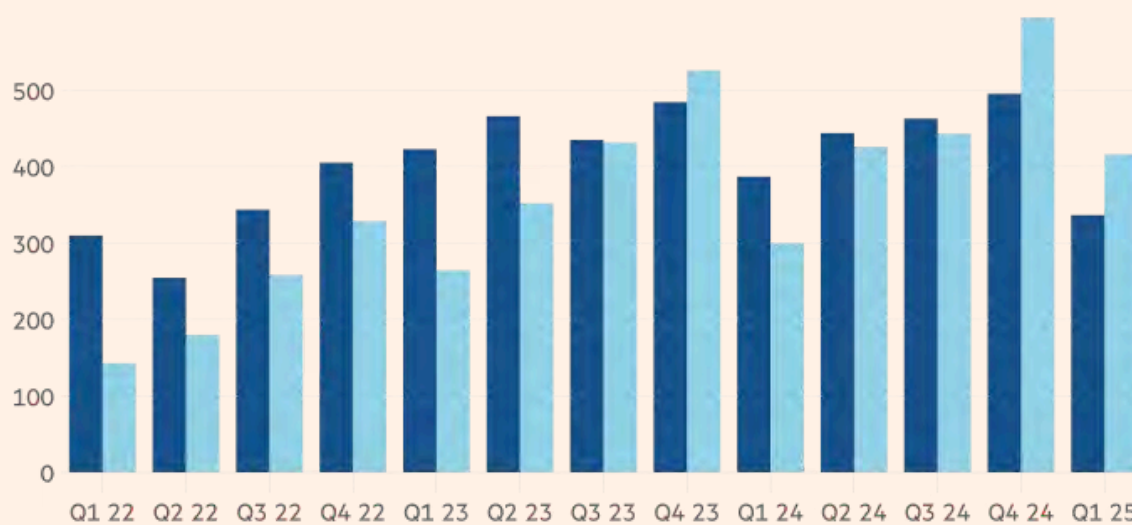


Figure for BYD is EVs only

Source: Companies

Musk, a key ally of US President Donald Trump, has hurt Tesla's brand in Europe through his interventions in the region's politics. Delays to the upgrade of its flagship Model Y car also dented sales in the quarter.

The company is banking on a revival in demand after finally launching the redesigned Model Y in China in February and Europe last month.

In a statement, Tesla said the changeover of Model Y lines had led to the loss of several weeks of production during the quarter. "The ramp-up of the New Model Y continues to go well," it added.

But the upgrade, which will be executed in phases, has [not yet lifted sales](#), with new registrations falling sharply in France, Sweden and other European markets during the first quarter.

The troubled rollout of the new Model Y comes as Tesla's challenges grow in China, the world's largest EV market and one in which BYD has a commanding lead.

Tesla's ageing product portfolio has hit its market share in the country just as BYD has improved its hybrid and electric offerings and pressed ahead with an overseas expansion. Tesla is also facing more competition from established carmakers such as BMW and Volkswagen.

The damage to the Tesla brand is a new challenge for the EV pioneer whose popularity among consumers had previously drawn praise from rivals such as Volkswagen.

Tesla shares soared following Trump's election victory in November, giving the company a market capitalisation of \$1.5tn at their peak in December, but have since fallen more than 40 per cent.

The steep drop prompted Musk to make a personal appeal to Tesla employees to hold on to their shares, saying the company's plans for autonomous driving would boost its fortunes.

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US & Canadian companies

Electric vehicles

Tesla Inc

Kana Inagaki

Stephen Morris

Tesla Sales Are Slumping, Even in the Most E.V.-Friendly Place

 [nytimes.com/2025/04/02/business/tesla-sales-elon-musk.html](https://www.nytimes.com/2025/04/02/business/tesla-sales-elon-musk.html)

Melissa Eddy, Jack Ewing

April 2, 2025

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Sign up for Your Places: Global Update. All the latest news for any part of the world you select.

If there is anyplace Tesla should be thriving, it's Norway. Electric vehicles account for more than 90 percent of new car sales in the Scandinavian country, and buyers here are among the most sophisticated in the world when it comes to understanding the nuances of batteries, charging and range.

So it hardly bodes well for Tesla that its sales in Norway have declined more than 12 percent so far this year. Sales for the first three months of the year were even worse in Denmark, France, the Netherlands and Sweden.

In fact, Tesla's sales have been on a steep downward trend around the world: The company said on Wednesday that its global sales in the first quarter fell 13 percent from a year earlier.

Tesla said that it delivered nearly 337,000 cars during the quarter, down from 387,000 in the first three months of 2024. The tepid sales reflected a number of serious problems at the company, not least a consumer backlash against the prominent role that Elon Musk, the chief executive, is playing in the Trump administration.

Geir Rognlien Elgvin, an urban planner with the City of Oslo, bought his first Tesla in 2013, months after they were introduced in Norway. He has toured the company's battery Gigafactory in Nevada. He met Mr. Musk when the executive was still mostly known for wanting to address climate change with electric cars and his rocket company, SpaceX.

Image



Geir Rognlien Elgvin sold his Tesla and now travels the streets of Oslo on an e-bike. Credit...David B. Torch for The New York Times

But as Mr. Musk drifted to right-wing politics, Mr. Elgvin's enthusiasm waned. And he grew concerned about the company's data security policy.

Several months ago, he swapped his Tesla for a battery-powered cargo bike and a shared electric Volkswagen. "I would never drive a Tesla again," he said. "It's a question of ethics."

Last year, Tesla accounted for nearly a quarter of car sales in Norway, far more than any other carmaker. But in the first two months of this year Tesla slipped to third place behind Volkswagen and Toyota. Teslas made up just 9 percent of new cars sold, less than half of its market share a year earlier.

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For Tesla, the decline in the world's most advanced electric vehicle market is ominous, signaling problems to come elsewhere. "Norway is always a good place to look into the future," said Will Roberts, who follows electric vehicles at Rho Motion, a research firm.

There are several explanations for Tesla's sales decline. The company depends on two models, the Model Y sport utility vehicle and the Model 3 sedan, for almost all its sales. The Cybertruck pickup, Tesla's newest and most polarizing model, has been plagued by recalls

and has not sold as well as Mr. Musk predicted it would.

Tesla once set the standard for battery range, software and driver-assistance technology. But traditional carmakers have become more adept at building electric vehicles and have begun to catch up to Tesla in technology. Competitors like Volkswagen, Volvo, BMW — and, outside the United States, BYD, Xpeng and other Chinese manufacturers — offer a diverse selection of luxury sedans, minivans, pickups and compact cars.

Image



A Tesla trade-in being prepped for resale at Rebil, Norway's largest used-car dealer. Credit...David B. Torch for The New York Times

"Tesla pretty much all of these years has been alone in Europe and the U.S.," said Felipe Munoz, global analyst at JATO Dynamics, a research firm. "That's not the case anymore."

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Some of the sales decline could be due to buyers who are waiting for an upgraded version of the Model Y, analysts said. Deliveries of that version began in March in Norway, which perhaps explains why the company's sales last month were down only 1 percent from March 2024.

But Mr. Munoz pointed out that sales of the Model 3, which was updated in 2023, have also fallen, though not as much.

In February, registrations in Europe of the older Model Y fell 56 percent, while registrations of the Model 3 fell 14 percent, according to JATO. The declines occurred even though overall sales of electric vehicles in Europe jumped 25 percent.

Mr. Musk's support for right-wing parties in Europe and his role as President Trump's cost-cutter in chief have not helped Tesla's image. He has been the focus of protests around the United States and Europe, and his activities have alienated some customers. Electric vehicle buyers in most countries lean left politically.

"I hate Musk, I hate Trump, I hate this entire company," said Kao Leu, a 75-year-old resident of New York's Harlem neighborhood who was protesting outside a Manhattan Tesla dealership last week.

In Sweden, the country's largest insurer, Folksam, said Wednesday that it had sold its stake in the U.S. automaker because Tesla's approach to employee rights violated the company's investment criteria. Folksam had been invested in Tesla since 2013 and its stake was worth 1.6 billion Swedish krona, or \$160 million.

Many investors are concerned about the company's prospects. Tesla's stock price, down more than 40 percent from its December high, fell about 4 percent in early trading on Wednesday.

Mechanics with the union IF Metall have been on strike in Sweden for more than a year, over Tesla's refusal to sign a collective agreement.

More than anger, many Norwegians feel ashamed for supporting a company that they see as reneging on its commitment to making personal transportation better for the planet and whose chief executive they say has abandoned the principles of democracy.

Image



Andrea Fresk of Son, Norway, said she felt increasingly ashamed about owning a Tesla.Credit...David B. Torch for The New York Times

Andrea Fresk's Tesla is caked with a thick layer of late-winter grime, a state of neglect she said reflected her ambivalence toward the vehicle that she and her husband took out a 10-year loan to buy in 2019.

After Mr. Musk bought the social media company Twitter, she began feeling increasingly ashamed about owning the Tesla, but it got worse after Mr. Musk became a regular presence in the Trump administration.

"Then it became really hard to defend having this car," said Ms. Fresk, a psychologist with Norway's public family services.

Some of her friends have already sold their Teslas, she said. But because she and her husband are still paying off the car and it runs smoothly, she is not replacing it for now.

Rebil, Norway's largest used-car dealer, has seen an increase in the number of drivers selling their Teslas in recent months. But that means prices are low, and despite "Tesla Shame," sales have been brisk.

“I’ve had a lot of customers concerned about Tesla,” said William Oestby, a salesman with Rebil. But when he quizzes them on price, range, size and the hauling capability they are seeking, he said, Tesla is usually the best deal on offer. “It’s hard to find something that compares,” he said.

Image



Rebil reported a surge in Tesla trade-ins in recent months.Credit...David B. Torch for The New York Times

Image



The increase in drivers selling their Teslas has pushed prices down at Rebil.Credit...David B. Torch for The New York Times

That may soon change. Over the next two years, Ford Motor, BMW, Mercedes-Benz and other automakers will introduce their next generation of electric vehicles. These cars, some which will be on sale before the end of this year, will incorporate advances in battery technology that allow greater driving range and faster charging. These automakers say their cars will be better than what Tesla is offering.

The traditional automakers “have all made a lot of strides forward,” Mr. Roberts of Rho Motion said. “Previously consumers might have struggled to find other options than Tesla that really competed. That’s now not the case.”

Image



Vehicles powering up at the charging stations at Rohne Selmer Ford in Oslo.Credit...David B. Torch for The New York Times

Anusha Bayya contributed reporting from New York, and Henrik Pryser Libell from Oslo. Share your thoughts.

The Times needs your voice. We welcome your on-topic commentary, criticism and expertise. Comments are moderated for civility.

Democrats ask SEC to preserve records related to Trump's crypto business, probing conflicts

 [reuters.com/sustainability/boards-policy-regulation/democrats-ask-sec-preserve-records-related-trumps-crypto-business-probing-2025-04-02](https://www.reuters.com/sustainability/boards-policy-regulation/democrats-ask-sec-preserve-records-related-trumps-crypto-business-probing-2025-04-02)

Lawrence Delevingne, Michelle Conlin, Tom Wilson, Tom Bergin

April 2, 2025

Item 1 of 3 U.S. Senator Elizabeth Warren (D-MA) speaks to members of the media at the U.S. Capitol, in Washington, D.C., U.S., March 12, 2025. REUTERS/Nathan Howard

[1/3]U.S. Senator Elizabeth Warren (D-MA) speaks to members of the media at the U.S. Capitol, in Washington, D.C., U.S., March 12, 2025. REUTERS/Nathan Howard Purchase Licensing Rights, opens new tab

- Democrats question Trump's influence on SEC via World Liberty Financial
- Trump family controls 75% of World Liberty's token revenues
- SEC's crypto task force led by pro-crypto Commissioner Peirce
- Democrats seek SEC records on Trump's crypto ties

WASHINGTON, April 2 (Reuters) - A pair of top Democratic lawmakers asked the U.S. securities regulator on Wednesday to preserve records related to President Donald Trump's crypto venture World Liberty Financial and posed questions about potential conflicts of interest.

In a letter sent to acting Securities and Exchange Commission Chairman Mark Uyeda, seen by Reuters, lawmakers requested information to "help us better understand the extent to which the Trump family's financial interest in World Liberty Financial may be influencing your and the Commission's activities."

Senator Elizabeth Warren, the ranking member of the U.S. Senate's banking committee, and Representative Maxine Waters, the ranking member of the U.S. House of Representatives' financial services committee, signed the letter, which cited a Reuters report this week about the crypto project.

Republicans have a majority in both the U.S. House and Senate, which limits the ability of Democrats to call formal public hearings and conduct investigations. The congressional members' letter to the SEC does not cite any legal authority that would compel the agency to abide by its requests. A White House spokesperson said in an emailed statement that "President Trump's assets are in a trust managed by his children. There are no conflicts of interest."

The House Financial Services Committee, led by Republicans, on Wednesday considered legislation that would regulate the broader adoption of crypto stablecoins. The Trump White House has identified promoting their use as a legislative priority.

Reuters published a story on Monday documenting how, as World Liberty Financial raised more than half a billion dollars in recent months, Trump's family took control of the crypto venture and grabbed the lion's share of those funds, aided by governance terms that industry experts say favor insiders.

Overall, the Trump family now has a claim on 75% of net revenues from token sales of World Liberty, and 60% from operations once the core "decentralized finance" business gets going. The arrangement means the Trump family is currently entitled to about \$400 million in fees, Reuters reported. The SEC did not respond to a request for comment. Nor did President Trump's three sons, all of whom were named in the letter. The same was true for World Liberty co-founders listed in the letter, including a pair of crypto entrepreneurs; Steve Witkoff, the Trump administration's envoy to the Mideast; and one of Witkoff's sons

'UNPRECEDENTED FINANCIAL TIES'

The lawmakers' letter requests that the SEC preserve and provide copies of any records or communications from the White House to the SEC regarding World Liberty, with a list of more than half a dozen Trump family members and their business partners. It asks what procedures might be in place to "prevent the Trump family's unprecedented financial ties to the crypto industry from influencing or guiding the SEC's decisions."

The Trump Organization announced in January the president's investments, assets and business interests would be held in a trust managed by his children and he would play no role in day-to-day operations or decision-making. The family's business also retained an attorney to serve as an ethics adviser to "avoid any perceived conflicts of interest."

Among the nine items the Democrats are requesting from the SEC are items specific to World Liberty investor Justin Sun and records regarding the SEC's recent decision to pause its case against the Hong Kong-based crypto entrepreneur and his affiliated companies. As well as its single-largest known investor, at a disclosed amount of \$75 million, Sun has become an advisor to the project. Representatives for Sun did not reply to requests for comment.

Trump has promised sweeping changes in the regulation of crypto to popularize its mainstream use in America. The Trump family has opened multiple beachheads in crypto, gaining hundreds of millions of dollars through related ventures.

The SEC took a strict stance on cryptocurrency under Gary Gensler, the Democratic chair under President Joe Biden. Uyeda's SEC has created a task force to work with the industry, led by Republican Commissioner Hester Peirce, known for her favorable stance towards the sector. It also downsized the crypto enforcement team by moving lawyers working in that group elsewhere, Reuters has reported.

World Liberty announced on March 25 it planned to launch a U.S. dollar-pegged stablecoin, called USD1.

During the meeting about stablecoin legislation on Wednesday, Waters said she would not support the bill unless President Trump was blocked from owning a stablecoin business through World Liberty.

"With this stablecoin bill, this committee is setting an unacceptable and dangerous precedent, validating the president and his insiders' efforts to write rules of the road that will enrich themselves at the expense of everyone else," she said.

Reporting by Lawrence Delevingne in Boston, Michelle Conlin in New York, Tom Wilson and Tom Bergin in London; Editing by Tom Lasseter and Nick Zieminski

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Lawrence Delevingne
Thomson Reuters

Delevingne works primarily on enterprise stories related to finance. He joined Reuters in 2015 and previously reported for CNBC.com and Absolute Return. Delevingne is a graduate of Columbia's Graduate School of Journalism and Georgetown's School of Foreign Service.

Michelle Conlin
Thomson Reuters

Michelle Conlin is an award-winning journalist at Reuters, where she has covered Americans in debt, the 2016 presidential election, mortgage fraud, the foreclosure epidemic, pandemic evictions and national breaking news. Her reporting at Reuters has had wide-ranging impact, including contributing to new legislation addressing zombie homes, new rules banning banks' practice of gagging homeowners, and the end of governmental financing support of bonds backed by Wall Street's foray into single-family homes.

Tom Wilson
Thomson Reuters

Tom Wilson covers investigative stories across finance and business. He previously led Reuters' coverage of cryptocurrencies, and was the news agency's Reporter of the Year 2022 for his series on the Binance exchange. In a decade at Reuters, he worked in Tokyo for four years, uncovering abuses in Japan's immigration system and covering the tobacco giant Philip Morris. His work has won prizes from the Gerald Loeb Awards, the Overseas Press Club and the Society for Advancing Business Editing and Writing.

Tom Bergin

Thomson Reuters

Tom Bergin is an investigative journalist specializing in regulatory abuses, fraud, tax avoidance and illicit money flows. His work has won awards including The Gerald Loeb Prize for Distinguished Business and Financial Journalism and the Orwell Prize for Journalism. He is the author of two books: 'Spills & Spin: The Inside Story of BP' and 'Free Lunch Thinking: 8 Economic Myths and Why Politicians Fall for Them'. Tips via email

Trump-Backed Bitcoin Mining Venture Wants to Go Public

American Bitcoin Corp., the crypto mining venture announced this week between Hut 8 Corp. and an investor group that includes two sons of US President Donald Trump, plans to eventually go public as well as to seek additional private capital.

“So you can see this in the long term as two sister publicly traded companies,” **Asher Genoot**, chief executive officer of Miami-based Bitcoin miner Hut 8, said during a Bloomberg TV interview on Tuesday. “One that is energy, infrastructure data centers and the other one that’s Bitcoin, AISCs and reserves and together they form a vertically integrated company that has some of the best economics out there.”

The launch of the Bitcoin mining venture came after Hut 8, one of the largest public crypto-mining companies, acquired a majority interest in American Data Centers Inc., a company formed by a group of investors including Eric Trump and Donald Trump Jr.

Hut 8 has transferred substantially all of its Bitcoin mining equipment into the new entity, which is called American Bitcoin. While the venture is a pure-play Bitcoin mining company, Hut 8 will be more focused on its data-center businesses as it expands its infrastructure and capacity in supporting artificial intelligence applications.

Read more: [Trump Family to Launch US Bitcoin Mining Venture With Hut 8](#)

The Bitcoin mining industry has seen a sharp decline in revenue after the “halving,” a code update in Bitcoin last April, and increasing competition as new miners enter the market. Public miners have benefited from rising Bitcoin prices over the last year as well as access to the US capital markets where they have raised billions of dollars from selling new shares and issuing debt.

"We are going to become the greatest Bitcoin mining company on earth and we are doing it here in America," **Eric Trump** said in a conference call earlier on Tuesday.

Genoot said the new entities will also consider taking private investment before go public on the call.

China Ties

American Bitcoin is also working with Bitmain, the largest supplier of specialized computers to mine Bitcoin. The Chinese company will help the firm to tap into the most advanced mining technology and expand its operations as American Bitcoin deploy the new machines in the future.

"We believe our ability to deploy this machine at scale and more broadly the deep miner-manufacturer relationship that has enabled this partnership reflect a key competitive advantage that will enable us to achieve ambitious targets for American Bitcoin," said Mike Ho, executive chairman at Hut 8.

The Chinese manufacturer has faced more scrutiny with the US blacklisting its AI affiliate Sopghgo. The US authorities have also seized some of the Bitcoin mining machines as they intensify inspections on such imports.

US-listed Bitcoin mining companies have been one of the earliest supporters of Donald Trump during the most recent election cycle. Their meeting with him last June is one of the key junctures when Trump unveiled its pro-crypto stance and pledged to ensure that all remaining Bitcoin is "made in the USA."

The new venture, which follows the launch of a stablecoin last month by the Trump-backed World Financial Liberty, is the latest sign of a deepening relationship between the president's family and the crypto sector.

"There are no conflicts because I don't work with the White House," Eric Trump said in the Bloomberg TV interview. "I have been with private industry my entire life. We started the World Financial Liberty long before my father got elected to the White House. This is something we believe in crypto for a very long time."

--With assistance from **Tim Stenovec**.

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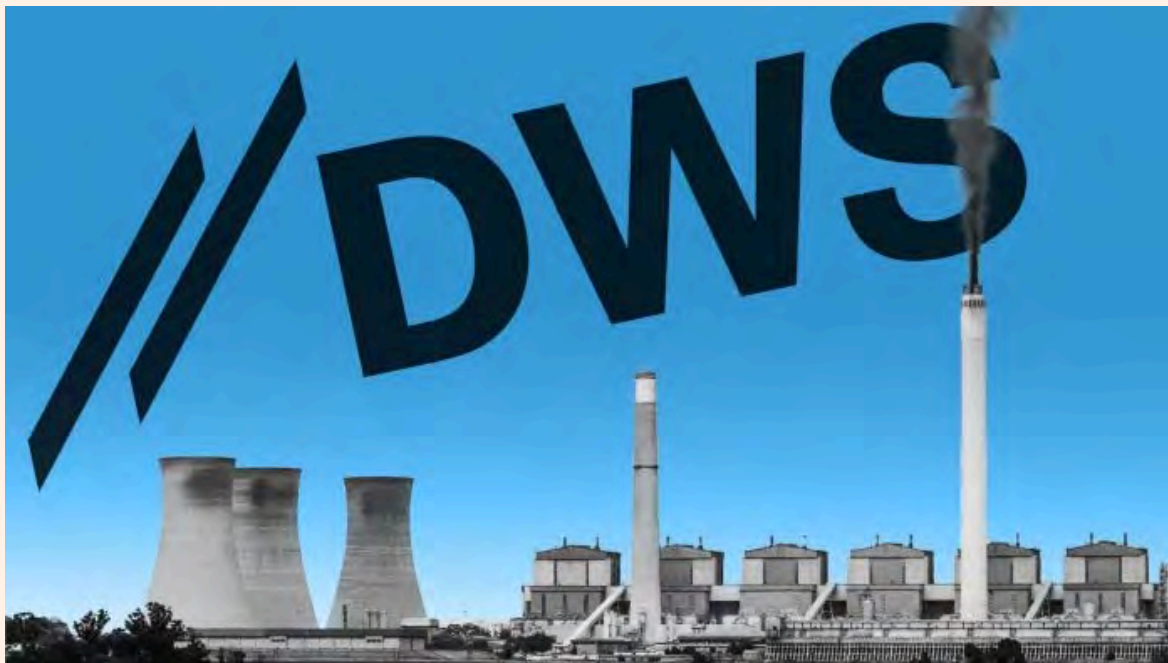
Dave Liedtka

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Greenwashing

Deutsche Bank's asset manager fined €25mn over greenwashing scandal

Penalty against DWS imposed by German prosecutors follows \$19mn settlement with US authorities in 2023



DWS misled investors about its green credentials, Frankfurt prosecutors said on Wednesday © FT montage/Bloomberg

Florian Müller and **Olaf Storbeck** in Frankfurt

Published 6 HOURS AGO | Updated 05:30



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Deutsche Bank's asset manager DWS has been fined €25mn by German prosecutors over a greenwashing scandal, following long-running investigations by authorities in the US and Germany.

[DWS](#), which is 80 per cent owned by the German lender, misled investors about its green credentials, Frankfurt prosecutors said on Wednesday.

Prosecutors concluded that the asset manager used “aggressive” advertising that “did not reflect reality”, citing the claim that environmental, social and governance was “part of our DNA” and that the firm was a “leader” in the field as examples.

The investigation was launched after a whistleblower complaint from Desiree Fixler, DWS's former head of environmental, social and governance. Fixler alleged that DWS made misleading statements in its 2020 annual report about the size of its [ESG assets](#).

Shares in DWS tumbled in 2021 after the US Securities and Exchange Commission launched its investigation, with €1bn in stock market value wiped out in a day.

DWS agreed to pay \$19mn to settle the charges brought by the US securities regulator in 2023, which at that time was the watchdog's highest-ever penalty related to ESG criteria against an investment adviser.

While the SEC's settlement referred to a period between 2018 and 2021, the German prosecutors' investigation found the misconduct continued until 2023, after the appointment of current chief executive Stefan Hoops in June 2022.

Former chief executive Asoka Wöhrmann left in the wake of the scandal in 2022. He received a €13.7mn payout, including €8.15mn in severance pay. At the time, DWS highlighted that the severance package was subject to the "possibility of clawback".

Frankfurt prosecutors told the Financial Times that criminal investigations against certain individuals were still ongoing, but declined to name those involved.

A separate investigation into DWS's conduct at German financial watchdog BaFin is ongoing. A BaFin spokesperson declined to comment.

DWS, which has been raided three times since 2022, said it welcomed the conclusion of the prosecutors' investigation and accepted the fine, having "co-operated fully throughout the entire investigation".

The asset manager said on Wednesday that it had already acknowledged that "our marketing was sometimes exuberant" in the past, and said it had improved its internal documentation and control processes.

The company said the fine would not affect its quarterly results because it had made provisions. Shares in DWS, which had risen to an all-time high last month, lost 1.2 per cent in Wednesday trading.

Litigation

April 2, 2025, 7:32AM PDT

Judge in Staley Case Baffled by FCA's Casual Barclays Call

A judge said it was “baffling” that the UK financial regulator failed to take notes on a key call with Barclays Plc Chairman **Nigel Higgins** to discuss then-Chief Executive Officer **Jes Staley's** links to **Jeffrey Epstein**.

Judge Timothy Herrington said he could not understand why the Financial Conduct Authority hadn't kept a record of the August 2019 call between **Jonathan Davidson**, head of retail supervision at the time, and Higgins. The conversation has become a focal point in Staley's appeal against his ban from the finance industry, which is concluding this week in a London court.

“It just seems that it was kicked off in an informal manner,” said Judge Herrington. “The note of the record was clearly not as adequate as it should have been,” he said. “I say this with a degree of frustration.”



Jes Staley, former chief executive officer of Barclays Plc, arriving at The Rolls Building in London, UK, on Monday, March 10, 2025.

Photographer: Jaimi Joy/Bloomberg

Herrington is hearing closing arguments from the FCA and Staley following two weeks of testimony last month.

Read more: [Five Things We Learned From Jes Staley's Epstein Testimony](#)

The regulator [fined and banned](#) Staley in 2023 for “recklessly” misleading it over his friendship with the late pedophile financier. Its decision centered on a letter Barclays sent to regulators in October 2019 – several months after the phonecall – which stated that Staley and Epstein “did not have a close relationship.”

Lawyers for the former Barclays boss argued this week that the upper tribunal was within its rights to rule that the FCA could downgrade its finding against Staley to one of negligence. That would likely carry a less severe punishment for the former CEO.

The FCA's lawyer, though, said Staley had clearly set out to deceive the authorities over the extent of his links to Epstein in the wake of his former friend's death six years ago. “He had a clear motive to mislead,” said Leigh-Ann Mulcahy.

“The reality is that Mr. Staley faced an unpleasant dilemma: either he told Barclays the truth, most likely ending his career and giving rise to further investigation immediately, or he could take the chance of misleading the Authority,” said Mulcahy. “He chose the latter.”

--With assistance from **Jonathan Browning**.

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Securities Law

April 2, 2025, 6:12AM PDT

Macy's to Claw Back Executive Bonuses Due to Accounting Scandal

Macy's Inc. is clawing back more than \$600,000 in cash bonuses from executives after an accounting scandal led to inflated pay.

The department-store operator tied executives' cash bonuses to an earnings metric that turned out to be overstated by around \$81 million in 2023, Macy's said in a securities filing on Tuesday evening.

Read More: [Macy's Touted a Metric That Ended Up Being Juiced for Years](#)

That meant Macy's overpaid executives by \$609,613 as of the end of 2024, the company said. Some of that has already been clawed back, so the outstanding amount stood at \$352,093 as of April 1, it added.

The company's compensation committee said it "will seek to recover the remaining amount of the erroneously awarded compensation" from executives. Macy's didn't name the people whose bonuses will be affected. A spokesperson declined to comment.

Macy's also [said Tuesday](#) its chief financial officer was leaving. The company said it was replacing him with his counterpart at Capri Holdings Ltd., **Thomas J. Edwards**, and said the move was part of its plan to return to long-term, profitable growth.

Under US Securities and Exchange Commission [rules](#), public companies are required to assess whether they need to revoke corporate bonuses if they uncover accounting errors that miscalculated past profits.

In November, Macy's delayed an earnings release and then issued a lower profit [outlook](#) after an investigation found an employee intentionally hid more than \$150 million in delivery expenses from the fourth quarter of 2021 through the third quarter of 2024. The probe didn't uncover evidence of missing cash or unpaid vendors and instead pointed to accounting errors by the former employee, who also falsified documents to hide the problem, according to the company.

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Ponzi Schemer Who Got Trump Clemency Convicted in New Fraud Case

Federal jurors convicted a New Jersey man on fraud and money laundering charges after his previous 24-year prison sentence over a Ponzi scheme was commuted by President Donald Trump in his first term.

Eliyahu “Eli” Weinstein, 49, was found guilty Monday of defrauding more than 150 investors of \$41 million while falsely promising to invest their money in Covid-19 masks, scarce baby formula and first-aid kits bound for Ukraine.

Prosecutors said Weinstein began a new crime spree soon after serving less than eight years in prison. He called himself “Mike Konig” to hide his identity from friends and family who invested in his bogus deals. As the fraud progressed, he was secretly recorded by co-conspirators.

“I finagled, and Ponzied, and lied to people to cover us for our deals,” Weinstein said in a recording played for jurors in federal court in Trenton, New Jersey, during the seven-week trial.

Weinstein attorney **Ilana Haramati** said she intended to appeal and may seek another reprieve from Trump.

“We are going to explore every open avenue to help Mr. Weinstein vindicate himself and return to his family,” Haramati said.

Trump commuted Weinstein’s earlier sentence when a group of congressmen, Harvard Law School professor **Alan Dershowitz**, former prosecutors, and other supporters, including members of the Orthodox Jewish community, campaigned for his release.

On Jan. 20, 2021, the last day of Trump’s first term, the White House released a statement saying Weinstein was “the father of seven children and a loving husband” who had “maintained an exemplary prison history.” It said that upon his release he would have “strong support from his community and members of his faith.”

Weinstein had pleaded guilty to a Ponzi scheme in January 2013 and was sentenced to 22 years. In 2014, he got another two years for his role in a separate fraud involving the initial public offering of Facebook Inc., now Meta Platforms Inc.

Read More: Ponzi Schemer Doing 22 Years Pleads Guilty in Facebook Scam

At the trial, prosecutors told jurors that Weinstein was a twice-convicted fraudster who had to hide his identity from investors and worked with a co-defendant, Aryeh "Ari" Bromberg, to raise money.

Weinstein and Bromberg were convicted of securities fraud, wire fraud, money laundering and conspiracy counts. Weinstein was also convicted of making false statements to the US Probation Office. Both men were acquitted of some counts.

Haramati said she would appeal the judge's decision to tell the jury that Weinstein had two previous fraud convictions.

"The prejudice of that 'once a cheater always a cheater' bias cast a long shadow over the trial," Haramati said.

US District Judge Michael Shipp set sentencing for both men for Sept. 17. Weinstein has been in custody in Monmouth County, New Jersey, since July 2023.

Bromberg attorney Ricardo Solano said he also intends to appeal and that his client is "a casualty of the government's eagerness to convict" Weinstein.

"We are obviously grateful that the jury listened to us and acquitted Ari of several counts that should have never been brought," Solano said. "The government simply got it wrong with respect to Ari Bromberg."

A spokesperson for interim US Attorney **Alina Habba** had no immediate comment.

Prosecutors said that Weinstein gambled millions of dollars in investor money at casinos. Beyond gambling, Weinstein used investor money to "buy fancy houses, fancy watches, give money to his co-conspirators, and put money toward deals that had nothing to do with what investors believed they were investing in," Assistant US Attorney Jonathan Fayer told jurors in his closing argument on March 27.

"This is a case about deceit," Fayer said. "It's not a case about redemption. It's a case about deception. It's a case about fraud, it's a case about lies, and it's a case about obstruction of justice."

At the time of his indictment, prosecutors said Weinberg hid his illicit business activities and assets to avoid paying \$228.7 million in restitution he still owed to his victims from his first Ponzi scheme.

Five co-conspirators pleaded guilty and testified at trial in a bid for leniency at sentencing.

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[Securities Law News](#)

April 1, 2025, 1:49 PM PDT; Updated: April 2, 2025, 5:11 AM PDT

Commonwealth Financial \$93 Million to SEC Pulled on Appeal (2)

- First Circuit said question of alleged omission was jury issue
- Sent back to district court that approved SEC disgorgement

Commonwealth Financial Network doesn't have to pay the SEC over \$93 million for purportedly paltry disclosures of its revenue-sharing agreement without a jury review of whether more detailed disclosures would've changed investors' minds, a federal appeals court said Tuesday.

The district court shouldn't have granted the Securities and Exchange Commission's motion for summary judgment, a three-judge panel for the US Court of Appeals for the First Circuit said while vacating that decision and a disgorgement order, returning the case to the US District Court for the District of Massachusetts for further proceedings.

Even the SEC didn't back up the summary judgment order, Appellate Judge Sandra L. Lynch wrote for the appeals court, saying neither the agency nor the panel found any circuit case "which substitutes a per se materiality rule for the summary judgment standard."

Commonwealth Financial asked the First Circuit to vacate the district court order, arguing that a jury should've heard whether alleged omissions were material. The company added in its appellate brief that the district court essentially decided that those omissions were significant enough to sway investors' choices, even though no clients ever came forward to say they mattered.

The SEC never established a causal connection to show that a client would've picked a different fund if its disclosures had been more detailed, Commonwealth Financial's attorney, Thomas M. Byrne of Eversheds Sutherland (US) LLP, told the First Circuit during oral arguments. And the near \$66 million it was told to disgorge didn't deduct expenses as it should have, the brief said.

If a jury finds liability—even partially—then the district court must consider those two points for disgorgement, Lynch said. "The district court made concerning, fundamental legal errors as to these issues in its prior disgorgement calculations," she wrote.

"We are very pleased with this decision and will continue to pursue all legal avenues to defend our position," said Peggy L. Ho, Commonwealth Financial's general counsel, in an email.

The SEC said the firm failed to mention from 2014 until 2018 that certain mutual fund class shares from which Commonwealth received revenue sharing tended to be more expensive for clients. Clients would have a economic interest to switch to the lower-cost options that paid Commonwealth Financial less or no revenue—but at the time it just highlighted the higher-cost share classes in a list of recommended funds it provided representatives, the agency said in its brief. Attorney Paul G. Álvarez, on behalf of the SEC, told the panel that the agency spoke with multiple representatives who said cost was a critical factor to clients.

Lynch said the SEC's argument "in many ways assumed that these investors were identically situated," and a reasonable jury could see it differently.

Judge Indira Talwani of the District of Massachusetts had found the investment advisory firm flouted the 1940 Investment Advisers Act by using hypothetical descriptions on a potential conflict from its agreement with National Financial Services LLC, an arm of Fidelity Investments. She said there was reason to believe at least some clients would have chosen a lower-cost fund.

Commonwealth Financial maintained to the district court that its disclosures were up to snuff during the time period.

Former Supreme Court Justice Stephen G. Breyer and Judge Lara E. Montecalvo heard oral arguments Jan. 10 along with Lynch.

SEC attorneys represented the agency. Eversheds Sutherland (US) LLP represented Commonwealth Financial. Each declined to comment via email.

The case is SEC v. Commonwealth Equity Servs., LLC , 1st Cir., No. 24-01427, 4/1/25 .

(Updates April 1 story to reflect the SEC declined to comment in the 13th paragraph.)

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Nordstrom Family Faces Class Action Over Merger Deal

By **Katryna Perera**

Law360 (April 1, 2025, 6:43 PM EDT) -- Members of the Nordstrom family and Mexican omnichannel retailer and shareholder El Puerto de Liverpool, along with Nordstrom Inc., were hit with a class action alleging that they formed a group to acquire the remaining shares of the retailer and take it private at an inadequate price and based on an unfair and unlawful process.

Nordstrom investor Eric Gilbert filed a **complaint** Monday against the retailer, its CEO Erik Nordstrom, President and Chief Brand Officer Peter Nordstrom, several board members and controlling shareholders, among others.

The suit challenges a **\$6.25 billion all-cash go-private merger** that the parties announced in December. Under the terms of the deal, the Nordstrom family and Liverpool will acquire all outstanding common shares of the company that they do not already own for \$24.25 per share in cash.

According to a statement about the deal issued in December, the purchase price represents a 42% premium to the company's closing price on the last day of trading before media reports circulated about a potential transaction in March 2024.

Once the deal closes, which is expected in the first half of 2025, the Nordstrom family will have a majority stake in the company.

However, Gilbert alleges in his suit that the deal is the product of a flawed process that violated Washington state's "anti-takeover" statute and that the defendants breached their fiduciary duties.

"Members of the Nordstrom founding family and El Puerto de Liverpool, a Mexican retailer, who collectively own 43% of Nordstrom's stock, formed a buyer group and agreed among themselves to acquire the remaining Nordstrom shares they did not already own and to vote against alternative transactions before receiving approval to do so from Nordstrom's board of directors," the complaint states.

Washington's anti-takeover statute, also known as the Washington Business Corporation Act, states that if stockholders who collectively own more than 10% of a company's outstanding shares reach an agreement, arrangement or understanding among themselves related to acquiring or voting shares before receiving board approval, any subsequent merger must be approved by stockholders holding two-thirds of the company's shares, excluding the shares owned by the buyers, according to the complaint.

Gilbert said that the defendants formed a buyers group before receiving approval from Nordstrom's board, and therefore, the deal at the heart of the suit should have been subject to the heightened voting requirement.

However, the merger is not conditioned on approval of the necessary stockholders, Gilbert said, and if the transaction closes without receiving the required stockholder approval, it will violate the anti-takeover statute.

Gilbert further alleges that the deal is unfair to Nordstrom's public stockholders because it was secured at an unfair price of \$24.25 per share.

"This price represents a 'take-under' or negative discount compared to the stock's trading price shortly before the agreement and fails to reflect the company's intrinsic value, and recent positive performance," the complaint states. "Financial analyses performed by the special committee's own advisors, as well as independent analyst price targets, indicate a higher value for the company.

"Numerous equity analysts established price targets that were higher than the merger price, including Morningstar (\$38.50), Telsey (\$26.00), Gordon Haskett (\$25.00), Citi (\$25.00), and TD Cowen (\$25.00)," the complaint further states.

Gilbert seeks damages, attorney fees and a jury trial.

Founded in 1901 as a shoe store, Nordstrom has grown to include more than 350 Nordstrom, Nordstrom Local or Nordstrom Rack locations. The company has been mulling a sale for months, and in September, it confirmed that it had received a proposal from a group that included members of the Nordstrom family and Liverpool. The proposed offer made public then was worth \$23 per share in cash, valuing the clothing retailer at around **\$3.8 billion**.

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

Gilbert is represented by Steve W. Berman and Reed R. Kathrein of Hagens Berman Sobol Shapiro LLP, Jason Leviton, Kimberly A. Evans, Lindsay K. Faccenda and Daniel M. Baker of Block & Leviton LLP, Ned Weinberger and John Vielandi of Labaton Keller Sucharow LLP, and D. Seamus Kaskela and Adrienne Bell of Kaskela Law LLC.

Counsel information for the defendants was not immediately available.

The case is Gilbert v. Nordstrom Inc. et al., case number 2:25-cv-00568, in the U.S. District Court for the Western District of Washington.

–Additional reporting by Jade Martinez-Pogue. Editing by Michael Watanabe.



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Estée Lauder Must Face Investors' Suit Over Inflated Growth

By **Katryna Perera**

Law360 (April 1, 2025, 9:47 PM EDT) -- Estée Lauder investors have successfully pled the cosmetics company and its top brass made several misleading omissions and statements and opinions "mired in half-truths" in their suit alleging that the company announced unrealistic expectations for growth early in the COVID-19 pandemic, a New York federal judge ruled Monday.

U.S. District Judge Arun Subramanian issued an **opinion and order** saying the complaint alleges several actionable statements as well as scienter, or knowledge of wrongdoing, by the individual defendants and loss causation, among other things.

The suit, **filed in 2023**, claims that starting in August 2022, Estée Lauder, CEO Fabrizio Freda and Chief Financial Officer Tracey T. Travis covered up the company's reliance on prohibited "gray market" or "daigou" sales of its products in China. When China eventually cracked down on the illicit activity later that year, Estée Lauder sales and stock prices cratered, the investors say.

On Monday, Judge Subramanian said the operative complaint pleads several actionable statements and omissions, including a statement concerning the source of Estée Lauder's increased travel retail sales in late 2021 that omitted the company's reliance on daigou.

Judge Subramanian said there is little doubt that daigou sales are at least improper, if not illegal, and Estée Lauder "exploited" this illicit marketplace.

"Sure, daigou are gray, not black, markets. But omitted sources of revenue don't need to be 'fraudulent or otherwise illegal' for a statement to be misleading," the order said. "Daigou's degree of impropriety under Chinese law doesn't matter ... what matters is that Estée Lauder touted the reasons for its success while leaving out the parts of the truth it found inconvenient. The telling of half-truths — that's what the securities laws don't tolerate."

"Once Estée Lauder chose to speak about the sources of its success, it had a duty 'to disclose the true (and improper) nature,'" the judge added.

According to the order, the defendants argued in their dismissal motion that the relevant omission is not the company's reliance on daigou but the effect of the 2022 enforcement actions by Chinese authorities. The investors' theory fails because they haven't pled that Estée Lauder or its executives knew the steps the Chinese government would take to enforce daigou restrictions, which would lead to a decline in net sales, the defendants argued.

However, Judge Subramanian said the defendants misread the complaint and "confuse materiality with scienter."

"Plaintiffs don't focus on the effects of the 2022 crackdown at the exclusion of all else. What plaintiffs say is that when times were good, defendants boasted about the sources of Estée Lauder's sales growth while neglecting to mention that the driver of this growth was daigou," the order said. "And then when times were bad — because of the 2022 crackdown — the company continued to mislead investors by not owning up to the real source of the decline: again, daigou."

Additionally, the judge noted that, by their very nature, daigou are vulnerable to government enforcement, and Estée Lauder should have seen a crackdown coming.

"The Chinese authorities would catch up — the question wasn't if but when," he wrote. "That Estée Lauder escaped previous [enforcement actions] unscathed doesn't immunize its business model and render information about this source of sales growth immaterial."

"Plaintiffs allege enough to demonstrate that defendants misled investors by promoting the recipe for their secret sauce, while leaving an ingredient of questionable legality off the list," the judge added.

Judge Subramanian also found Monday that several challenged statements in the complaint are actionable and not just "'rah-rah' sentiments about the future."

"In each statement the speaker offers glimmering predictions about future sales or prospects in China based on misrepresentations of the present-day facts on the ground. The safe harbor doesn't extend that far," the order said.

Regarding the suit's claims of scienter, Judge Subramanian found that the investors have plausibly alleged that Freda and Travis knew the company was relying on daigou sales.

"[The investors] alleged a trove of information that would have pointed to daigou, highlighted public statements by Travis and Freda about daigou and their attentiveness to travel-retail sales data, and alleged that Estée Lauder had a whole team whose purpose was to analyze daigou sales," the order said. "All this 'create[s] a compelling inference that [Freda and Travis] made a conscious decision to not disclose [Estée Lauder's reliance on daigou] in order to' avoid talking about its legally dubious revenue stream."

According to the order, Freda and Travis argued that it's more plausible that they could not predict the 2022 crackdown and that it would cause Estée Lauder's sales to decline. But Judge Subramanian said this argument is "unresponsive to plaintiffs' theory of fraud."

"Why would the unforeseen severity of the 2022 crackdown be a reason to omit daigou when talking about the reasons for Estée Lauder's sales growth before the crackdown?" he said. "The more plausible view is that Estée Lauder saw an opportunity to make up for lost sales, went for it despite the regulatory risks and reputational drawbacks, and then kept quiet out of fear of spooking investors."

The judge also found Monday that Freda and Travis' intent can be imputed to Estée Lauder and that the investors adequately pled loss causation.

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

The investors are represented by Michael P. Canty, James T. Christie, Guillaume Buell and Jacqueline R. Meyers of Labaton Keller Sucharow LLP and Thomas C. Michaud of VanOverbeke Michaud & Timmony PC.

Estée Lauder, Freda and Travis are represented by Caroline Hickey Zalka of Weil Gotshal & Manges LLP.

The case is In re: The Estée Lauder Co. Inc. Securities Litigation, case number 1:23-cv-10669, in the U.S. District Court for the Southern District of New York.

--Editing by Jay Jackson Jr.



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Paramount Investor Gets Partial Win In \$8B Merger Doc Suit

By **Jeff Montgomery**

Law360 (April 1, 2025, 4:34 PM EDT) -- A top Paramount Global stockholder who sued for books and records on the company's proposed \$8 billion acquisition by Skydance Media won Delaware Court of Chancery admission of dozens of documents Tuesday, with a rare, closed ruling to follow on confidentiality claims for other still-held-back records.

Senior Magistrate Selena E. Molina rejected objections by attorneys for Paramount Global who questioned the reliability of 55 exhibits that included, in part, news accounts related to the transaction.

The records were sought in support of a probe of potential insider wrongdoing by a fund of billionaire Mario Gabelli, Paramount Global's second-largest common stockholder after Shari Redstone's National Amusements Inc.

But the magistrate said she would take about a week to consider excluding or redacting an undisclosed number of other documents sought by Gabelli 25 Fund Inc. At issue, according to a pre-trial stipulation, are details regarding initiation of negotiations with Skydance before Paramount formed its special committee and a consultant's estimate of an implied price of about \$30 for company shares held by NAI.

Attorneys for Gabelli said in their complaint that one of his funds, which has a more-than \$127 million stake in Paramount overall, wanted to investigate whether Paramount's board, controller National Amusements Inc. or Skydance lined up a merger that will pay NAI chairwoman and president Shari Redstone significantly more for NAI's controlling stake in Paramount than minority shareholders.

"Essentially, we are looking for documents which relate to formation of the special committee concerning any discussion Ms. Redstone had with potential bidders in late 2023, before the formation of the special committee," said Vincent R. Cappucci of Entwistle & Cappucci LLP, counsel to the Gabelli fund. "We have reason to believe that Ms. Redstone did engage in those discussions and those discussions occurred before the formation of the special committee, and without the participation of its members."

Jonathan K. Youngwood of Simpson Thacher & Bartlett LLP, counsel to Paramount Global, said he believed "in some almost counterintuitive way the production we've made actually further undercuts the claims" by Gabelli's fund, "because it shows a record of proper procedure and process. We would think production would make the case worse for plaintiff."

The Gabelli Funds overall hold about 11.8% of all Class A shares of Paramount Global, with attorneys for the funds citing a "more than credible basis to suspect that minority shareholders are receiving reduced merger consideration compared to NAI." The document suit added that the deal's alleged tilt would create a not-entirely-fair transaction tainted by fiduciary breaches.

Skydance allegedly offered hundreds of millions of dollars in unfair and "egregious" benefits to Redstone, who controls Paramount through her control of NAI, which holds 77% of Paramount's voting Class A stock and 5% of its non-voting "B" shares.

Terms of the Skydance deal include a "no shop" provision barring Paramount from considering other

buyer offers. Redstone-controlled NAI would get an allegedly inflated \$2.4 billion in a first step of the merger, as well as a buyout of Redstone's Central Park apartment and payment for the lease on her private jet, along with a \$200 million indemnification agreement covering any breach of fiduciary duty claim targeting the deal.

"There is quite a bit of suspect activity here, but what is clear is Ms. Redstone clearly favored a transaction that gave most of the most benefit to National Amusements," Cappucci told Magistrate Molina.

Also at issue, Cappucci said, are board-level materials that "shine a light on what appears to be a disparity" between disclosures in a U.S. Securities and Exchange Commission registration for the deal saying that the special committee did not value NAI to determine the premium, while board minutes reference both premium and price.

The premium evaluation is "critical to due care," Cappucci said. "That is completely missing from the production," creating a "significant gap in production that is essential" to the court's assessment of the fairness of the deal and the special committee's conduct.

Youngwood questioned allegations of gaps in the company's production of materials, noting that about 9,800 pages had been delivered to Gabelli's counsel.

"I don't know that there's much to make of it," Youngwood said at one point. "If counsel thinks it was inappropriate for Ms. Redstone to talk to fellow board members, put it in your plenary complaint, and we'll see if it survives a motion to dismiss. I don't think a controller talking to a special committee member is inappropriate."

The partial decision Tuesday came about a month after Chancellor Kathaleen St. J. McCormick's agreement to allow an amended stockholder challenge to Paramount Global's Skydance Media deal, along with fast-tracked responses from parties affected by a stockholder call for a probe of Paramount's response to an alternative \$13.5 billion offer.

Chancellor McCormick imposed the short-fuse schedule in part after Paramount purportedly accelerated its merger timetable by securing SEC approval of a formal information statement regarding the merger.

Also pending is a mid-case appeal to Delaware's Supreme Court in another Paramount Global documents demand suit involving the use of confidential sources and pre- or post-petition evidence in stockholder books and records cases. Vice Chancellor J. Travis Laster certified the questions to the justices seven weeks after reversing a magistrate in a Chancery decision dismissing a probe of Paramount's \$8 billion merger with Skydance Media.

Vice Chancellor Laster's decision followed an unequivocal court finding that news articles central to the Employees' Retirement System of Rhode Island investigative demand of Paramount Global's deal can "bear sufficient indicia of reliability to be considered," among other rulings.

Gabelli Value 25 Fund is represented by Sue L. Robinson, Brian E. Farnan and Michael J. Farnan of Farnan LLP and Vincent R. Cappucci, Joshua K. Porter and Jessica A. Margulis of Entwistle & Cappucci LLP.

Paramount Global is represented by Jon E. Abramczyk, D. McKinley Measley, Alexandra M. Cumings and Louis F. Masi of Morris Nichols Arsht & Tunnell LLP and Jonathan K. Youngwood and Meredith Karp of Simpson Thacher & Bartlett LLP.

The case is Gabelli Value 25 Fund Inc. v. Paramount Global, case number 2024-1353, in the Court of Chancery of the State of Delaware.

--Editing by Dave Trumbore.



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Chancery OKs \$500K Incentive Fee After Santander Class Win

By **Jeff Montgomery**

Law360 (April 1, 2025, 7:02 PM EDT) -- Citing competing policy interests, a Delaware vice chancellor on Tuesday pruned to \$500,000 a \$1.63 million incentive fee proposal for two Santander Consumer USA Holdings Inc. stockholders who led a squeezeout-merger challenge that produced a \$162.5 million class settlement in October.

Vice Chancellor Lori W. Will, in an 18-page decision, found Elliott International LP and Liverpool Limited Partnership — both stockholders of Santander — "devoted extraordinary time and expertise" as representative lead plaintiffs "to building, advancing and resolving the case, yielding a positive outcome" for the stockholder class that contested the deal.

The initial fee request, however, "well exceeds that awarded by any Delaware court, and precedent suggests that it is too high," the vice chancellor wrote. The decision noted the request would have been 62.5% larger than the current highest, \$1 million incentive award in 2017 in a challenge to the \$200 million acquisition of Occam Network Inc. by Calix Inc., a longer and more involved case, more punishing to its lead plaintiff.

In the Santander suit, investors accused the company's board of directors of setting up a tender offer that had no minimum requirement for approval and that was completed with less than 30% of stockholders tendering their shares in favor of the \$41.50-per-share price.

The shareholders claimed that controlling shareholder Santander Holdings USA Inc. received \$6.3 billion in distributions after the deal closed, more than half the implied value of the company in the squeezeout. In the absence of the merger, \$1.23 billion would have gone to minority shareholders that had refused to support the deal, the court said.

"Elliott and its counsel theorized that Santander insiders had unique knowledge that allowed them to time the buyout so that they reaped billions of dollars in unique benefits," the vice chancellor wrote. Ultimately, Santander settled for \$162.5 million, with class attorneys awarded more than \$26.6 million in fees and expenses — an amount subsequently tapped for the incentive fee.

Chancellor Will relied in part on former Chancellor William B. Chandler III's 2006 opinion in *Raider v. Sunderland*, which said courts should consider a plaintiff's expenditure of both "a significant amount of time, effort and expertise" on a case and the securing of "a significant benefit for the class."

Yet while Elliott's efforts benefited the stockholder class, Vice Chancellor Will wrote, the firm did not "incur the sort of personal harm" in the current largest incentive fee case, *Chen v. Howard-Anderson*.

In that action, which ran from 2010 to 2017, hedge fund employee and large Occam Networks Inc. shareholder Herbert Chen was subjected to intense personal scrutiny and threatened sanctions, the vice chancellor observed, with the fallout and "negative press" said to have effectively ended Chen's career on Wall Street. The case was settled for \$200 million in 2016.

"The time Elliott devoted to this case well exceeds that of the plaintiff in *Raider*, but it is thousands of hours less than those devoted in *Chen*," the vice chancellor wrote, noting Elliott's risks were "in line with how its core business operates."

"This payment, on top of Elliott's pro rata recovery" of almost a third of the settlement fund and

reimbursement of its expenses, "will compensate it for the burdens it took on that are not shared with other class members," the vice chancellor wrote. The court added that Elliott approached the risks "with the resources and leverage of a massive institution."

In landing on an incentive fee number, the opinion said, the court had to take into account potentially conflicting interests faced by representative stockholders when considering an incentive award in an otherwise unfavorable settlement.

Santander and counsel for the shareholders did not immediately respond to requests for comment late on Tuesday.

The shareholders are represented by Gregory V. Varallo, Andrew E. Blumberg, Benjamin M. Potts, Margaret Sanborn-Lowing, Jeroen van Kwawegen and Edward Timlin of Bernstein Litowitz Berger & Grossmann LLP, Kimberly A. Evans, Lindsay K. Faccenda, Jason M. Leviton, Irene Lax and Robert Erikson of Block & Leviton LLP, and J. Daniel Albert, Eric L. Zagar, Matthew C. Benedict and Lauren Lummus of Kessler Topaz Meltzer & Check LLP.

Santander Consumer USA Holdings Inc., its controller and parent are represented by Garrett B. Moritz, Adam D. Gold, Thomas C. Mandracchia and Dylan T. Mockensturm of Ross Aronstam & Moritz LLP and William Savitt, Sarah K. Eddy, Ryan A. McLeod, Iliria Camaj and Emma S. Stein of Wachtell Lipton Rosen & Katz.

The consolidated case is In re: Santander Consumer USA Holdings Inc. Stockholders Litigation, case number 2022-0689, in the Court of Chancery of the State of Delaware.

--Editing by Philip Shea.

Tesla Asks Del. Justices To Undo \$176M Atty Fee 'Windfall'

By **Bonnie Eslinger**

Law360 (April 1, 2025, 11:21 PM EDT) -- Tesla urged the Delaware Supreme Court on Tuesday to slash a \$176 million attorney fee award granted as part of an excessive director compensation suit settlement, saying it amounts to a "windfall in a case that settled well before trial and after three years of only tepid litigation."



Tesla suggested that attorneys who helped settle an excessive director compensation suit should receive, at best, a fee award of no more than \$70.9 million. (Sipa via AP Images/Sebastien Salom-Gomis)

Tesla's opening **brief** argues that the lower court overestimated the \$730 million benefit achieved by the derivative action, specifically the returned stock options, which were valued at \$458.6 million. The company never stipulated to that amount, the appeal says.

The options in reality returned only \$19.9 million to the company, the costs incurred when they were issued, Tesla argued. So the Court of Chancery was wrong to base its \$176.2 million fee award — the fourth largest in Delaware history — on the settlement's perceived overall value.

In real numbers, the litigation brought by investors on behalf of Tesla secured a settlement from current and former board directors that yielded a net benefit to the company of only about \$296 million — the value of the returned cash, plus \$19.9 million for the options, Tesla argues. That amount doesn't merit a \$176.2 million fee award, according to the company.

"Worse still, the court awarded this windfall in a case that settled well before trial and after three years of only tepid litigation," Tesla states.

The award should be substantially reduced due to the overestimated benefit, it says.

In addition, a "mid-stage" resolution, like the one hammered out here, typically warrants a fee between 15% to 25% of the benefits, so the court should have capped the award at the lower end of that scale, Tesla says.

Finally, the lower court judge ran afoul of guidance from a 2023 Delaware Chancery Court decision in a case brought by Dell shareholders that examined the factors for determining an appropriate fee award, the company says.

"This court held in Dell that a \$5,000-per-hour fee award that equaled 7x counsel's lodestar reflected the 'high end' of reasonableness, even in a \$1 billion cash settlement," Tesla states.

And yet, the \$176.2 million fee award in this case calculates out to more than 11 times the amount of the legal tab, which puts the billing rate beyond \$8,200 per hour, Tesla says. Fee awards in large common-fund cases have typically involved a multiplier of 2.83, it says, so here the fee would be \$68.4 million based on that multiplier.

At best, a fee award of no more than \$70.9 million is warranted, based on a "generous" 24% cut of Tesla's actual recovery, the company says.

The litigation, filed in June 2020 by a pension fund shareholder against Musk and company directors, sought repayment of what it said were years of "**outrageous**" **board stock awards** that cost the company hundreds of millions of dollars.

Three years later, the parties reached a deal to end the case that involved stocks, options and cash. It was valued at **\$735.2 million**, according to the settlement.

Tesla and the investors fought over the initially proposed **\$230M fee award**. During an October 2023 hearing, an attorney for Tesla's stockholders challenged a company attorney to stand by claims that the director stock option returns required under the settlement wouldn't put \$458 million back on the car company's equity balance sheet.

"If Tesla really believes that \$458 million of options coming back to the company are worth almost nothing — \$19.5 million — then pay them to us," said Andrew S. Dupre of McCarter & English LLP, counsel for the stockholders.

Chancellor Kathaleen St. J. McCormick subsequently **approved** the \$176.16 million fee award to the three firms, less than the \$230 million requested. At the time Chancellor McCormick said most of the reduction was prompted by the dispute between Tesla and the stockholders over the forgone value of the future options. Attorneys for the class valued the benefit at \$180 million, while Tesla pegged the gain at zero.

"I struggle to value this benefit in this case," the chancellor said, citing the court's desire to avoid windfalls in compensation decisions.

Despite the pruning, Chancellor McCormick said the Tesla stockholder attorneys earned the award.

"Plaintiff's counsel litigated on a fully contingent basis for years with no certainty that they would ever receive a penny for their efforts," she said during a more than 40-minute telephone bench ruling.

The fee is going to McCarter & English LLP, Fields Kupka & Shukurov LLP and Bleichmar Fonti & Auld LLP.

The settlement applies to current and former board members, including Elon Musk's brother Kimbal Musk, media mogul James Murdoch, and Tesla board chair Robyn Denholm.

Tesla and a stockholder objector recently **appealed** the settlement's approval.

The dispute is separate from another Chancery Court suit that **challenged the fairness** of Elon Musk's \$56 billion, 10-year pay package, in which an appeal has also been filed.

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

The investors are represented by Andrew S. Dupre of Akerman LLP, William Fields, Christopher Kupka and Samir Shukurov of Fields Kupka & Shukurov LLP, and Robert B. Lackey, Joseph Fonti, Nancy Kulesa, George Bauer and Thayne Stoddard of Bleichmar Fonti & Auld LLP.

Tesla is represented by Brian T. Frawley, Matthew A. Schwartz, Jeffrey B. Wall and Morgan L. Ratner of Sullivan & Cromwell LLP, John L. Reed and Ronald N. Brown III of DLA Piper, and Jason C. Jowers and Sarah T. Andrade of Bayard PA.

The board members are represented by Raymond J. DiCamillo, Kevin M. Gallagher and Kyle H. Lachmund of Richards Layton & Finger PA, and Evan R. Chesler and Vanessa A. Lavelly of Cravath Swaine & Moore LLP.

The case is In re: Tesla Inc. Director Compensation Stockholder Litigation, case numbers 52, 2025 and 53, 2025, in the Supreme Court of the State of Delaware.

--Additional reporting by Katryna Perera, Jeff Montgomery and Jessica Corso. Editing by Adam LoBelia.

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Judge Tosses Hertz Investor's \$126M Short-Swing Profits Suit

By **Katryna Perera**

Law360 (April 1, 2025, 5:53 PM EDT) -- A New York federal judge has tossed, for good, a suit against the controlling shareholders of Hertz Global Holdings Inc. that claimed they realized at least \$126 million in short-swing profits by selling their shares shortly before the car rental company's directors greenlighted a \$2 billion stock repurchase program.

U.S. District Judge Laura Taylor Swain on Monday issued an **order** stating that the plaintiff, Andrew Roth, has not plausibly alleged a claim under the short swing profit rule of the Securities Exchange Act.

According to the order, to state a claim under the rule — also known as Section 16(b) — Roth needed to plausibly allege a purchase and corresponding sale of securities by a statutory insider within a six-month period.

Judge Swain said Roth plausibly alleged that a defendant and controlling shareholder of Hertz, Amarillo LP, was a principal stockholder of Hertz and, therefore, an insider, and that Amarillo directly sold Hertz stock, which Hertz repurchased within six months of the sale.

But the suit also tries to attribute Hertz's buyback of its own stock to Amarillo, as a principal shareholder, according to the order.

"Plaintiff asserts that, because Amarillo LP held approximately 40% of the company's common stock during the relevant time period, it must be considered a 'beneficial owner' of Hertz stock with an indirect pecuniary interest in the Hertz repurchases," the order stated.

Amarillo argues that Hertz's transactions in its own securities cannot be attributed to company insiders under Section 16(b), and in her Monday order, Judge Swain agreed.

"Plaintiff has filed numerous Section 16(b) claims in courts around the country premised on this legal theory, and, thus far, each court has rejected plaintiff's attempt to expand liability to issuer transactions under Section 16(b) ... this court joins in rejecting plaintiff's reading of Section 16(b)," the order stated.

The judge found that a plain reading of the short swing profit rule's text undermines Roth's proposed interpretation because the statute uses different terms to refer to "beneficial owners," such as Amarillo and the "issuer," which in this case is Hertz.

"The most faithful reading of the plain text and stated purpose of the statute requires the court to distinguish transactions by statutory insiders from those of the issuer itself," the order said.

The judge also noted that Section 16(b) "cautions against an overly broad application of liability."

"Section 16(b) operates as a 'blunt instrument' imposing 'liability without fault ... within its narrowly drawn limits.' The Supreme Court has clarified that '[i]t is inappropriate to reach the harsh result of imposing [Section] 16(b) 's liability without fault on the basis of unclear language,'" the order stated. "The statute must therefore be applied 'narrowly' to 'limited areas of clear and unambiguous liability.' Roth's interpretation plainly does not meet that standard."

Additionally, Judge Swain said Roth's proposed interpretation of the statute would produce "undesirable and absurd results."

"Under Roth's theory, then, every time a company that issues an equity security conducts a sale or purchase in that security, every insider in that company is deemed to conduct the transaction himself under 15 U.S.C. [Section] 78p(b)," the order said. "This outcome would interfere not only with the insiders' ability to make investment decisions — for fear that six months thereafter the issuer may implement a buyback opening them to liability — but may also interfere with companies' abilities to transact in their own securities without objection from directors and officers subject to broad liability."

Finally, the judge said the U.S. Securities and Exchange Commission's regulatory framework and practices preclude the attribution of issuer share repurchases to insiders.

The judge also denied Roth leave to amend his complaint since the identified deficiencies arise from his core legal theory.

Roth filed suit **in January 2024** against five institutional shareholders of Hertz, including Amarillo, who he claims also appointed the board members that authorized the stock buyback.

The complaint states that on Nov. 8, 2021, Amarillo, 11 other shareholders and several underwriters entered into an underwriting agreement under which the selling shareholders sold their Hertz common stock — about 15 million shares — to the underwriters at a price of roughly \$27 per share. The underwriters then sold those same shares to the public at \$29 per share.

A few weeks later, on Nov. 29, 2021, Hertz announced that its board of directors, of which four members were appointed by the defendants, had authorized the repurchase of up to \$2 billion of the company's outstanding common stock, according to the complaint.

Roth contends that nothing in Hertz's announcement indicated that any directors recused themselves from the decision or that an independent board committee approved the repurchase.

The complaint says that because the defendants are controlling shareholders of Hertz, they both directly and indirectly profit from or share in any profit the company experiences due to a stock buyback.

"Defendants had, at minimum, an approximately 39% indirect pecuniary interest in the company's repurchases, measured by their percentage ownership of the common stock as of Nov. 16, 2021," the complaint states. "By engaging in the short-swing transactions identified herein, defendants, as statutory insiders, breached the trust and fiduciary duty that they owed to the company to refrain from engaging in short-swing trading in the company's common stock."

Counsel for Roth declined to comment Tuesday, and counsel for the defendants did not immediately respond to requests for comment.

Roth is represented by Glenn F. Ostrager, Joshua S. Broitman and Roberto L. Gomez of Ostrager Chong Flaherty & Broitman PC.

Amarillo and the other defendants are represented by Stefan Atkinson and Byron Pacheco of Kirkland & Ellis LLP.

The case is Roth v. CK Amarillo LP et al., case number 1:24-cv-00706, in the U.S. District Court for the Southern District of New York.

--Editing by Kristen Becker.



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9th Circ. Judge Unsure Oppenheimer Liable For Broker Ponzi

By **Greg Lamm**

Law360 (April 1, 2025, 8:46 PM EDT) -- A Ninth Circuit judge on Tuesday questioned if Oppenheimer & Co. Inc. was responsible for a Ponzi scheme orchestrated by one of its brokers as a side hustle, telling investors he was struggling to see how they were direct customers of the investment firm.

The case centers on former Oppenheimer broker John Woods, who ran a Ponzi scheme called Horizon Private Equity III LLC out of Oppenheimer's Atlanta office before he was ultimately imprisoned on a wire fraud conviction.

Two Washington couples — Steven and Dori Mitchell and Jerome and Lori Hopper — said that Oppenheimer should have known about the fraud and ignored supervisory obligations imposed upon the firm by Financial Industry Regulatory Authority rules.

The investors, who said they invested \$2.2 million in Horizon in 2016, urged the Ninth Circuit to reverse a lower federal judge who **blocked their bid** to arbitrate claims against Oppenheimer before FINRA, in a ruling that determined the investors were not Oppenheimer "customers" as defined by the regulatory authority.

At a hearing Tuesday before a three-judge panel, U.S. Circuit Judge Milan Smith Jr. noted that investors never held an account with Oppenheimer and there was no direct customer relationship between the investors and the firm.

"What I am struggling with is how do you tie your clients to Woods and to Oppenheimer?" said Judge Smith, who also noted that it didn't seem like the investors had any direct interaction with the broker, aside from one call between Jerome Hopper and Woods.

Roger M. Townsend of Breskin Johnson & Townsend PLLC, representing the investors, said Woods relied on his cousin, Michael Mooney, to be the go-between salesperson. Horizon was a wholly owned entity controlled by Woods and the money went to him, Townsend said.

The attorney said Oppenheimer knew about Horizon and had concerns.

"They had the red flags," Townsend said. "They called Woods, and not surprisingly, the perpetrator of a Ponzi scheme said, 'No, I am not committing a Ponzi scheme.' And that satisfied Oppenheimer."

Judge Smith said that, because there was no direct customer relationship between the investors and Oppenheimer, it "all hinges on Woods."

"So Oppenheimer could have called Woods and inquired about Horizon without any knowledge of your clients, right?" Judge Smith said.

Townsend said if Woods is allowed to run a shell corporation that insulates Oppenheimer, that would undermine FINRA's regulatory impact.

Townsend said that it doesn't matter that the investors dealt with Mooney rather than Woods.

"If you were to invest in Berkshire Hathaway, do you have to talk with Warren Buffett? Or can you talk to one of his sales people?" the attorney said.

Oppenheimer attorney Jason D. Frank of Morgan Lewis & Bockius LLP said the investors didn't have an account with Oppenheimer, nor did they buy securities from the firm.

Frank said that Mooney was their investment adviser, a former Oppenheimer associate who left the firm in 2010, six years before the investors got involved with Horizon.

"They are not customers of Oppenheimer & Co.," Frank said.

Judges Lawrence VanDyke, Milan Smith Jr. and Jane Magnus-Stinson sat on the panel for the Ninth Circuit.

Oppenheimer is represented by Jason D. Frank and Matthew C. McDonough of Morgan Lewis & Bockius LLP.

The investors are represented by Craig H. Kuglar of The Law Office of Craig H. Kuglar LLC and Roger M. Townsend of Breskin Johnson & Townsend PLLC.

The case is Oppenheimer & Co. Inc. v. Mitchell et al., case number 4-2379, in the U.S. Court of Appeals for the Ninth Circuit.

The underlying case number is 2:23-cv-00067, in the U.S. District Court for the Western District of Washington.

--Editing by Melissa Treolo.

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Bigelow Waved The Flag While Selling Foreign Tea, Jury Told

By **Rachel Scharf**

Law360, Los Angeles (April 1, 2025, 10:48 PM EDT) -- R.C. Bigelow Inc. falsely advertised its foreign-grown teas as "manufactured in the USA" in a deceitful effort to play on customers' patriotic sentiments, counsel for a certified class of Golden State tea buyers told jurors as a damages trial opened in California federal court Tuesday.

Eight jurors heard opening arguments in the trial before U.S. District Judge Dean D. Pregerson, who has already **held Bigelow liable** for misleading California tea buyers about the overseas origins of its black, green, chai, vanilla and Earl Grey tea products. The jury will be tasked with determining whether Bigelow intentionally lied and what damages, if any, the company must pay to class members.

A lawyer for the certified class of California tea buyers, Peter Schneider of Schneider Wallace Cottrell Konecky LLP, said in his opening statement Tuesday that Bigelow added the tagline "manufactured in the USA, 100% family-owned" to the labels of its boxes as part of a rebranding campaign in 2017.

The problem with this statement, said Schneider, is that Bigelow's teas are actually grown in India, Sri Lanka and China. But Bigelow pushed its false made-in-America message in a full-on "blitz," the attorney argued, putting the new tagline on billboards, broadcast commercials and Major League Baseball game advertisements.

"Patriotic branding was a central marketing strategy," Schneider told the jury. "Bigelow literally wrapped themselves in the American flag in order to mislead consumers and dominate the competition."

According to Schneider, Bigelow's false advertising helped it maintain a 25% market share in the U.S. specialty tea business and beat out competitors like Lipton, Celestial Seasonings and Tazo. And the company was able to reap \$3.5 million in premium price profits, he said.

"We are asking you to make the customers whole," said Schneider.

Bigelow's counsel, Timothy Branson of Gordon Rees Scully Mansukhani LLP, countered in his opening statement that the line "manufactured in the USA" was meant as a reference not to where tea leaves are grown, but to the facilities in Connecticut, Idaho and Kentucky where Bigelow's products are blended and packaged.

If you look more closely at Bigelow's tea boxes, said Branson, there are actually text boxes and graphics that clearly tell customers the tea itself is grown overseas.

"They never intended customers to think the teas and ingredients were all from the U.S.," Branson told the jury.

Branson also urged the jury to be wary of the plaintiffs' damages requests, poking holes in the economic models used by their expert and arguing that the "manufactured in the USA, 100% family-owned" label did not actually impact tea prices.

"Retailers charged the same price for the products with our without the '100%' logo," Branson said.

The first witness called Tuesday was Kimberly Banks, a 50-year-old Los Angeles resident serving as one of the two lead plaintiffs for the class. Banks testified that she's a "regular tea drinker" and used to buy two different varieties of Bigelow teas.

Banks said Bigelow's American-made labeling "swayed" her to choose those products until she found out the truth.

"I felt that I was deceived, so I just don't purchase it any longer," Banks told the jury.

The trial is slated to resume Wednesday and last roughly a week.

The case has been **pending since 2020**, and Judge Pregerson **certified** a California-wide consumer class in 2023. The judge granted partial summary judgment to the tea buyers this past summer, ruling that Bigelow's labeling was literally false and teeing up the question of damages for a jury.

Bigelow later **sought to decertify** the class and call off the trial due to supposed flaws in the consumers' statewide damages model. But Judge Pregerson allowed the classwide trial to go forward and said he'll make evidentiary decisions as they come up.

The class is represented by Todd M. Schneider, Peter B. Schneider and Jason H. Kim of Schneider Wallace Cottrell Konecky LLP and Aubry Wand of The Wand Law Firm PC.

Bigelow is represented by Timothy K. Branson, Thomas R. Watson and Patrick J. Mulkern of Gordon Rees Scully Mansukhani LLP.

The case is Kimberly Banks et al. v. R.C. Bigelow Inc. et al., case number 2:20-cv-06208, in the U.S. District Court for the Central District of California.

--Editing by Michael Watanabe.

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PacifiCorp Owes Another \$36M After Latest Wildfire Trial

By **Cara Salvatore**

Law360 (April 1, 2025, 10:55 PM EDT) -- An Oregon jury awarded over \$36 million Monday to seven property owners affected by fires that started during a 2020 windstorm in which PacifiCorp chose not to de-energize its power lines, bringing the reported total in such trials to over \$300 million.

Among the highest amounts, the jury awarded \$11.5 million in non-economic damages to homeowner Denise Dake, who lost her house and workshop in the Eagle Point area, 45 minutes from Medford.

She had owned the house for decades, jurors were reminded in closing arguments, taking a property that had no electricity or plumbing and making it her own.

"Everything on the property was done with intention and care and reflected who they are and what they valued," Michael Wampold, representing the plaintiffs, told jurors. Dake's son and grandchildren were raised there, jurors heard.

Dake was also awarded \$627,850 in economic damages. The defense had argued in closings that Dake should receive \$565,574 in economic damages.

Three of the plaintiffs' properties were caught up in the Echo Mountain Fire, three in the Santiam Canyon Fire, and Dake's was the lone property in this trial that was in the South Obenchain Fire, in the southern part of the state.

The jury also awarded \$10 million in non-economic damages to plaintiff John Wagner and \$7 million in non-economic damages to plaintiff Michele Pfohl, as well as economic damages amounts of under \$500,000.

In closing arguments, Wampold showed photos and satellite images of the properties before and after the Labor Day 2020 fires.

He also showed a mockup of a fictional newspaper classified ad purporting to search for someone seeking to have their property damaged in a fire and to undergo physical and mental strain because of it.

"If someone saw an ad like that, what would you have to pay someone to do that?" he said. "Is there any doubt that if it was \$25 million, the Dakes would not take it up?"

Meanwhile, defense lawyer Rajan Trehan told the jury that fair compensation amounts had been established at trial, but that fairness was the key. He told the jury that \$25 million was the maximum they could award per plaintiff because that's what counsel had asked for in required paperwork.

"We're not here to tell you to ignore any of the plaintiffs' experiences," Trehan said, "the difficult parts of dealing with the fire."

He went on, "The entire point of this trial is to calculate reasonable damages, and in order to do that, you have to have a fuller picture."

As for the classified ad mockup, Trehan told the jury this trial is not about "whether the plaintiffs

would agree to participate. That's not what you're determining."

After the most recent verdict, in February, plaintiffs said the damages so far totaled over \$270 million, meaning they would now be over \$305 million after the addition of this fifth trial.

These trials and more scheduled to continue this year have been damages trials. A jury that decided classwide liability issues in 2023 found the power company was negligent before and during a historic wind event.

The classwide jury also decided punitive damages in all future trials would be awarded as one-quarter of compensatory damages. Here, if the judge adds it to the judgment, that would add over \$9 million.

The plaintiffs are represented by Michael Wampold.

Pacificorp is represented by Rajan Trehan.

The case is In re Pacificorp, case number not available, in the 4th Judicial District of Oregon.

--Editing by Michael Watanabe.

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Streaming Service Can't Drop Privacy Suit Over Data Sharing

By **Allison Grande**

Law360 (April 1, 2025, 11:11 PM EDT) -- A California federal judge refused to cut federal and state video privacy claims from a putative class action accusing movie streaming provider Mubi of secretly tracking and sharing subscribers' video-viewing histories with third parties such as Meta, rejecting arguments that the plaintiffs lacked standing and adequate support for their allegations.

In a ruling issued Monday, U.S. District Judge Eumi K. Lee mostly denied Mubi Inc.'s motion to dismiss the suit accusing it of violating the federal Video Privacy Protection Act and California privacy and unfair competition law by installing tracking pixels on its website that transmit information about the videos that subscribers view to Meta Platforms Inc., TikTok Inc., Google LLC and X Corp.

While Mubi moved to strike down the claims for both standing and pleading deficiencies, Judge Lee found that the plaintiffs' allegations under the VPPA and California Civil Code Section 1799.3, which prohibits video rental and sale providers from disclosing consumers' personal information without written consent, survived this challenge although the judge did scrap the plaintiffs' claim under California's Unfair Competition Law without leave to amend and axed their bid for injunctive relief for good.

When it came to the VPPA claim, Mubi contends that the plaintiffs have failed to allege the type of concrete injury necessary to establish Article III standing because their complaint hinged on the "procedural" issue of whether the streaming provider had obtained their consent in the specific "separate and distinct form" required by the statute rather than on actual harm.

But Judge Lee found that "the violation of [the plaintiffs'] substantive privacy right that was allegedly violated by Mubi's unauthorized disclosure of viewing activity to third parties to be exploited for advertising purposes," rather than their grievance about the alleged deficiency of Mubi's disclosure notice, formed the basis for plaintiffs' standing.

Because the "disclosure of private information is an 'intangible harm' that satisfies Article III standing," the plaintiffs' assertion that Mubi unlawfully sends personal information to third parties "concern substantive privacy rights under the VPPA" that are sufficient to sustain that claim, Judge Lee concluded.

The judge also declined to toss the VPPA claim on the grounds that the plaintiffs haven't accused Mubi of disclosing information that identified subscribers as having "requested or obtained" specific videos, finding that the streaming provider's assertion that the Meta tracking pixel only disclosed webpage links that don't identify which videos visitors watched "directly contradicts" plaintiffs' claims that the technology is capable of disclosing this information.

This disconnect creates "a factual dispute" that Judge Lee declined to resolve on a motion to dismiss.

"Rather, the court accepts the truth of plaintiffs' factual allegations and construes them in plaintiffs' favor," Judge Lee ruled, in finding that the plaintiffs' claim that Mubi discloses users' personal information via the Meta tracking pixel without obtaining proper consent was sufficient to state a plausible claim under the video privacy law.

Judge Lee additionally found that the plaintiffs had adequately supported their claim under California Civil Code Section 1799.3, rejecting Mubi's assertion that the plaintiffs had consented to the

disclosure of their personal information by agreeing to the privacy policy while registering for streaming service.

While website visitors encounter references to the privacy policy on both a home page where they can sign up for a free trial and a second page where they enter their payment information to begin this trial, Judge Lee concluded that these disclosures, typically presented to consumers in smaller and lighter font than other text of these pages, were insufficient to provide "reasonably conspicuous notice of a sign-in wrap agreement" that bound consumers.

"The distracting design of the Home Page draws the user's attention 'away from the barely readable critical text,'" Judge Lee ruled. "And the notice on the payment page was 'muddled by language regarding [subscription fees and membership cancellation], which may or may not be relevant to the user's transaction,' and '[a] reasonable user could easily assume the notice pertains to [subscription fees and membership cancellation] and hastily skim past it.'"

However, Judge Lee did grant Mubi's bid to ax the unfair competition law claim, finding that the plaintiffs had failed to allege that they lack an adequate legal remedy for their claims, as required by the statute.

Additionally, the plaintiffs lack standing to obtain injunctive relief under the VPPA and California privacy law because they haven't demonstrated that they face "a substantial risk of future injury," according to Judge Lee.

"Since plaintiffs' complaint is based on their prior lack of awareness of MUBI's disclosure practices, the allegation that they remain MUBI subscribers does not create a reasonable inference that plaintiffs will continue to watch films on MUBI," the judge ruled. "Accordingly, plaintiffs have not alleged a 'substantial risk of future injury' based on MUBI's ongoing or future disclosure of PII to third parties."

Mubi couldn't be reached for comment on Judge Lee's ruling Tuesday.

The plaintiffs are represented by Jeff S. Westerman and Caleb Marker of Zimmerman Reed LLP, Neal J. Deckant and Stefan Bogdanovich of Bursor & Fisher PA, Brandon M. Wise of Peiffer Wolf Carr Kane Conway & Wise LLP, David Almeida of Almeida Law Group LLC, and John J. Nelson of Milberg Coleman Bryson Phillips Grossman PLLC.

Mubi is represented by Michael H. Rubin and Gary Feinerman of Latham & Watkins LLP.

The case is Edwards et al. v. Mubi Inc., case number 5:24-cv-00638, in the U.S. District Court for the Northern District of California.

--Editing by Kristen Becker.