

San Francisco judge advances \$100M Wells Fargo settlement



San Francisco Superior Court Judge Jeffrey S. Ross

A San Francisco judge paved the way Wednesday for a \$100 million settlement in a shareholder derivative lawsuit accusing Wells Fargo officers and directors of neglecting risk management and regulatory compliance duties.

An attorney for the plaintiffs George Aguilar, a partner at Robbins LLP, wrote in a notice that the payment in the proposed settlement would be the third largest derivative settlement in California state court history.

San Francisco Superior Court Judge Jeffrey S. Ross denied a motion for an individual plaintiff to intervene Wednesday, allowing the case to move forward to preliminary approval of the settlement at a hearing on April 23.

The lawsuit claims breaches of fiduciary duty, waste of corporate assets and unjust enrichment due to mismanagement and noncompliance with several regulatory consent orders. *Timothy Himstreet and Montini Family Trust v. Charles W. Scharf et al*, CGC22599223 (S.F. Super. Ct. filed Apr. 19, 2022)

Randall Baron, co-counsel for the plaintiffs and a partner at Robbins Geller Rudman & Dowd LLP, said after the hearing Wednesday that once the settlement receives preliminary approval they could go back to the shareholders and see if they approve of it before moving to a final settlement -- pending successful communications between parties and Ross over outstanding issues.

The complaint claims Wells Fargo failed to comply with regulatory consent orders issued by the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Consumer Financial Protection Bureau that followed various scandals.

"We are pleased to put this matter behind us," said an emailed statement from the company. "Wells Fargo is a different company today, having made significant progress toward improving our risk and control infrastructure, as demonstrated by our regulators terminating eleven consent orders since 2019."

Tiffany Lin and Todd Cosenza of Willkie Farr & Gallagher LLP, and Brendan P. Cullen of Sullivan & Cromwell LLP represented the defendants and declined to comment.

The plaintiffs claim that individual defendants failed to ensure Wells Fargo addressed its risk management and compliance despite being aware of the regulatory requirements. The complaint highlights a finding by the U.S. House of Representatives Committee on Financial Services that Wells Fargo's compliance was "materially incomplete" and raised concerns about the company's leadership.

Brian J. Robbins of Robbins LLP listed in the complaint several large settlements the company agreed to pay in recent years.

"On May 4, 2018, Wells Fargo announced that it agreed to pay \$480 million to settle a securities class action lawsuit arising from the company's fake customer accounts scandal," Robbins wrote.

"In November 2019, Wells Fargo and its insurance partner agreed to pay another \$432 million to settle consumer claims arising from the company's automobile insurance scandal.

"On February 21, 2020, Wells Fargo agreed to pay \$3 billion to settle criminal and civil investigations into the unauthorized accounts scandal. These catastrophes should have been a wake-up call to overhaul the company's broken corporate culture."

The House committee called on Congress to "compel regulators to be more aggressive with regard to megabanks like Wells Fargo in using the supervisory tools and sanctions available to them," the complaint said. The committee also recommended that Congress "consider legislation mandating that regulators immediately direct a recidivist megabank like Wells Fargo to remove complacent and ineffective directors ... and compel regulators to either (a) downsize Wells Fargo, or (b) wind down the bank."

On this news, according to the complaint, Wells Fargo's market capitalization plunged 21.5%, or \$8.92 per share, on March 9, 2020, to close at \$32.48 per share compared to the closing of \$41.40 per share on March 4, 2020, erasing more than \$36.5 billion in market capitalization in just three trading days.

The proposed settlement includes a \$100 million payment to Wells Fargo from the insurers under Wells Fargo's director and officers' liability insurance policies.

The settlement also includes corporate governance reforms at Wells Fargo, aimed at improving its risk structure, programs, policies, procedures, employee training and board of director's oversight.

In exchange, the settlement will release a broad range of claims that relate to the derivative action and the regulatory consent orders.

#384740

James Twomey

Daily Journal Staff Writer
james_twomey@dailyjournal.com

Investor class certified in suit over Waste Management acquisition | Secondary Sources | National

Investor class certified in suit over Waste Management acquisition
2025 SECDBRF 1255

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By Nicole Banas

WESTLAW Securities Enforcement & Litigation Daily Briefing

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April 02, 2025

(April 02, 2025) - A New York federal judge has certified a class of Waste Management Inc. investors in a securities fraud lawsuit involving the company's \$4.6 billion acquisition of Advanced Disposal Services Inc. in 2020.

In re Waste Management Securities Litigation, No. 22-cv-4838, 2025 WL 958467 (S.D.N.Y. Mar. 31, 2025).

WM's evidence that its securities did not trade in an efficient market failed to rebut the presumption that investors purchased them in reliance on alleged misstatements, U.S. District Judge Lorna G. Schofield said in a March 31 opinion granting the plaintiffs' motion for class certification.

The judge also appointed Robbins Geller Rudman & Dowd LLP as lead counsel and tapped the Seafarers Officers & Employees Pension Plan and two other pension funds as class representatives.

Deceptive acquisition process?

The lawsuit alleges that WM issued \$4 billion in senior notes in 2019 to fund its acquisition of Advanced Disposal.

Four of the five series of notes contained a "special mandatory redemption" clause stating that WM would redeem the notes for 101% of par value, plus interest, if the acquisition did not close by July 14, 2020, the amended complaint says.

WM, CEO James C. Fish Jr. and three other executives concealed problems with the U.S. Department of Justice's antitrust review of the deal that rendered it unlikely to close by the deadline, according to the suit.

The company secretly renegotiated the merger agreement after the DOJ required WM to divest assets worth more than \$200 million, the complaint says.

WM surprised investors June 24, 2020, when it announced a revised merger agreement with Advanced Disposal and disclosed that it would redeem outstanding notes with the special mandatory redemption clause, the complaint says.

The announcement "eviscerated" the notes' premium, which had been as high as 121%, according to the suit.

The District Court mostly denied the defendants' motion to dismiss the securities fraud suit in March 2024, but it tossed claims against WM Treasurer Leslie K. Nagy.

Class certification squabble

The lead plaintiffs filed a motion for class certification in September, arguing that the suit predominately involved factual and legal questions common to all class members.

The defendants countered that the predominance requirement for certification was not satisfied because the plaintiffs did not establish a presumption of class members' reliance on the alleged misstatements.

The plaintiffs failed to prove that WM notes traded in an efficient market, as required to invoke the presumption, the opposition memo said.

The defendants also moved to exclude the expert opinion of finance professor Steven T. Feinstein, arguing that his event study of WM senior notes was unreliable.

Feinstein only analyzed price movement after the disclosures at the end of the class period, which is insufficient to demonstrate market efficiency, the motion said.

Motion granted

Judge Schofield said Feinstein's report had "limited probative value" because it evaluated movement on a single "news day" without comparing it to non-news days.

However, the defendants failed to disprove market efficiency with a competing event study that evaluated an "overly expansive" number of dates, the judge said.

Although the direct evidence of market efficiency was inconclusive, the plaintiffs made the required showing through indirect evidence, Judge Schofield said.

For example, the high trading frequency and large par value of the notes strongly suggests a liquid market that processes and reflects pertinent information, the judge said.

The defendants failed to rebut the presumption with evidence that the announcement June 24, 2020, that WM would redeem the notes did not affect note prices, Judge Schofield said.

She also declined to exclude Feinstein's opinion, saying it was helpful on issues of price impact and damages.

David D. Sterling and Amy Pharr Hefley of Baker Botts LLP represent the defendants.
By Nicole Banas

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Article: Advanced Disposal investors misled about \$4.9 billion merger, suit says 2019
MERACDBRF 0126

Date: May 24, 2019

Advanced Disposal Services Inc. and its directors violated federal securities laws when they issued a misleading proxy statement for the solid waste collection and recycling company's pending \$4.9 billion purchase by Waste Management Inc., according to a shareholder lawsuit.

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Beverage Maker Celsius Faces Overstocking-Related Revenue Inflation Claims in Nevada, Florida

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Ellen Bardash

April 2, 2025

A shareholder in the Florida-based beverage company Celsius has filed a derivative complaint accusing the beverage company of padding revenue reports by overstocking distribution channels, one of several cases filed in recent months that makes similar claims.

The latest case, filed Monday in Clark County, Nevada, by Robbins LLP and The O'Mara Law Firm, brings breach of fiduciary duty and unjust enrichment claims, alleging Celsius executives and directors benefitted from insider knowledge and made financial misrepresentations linked to \$11.3 billion in market capitalization losses.

That lawsuit and others, the first of which was initiated in November, reference the distribution agreement with Pepsi that Celsius entered into in 2022. All are filed in either state or federal courts in Nevada, where Celsius is incorporated, or Florida, where its principal executive offices are located. Some have been dismissed or consolidated, with six actions remaining that reference the distribution agreement and its resulting impact on revenue.

"The company recognized revenue at the time of product delivery, rather than at the point of sale. This approach enabled Celsius to report revenue for 2023 that was double that of the preceding year, inflating its true financial picture," the newest complaint stated. "However, Celsius represented that the revenue boost resulted from increased demand for its products. At the same time, Pepsi found itself overstocked with Celsius products from its one-time purchase and unlikely to make additional inventory purchases for the foreseeable future."

The O'Mara Law Firm is also representing a Celsius shareholder in another case in Clark County's district court, which the firm filed Feb. 7 alongside Lifshitz Law. Several days later, Muehlbauer Law Office, The Weiser Law Firm and RM Law filed an additional complaint in the same court.

Two lawsuits filed in the District of Nevada—one filed in mid-December and the other at the end of January—have been consolidated, with the parties stipulating The Brown Law Firm and Rigrodsky Law, each of which was involved with filing one of the original complaints, can serve as co-lead counsel for the shareholder plaintiffs. Celsius is represented by Alston & Bird and Nevada law firm Saltzman Mogan Dushoff, the latter of which is representing the company in at least one of the cases pending in Nevada state court.

Two additional securities cases are also pending in the Southern District of Florida, filed in November and January. Both have been assigned to U.S. District Judge Robin L. Rosenberg and Magistrate Judge Bruce E. Reinhart. Robbins Geller Rudman & Dowd are representing the plaintiffs in the more recent case, in which defense counsel has not been named. In the earlier filed action, Grant & Eisenhofer was named lead plaintiffs counsel on March 3, and as in the federal litigation in Nevada, Alston & Bird is representing Celsius.

A spokesperson for Celsius did not immediately respond for comment.

Class Action

April 3, 2025, 9:18 AM PDT

Bakkt Crypto Platform Sued by Investor After Key Customer Losses

- **COURT:** S.D.N.Y.
- **TRACK DOCKET:** No. [1:25-cv-02753](#) (Bloomberg Law subscription)

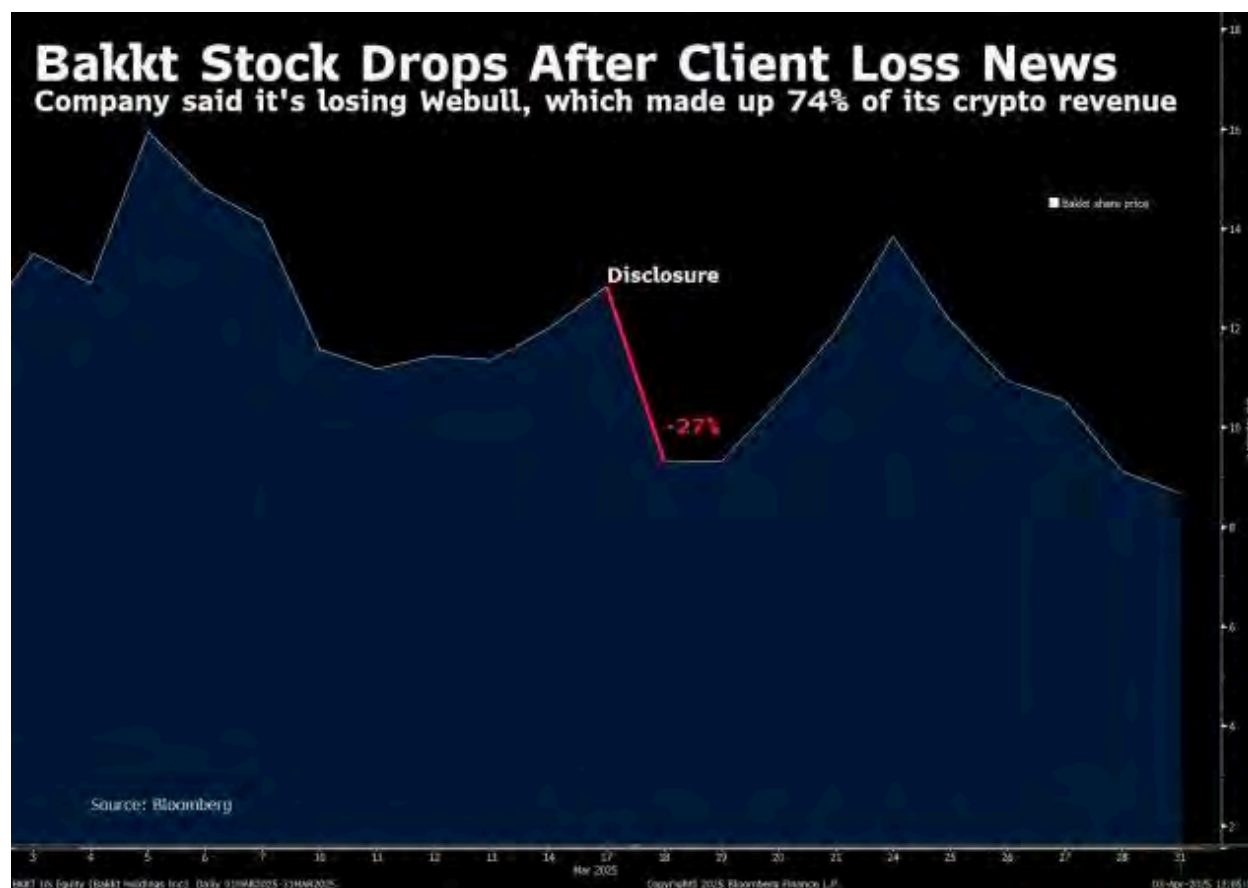
Bakkt Holdings Inc. overhyped its cryptocurrency services' stability until announcing large customer cancellations that would hinder its top-line revenue, a proposed class action said.

Share prices fell 27% the day after Bakkt said Webull Pay LLC and Bank of America Corp. wouldn't renew contracts, an investor told the US District Court for the Southern District of New York. Combined, this would result in a 73% loss to the crypto platform's top-line revenue, said the investor complaint filed Wednesday.

After market hours on March 17, Bakkt said in a federal filing that Webull was terminating its contract, effective this upcoming June, and that the client made up 74% of its crypto-services revenue across the first nine months of 2024 and 2023, the suit said. And the company reported Bank of America wasn't renewing its contract that expires in April; that had comprised 17% of its loyalty-services revenue in the first nine months of 2024, the complaint said.

Bakkt throughout 2024 attributed its digital asset services' revenue growth to its 2023 acquisition of an integrated trading platform, the complaint said. Investor Guy Serge A. Frankin's complaint said 98% of Bakkt's income came from crypto services. It has a "loyalty solutions" segment for point redemption and fulfillment, such as travel bookings, he said.

The proposed class would include those who invested in Bakkt from March 25, 2024, through March 17, 2025, during which time Frankin alleged the company misrepresented the diversity of its crypto services revenue and its ability to maintain key customers, as well as didn't disclose its dependency on Webull's contract.



The lawsuit comes after a year of stock and financial turbulence for Bakkt, which was launched by New York Stock Exchange owner Intercontinental Exchange Inc. in 2018.

Bakkt last year was exploring a potential sale after the company said it might not be able to continue as a going concern. The crypto exchange was under threat of being delisted from the NYSE. President Donald Trump's media company had reportedly been in talks to buy Bakkt last year, but that speculation appeared to fizzle as Trump Media & Technology Group Corp. announced plans to launch financial-services brand TruthFi in January.

Glancy Prongay & Murray LLP and The Law Offices of Frank R. Cruz represent Franklin. He's suing Bakkt, its CEO, CFO, and former CEO for alleged Securities Exchange Act of 1934 violations. He seeks damages among other relief.

Bakkt didn't immediately respond to an email seeking comment.

The case is Franklin v. Bakkt Holdings, Inc. , S.D.N.Y., No. 1:25-cv-02753, complaint filed 4/2/25 .

To contact the reporter on this story: Gillian R. Brassil in Washington at gbrassil@bloombergindustry.com

To contact the editor responsible for this story: Drew Singer at dsinger@bloombergindustry.com

Walmart's \$2.3 Billion Deal for Vizio Hit With Court Challenge

- **COURT:** Del. Ch.
- **TRACK DOCKET:** [No. 2025-0314](#)

Vizio Holding Corp.'s founder pushed the smart-TV maker into an underpriced \$2.3 billion sale to Walmart Inc. in exchange for lucrative side perks offered during secret talks, according to a shareholder lawsuit.

An investor cashed out by the transaction is suing Vizio's onetime senior leaders, including CEO William Wang, company president Ben Wong, and other corporate directors at the time of the acquisition. Despite the emergence of other suitors, Wang wielded his 86% stake to tilt the scales toward Walmart before taking an almost-done deal to the board, which rubber-stamped terms that steered value to him and Wong, the suit says.

"Wang and Walmart orchestrated a process designed to maximize Wang's personal interests," then got "a sweetheart deal by granting Wang and his underlings lucrative employment contracts," according to the court complaint. "The unfair process led to an unfair price."

The transaction, which closed in December, is designed to boost growth at the retail giant's advertising segment, Walmart Connect. The allegations echo several recurring themes in Delaware's Chancery Court, the leading US forum for merger fights and corporate cases. The elite business court's recent crackdown on controlling stockholder conflicts of interest—involving both buyouts and other contexts—led to a landmark legal overhaul last month designed to smooth the way for dealmakers by reducing shareholder scrutiny.

Walmart, which isn't directly named as a defendant, called the claims meritless through a spokesperson Wednesday. "There are strong defenses to the allegations in this suit," the company said in a statement. "We expect it to be resolved quickly."

According to the lawsuit, Wang spent months engaged in clandestine negotiations before getting the board involved. The board then belatedly set up a special transaction committee that—though nominally independent—"lacked the critical authority to address conflicts of interest or to say no," the suit says.

The committee also allegedly hired a JPMorgan Chase & Co. affiliate with significant conflicts of its own stemming from its extensive history with Wang and a compensation structure that strongly favored deal approval. JPMorgan isn't named as a defendant.

The transaction—which was never put to an investor vote—let Wang and Wong monetize their shares, participate in the synergies that justified the sale in the first place, and “obtain equity in a larger, more stable company,” according to the court filing.

The lawsuit was made public March 31 after being filed under seal March 25.

The investor leading the litigation, Robert Garfield, is represented by Block & Leviton LLP. Wang, Wong, and the other former board members haven't yet made court appearances.

The case is Garfield v. Wang, Del. Ch., No. 2025-0314, complaint unsealed 3/31/25 .

To contact the reporter on this story: Mike Leonard in Washington at mleonard@bloomberglaw.com

To contact the editor responsible for this story: Drew Singer at dsinger@bloombergindustry.com

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InnovAge Investors Keep PE Firm in Suit Over Elder Care IPO

- IPO allegedly misled on shift from nonprofit to for-profit
- Court decision is latest rejecting dismissals in lawsuit

InnovAge Holding Corp. investors can sue the entities behind private equity firm Welsh, Carson, Anderson & Stowe in a sprawling case against the geriatric health care company, its underwriters, and others, a federal court ruled.

Although “Welsh, Carson, Anderson & Stowe” is simply a trade name, the investors adequately alleged that WCAS Management Corp. controls the business and its funds and can potentially be held liable as a “control person” of InnovAge, Judge William J. Martinez said for the US District Court for the District of Colorado. The investors will also have a chance to prove that two other WCAS entities are subject to control person liability as well, he said, declining to dismiss them from the proposed class action.

InnovAge initially provided “Program of All-Inclusive Care for the Elderly” services as a nonprofit. The investors allege it then transitioned to become a for-profit corporation with a \$196 million investment from WCAS. But InnovAge made false and misleading statements about the success of its growth strategy and the potential impact of government PACE audits in its initial public offering, they said. The offering “turned out to be one of the five worst-performing IPOs in 2021” as its standard of care failed to keep up with enrollment and state regulators cracked down, they said.

Martinez declined to dismiss claims against J.P. Morgan Securities LLC and several other underwriters in a January 2024 decision. He earlier allowed some claims to proceed against InnovAge itself and other defendants.

Former Florida Gov. Jeb Bush (R) and Ted Kennedy Jr., an attorney at Epstein Becker & Green PC and former Connecticut state legislator, are on the InnovAge board and are named as defendants in the suit, as well as in a paused shareholder derivative suit in the Delaware Chancery Court.

Cohen Milstein Sellers & Toll PLLC is lead counsel for the investors. Sullivan & Cromwell LLP represents the WCAS entities, InnovAge, and other defendants. Freshfields US LLP represents the underwriters.

The case is El Paso Firemen & Policemen's Pension Fund v. InnovAge Holding Corp. , 2025 BL 109216, D. Colo., No. 21-cv-2770, 3/31/25 .

To contact the reporter on this story: Martina Barash in Washington at mbarash@bloomberglaw.com

To contact the editor responsible for this story: Drew Singer at dsinger@bloombergindustry.com

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Maison Solutions Sheds Investor Visa Fraud Allegations for Now

- Investors didn't sufficiently allege hidden vendor tie
- Judge letting investors replead their EB-5 fraud, selloff suit

Maison Solutions Inc. substantively beat investor allegations that the specialty grocery retailer concealed immigrant visa fraud accusations against its CEO and certain related-party transactions before its initial public offering and a major selloff.

The lead plaintiffs insufficiently alleged how Maison neither disclosing litigation concerning said visa fraud nor purported related party transactions would've made a difference to investors in getting stock, Judge Sherilyn Peace Garnett said. Because investors' allegations were grounded in fraud, they were subject to a heightened pleading standard to bring liability claims under a section of securities law for alleged misrepresentations in Maison's IPO registration statement, the US District Court for the Central District of California judge said.

The first amended complaint also didn't adequately connect Maison to XHJC Holdings Inc., Garnett said in her Monday order mostly granting defendants' motion to dismiss. The suit had said that its vendor XHJC shared a mailing address with a restaurant allegedly associated with Maison CEO John Xu and that relationship should've been disclosed. Xu and another of his businesses were accused in a lawsuit of operating supermarkets as a front to defraud the EB-5 visa program, all of which was highlighted by a short seller on social media in 2023, investors said.

But Garnett said she declined to "prematurely determine" Maison didn't need to disclose that litigation in its registration statement, even though she'd said investors insufficiently alleged that point's materiality.

The fact that the lawsuit then-pending in the Los Angeles County Superior Court was viewable on a public docket wasn't enough; a rational jury could plausibly find Maison misleadingly omitted that information, she said. And the investors plausibly alleged Xu controlled two partnerships that the company acquired equity in, which wasn't disclosed, she said.

Garnett is letting the investors file a second amended complaint. She declined to separately address investors' securities fraud claims, given they used those same alleged misrepresentations from the registration statement.

Share prices fell almost 84% the day Hindenburg Research alleged to have “found multiple red flags” concerning Maison, including the visa fraud suit and purported XHJC relation, Garnett said. Investors subsequently sued. Maison later said the report contained inaccurate and misleading statements, she said.

The proposed class would include those who got Maison stock connected to its IPO registration statement and/or when it began trading on Oct. 5, 2023 through Dec. 15, 2023, when the stock plummeted.

Glancy Prongay and Murray LLP is lead counsel and The Law Offices of Frank R. Cruz is additional counsel for lead plaintiffs Migwang Jeong, Yun Jung Kim, Yousub Jun, Lee Sun-Bok, and Hyeonnam Gang. Akerman LLP represents defendants Maison, current and former officers and directors, and underwriters for its IPO. None of these firms immediately responded to emails seeking comment.

The case is Green v. Maison Sols. Inc. , C.D. Cal., No. 2:24-cv-00063, 3/31/25 .

To contact the reporter on this story: Gillian R. Brassil in Washington at gbrassil@bloombergindustry.com

To contact the editor responsible for this story: Kiera Geraghty at kgeraghty@bloombergindustry.com

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Motorsport Games Settles Securities Fraud Suit Over Game Success

Motorsport Games Inc. settled with a former co-stakeholder that had alleged the company concealed how well sales of a new racing video game would do before selling its shares.

They also resolved counterclaims that Motorsport brought against Innovate 2 Corp. for allegedly breaching their stock-purchase agreement by suing. US District Court for the District of Delaware Judge Stephanos Bibas inked their joint stipulation to dismiss all claims with prejudice on Wednesday. Bibas in February tossed Innovate's claims and OKed Motorsport's counterclaim when granting summary judgment in the latter's favor.

- Bibas said Innovate failed to allege any misrepresentations or omissions surrounding 704Games' sales data or Motorsport's financial status: Innovate failed to demonstrate that the sales projection was inaccurate when made, Bibas said
- Motorsport agreed to buy almost 54% of the struggling game-maker, leaving Innovate with almost 14%, in 2018; 704Games allegedly painted a gloomy picture about its new game's sales at a 2020 board meeting, per the lawsuit. But the game did better than projected, it said
- Motorsport said it felt it overpaid for shares and wanted a form of recompense a week after the meeting, per Bibas' order—a couple months after the meeting, it bought out Innovate's shares. "But not every poor investment decision is due to securities fraud," he said

Venable LLP represents Motorsport. Chipman Brown Cicero & Cole LLP and Huth Reynolds LLP represent Innovate. None of the firms immediately responded to emails seeking comment.

The case is *Innovate 2, Corp. v. Motorsport Games Inc.*, D. Del., No. 1:21-cv-00165, closed 4/2/25.

To contact the reporter on this story: Gillian R. Brassil in Washington at gbrassil@bloombergindustry.com

To contact the editor responsible for this story: Adam Ramirez at aramirez@bloombergindustry.com

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Litigation Trend: Securities Class Actions on the Rise Against This Sector

 [law.com/texaslawyer/2025/04/03/litigation-trend-securities-class-actions-on-the-rise-against-this-sector](https://www.law.com/texaslawyer/2025/04/03/litigation-trend-securities-class-actions-on-the-rise-against-this-sector)

Laura Lorek

April 3, 2025

Energy companies faced 15 new federal securities class action complaints in 2024, a spike from recent years, according to a Baker Botts report.

The rise reflects heightened scrutiny following high-profile incidents and market volatility.

Stock price declines often lead to securities litigation, particularly in response to regulatory actions, environmental incidents, construction delays, or market disruptions.

Jim Beha, partner with Baker Botts in New York, noted 219 securities class action complaints against all companies last year—and nearly 7 percent or 15 of those were against energy companies.

"Anytime something happens that makes public companies stock price fall by a meaningful amount, securities plaintiffs look to investigate whether there's fraud," Beha said.

According to Baker Botts' inaugural "Review of Securities Class Action Litigation in the Energy Industries," many recent securities complaints stemmed from distinct, adverse events unrelated to traditional financial reporting issues.

These events include the landslide at SSR Mining's facility, regulatory changes impacting solar companies in California, and project delays affecting New Fortress Energy's LNG operations.

"Overall, the vast majority of the complaints are filed either in the Second Circuit in the Southern District of New York and Manhattan or they're filed in Northern California ... after those first big two, it's the district courts in Texas that get the most involving the energy companies," Beha said.

Beha said energy defendants achieved strong litigation outcomes in most cases. In the past decade, 43 percent of energy industry cases were dismissed, and nearly 39 percent settled. None went to trial verdict.

"What we found over the last decade for the energy company cases that have been resolved, ... there have been 137 over 10 years— ... 59 was a defense victory, and 40 of them settled," Beha said. "Energy company defendants are winning the vast majority of the cases outright without paying anything to settle...those results are a little bit better than the overall numbers for all securities cases."

According to the Baker Botts report, settlements involving energy companies had an average value of \$18 million in 2024, slightly below the broader securities litigation average. The median time from filing to settlement exceeded four years, consistent with historical patterns.

"There have been, in the last 30 years, maybe 15 trials against all cases," Beha said.

Beha said a case settled during the third week of trial in Houston, Southern District of Texas. Robbins Geller Rudman & Dowd LLP and co-lead trial counsel from Entwistle & Cappucci secured a \$126.3 million recovery for investors in a securities fraud class action against Alta Mesa—a high-profile and now-bankrupt “special purpose acquisition company” or “SPAC.”

The settlement came in the midst of a multi-week jury trial involving Alta Mesa Resources, Inc., certain of its officers, directors, and board members, and the private equity firm Riverstone Holdings.

In addition, the Baker Botts report concluded that pure omissions are not actionable. The Supreme Court confirmed that securities fraud claims must involve affirmative misleading statements; simply staying silent about certain risks is not securities fraud.

Forward-looking statements are still protected. Courts enforce the federal securities law safe harbor for such statements if they include meaningful cautionary language, which provides a strong defense against claims of failing to predict future issues.

Courts often dismiss securities fraud claims based on general statements about safety or ethics, viewing them as puffery. For instance, Hawaiian Electric's wildfire litigation saw such allegations rejected for being too generalized.

US judicial panel votes to scrap key part of amicus disclosure rule

 [reuters.com/legal/government/us-judicial-panel-votes-scrap-key-part-amicus-disclosure-rule-2025-04-02](https://www.reuters.com/legal/government/us-judicial-panel-votes-scrap-key-part-amicus-disclosure-rule-2025-04-02)

Nate Raymond

April 2, 2025

A bronze statue titled "Justice Delayed, Justice Denied" depicting a figure of Justice is seen on the Albert V. Bryan United States Courthouse in Alexandria, Virginia, U.S., September 1, 2020. REUTERS/Andrew Kelly/File Photo Purchase Licensing Rights, opens new tab

April 2 (Reuters) - A U.S. judicial panel voted on Wednesday to abandon a core part of a proposed rule aimed at increasing disclosure of who funds friend-of-the-court briefs by outside groups following backlash from the U.S. Chamber of Commerce and other trade associations.

The U.S. Judicial Conference's Advisory Committee on Appellate Rules, during a meeting in Atlanta, voted 5-4 to scrap a proposed rule change that would have required non-profits, charities, or trade associations that file amicus briefs to disclose when a party in a case is a major financial contributor.

The disclosure requirement was a central piece of a proposed rule judicial policymakers had put out for public comment following years of deliberations over whether to impose greater transparency requirements on filers of amicus briefs.

The proposed rule the panel had endorsed last year would have required amicus briefs to disclose if a party or its counsel in a given case contributed 25% or more of the organization's annual revenue.

The committee had also proposed requiring an amicus brief filer to name any donor who earmarked money for the preparation of the brief if that person or entity had only been a member of the organization filing it for less than 12 months.

The committee on Wednesday voted unanimously to advance that piece of the proposal to the Judicial Conference's Committee on Rules of Practice and Procedure, its top rulemaking body, to vote to finalize the rule.

But the panel narrowly voted down the 25% requirement, after some judges and the U.S. Department of Justice now under Republican U.S. President Donald Trump questioned its necessity.

It had been widely opposed by groups that frequently file such briefs in cases, like the Heritage Foundation and the U.S. Chamber of Commerce, which argued mandatory disclosure of a group's members would violate its right to free association under the U.S. Constitution's First Amendment.

Lisa Wright, a federal public defender, said it was no surprise such groups opposed the rule, but she argued greater disclosure would help maintain the public's trust in the judicial system.

But U.S. District Judge Carl Nichols, a Trump appointee in Washington, cited a lack of any known cases where a judge had been "hoodwinked by not knowing this information" into relying on arguments in an amicus brief submitted by a non-party.

"What matters much more to me is what an amicus brief says rather than who it is filed by," he said.

The judiciary first began considering the rule following the introduction of legislation in 2019 by Democratic lawmakers including Democratic U.S. Senator Sheldon Whitehouse of Rhode Island that would regulate amicus brief filers.

He and other Democrats have argued that changes were needed to expose how special interests can secretly disguise their advocacy for causes in cases pending in the courts by funneling donations through non-profits that file amicus briefs.

While Democratic lawmakers have in the years since reintroduced the legislation, it has never been enacted.

Mark Freeman, an official with the U.S. Department of Justice who spoke on behalf of Acting Solicitor General Sarah Harris, said the department was concerned the disclosure requirement could be overly burdensome.

"We're at risk of going overboard with the disclosure rules and deterring the filing of amicus briefs," he said.

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Nate Raymond reports on the federal judiciary and litigation. He can be reached at nate.raymond@thomsonreuters.com.

'Consumer confusion': FDA rebukes acne med findings of one of plaintiff lawyers' favorite labs

 legalnewsline.com/stories/670758431-consumer-confusion-fda-rebukes-acne-med-findings-of-one-of-plaintiff-lawyers-favorite-labs

John O'Brien

April 3, 2025

Federal Gov

Turow | <https://www.skadden.com/>

WASHINGTON (Legal Newsline) - It could've been the next pot of gold for plaintiff lawyers, but the Food and Drug Administration says it's bogus.

The FDA has again rejected the findings of product-testing lab Valisure, which is responsible for tens of thousands of Zantac lawsuits despite criticism from the agency. Valisure dialed up the Zantac playbook, which previously led to a multibillion-dollar settlement, by super-heating acne medicine to produce benzene.

It then submitted its findings to the FDA as plaintiff lawyers put the Valisure study in a flurry of lawsuits against defendants like Walmart, L'Oreal and Target. The same day Valisure announced its citizen petition with the FDA, Bloomberg and CNN ran stories on it. The lawsuits came a couple of days later, with one woman filing five in one day.

"The regular use of Valisure data in simultaneously filed citizen petitions and lawsuits certainly suggests a connection with the plaintiffs' bar," said Rachel Turow, of counsel at Skadden Arps on FDA regulatory issues.

"We see similar patterns like this with other consumer protection groups and the plaintiffs' bar, but the timing and nature of the data use in this instance suggests a particularly close relationship."

Valisure uses its own methods to find out what happens when products like Zantac are heated to extreme temperatures. In the case of acne medication, it claims benzoyl peroxide turns into cancer-causing benzene.

Around 30 lawsuits followed Valisure's testing on the acne medication. But they are in jeopardy now, after the FDA tested 95 acne drugs and found only six lots with small problems, all nearing their expiration dates.

"Even with daily use of these products for decades, the risk of a person developing cancer because of exposure to benzene found in these products is very low," the FDA wrote.

The FDA went on to warn labs like Valisure to use validated testing methods, saying Valisure's processes may result in much higher reported levels of contaminants like benzene.

"FDA has continued to raise concern that use of unvalidated testing methods by third-party laboratories can produce inaccurate results leading to consumer confusion," the FDA said.

Valisure heated acne medicines to 170 degrees Fahrenheit and found "concerningly high levels of benzene in only 18 days." Valisure said the temperature was a reasonable estimation of what might occur in a shipping container or a hot car.

It was a similar process that produced NDMA in the heartburn medicine Zantac. Valisure created an artificial stomach, heated it to 266 degrees and exposed it to a level of salt that would kill a human.

And though the FDA similarly rejected those findings, lawsuits pressed on. A federal judge in Florida dismissed about 50,000 lawsuits after finding Valisure's methods didn't fit expert witness standards, but judges in Delaware and California reached the opposite conclusion and allowed lawsuits there to proceed.

That green light caused a massive spike in advertising for lawyers trying to find Zantac clients. The research firm X Ante found trial lawyers went from \$3,000 on Zantac ads in May, then after the Delaware ruling that figure went up to \$1.8 million in June and July.

In Philadelphia, plaintiffs asked a judge with a reputation for keeping "junk science" out of his courtroom to recuse himself from handling pretrial matters for more than 400 cases, but he refused, leading to an appeal.

As of August, there were 28 cases over acne medicine that, while not alleging any physical injury, said consumers would not have paid as much for them, or not bought them at all, had they been warned of the risk of benzene.

There are at least 12 different defendants. One woman - Lucinda O'Dea - filed five lawsuits in one day, but they were against five separate companies regarding five different products.

The panel that creates multidistrict litigation proceedings refused to group them all together, then earlier this year refused to consolidate six cases against L'Oreal.

In September, a Los Angeles federal judge found three lawsuits against the makers of Proactiv and other medications were barred by federal drug safety law since the FDA had given approval.

The FDA's March 11 findings won't help other plaintiffs' cases, unless they are suing over the six products out of 95 to have slightly elevated benzene levels. They are La Roche-Posay Effaclar Duo Dual Action Acne Treatment, Walgreens' Tinted Acne Treatment Cream and Acne Control Cleanser, Proactiv's Emergency Blemish Relief Cream and Skin Smoothing Exfoliator and SLMD Benzoyl Peroxide Acne Lotion.

Those companies volunteered to recall the lot numbers of those tested products, while the maker of Zapzyt Acne Treatment Gel recalled it after conducting its own testing.

Of course, reprimands from the FDA didn't stop the Zantac judges in Delaware and California from letting those cases proceed. Trial lawyers paid \$2 million to a second lab to produce similar results as Valisure's, which medical experts then cited to conclude Zantac can cause cancer.

The FDA said Valisure's methods on Zantac were unreliable. Though the Florida judge took that to heart, the Delaware judge downplayed the significance, which led to GlaxoSmithKline settling some 80,000 state-court lawsuits last year for \$2.2 billion.

Valisure CEO David Light started the company following his time at Yale University and a prison stint for possessing an illegal cache of weapons.

"There are other consumer publications that do their own testing and that have plaintiffs' lawyers pushing their theories," said Turow, a former regulatory counsel at the FDA who has held in-house jobs at major pharmaceutical manufacturers.

"However, I have not seen them being publicly criticized by FDA since many of them do not submit their results to the agency.

"FDA's testing should trump Valisure's testing, so I would expect FDA's declaration that the products are safe to be protective for defendants in (acne medicine) cases."

ORGANIZATIONS IN THIS STORY

Food And Drug Administration

Class Action

April 3, 2025, 8:54AM PDT

Court Names 12 Sites for Parties to Match PFAS to Manufacturers

- Goal to see if producers of contaminants can be identified
- US adds reasons, examples to claims it's not liable

The federal court overseeing national PFAS litigation has selected a dozen facilities where plaintiffs and defendants will decide if they can determine which companies produced the specific chemicals or fire fighting suppressants contaminating those sites.

Determining whether the producers of specific fire fighting suppressants or PFAS in them can be linked to a site's pollution is a critical piece of information for the litigation, *In Re Aqueous Film-Forming Foams Products Liability Litigation MDL 2873*, Judge Richard M. Gergel of the US District Court District of South Carolina, repeatedly has said.

The determination is instrumental for all sides to know as they prepare to expend significant time and money litigating thousands of property, personal injury, and other torts that have been combined into the case.

Gergel's April 1 order named 12 airports, fire stations, and fire training facilities in seven states as the sites where litigants will seek information about the per- and polyfluoroalkyl substances found there and whether those can be traced to specific PFAS producers or the manufacturers of a fire suppressant, known as aqueous film-forming foam (AFFF), that contained the chemicals.

Airports and other facilities using AFFF were chosen as they seemed the most likely to maintain purchase records. The states in which the facilities are found are: Alaska, Florida, Indiana, Louisiana, New Hampshire, Massachusetts, and Maryland.

US Expands Defenses

The federal government—in a separate, but related filing on April 2—added additional specific defenses to previously made claims that it's not liable for AFFF-related harms and can't be sued to speed, extend, or otherwise shape its ongoing cleanups of PFAS under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or Superfund.

Among other points in the 15-page amended statement of defenses, the federal government said: "Plaintiffs' claims against the Federal Aviation Administration are barred, in whole or in part, by prior written agreements."

The Federal Aviation Administration required many airports to use AFFF for years.

The federal government also said it has “sovereign immunity” in cases where plaintiffs assert it should have complied with the New Mexico Hazardous Waste Act, New Jersey Safe Drinking Water Act, New York Environmental Conservation Law, Washington Model Toxics Control Act, and other state statutes.

And, alleged violations of federal laws including CERCLA, the Clean Water Act, Resource Conservation and Recovery Act, and Safe Drinking Water Act also are “not actionable against the federal government,” it said.

The case is In Re Aqueous Film-Forming Foams Products Liability Litigation MDL 2873 , D.S.C., No. 18-cv-02873, order filed 4/1/25 .

To contact the reporter on this story: Pat Rizzuto in Washington at prizzuto@bloombergindustry.com

To contact the editor responsible for this story: Zachary Sherwood at zsherwood@bloombergindustry.com

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Class Action

April 2, 2025, 12:13 PM PDT

Polyethylene Plumbing System Maker Can't Shed Defect Class Suit

- Arbitration wasn't assigned to homeowners, contractor said
- Class definition too broad, but it's too early to strike claims

Uponor Inc. and associated entities' attempts to shake a proposed class action alleging the companies sold polyethylene (PEX) tubing that prematurely degrades was denied by a federal judge.

The US District Court for the Middle District of Tennessee denied the companies' motion to compel arbitration, dismiss the suit, and strike class allegations.

The plaintiffs alleged that Uponor's manufacturing process involves subjecting the pipes to high temperatures that cause the tubing to prematurely degrade, crack, leak, and damage other structures in their homes. The homes were built by contractors who used the tubing, and the homeowners say Uponor failed to disclose the alleged defects to builders, plumbers, and the public.

Uponor argued the plaintiffs must arbitrate their claims due to an arbitration provision within the company's express warranty agreement.

But that argument "is significantly hampered by the fact that Defendants do little—beyond merely noting the Warranty appeared on their website—to explain where this Warranty would have appeared, who would have signed a document containing it, and so forth," Judge Eli J. Richardson said.

The judge rejected the company's argument that the plaintiffs were assigned the warranty because home builders regularly assign warranties for products in new homes to the purchasers.

The homeowners provided a declaration from the contractor stating that it never knew about the warranty or transferred one to the plaintiffs, and Uponor didn't rebut the declaration, Richardson said.

Uponor also argued the complaint should be dismissed because the piping was part of the homes, making the homes themselves the defective product.

The issue was an issue of first impression in Tennessee law, but the judge said that because the piping is "integral to and intertwines" with the homes Tennessee courts would likely find that homes with the piping rather than the piping itself are the "product" if they were purchased with the PEX already installed.

Here, it's unclear whether the plaintiffs' homes satisfy that categorization because the complaint doesn't say whether the piping was a modification or was installed at the purchase time, Richardson said.

Richardson also rejected Uponor's argument that the homeowners couldn't show causation. The plaintiffs detailed the manufacturing process at issue and explained "in detail" how the process changed the chemical structure of PEX and caused premature damage, he said.

Though the judge didn't strike class allegations, he noted that they were "on thin ice" and that he wouldn't certify the current class definition.

The plaintiffs wanted to certify a class of all people or entities who owned homes, businesses, or other structures in Tennessee that had Uponor's PEX as components of the plumbing system between 2009 and 2021 and who experienced leaks.

Determining whether the defects were from the PEX in the plaintiffs' homes or faulty installation or another problem that caused leaks is a highly individualized inquiry, Richardson said.

But it's too early to strike the claims without giving the plaintiffs a chance to narrow the definition, he said.

The homeowners are represented by Wyatt Tarrant & Combs LLP.

Uponor is represented by Puryear Pippenger & Cook PLLC.

The case is Carrico v. Uponor Inc. , M.D. Tenn., No. 3:23-cv-00497, 3/31/25 .

To contact the reporter on this story: Shweta Watwe in Washington at swatwe@bloombergindustry.com

To contact the editor responsible for this story: Nicholas Datlowe at ndatlowe@bloombergindustry.com

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Several companies must face lawsuit over tainted baby food, US judge rules

 [reuters.com/business/healthcare-pharmaceuticals/several-companies-must-face-lawsuit-over-tainted-baby-food-us-judge-rules-2025-04-03](https://www.reuters.com/business/healthcare-pharmaceuticals/several-companies-must-face-lawsuit-over-tainted-baby-food-us-judge-rules-2025-04-03)

Jonathan Stempel

April 3, 2025

Item 1 of 3 Gerber baby food products are seen on shelves at a buybuy Baby store in Libertyview Industrial Plaza, Brooklyn, New York, U.S., September 14, 2022. REUTERS/Siddharth Cavale/File Photo

[1/3]Gerber baby food products are seen on shelves at a buybuy Baby store in Libertyview Industrial Plaza, Brooklyn, New York, U.S., September 14, 2022. REUTERS/Siddharth Cavale/File Photo Purchase Licensing Rights, opens new tab

- Baby food said to cause ADHD, other damage to children
- Parents alleged negligence, manufacturing defects
- Companies say 'heavy metals' occur naturally

April 3 (Reuters) - A U.S. judge said several companies including Walmart (WMT.N) , opens new tab, Beech-Nut and Gerber must face a nationwide lawsuit claiming that toxic heavy metals contaminated their baby food, causing brain and neurodevelopmental damage to children who ate it.

In a decision on Wednesday, U.S. District Judge Jacqueline Scott Corley said parents can try to prove that defective manufacturing, negligence and failure to warn about more than 600 baby food products caused their children to suffer autism spectrum disorder and attention deficit hyperactivity disorder.

Parents said some defendants failed to adhere to internal limits about how much arsenic, cadmium, lead and mercury in baby food was safe, while others never addressed the issue.

Corley said this made it plausible to claim that some baby food was unsafe, if safety criteria were not followed. The San Francisco-based judge also said no "ironclad rule" required the parents to allege that toxicity crossed a particular threshold.

Beech-Nut is owned by Nestle (NESN.S) , opens new tab, Gerber is owned by Switzerland's Hero Group, and Walmart sold its baby food under its own name.

Other brands in the case include Hain Celestial's (HAIN.O) , opens new tab Earth's Best Organics, Danone's (DANO.PA) , opens new tab Happy Baby and Happy Tot, Sun-Maid Growers of California's Plum Organics and Neptune Wellness Solutions' (NTUG.BE) , opens new tab Sprout Organic.

Lawyers for the defendant companies did not immediately respond to requests for comment on Thursday.

The companies have said their baby food is safe. They also argued that heavy metals are naturally present in the environment, and parents "cannot simply allege that detectable levels of heavy metals make baby food defective."

R. Brent Wisner, a lawyer for the plaintiffs, said he was pleased with the decision.

"Selling baby food with lead and arsenic is simply not OK, and with the court's ruling, we are one step closer to holding these companies accountable for their decades of malfeasance," Wisner said in an email.

Parents sued after a 2021 report [\[link\]](#), opens new tab by a U.S. House of Representatives subcommittee on economic and consumer policy said "dangerous" levels of heavy metals in some baby food could cause neurological damage.

Corley dismissed Campbell's (CPB.O) [\[link\]](#), opens new tab, which sold Plum Organics to Sun-Maid in 2021, as a defendant.

Amazon.com (AMZN.O) [\[link\]](#), opens new tab and its Whole Foods unit have also been sued for selling Hain and Danone baby food.

The case is In re: Baby Food Products Liability Litigation, U.S. District Court, Northern District of California, No. 24-md-03101.

Reporting by Jonathan Stempel in New York; Editing by Bill Berkrot

Our Standards: The Thomson Reuters Trust Principles. [\[link\]](#), opens new tab

Big Law's Blacklist Reckoning Will Mark Firms for a Generation

University of Washington's Eric Schnapper examines the divide growing between Big Law firms that choose to work with President Donald Trump versus resisting the EOs targeting lawyers—and what it means for the profession's future.

The differences that are emerging among major law firms about how to respond to the blacklisting executive orders are likely to polarize and deeply divide the legal profession for a generation.

First, there is a stark division among the firms that were blacklisted or anticipated that they would soon be. Three major firms, blacklisted by the White House, have now challenged the blacklisting, represented by three additional firms that have chosen to run the risks involved. Four firms have taken a very different course, opting to make a deal to avoid blacklisting.

The roster of firms on each side is likely to increase. Recent executive orders proclaim a broad intent to undermine “global” “Big Law” firms for handling cases the administration dislikes. Some targets of any future executive orders will fight, others may settle. And there are reports that not-yet-blacklisted firms are currently negotiating with the White House to enter into preemptive deals to avoid blacklisting.

Law firms may well regard these settlements as having encouraged the administration to continue and expand the blacklisting.

Second, at some point, there will be a major law firm amicus brief in support of those challenging the blacklisting. The firms that have the courage to join in that brief may reasonably feel that they are in greater jeopardy of official reprisal because other firms remain on the sidelines. After all, if all of the largest 25 or 50 firms signed such a brief, the administration would not have a basis for singling out any particular firm.

Third, firms that poach clients or attorneys from those that are challenging the blacklisting, or that have incurred the wrath of the administration for joining an amicus brief, will rightfully be resented by those who lose clients or lawyers. To the extent that clients or attorneys leave firms that are in disfavor with the administration, there may be disputes about whether this was the result of affirmative poaching. As a practical matter, firms that have made deals with the administration, and those that have remained cautiously on the sidelines, will—even without doing anything further—be able to benefit from the perilous circumstances of their more confrontational peers.

Fourth, decisions that deal-making firms make to avoid controversial cases or clients are likely to be scrutinized for evidence that those firms are trying to curry favor with the Trump administration or are acting pursuant to some unspoken understanding.

These emerging differences among the large firms may affect the comparative willingness of firms to handle cases challenging the legality of other Trump administration actions. Until now, most large firms have declined to get involved in those disputes, wary of provoking the administration. But once a firm has challenged the blacklisting, as either a plaintiff or counsel, it may conclude that involvement in another lawsuit against the government couldn't make things any worse. On the other hand, firms that opted to make deals will probably be unwilling to undermine the "constructive relationship" with the administration for which they may have paid dearly.

Trump has inflamed this situation by denigrating law firms that are making deals. "They are all bending and saying, 'Sir, thank you very much. . . . Where do I sign?'" The lawyers who have reached or are negotiating deals are probably too closely aligned with the administration to publicly dispute that demeaning account. And critics of the deals may well regard Trump's statements as confirming their worst fears.

Major large firms' choices today will help define those firms for decades. The firms that opt to challenge government blacklisting will be regarded as courageous by some, and as reckless by others. The firms that settle will be seen as pragmatic by some, but as unprincipled by others. In the future, attorneys and clients will, to varying degrees, choose to join, remain at, leave, hire, or dismiss major law firms based on what positions and actions those firms took in response to the Trump blacklisting.

It's impossible to foresee how many firms will fall into which camps, or how lawyers and clients will respond to those differences, but an important early indicator of what lies ahead may come in the months ahead, as law school on-campus interviews and hiring occur. Law students may seek out the firms with whose conduct they agree, and avoid firms whose actions they regard as impolitic or unprincipled. Recruiters may find themselves spending much of their time explaining how their firms chose to respond to the blacklisting.

No senior partner wanted to bet even part of the firm on which side to pick in this historic dispute. But for those faced with that choice, it's important to bear in mind that in the long term, whether a firm withers or thrives is going to depend not only on what may occur in the Oval Office, at the headquarters of large corporate clients, and in the courts, but also on what is happening in the nation's law schools where the next generation of lawyers is watching.

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

Author Information

Eric Schnapper, a professor at the University of Washington School of Law, previously worked for 25 years as an attorney for the NAACP Legal Defense and Educational Fund Inc.

Write for Us: Author Guidelines

To contact the editors responsible for this story: Jessie Kokrda Kamens at jkamens@bloomberglaw.com; Jada Chin at jchin@bloombergindustry.com

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Trump Deals Show Big Law Long Ago Chose Business Over Profession

Column

Welcome back to the Big Law Business column . I'm Roy Strom, and today we look at the cultural cost of law firms' deals with the president. Sign up for Business & Practice , a free morning newsletter from Bloomberg Law.

My last column was proven wrong mere hours after publication. Big Law firms can't negotiate their way out of President Donald Trump's ire, I wrote on March 20.

Paul Weiss struck the first deal with Trump the same day. Three more of the country's largest, wealthiest law firms, Skadden, Willkie, and Milbank have since followed that lead. Together, they've promised to provide a collective \$340 million worth of pro bono efforts to causes agreed upon by the president and the firms, among other concessions.

Those firms are getting significant backlash. A few associates who've quit Skadden publicly rebuked the firm on their way out the door. A broader sign of Big Law capitulation is likely to come when top firms are largely absent from an amicus brief supporting Perkins Coie in its fight against a Trump executive order. That brief is expected to include signatures from hundreds of smaller law firms, lawyers, and law professors—but few of the very largest law firms.

Part of my mistake the last time out was expecting firm leaders to weigh the cultural cost of these deals more heavily. I wrote:

Capitulation would carry major risks to a firm's culture. Associates are already clamoring for leaders to speak out forcefully against Trump's attacks.

Why has the cost to firm culture been discounted by some of Big Law's biggest players? And what will the price ultimately prove to be?

To answer those questions, I turned to Bill Henderson, a law professor at Indiana University. Something he said then when we spoke two years ago seems particularly relevant today: Too many lawyers are working to get rich and ignoring other important aspects of the profession.

Henderson doesn't see specific firms paying a significant price from their decision to settle with Trump. But he believes the profession will suffer from those firms' collective inability to stand up to an attack on lawyers' independence.

"This is the end stages of us taking for granted our inheritance," Henderson said.

Moneyed Interests

Law firm leaders who've struck deals with Trump rationalize them as choosing survival in exchange for a small sacrifice of their own independence. Paul Weiss chair Brad Karp said in an internal email that the deal avoided an executive order that could have "destroyed" his firm. Willkie's executive committee said its proactive negotiation staved off "grave consequences."

Karp also said the deal was in keeping with the firm's values. Willkie's leadership said it was in line with its "longstanding practices." Milbank leader Scott Edelman his firms commitments to Trump "are things we are happy to do anyway."

Henderson, who signed the Perkins Coie amicus brief, has a broader critique of law firms: He believes they've helped to usher in an era of extreme wealth inequality that gave rise to popular dissatisfaction with government. The new deals with Trump are stark examples of firms choosing their business interests over upholding the profession's ideals, he said.

"Law firms represent moneyed interests, so there is an inherent conflict here," Henderson told me. "They are in bed making a good living with these clients, and there are social consequences to that. And then one day they have to wake up to defend the rule of law?"

"The longer a country goes with peace and stability, the more special interests strangle it and make it incapable of making decisions for the collective good. And that's where we are now," Henderson said. "It's total gridlock because there are so many special interests that are gumming up the works. And lawyers are in the business of gumming up those works; that is what we do."

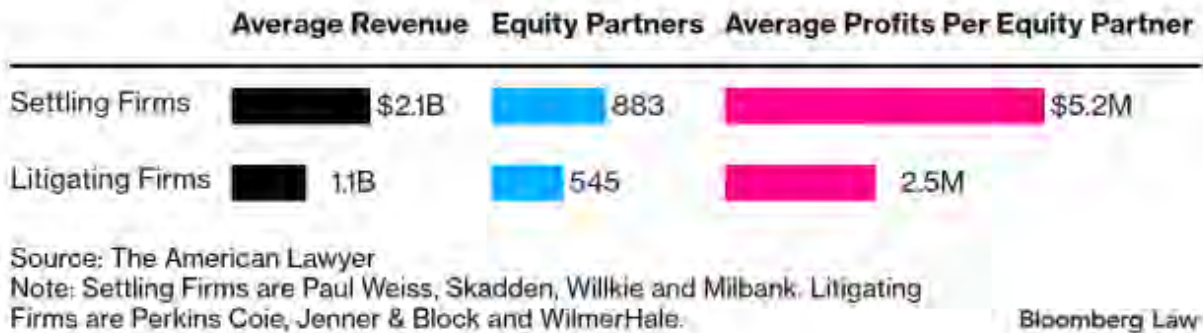
Partners at the three firms who've settled with Trump earn, on average, twice as much as the three firms who've chosen to fight executive orders targeting them in court.

In 2023, Skadden, Paul Weiss, Willkie and Milbank had a combined 883 equity partners, who earned \$5.2 million on average in profits, according to data from The American Lawyer. WilmerHale, Perkins Coie, and Jenner & Block had 545 combined equity partners, earning about \$2.5 million on average.

"You cannot countenance kicking out the independence of the profession just to keep continuing to make a high living," Henderson said.

Bigger, Richer Firms Settling With Trump

Law firms that have struck a deal with Trump are much larger and more profitable than those fighting executive orders in court.



Henderson acknowledged the collective inaction facing the largest law firms. They are afraid to sign the Perkins Coie amicus brief or otherwise defend themselves unless their peers do the same. But there's no easy mechanism to mobilize the group, he said.

Still, he said it's important for lawyers to speak out. And he believes the current environment will have some modest cultural costs for law firms that struck deals. It is likely to galvanize some lawyers—younger ones, especially—toward standing up for the profession's ideals rather than its business objectives, he said.

"We do take an oath to uphold the Constitution and the rule of law. This is clearly antithetical to that," he said. "And you know what the problem is? It's costly. And we're not used to paying a price for our freedom. And we're not used to paying the price for constitutional democracy. And we've deferred payment."

Henderson developed part of his critique of today's law firms based on the work of Stanford Law professor emeritus Robert Gordon, who studied lawyers in the Gilded Age. Some of them left private practice to fight against policies that led to vast wealth.

Gordon told me he also expects some partners will resign or defect from firms who struck deals with the administration, even if it hasn't happened yet.

Those firms have argued that the concessions they made to Trump were in keeping with things they already do, like pro bono work for groups fighting antisemitism. But Gordon said the concessions represent capitulating to "dominance displays" demanded by the government.

"A lot of people say, 'Look, law firms sold out to business long ago.' And there is some truth to that," Gordon said. "But this is ratcheting it up another level. This is agreeing to particular demands of government to do particular deals. And that is an escalation, and it's dangerous."

Worth Your Time

On Pro Bono: A Heritage Foundation-linked group is seeking to leverage President Donald Trump's executive actions against law firms to get free legal help for conservative causes, Emily Birnbaum writes.

On M&A: Kirkland & Ellis topped the list of M&A advisers in the first quarter, according to Bloomberg Law's league tables.

On Bankruptcy: 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, James Nani reports.

That's it for this week! Thanks for reading and please send me your thoughts, critiques, and tips.

To contact the reporter on this story: Roy Strom in Chicago at rstrom@bloombergindustry.com

To contact the editors responsible for this story: Alessandra Rafferty at arafferty@bloombergindustry.com
Chris Opfer at copfer@bloombergindustry.com; John Hughes at jhughes@bloombergindustry.com;

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Adams Case, Big Law Deals Launch Era Rife With Ethical Conflicts

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Raymond Brescia

April 3, 2025

Bloomberg Law News 2025-04-03T14:05:06325855584-04:00

By Ray Brescia2025-04-03T13:04:42000-04:00

Almost at the same time that US District Judge Dale Ho was dismissing the prosecution of New York City Mayor Eric Adams on April 2, another major law firm agreed to provide volunteer time on causes preferred by President Donald Trump with the understanding that he will go easy on them.

But these events are connected by more than just time. The apparent quid pro quo that doomed the Adams prosecution, and led Ho to rule that the Trump administration shouldn't be able to hold the threat of continued prosecution of Adams "like the proverbial Sword of Damocles" over the mayor, is precisely the kind of deal these law firms have struck to avoid executive orders damaging their business. Could Big Law's wheeling and dealing cause greater havoc in the courts than Adams's case did?

Ho found he had to dismiss the prosecution of Adams in part because there was credible evidence that the Trump administration had dangled the prospect of abandoning the prosecution of the mayor before him to exact future policy concessions from him. Such an abuse of legal process is illegitimate and undermines a criminal defendant's rights. Ho determined it was appropriate to not just dismiss the case, but to dismiss it "with prejudice": that is, the Department of Justice couldn't reinstate it at a later time should it determine Adams wasn't acceding to the administration's policy preferences.

The prosecution—and the promise to abandon it—had all the hallmarks of an inappropriate quid pro quo and created a clear conflict that delegitimized the Adams prosecution. When law firms enter into agreements to accede to the demands of the Trump administration, they are creating similar conflicts of interest that threaten the legitimacy of criminal proceedings when they represent defendants in cases brought by the government.

An essential element of our criminal justice system is that criminal defendants are entitled to the effective assistance of counsel under the Sixth Amendment. Case law interpreting that right provides that where a lawyer operates under a conflict of interest, it can taint the proceeding. That means the plea deal or conviction in the case might get thrown out of court.

In order to protect the integrity of their proceedings, when judges know or have reason to know that a potential for a conflict exists, they have an affirmative duty to ensure lawyers appearing before them can provide conflict-free representation.

The fact that law firms have struck agreements with the Trump administration raises serious questions about whether they can provide effective assistance of counsel in cases against the government.

What happens if the Trump administration doesn't like the way in which a particular case is being litigated by one of these firms? What's to stop the administration from going back to those firms and telling them they should pull their punches, to not be so aggressive in their representation of a particular client that gets under the president's skin? These agreements don't provide any assurances that Trump won't demand more concessions from the law firms.

To ensure that both federal and state courts across the country are protecting the constitutional rights of the defendants before them, judges now must inquire whether any criminal defense attorney from one of these firms that has cut a deal with the Trump administration is operating under a conflict similar to the one that doomed the Adams prosecution.

The outcome in the Adams case is a stain on the DOJ, and the profession as a whole. But it is just one case. As more firms agree to enter into deals with the administration, the potential mischief such agreements can cause in the courts is exponentially greater than the Adams affair and goes beyond just one case. It's every case in which lawyers from these firms represent the defendants. As more firms take this path, it will create a significant drain not just on the courts that must conduct this review but also on clients themselves should they have to bear the burden of finding new counsel.

There is one way to prevent this chaos though. Courts should start these inquiries immediately. Should judges find the lawyers operating under real constraints, they should disqualify those lawyers where appropriate.

As firms—and their clients—realize that they can't enter such agreements without it exacting a real cost, perhaps other firms considering whether they should also cut a deal with the Trump administration will think twice before they do so.

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

Author Information

Ray Brescia is an author and a professor of law at Albany Law School.

News from Bloomberg Terminal
April 3, 2025, 10:57AM PDT
The Tariffs Have Some Math

By Matt Levine

(Bloomberg Opinion) --

Welp

I do not want to write about the tariffs, because there is a pretty overwhelming consensus that they are bad, and that consensus strikes me as correct, so what can I add? "Trump Tariffs Wipe Out \$2 Trillion From US Stock Market," reports Bloomberg. "Wall Street analysts anguish over 'Liberation Day,'" reports FT Alphaville. "You Can NOT Be Serious!," writes my Bloomberg Opinion colleague John Authers.

Perhaps there is something interesting about the "reciprocal" tariff formula, which notionally tariffs countries based on the "unfair tariff disparities and non-tariff barriers" that they impose on US goods, but which *actually* tariffs countries based on their trade surplus with the US. Bloomberg's Josh Wingrove reports:

In a statement published Wednesday night to explain its methodology for tariffs that rocked the globe, the United States Trade Representative detailed a formula that divides a country's trade surplus with the US by its total exports, based on data from the US Census Bureau for 2024. And then that number was divided by two, producing the "discounted" rate.

China, for instance, had a trade surplus of \$295 billion with the US last year on total exports of \$438 billion – a ratio of 68%. Divided by two according to Trump's formula, that yielded a tariff rate of 34%.

Two related points here.¹ One is the quite *explicit* assumption – from the USTR statement – "that persistent trade deficits are due to a combination of tariff and non-tariff factors that prevent trade from balancing." That is, if a country exports more goods to the US than it imports from the US, that is *necessarily* unfair, and if you can't find a tariff that explains the disparity, you can simply assume a secret mystery tariff:

While individually computing the trade deficit effects of tens of thousands of tariff, regulatory, tax and other policies in each country is complex, if not impossible, their combined effects can be proxied by computing the tariff level consistent with driving bilateral trade deficits to zero. If trade deficits are persistent because of tariff and non-tariff policies and fundamentals, then the tariff rate consistent with offsetting these policies and fundamentals is reciprocal and fair.

I guess the word “fundamentals” appears there: A country could export more goods to the US than it imports from the US for fundamental reasons, not *just* tariffs and non-tariff protectionist policies. But “offsetting the fundamentals” is also “reciprocal and fair.” So for instance you could crudely characterize a portion of the trade between Vietnam and the US as (1) Vietnamese wages are lower than US wages, so Vietnamese people make sneakers and t-shirts that they sell to the US cheaply for dollars and (2) the US financial system is big, so Vietnamese people invest those dollars in US financial assets. We are good at making financial assets, they are good at making low-cost clothing, so we trade. To Trump *this is necessarily unfair* and we must stop it. My Bloomberg colleague Joe Weisenthal writes:

Now we’re slapping massive tariffs on them, but the question is ... to what end? Do we think there are hundreds of thousands of people in the US eager to work in sneaker and t-shirt factories at the wages that sneaker and t-shirt factories pay? Are there people eager to work in sneaker factories even at ‘good’ wages? Do we think that the US has the level of robotic capability to replace these factories without having to hire a lot of workers? And if not, what is the administration trying to accomplish?

Now my biases are obvious: I am a financial columnist because I find finance delightful, and a world in which the US gives people finance and gets back inexpensive goods strikes me as good for the US. We give them entries in computer databases, they give us back food and clothing: That is a magical deal for us! *Clearly people disagree*, and I suppose some of that disagreement is plausible, but I also think that Weisenthal is right about the sneaker factories.

The second point I would make here is that, if you read the USTR statement, it actually prints a formula. Bloomberg reports that it is “a formula that divides a country’s trade surplus with the US by its total exports.” The country’s surplus is its exports minus its imports, so the formula can be rewritten “Tariff = (exports to US - imports from US) divided by (exports to US),” or in symbols:

$$\tau = \frac{m - x}{m}$$

Where tau is the “correct” tariff rate, m is US imports from the country (its exports to the US) and x is US exports to the country (its imports from the US). And then you “discount” the correct rate by 50% to get the Trump tariffs.

The USTR does not print that formula. It prints this one:

$$\Delta\tau_i = \frac{x_i - m_i}{\varepsilon * \varphi * m_i}.$$

Source: Office of the United States Trade Representative

Don't worry about the delta in front of the tau, or the subscript i 's; those are just decoration.² More substantively, the USTR has added an epsilon and a phi to the denominator of the equation. What do those parameters represent? Well, epsilon represents "negative 4," and phi represents "0.25." If you multiply them together you get negative 1. So it's the same equation as I wrote – surplus divided by exports – but with some extra Greek letters.³

Why did the USTR write a minus sign as "epsilon times phi"? Well, there is an explanation. Epsilon is "the elasticity of imports with respect to import price," phi is "the passthrough from tariffs to import price," and they happen to exactly offset: A 1% increase in tariffs increases import prices by 0.25%, which reduces import demand by 1%. So a tariff equal (in percentage terms) to the country's trade surplus with the US will exactly eliminate that surplus. The USTR cites some studies *not* finding those results,⁴ and then makes up numbers for convenient arithmetic. But exactly eliminating the country's trade surplus (the US trade deficit) is the stated goal. The Financial Times reports:

Oleksandr Shepotylo, an econometrician at Aston University, Birmingham, which recently modelled the effects of a global trade war, said the use of economic formulas merely gave the USTR document "a sense of being linked to economic theory", but it was in fact divorced from the reality of trade economics. "The formula . . . gives you a level of tariff that would reduce [the] bilateral trade deficit to zero. This is an insane objective. There is no economic reason to have balanced trade with all countries," he said. "So in this sense, this policy is very unorthodox and cannot be defended at all."

Well, yes. I just like that they made up the numbers to get an exact negative 1. Again, I am a financial columnist, and I have a patriotic appreciation for the US's export industry of finance, and two of that industry's most popular products are:

1. Sprinkling some Greek letters on your work to add visual interest, and
2. Making up parameters to solve for the result you want.

Even in this tariff announcement, you see the US leaning into its comparative advantage.

Nondelegation

Yesterday Donald Trump unilaterally imposed big tariffs due to his own idiosyncratic understanding of economics. But why does he get to do that? The US Constitution says that “the Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises.” Congress, not the president, gets to set tariffs.

Over the years, though, Congress has mostly handed that power over in a series of laws delegating tariff authority to the president. Yesterday’s tariff announcement relies on one of those laws, the International Emergency Economic Powers Act of 1977, which allows the president to declare a “national emergency” due to “an unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States” and respond to that emergency in various ways including by regulating or prohibiting imports. “No president had used IEEPA to impose tariffs until this year,” notes the Congressional Research Service in a useful report, but now Trump has “declared that foreign trade and economic practices” – all of them – “have created a national emergency” allowing him to make up whatever tariffs he wants.

The law also allows Congress to reverse the president’s actions, and in fact the US Senate already voted to block some of Trump’s previous tariffs on Canada, though the House of Representatives is unlikely to vote on the measure. You could imagine that changing in response to the latest round of blanket tariffs, but you’d have to work pretty hard to imagine it.

One other thing that I think about, though, is the “nondelegation doctrine.” This is an old legal theory that Congress cannot hand over its legislative power to the executive branch: Executive agencies can interpret and carry out the law, but they can’t *make* law; an act of Congress saying “the Securities and Exchange Commission should just decide what the rules are for crypto” is arguably an unconstitutional delegation of legislative power to the executive branch. At the very least, Congress has to set the general policy and give the SEC guidance about what the rules should do; the SEC can’t just do whatever it wants.

This theory has, for nearly a century, been pretty dead: The Supreme Court has rejected pretty much every modern nondelegation-doctrine challenge to agency rulemaking, and in fact the CRS notes that “Supreme Court decisions upholding tariff laws have become landmarks in the development of a broader ‘nondelegation doctrine’ concerning the extent to which Congress may lawfully delegate authority to the executive branch.”

But, as we have discussed a couple of times in the SEC context, that might be changing: US courts, including the Supreme Court, are increasingly interested in reviving the nondelegation doctrine. The IEEPA – as interpreted in the Trump tariffs anyway – is an *exceptionally* broad delegation of powers: Only Congress has the constitutional power to impose tariffs, but apparently in the IEEPA it gave the president power to impose any tariffs he wants with no guidance or limits. Seems like an interesting nondelegation case? It is plausible that the current state of US constitutional law is “administrative agencies can’t make securities regulations or environmental rules, but of course Donald Trump can do whatever tariffs he wants.” But it’s not *necessarily* true. Some importer should bring a nondelegation case! Could be fun!

(Disclosure-brag: As I've mentioned before, my wife has argued a nondelegation case in the Supreme Court, so I have a certain personal connection to this frankly pretty speculative theory.)

Gold bars

The stock market is crashing today because Trump announced tariffs that were much bigger than the market anticipated. Meanwhile financial traders were setting themselves up for the only tariffs that *didn't* happen:

A massive arbitrage trade that has drawn tens of billions of dollars' worth of gold and silver to the US came to an abrupt halt with Wednesday's announcement that precious metals would be exempt from Donald Trump's sweeping tariffs.

For several months, prices in New York have traded at large and unusual premiums to global benchmarks as traders weighed the risk that precious metals could be caught up in tariffs. The differential created an incentive for banks and traders to load planes and ships with so much bullion that it distorted US trade data in the process.

On Thursday, US premiums for precious metals tumbled after a list of exemptions from the tariffs included gold, silver, platinum and palladium. ... "Yesterday's announcement effectively puts an end to the massive flow of precious metals into the US over the last few months as the EFPs collapse," said Anant Jatia, chief investment officer at Greenland Investment Management, a hedge fund specializing in commodity arbitrage trading.

We talked about this "arbitrage" in February and again in March, when I pointed out that a commodity in the US is no longer economically equivalent to the same commodity outside of the US, "nor is it equivalent to, like, 'the same commodity plus 25%,' because the tariffs are uncertain." Gold in New York was worth (1) the value of gold in London plus (2) some premium representing the expected value of possible future tariffs on importing gold into the US. That expectation was high, and now it is lower, but to be fair you never know what will happen tomorrow.

People are worried about stock buybacks

I mean, if you don't like stock buybacks, I guess tariffs did solve that problem:

US companies last month announced the fewest stock buybacks, in dollar terms, since the Covid pandemic, an early sign of cash hoarding from worries about economic growth and the impact of a global trade war. ...

"No one knows what will happen with tariffs," said Jeffrey Yale Rubin, president of Birinyi Associates. "So how are corporate executives supposed to plan for cash flows? It's a lot easier to slow buybacks than cut dividends until companies know more about the trade outlook."

Again, my bias is that exchanging financial creativity for goods and services is mostly a good thing for the US, but clearly the Trump theory is that that's wrong. I don't think that this means "US companies will stop spending money on stock buybacks and spend it building sneaker factories instead," but I guess that is roughly the theory.

Individual research

An aspect of modern finance that I confess is mysterious to me is: What do retail investors do? I mean, a lot of people who are not financial professionals seem to buy and sell stocks and options in their own accounts. I sometimes confidently throw around phrases like “read about stocks on Reddit” or “click a button on a phone app” or “seek revenge on short sellers” or “trade stocks because it is more fun than other entertainment alternatives” or “YOLO zero-day options on meme stocks,” but I have no great intuition for the process. I feel like I have a decent handle on how hedge fund analysts choose and purchase stocks, but the retail investors are a bit of a mystery to me.

So I enjoyed this paper on “The Research Behavior of Individual Investors,” by Toomas Laarits and Jeffrey Wurgler. In 2007, a research firm “recruited a representative panel of [92,411] U.S. households that have agreed to install on their computers a data collection plug-in that records the URL address of each webpage visited. The data collected include the exact sequence of web pages visited and the amount of time spent on each page.”⁵ Presumably the research firm sold this data to all sorts of marketers, but over the years it has also given it to academics who wanted to study various aspects of people’s online behavior.

Laarits and Wurgler wanted to study people’s online stock research, so they got this data set and focused on the 484 households in the sample who did online stock trades. Arguably what individual investors did in 2007 tells you nothing about what they do in 2025 – Robinhood hadn’t even been invented yet! – but their findings still seem intuitively plausible today.⁶

There are various high-level aggregate findings:

The median individual investor spends six minutes per trade on research about the tickers traded. The mean individual investor spends 29 minutes. The median investor conducts most of this stock research in the 24 hours before a trade, and most of that time in a burst immediately before the trade. ...

Typical investors spend only a fraction of their research time at their broker’s domain. Disparate finance news sites, and especially Yahoo Finance, constitute a majority of stock-related research. ...

Most trades are preceded by the presentation of a snapshot page which includes a set of brief price and fundamental statistics and a graph of intraday prices. Many investors do not pursue research beyond this page.

When individual investors do go beyond the snapshot page, they spend by far the most time on price charts and price-related information. Analysts’ estimates are consulted less frequently, followed by assorted other fundamental and technical information. Risk statistics such as beta or volatility are of little apparent interest.

If you had asked me “how much attention do individual investors pay to a stock’s beta” I would confidently have answered “exactly zero,” so that makes sense. But my favorite part is not the aggregate statistics but this little depiction of a day, or rather 14 minutes, in the life of one retail trader in 2007:

A stylized extract of raw data illustrates the level of detail that it may include. Table 1 reports fourteen minutes of a browsing session [on March 23, 2007]. The session may begin at any link. This particular investor is a motorsports fan [who starts at formula1.com] but soon switches to CNBC.com, where she clicks a link providing current data on several U.S. and international stock market indices, the US 10-year Treasury yield, and the USD-Euro exchange rate.

After a minute at that page, the investor logs into a brokerage account. Within her online broker's research pages, she seeks out the day's most active names, which on that day included ImClone (IMCL). Based on our own investigation, IMCL enjoyed good news for its cancer drug's prospects. Our investor then consults the quarterly earnings performance for IMCL. From the link, we can infer that earnings were presented for the prior three years and estimates were shown for the next two years. In a separate panel, the chart showed the daily volume for IMCL over the prior three years, as well as a 13-day moving average. Further analysis of IMCL took place on the highly popular Yahoo Finance website. The investor obtains a quote on symbol ("s=") IMCL and then looks up the latest analysts' estimates ("ae").

Following a check-in with race results, the investor returns to her brokerage's page and takes a different tactic. This time, she looks for trading ideas through a stock screener, in particular stocks with expected EPS growth of at least fifty percent over the next fiscal year. This would have yielded many results, Google (GOOG) among them. A click or two later, the investor comes to a snapshot page, which presents many types of financial and price information on the given stock in an abbreviated form. After looking at a price chart, the investor enters a market order to buy ("ordertype=1") Google shares. Then she logs into e-mail and proceeds with other activities.

Honestly that seems somewhat more thorough than I would have guessed. Google closed at \$11.56 that day; it ended the year at \$17.30 and closed yesterday at \$157.04 so, you know, fine trade, no objections.

Anyway I assume this is different now – more Reddit? phones? asking ChatGPT what stocks to buy?– but it is still interesting anecdotal data. I suppose some research firm somewhere is still collecting this sort of click data for marketers; I wonder if any hedge funds use it. "A lot of people are looking at the GameStop snapshot page, let's buy some." Or "let's sell some."

Elsewhere in academic research on the effect of financial innovation on households, here is a 2024 paper asking: "Have cashless payments reduced the incidence of upper aerodigestive foreign body insertion?" The answer is yes, so if you work in fintech you can go ahead and tell your parents that you are actually saving lives.

Good pitch

It might be the case that the market for normal financial products is pretty saturated. "Pay us \$X now, and if Event Y occurs, you will receive Payoff Z": There's probably a product like that for most events that people anticipate, and if there isn't, there's probably a good reason that no one can build it economically.

But there probably are some events that people aren't thinking of, and if you have an unusual cast of mind you could think of them and build some innovative financial products. We talked last year about "science fiction trusts and estates lawyers," who are in the business of helping people do financial planning for their frozen heads when those heads are reanimated in 200 years and need money. If you are offering *retirement planning*, or *college financial planning*, you are competing with a lot of big asset managers. But if you are offering *reanimated frozen head financial planning*, you are ... not. Like Larry Fink does not go around talking about BlackRock's products for reanimated frozen heads. There is a lot of open space.

Also: You might not need to be that good at it. Both in the sense that, like, your investment performance can be worse (and your fees higher) than BlackRock's, and also in the sense that you don't *absolutely* need to solve the problems you are addressing. In a mature competitive market, people buying 200-year reanimated frozen head trusts would want to buy them from providers who are likely to be around in 200 years and not lose the money, and regulators would make sure that those providers were appropriately capitalized and monitored. But in the actually existing 200-year reanimated frozen head trust market, eh, possibly not.

I do not know how broadly applicable the lessons here are, but it's not just frozen reanimated heads. The opportunity that I think about all the time is OpenAI's threat to its investors that "it may be difficult to know what role money will play in a post-[artificial general intelligence] world." OpenAI gestured at that idea to justify structuring moderately unusual equity investments, but if you took it seriously what would you do? If you are an institutional allocator, how do you hedge the risk that the role of money might change in a post-AGI world? More to the point, if you are a salesperson of financial products, what sorts of hedges are you *pitching* to allocators? "Own AI stocks," fine. "Bitcoin," probably, somehow. But I feel like you could find much weirder things and get some takers.

Anyway here's a New York Times story that is closer to the frozen heads thing, but with a religious rather than science fiction flavor:

Swami Nithyananda ... claimed miracle powers, like helping the blind see through a "third eye" or delaying the sunrise by 40 minutes.

"I am a totality of unknown in your life. I'm the manifest of un-manifest," he said in one sermon. "The moment you sit in front of me, enlightenment starts."

During a conversation in front of a large crowd, he endorsed the idea of "the world's first inter-life reincarnation trust management." Rich people like Bill Gates or Warren Buffett could invest a few billion dollars in a trust; Nithyananda said he possessed the knowledge system to ensure they got the money when they were reborn.

That would be important, Nithyananda's interlocutor said, "because it is possible Bill Gates will be born very poor, Warren Buffett may be born in some African village as a very poor guy."

Inter-life reincarnation trust management! Definitely not a product offered by BlackRock. It does not sound like they actually got a meeting with Warren Buffett to pitch this, but surely someone would bite. Anyway the story is about how he and his "self-proclaimed United States of Kailasa" have gotten in trouble for other alleged deceptions, but this one I like.

Things happen

How North Korea Cheated Its Way to Crypto Billions. Cayman Islands Builds \$74 Billion Insurance Hub That Irks Apollo. Post-CoreWeave, Venture Investors Rethink Their Outlook on IPOs. AI Video Startup Runway Valued at \$3 Billion in Funding Round. Fintech Plaid completes new funding round but finds valuation cut in half. Microsoft Pulls Back on Data Centers From Chicago to Jakarta. Deloitte seeks to avoid liability over US nuclear fiasco. Coal Plant Ranked as Nation's Dirtiest Asks for Pollution Exemption. Trump's DEI Purge Drives 34% Drop in Pro-ESG Investor Proposals. Credit Agricole Gets ECB Nod to Raise BPM Stake as UniCredit Readies Bid Launch. WeightWatchers Investor Launches Fight for Board Seats. CFA Level I Pass Rate Rises to 45%, Candidates Get New Scorecard. The New Pepsi Challenge: Saving Pepsi From Years of Decline. Accused Tech Spy Says Rival CEO Recruited Him With Offer to Be Like James Bond.

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To contact the author of this story:

Matt Levine at mlevine51@bloomberg.net

To contact the editor responsible for this story:

Michael Newman at mnewman43@bloomberg.net

1. James Surowiecki adds: "In calculating the tariff rate, Trump's people only used the trade deficit in goods. So even though we run a trade surplus in services with the world, those exports don't count as far as Trump is concerned."
2. The delta means the *change* in the tariff rate, from an implicit starting point of zero. The i 's index the countries.
3. Mine has $m - x$ in the numerator, while theirs has $x - m$, because they put a negative sign in the denominator.
4. "Recent evidence suggests the elasticity is near 2 in the long run (Boehm et al., 2023), but estimates of the elasticity vary. To be conservative, studies that find higher elasticities near 3-4 (e.g., Broda and Weinstein 2006; Simonovska and Waugh 2014; Soderbery 2018) were drawn on. The elasticity of import prices with respect to tariffs, ϕ , is 0.25. The recent experience with U.S. tariffs on China has demonstrated that tariff passthrough to retail prices was low (Cavallo et al, 2021)." Cavallo et al. actually find "that a 10 percent tariff would be associated with a 0.6 percent lower ex-tariff price and a 9.4 percent higher overall price faced by the importer."
5. This is quoted from a 2014 academic legal article, cited by Laarits and Wurgler, that also used the data set.
6. They argue, plausibly, that even in 2007 online retail stock trading was the norm, and that "the few investors who were still calling their broker or visiting branch offices to trade by 2007 would likely have been less active, less sophisticated, and less economically important."

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Trump Media & Technology Group

Donald Trump kicks off sale of \$2.3bn Truth Social stake

Shares in Trump Media and Technology Group drop after company outlines plans in filing



Trump Media and Technology Group said in a filing with regulators that it planned to sell more than 142mn shares © Andrew Harnik/Getty Images

George Steer in New York

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Shares in Donald Trump's social media company fell after the president opened the door to selling his entire \$2.3bn stake, just as global investors were bracing themselves for his "liberation day" tariffs.

Shares in [Trump Media and Technology Group](#), which operates Truth Social, fell 7.4 per cent on Wednesday after the company said in a filing with regulators that it planned to sell more than 142mn shares.

The filing with the Securities and Exchange Commission late on Tuesday showed that Trump's 114mn shares are included in the sale, which will take place "from time to time in one or more offerings". The stake is worth about \$2.3bn and held in a trust controlled by his son Donald Trump Jr.

Existing shareholders including the president, US attorney-general Pam Bondi, TMTG chair Devin Nunes and a Cayman Islands-registered company called Yorkville will seek to sell a total of 134mn shares, the filing shows. TMTG also plans to issue 8.4mn new shares.

In a post on Truth Social on Wednesday morning, Trump Media denied its securities filing was “paving the way for the Trump trust to sell its shares”. It described the prospectus as a “routine filing”.

Shares in TMTG, which trades under the ticker DJT, have plunged more than 40 per cent this year amid a US stock market sell-off fuelled by the president’s aggressive trade agenda and concerns that the levies on some of America’s key trading partners will weigh on the world’s largest economy.

Trading in Trump stock has been volatile

Digital World Acquisition Corp | Trump Media & Technology Group share prices, \$

1. Deal with Digital World Acquisition Corp announced
2. Disclosure of SEC probe into Spac
3. SEC settles fraud charges against DWAC
4. Trump wins Iowa GOP caucuses
5. DWAC merges with Trump Media
6. First day of trading following assassination attempt
7. Polling signals Trump election victory

Later on Wednesday, which he has dubbed “liberation day”, Trump will announce his new “reciprocal” tariffs on foreign countries in a ceremony in the Rose Garden of the White House.

In September, DJT surged after [Trump](#) said he did not plan to sell any of his own shares in the company. Trading in the stock was temporarily halted by Nasdaq later that day.

Trump later accused Nasdaq of “taking orders from” the SEC. Writing on Truth Social, the president said at the time: “What right do [Nasdaq] have to do this? They have done it twice today. What’s going on?”

Earlier this week TMTG became the first group to [list on the New York Stock Exchange’s Texas platform](#), though its primary listing will remain on Nasdaq.

The stock had become a [popular way for individual investors](#) to show their support for the president, despite TMTG reporting a net loss of \$19.2mn in the third quarter. In October, the company said it had approximately 650,000 shareholders “with a unique profile overwhelmingly comprising retail investors”.

“Only roughly 2,100 investors owned more than 5,000 shares, and fewer than 1,000 investors owned more than 10,000 shares,” the company said.

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Trump Trust Takes Regulatory Step Toward Trump Media Stake Sale

A trust overseeing Donald Trump's \$2.1 billion stake in the media company that owns Truth Social is keeping the door open to cashing in on its position, which for the past year has formed the bedrock of the president's fortune.

Trump Media & Technology Group Corp. shares slumped as much as 9.4% before trimming losses Wednesday after the company filed on April 1 to register up to 142.5 million shares and warrants for sale. The company had previously registered the shares in a regulatory filing in June, prior to a lock-up expiration preventing insiders from selling and before Trump transferred his stake to a trust.

The filing is the first step for the president's trust, controlled by his son **Donald Trump Jr.** to potentially sell down his entire 114.75 million share stake. It also registered millions of shares owned by the sponsor of the blank-check firm that merged with Trump Media to take it public last year.

The US Securities and Exchange Commission needs to deem the filing effective before Trump's trust, the special-purpose acquisition company sponsor — ARC Global Investments II LLC — and other insiders can begin selling their shares.

The company said in a statement that the filing was "routine" to re-register the shares to keep the company's filings effective.

The stock rose to its highest level of the day, cutting its decline to 1.4% before being halted for volatility after the statement was published.

In September Trump sent shares of the social media startup soaring after he said he had "absolutely no intention of selling" his stake when a lockup period expired days later. He transferred his stake to the Donald J. Trump Revocable Trust, controlled by Trump Jr., in December after he won the election.

The president's \$2.1 billion worth of Trump Media shares are the most valuable asset in his \$4.7 billion fortune, according to the Bloomberg Billionaires Index.

Despite a \$4.1 billion valuation, the company has struggled. Revenue slumped to just \$3.6 million for the entirety of 2024, dropping more than 12% as it lost more than \$400 million, regulatory filings show.

Trump Media has been expanding its money-losing operations beyond being a social media company, partnering with Crypto.com on a lineup of “Made-in-America” investments and leaning into financial services with a new brand called Truth.Fi partnered with Charles Schwab Corp.

The stock has been volatile since going public last March through the blank-check merger, soaring as high as \$79.38 in its debut as a public company before plunging as low as \$11.75 in September. The stock then soared ahead of November’s election before erasing gains. It has wiped out nearly half of its value since the start of the year.

(Updates with company statement starting in second paragraph)

--With assistance from **Tom Maloney**.

To contact the reporter on this story:

Bailey Lipschultz in New York at blipschultz@bloomberg.net

To contact the editors responsible for this story:

Jeremy Herron at jherron8@bloomberg.net

Philip Sanders, Bailey Lipschultz

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Securities Law

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Teachers' Union Urges Public Pensions to Seek Tesla Stake Review

A national teachers' union is urging public pensions to ask their money managers how they will safeguard retirement assets given the steep plunge in Tesla Inc. shares this year.

In a letter to more than 75 state and city chief fiduciary officers of US public pension funds, American Federation of Teachers President Randi Weingarten is requesting they reach out to money managers overseeing their investments "to urgently review their current holdings" in the electric carmaker led by Elon Musk, according to a statement Wednesday.

The shares are down more than 40% from a closing record on Dec. 17, the second-worst performance in the S&P 500 for the period. Meanwhile, the company reported Wednesday the lowest sales since 2022.

READ MORE: [Tesla Sales Drop to Lowest Since 2022 Amid Musk Backlash](#)



The latest outreach comes after Weingarten wrote in late February to some of the largest US money managers expressing concern about the drop in the share price. She is reaching out now directly to pensions after receiving no responses from the money managers, according to this week's statement.

The "drop in Tesla sales increases the retirement risk to plans that millions of nurses, teachers and other workers are invested in," Weingarten said in the latest statement. "Our members' right to retire with dignity and grace after decades of service to families and communities is paramount."

Tesla's slump comes amid the broader equity rout that has caught the [attention](#) of public retirees. Along with risks the stock price slump poses to pensions, public school teachers have expressed concern about the Musk-led Department of Government Efficiency's efforts within President Donald Trump's administration to potentially cut funding or dismantle the Department of Education completely.

To contact the reporter on this story:

Shruti Date Singh in Chicago at ssingh28@bloomberg.net

Is Elon Musk Resigning From DOGE? Trump Adviser Expected to Step Back

Elon Musk is expected to step back from his role leading the Department of Government Efficiency once his 130-day period as a temporary adviser to President Donald Trump has lapsed, but the billionaire will still wield significant influence over the federal cost-cutting effort and remain a Trump confidant after his formal departure, according to people familiar with the matter.

Musk, the world's richest person, is a special government employee, a classification for temporary federal hires who are only supposed to work 130 days out of the year in their roles. If those days are counted consecutively from Trump's inauguration, Musk's tenure would be on track to end on May 30.

A formal date hasn't been set and the White House counsel's office is in charge of determining when Musk has worked his 130 days, the people said, who requested anonymity to discuss deliberations that aren't public.

However, DOGE, the federal entity that has led a swift and often tumultuous effort to slash the federal budget and downsize the government workforce, is here to stay, the people said. DOGE workers will continue to hold their posts in agencies as they seek further cost and personnel cuts, the people said.

Elon Musk, left, and Donald Trump
Photographer: Samuel Corum/Sipa/Bloomberg

Musk has faced a spate of political and business losses in recent days. He morphed from a benefactor into an apparent liability for a Republican-backed candidate in Tuesday's Wisconsin Supreme Court election. And Tesla Inc., the electric-vehicle maker he leads, has seen its sales drop in part because of his political activities.

One Trump adviser cautioned that the president isn't concerned about what specific title Musk holds and it's likely the billionaire, who is also the chief executive officer of SpaceX, will continue to be a frequent presence in the West Wing.

The White House didn't immediately respond to a request for comment.

Trump himself has publicly mused about the end of Musk's federal cutting efforts. The president last week said he expects to be "satisfied" with DOGE's cuts in the coming month or two. The president has also said DOGE's overhauls aren't "necessarily a very popular thing to do," an acknowledgment of the political risk associated with the effort.

Many top Trump aides and cabinet members, as well as Republican lawmakers, are tired of Musk's penchant for ignoring procedures that have led to quick-moving efforts to gut their agencies and key programs for Americans, sometimes without their advanced knowledge, the people said.

But Musk plays two crucial roles, the people said. He has provided a distraction — and sometimes serves as an avatar — for some of Trump's controversial actions. And the Trump political operation is still very reliant on the billionaire's money. Musk was Trump's largest contributor in the 2024 presidential election.

Trump aides are cautious not to alienate or criticize Musk because they want to keep him in the fold as a donor for the 2026 midterm elections, the people said. That's led Trump's inner circle to appear publicly supportive of DOGE and Musk even if they are annoyed by him, they said.

Vice President JD Vance, who will lead the Republican National Committee's fundraising efforts for the 2026 elections, on Thursday downplayed any notion that Musk is leaving the administration, telling Fox News that Musk's work was slated "to take about six months, and that's what Elon signed up for."

"But of course, he's going to continue to be an adviser. And by the way, the work of DOGE is not even close to done. The work of Elon is not even close to done," Vance said.

Political Blowback

The discussion about Musk's future is coming after one of his biggest political missteps since Trump took office in January — and as his most visible business faces increasing strain.

Brad Schimel, the Musk-backed candidate in a Wisconsin judicial race, was soundly defeated after the billionaire played a prominent role in the election, appearing at rallies and giving \$1 million checks to supporters.

Tesla this week also reported the weakest sales figures in nearly three years, a quarter that coincided with its CEO spending much of his time in Washington focusing on DOGE work.

"It's a wake-up call. Clearly he has become a rallying point for the opposition. We won the voter ID referendum by 25 points, but his Supreme Court candidate lost his race. So what does that tell you about his influence?" said Steve Bannon, a former chief strategist to Trump, referring to a conservative-backed Wisconsin ballot initiative to require identification to vote.

Musk, in a Fox News interview last week, acknowledged his 130-day limit. He said he believes that DOGE would cut \$1 trillion in that time frame, an ambitious goal that would require slashing more than half of the \$1.8 trillion the US spent on nondefense discretionary

programs in 2024.

Some Musk employees who had been tapped to join the administration have recently left their posts.

Christopher Stanley, who leads cybersecurity at the social-media platform X and SpaceX, joined the administration as a temporary expert at the Office of Personnel Management and was briefly tapped for the board of Fannie Mae in March before resigning a day later.

Another Musk employee, Ryan Riedel, was named chief information officer at the Department of Energy but returned to his job at SpaceX just weeks after the appointment, according to a report by MeriTalk.

Litigation

April 3, 2025, 2:00 AM PDT

Is DOGE Legal? For Some Agencies the Final Word Might Not Matter

Deep Dive

- **Musk-led vanguard unit key to government downsizing**
- **DOGE litigation hurdles lay in evidence, civil procedure**

Lawsuits to halt Elon Musk and DOGE from slashing the federal government are hitting legal roadblocks, showing the limits of using litigation to shut down an unprecedented bureaucratic wrecking ball while it still matters.

Federal workers, Democratic states, and other plaintiffs face the difficult task of tying specific actions back to Musk and DOGE to show they're in control rather than just advising properly empowered officials, law professors said.

DOGE is a unique, amorphous operation that the Trump administration contends isn't led by Musk, despite President Donald Trump's statements to the contrary.

"Much of what DOGE is doing is not transparent, not visible—it's purposefully obscured," said Michael Gerhardt, a law professor at the University of North Carolina who's written treatises on presidential authority and the separation of powers.

Musk and DOGE have been at the forefront of the drive to radically downsize the federal government, which includes firing thousands of workers, canceling billions of dollars in contracts, and attempting to shutter entire agencies.

But a recent appeals court decision lifting restrictions on DOGE highlighted the obstructions that challengers face. The administration will probably defeat a claim that Musk exercised unconstitutional authority over the dismantling of the United States Agency for International Development, a divided US Court of Appeals for the Fourth Circuit ruled last week.

And even if the administration ran afoul of the separation of powers by attempting to unilaterally shut down an agency enshrined by an act of Congress, Musk and DOGE couldn't be held responsible for that constitutional violation, the court said.

"From my perspective, the whole thing is whitewashing the reality of Musk's role in favor of a cabined, very formalistic view of his day-to-day power," Josh Galperin, a Pace University professor who teaches administrative and constitutional law, said of the Fourth Circuit's ruling.

Born Into Litigation

The legal challenges to DOGE began soon after Trump created it with an Inauguration Day executive order, one of several presidential directives he's devoted to the group.

The first batch of lawsuits—filed that same day—were based on representations from Trump, Musk, and others that DOGE would be an advisory commission headed by non-governmental workers who would provide advice on cutting government. The lawsuits alleged violations of the Federal Advisory Committee Act, which imposes requirements related to the transparency and composition of advisory groups.

But DOGE ended up being something different. Trump's initial order reorganized the US Digital Service—an Obama-era initiative housed in the executive office of the president—and renamed it the US DOGE Service. Musk has been serving as a special government employee rather than an outside adviser.

The shift in DOGE design makes the lawsuits alleging violations of the federal advisory law moot, said Richard Painter, a law professor at the University of Minnesota and top White House ethics lawyer during the George W. Bush administration.

Constitutional Allegations

DOGE's primary tactic for identifying jobs and contracts for the chopping block—obtaining access to agency data—has sparked about a dozen separate lawsuits focused on its activity at specific agencies, according to a Bloomberg Law review of litigation against the Trump administration.

Beyond those targeted lawsuits, a handful of plaintiffs have also brought broader constitutional challenges that seek to cancel DOGE's actions and disable Musk and the group from further activity.

A group of USAID workers and contractors sued Musk and DOGE in Maryland federal court. They alleged Musk is wielding seemingly limitless authority in violation of the Constitution's Appointments Clause, which sets forth requirements for the establishment and approval of government officers.

The USAID plaintiffs also claimed that DOGE violates the separation of powers by its actions that subvert Congress, as well as its design featuring no formal appointment, congressional authorization, or duties defined by law.

New Mexico and other Democrat-led states brought similar claims against Musk and DOGE, though they already lost a bid for a temporary restraining order by failing to show irreparable harm. The states' case was consolidated with a lawsuit filed by the Japanese American Citizens League, Sierra Club, and other public interest groups.

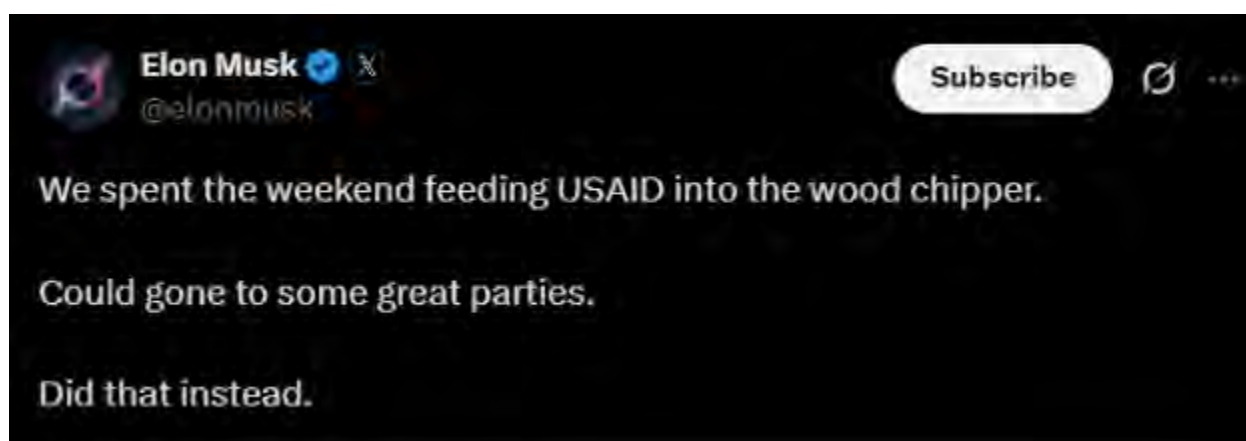
Evidence of Musk's Role

The USAID plaintiffs won a partial preliminary injunction at the trial court level related to DOGE's involvement in the attempt to eliminate the agency.

Although the district judge found that the plaintiffs would likely prevail on their constitutional claims, he said early evidence indicates that USAID officials executed or ratified many of the actions at issue, including decisions to terminate workers and pause foreign assistance.

But even the partial injunction, which was limited to moving USAID out of its headquarters and shutting down its website, was soon put on ice by the Fourth Circuit's March 28 decision.

The Trump administration offered evidence that Musk acted as a presidential adviser rather than DOGE chief, Judge Marvin Quattlebaum, a Trump appointee, wrote. The plaintiffs only put forth social media posts and press reports, according to the decision, which was joined by Judge Paul Niemeyer, a George H.W. Bush appointee.



The Right Defendants

Regardless of whether attempts to dismantle USAID violated the separation of powers, DOGE and Musk are the wrong defendants for such claims, the Republican-appointed judges said.

Judge Roger Gregory, a Clinton appointee, wrote in a concurring opinion that Musk violated the appointments clause and that the actions to shutter USAID violated the separation of power.

But Gregory agreed with his colleagues that the plaintiffs sued the wrong defendants.

Establishing the standing necessary to sue particular defendants rests in part on those defendants having the ability to fix the alleged injuries, said Craig Green, a Temple University law professor who focuses on judicial oversight of the executive branch. If the USAID plaintiffs are only suing entities without legal power, then there's arguably no standing to allow courts to decide whether DOGE and Musk violated the Constitution, he said.

The separation-of-powers claim could have legs if plaintiffs amend their lawsuit to include executive branch officials, although the damage to USAID may be impossible to undo by the time the case gets heard again, said Leslie Gielow Jacobs, a University of the Pacific law professor and head of the McGeorge Capital Center for Law & Policy.

"It's a lesson to others suing about Musk and DOGE's misdeeds—sue the president and lower executive department officials, too," she said.

To contact the reporter on this story: Robert lafolla in Washington at riafolla@bloombergindustry.com

Top officials to leave US SEC's anti-bribery unit, sources say

 [reuters.com/world/us/top-officials-leave-us-secs-anti-bribery-unit-sources-say-2025-04-02](https://www.reuters.com/world/us/top-officials-leave-us-secs-anti-bribery-unit-sources-say-2025-04-02)

Chris Prentice, Dawn Kopecki

April 2, 2025

The U.S. Securities and Exchange Commission logo adorns an office door at the SEC headquarters in Washington, June 24, 2011. Picture taken June 24, 2011.

REUTERS/Jonathan Ernst/File Photo Purchase Licensing Rights, opens new tab

NEW YORK/WASHINGTON, April 2 (Reuters) - The top two leaders of the U.S. Securities and Exchange Commission's foreign corrupt practices unit are leaving the agency, according to two people familiar with the matter, at a time when the Trump administration has been hitting the brakes on anti-corruption enforcement.

Charles Cain, the SEC's Foreign Corrupt Practices Act chief since 2017, and Tracy Price, deputy chief of the unit since 2018, are among hundreds of SEC officials leaving the agency, according to the two people who spoke on condition of anonymity as the moves have not been made public outside the agency. A third source familiar with the matter confirmed Price was departing.

President Donald Trump's administration, with billionaire Elon Musk as a top adviser, is seeking to overhaul the federal workforce through mass layoffs and reorganization. Neither Cain nor Price could be reached for comment. A spokesperson for the SEC declined to comment. The White House did not respond to a request for comment.

The Trump administration in February ordered a pause in enforcement of the FCPA, a U.S. law that bars U.S. companies from paying bribes to build business overseas. As part of an executive order, Trump called for Attorney General Pam Bondi to review the law's enforcement and pending cases over the next 180 days.

Advertisement · Scroll to continue

Trump's order did not name the SEC, but Antonia Apps, the regulator's acting deputy enforcement director, told lawyers at an American Bar Association conference that the agency would follow the Justice Department's lead.

Trump has said that the anti-corruption law puts U.S. companies at a disadvantage, facing punishment over what he has called "routine business practices in other nations." It's one of a series of moves by the Trump administration to move away from efforts to combat corruption.

But advocates point out the FCPA is a law that is regularly used to bring large levies against foreign companies with ties to the U.S.

One of the sources said the FCPA team has been ordered to stop work on FCPA cases.

Reporting by Chris Prentice; Editing by Paul Simao

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Chris Prentice
Thomson Reuters

Chris Prentice reports on financial crimes, with a focus on securities enforcement matters. She previously covered commodities markets and trade policy. She has received awards for her work from the Society for Advancing Business Editing and Writing and the Newswomen's Club of New York.

Securities Law

April 3, 2025, 10:31 AM PDT

The S&P 500's Safety Nets Are Gone: Jonathan Levin
Opinion

President Donald Trump's new reciprocal tariff policy is straightforwardly bad for the US economy and markets. The only conceivable reason that the S&P 500 Index was down *just* 4% on Thursday is that investors still don't believe it will stick. Unfortunately, there's no quick way out of this quagmire. No easy off-ramps via negotiation. No stock market "put" from the Federal Reserve. And no federal tax cuts or other stimulus that can sufficiently offset the hit.

Let's take those issues one at a time.

In the very earliest days of the second Trump administration, investors saw *The Art of the Deal* version of Trump use short-lived tariffs for pure coercion. Perhaps the clearest example was when Trump threatened Colombia with 25% tariffs over its refusal to accept deportees transported under degrading conditions. Within days, Colombia accepted the deportees and the tariffs went away. Anyone hoping for that outcome with Trump's "reciprocal tariff" policy is, sadly, delusional.

Trump, who has been talking up the merits of tariffs in trade policy since the 1980s, won the 2024 election on a Big Tariff platform. The nature of his latest proposals basically forecloses on the possibility of a deal that all parties can agree to quickly. His broadsides hit just about every country around the world, and the tariff rates were based on the false premise that bilateral trade deficits are inherently bad (they're not). They punish lots of legitimate bad actors in trade (such as China), and many others (friends in Latin America) that have mostly just tried to play the role of good neighbors.

It would be one thing if the White House had set the new tariffs to match other countries' tariffs on us, but that's not what it did. The actual tariff rates ended up being much higher, in many cases, than pure tariff reciprocity would imply. As Bloomberg News' Josh Wingrove has written, the formula essentially divides a country's trade surplus with the US by our total imports from that country, based on data from the US Census Bureau for 2024.

In other words, some countries will get hit hard simply because they sell a lot of goods that Americans desire, irrespective of their actual policies. The Trump administration has argued that countries use policies such as food inspection standards and value-added taxes as shadow barriers to trade (which is highly controversial to begin with). But the actual tariff policy announced didn't account for those things, so there's no reasonable basis for negotiations. (Despite the unfairness, the economic impacts are so damaging for some economies that they will probably come to the table anyway. But the odds of a swift outcome that satisfies both sides are close to zero.)

Next, some market participants might cling to hopes of major monetary policy support, but that's a fantasy as well. At the time of writing, futures trading implied about three Fed cuts this year, with better than even odds of a fourth. On the one hand, 0.75 to one percentage point of cuts over many months would hardly be the sort of stimulative bazooka that markets have come to expect in times of extreme stress – the so-called "Fed put" made famous during the chairmanship of Alan Greenspan.



On the other hand, even the three or four cuts that are priced in may be too much to ask. While tariffs represent a supply-side shock that central bankers would typically look past, they come after a period of sustained inflation and shaky household inflation expectations. Given Chair Jerome Powell's appreciation for Fed history, I'd bet that he will opt to keep policy rates on the high side rather than let inflation permanently settle into the American economy. A misstep on inflation would surely land him next to Arthur Burns on the Fed Wall of Shame.

Lastly, there's the belief that the White House, together with Republicans in the House and Senate, is about to pivot to more market-friendly policy, including tax cuts and deregulation. Maybe. But those consensus-building efforts are likely to prove much more of a slog than the executive cram-down that Trump just carried out in the form of tariffs.

Trump may manage to extend the expiring provisions of the Tax Cuts and Jobs Act of 2017, but those won't feel like *new* stimulus to households struggling with a potentially rocky labor market and higher prices. I'm skeptical that the fiscal hawks in Trump's own party are likely to cosign on other goodies (including no tax on tips and tax-deductible auto loans) that he proposed on the campaign trail. Deregulation? That may pay economic dividends in the years to come, but it can't match the speed of destruction of the tariffs. And how exactly will Trump's crack team of economic policy experts win support for all of this while they're juggling trade negotiations with countries all around the world?

Small investors still have an appetite for "buy the dip" strategies, wagering that the night is always darkest before dawn. Bloomberg's Bailey Lipschultz reported that they are piling into volatile stocks including Nvidia Corp. and the Vanguard S&P 500 ETF, according to data tracking the users of Fidelity Investments' brokerage.

I think they will be disappointed. I hope I'm wrong, of course, and history often frowns on the columnists who write hyperbolically negative pieces on the day of big selloffs. But then again, most of that recent history was written at a time when technocrats still held sway in the White House and the "Fed put" was alive and well. I'm not sure that we're living in a comparable time.

More From Bloomberg Opinion:



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QuantumScape, SPAC Brass Settle Merger Suit For \$8.75M

By **Rae Ann Varona**

Law360 (April 2, 2025, 10:47 PM EDT) -- QuantumScape Corp., its directors and officers and the special-purpose acquisition company that took the lithium-metal battery maker public agreed to an \$8.75 million settlement resolving a stockholder derivative suit that alleged the SPAC's brass breached their fiduciary duties in connection with the go-public merger, a Wednesday stipulation states.

The **stipulation and agreement to the settlement** filed in Delaware's Chancery Court states that counsel for QuantumScape shareholder Sheadrick Richards concluded that the multi-million dollar deal is fair, reasonable, adequate and beneficial to a class of persons who held stock in SPAC Kensington Capital Acquisition Corp. as of a November 2020 shares redemption deadline but did didn't redeem their shares.

Kensington and the QuantumScape defendants entered into the settlement "solely to put the released plaintiff's claims to rest, finally and forever, without in any way acknowledging any wrongdoing, fault, liability, or damages," the agreement said.

Kensington went public in June 2020. According to Richards' **complaint** filed in August 2022, Kensington's sponsor, Kensington Capital Sponsor LLC, had paid \$25,000 for "founder shares" prior to the IPO, equating to 20% of Kensington's stock.

Kensington announced in September 2020 that it would buy the legacy QuantumScape. The merger closed on Nov. 25, 2020, with Kensington changing its name and operating as QuantumScape.

Richards alleged in his suit that board members of the Westbury, NY-based SPAC allowed the company to go through with acquiring San Jose, California-based QuantumScape Battery Inc. "without effectively doing any due diligence" so that they could to monetize their founder shares.

The acquisition proxy statement, Richards alleged, gave a "false and misleading impression" that the Kensington board consisted of "disinterested directors" when the board members, in reality, held founder shares in Kensington that became tradeable as soon as the acquisition closed.

In seeking monetary damages for alleged breaches of fiduciary duty and aiding and abetting, Richards asserted that the Kensington board members' "interests in the sponsor created a conflict of interest between them, QuantumScape, and outside stockholders."

He said that the Kensington board didn't negotiate any terms of the acquisition, did not seek out third-party valuations or fairness opinions on QuantumScape's valuation, and misled shareholders about the amount of due diligence it had done.

QuantumScape, at the time, was facing **other** lawsuits over statements about its batteries, including a **shareholder suit** in California federal court. QuantumScape **settled** that case, with a California federal judge granting final approval of the \$47.5 million deal in late January.

Wednesday's stipulation, subject to court approval, was entered into by Richards and defendant parties Kensington Capital Partners LLC — which, according to Richards' complaint, was the sponsor's managing member — several individual defendants, including QuantumScape CEO Jagdeep Singh and Kensington CEO Justin Mirro, and QuantumScape.

The stipulation says that Richards' counsel also plans to seek attorney fees in an amount not to exceed 20% of the settlement amount, inclusive of inferred expenses.

Richards is represented by Christopher H. Lyons, Tayler Bolton, Randall J. Baron, Benny C. Goodman III, and Erik W. Luedeke of Robbins Geller Rudman & Dowd LLP, Peter B. Andrews, David M. Sborz, Jackson E. Warren, and Jacob D. Jeifa of Andrews & Springer LLC, Craig W. Smith, Gregory E. Del Gaizo, Shane P. Sanders, and Mario D. Valdovinos of Robbins LLP, and John Herman of Herman Jones LLP.

The Kensington parties are represented by Susan W. Waesco and Miranda N. Gilbert of Morris Nichols Arsht & Tunnell LLP, and Shahzeb Lari of Hughes Hubbard & Reed LLP.

The QuantumScape parties are represented by Andrew D. Cordo, Jessica A. Hartwell, Andrew D. Berni, Ignacio E. Salceda, and Rebecca L. Epstein of Wilson Sonsini Goodrich & Rosati PC.

The case is In Re Kensington-QuantumScape De-Spac Litigation, case number 2022-0721, in the Court of Chancery of the State of Delaware.

--Additional reporting by Leslie A. Pappas, Katryna Perera, and Sydney Price. Editing by Michael Watanabe.

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Law Profs Back Cert. Reversal In Boeing Stock-Drop Fight

By **Ryan Harroff**

Law360 (April 2, 2025, 2:53 PM EDT) -- Law professors and former U.S. Securities and Exchange Commission officials urged the Fourth Circuit to undo class certification for Boeing investors who accused the company of overstating the safety of its 737 Max fleet, calling the certification order a "master class" in misinterpreting precedent.

The Fourth Circuit issued an order Wednesday allowing the ex-officials and professors to enter their **amicus brief** supporting The Boeing Co.'s petition to undo certification. That brief asserts that the Eastern District of Virginia "aggressively and unnecessarily misinterpreted and circumscribed" the U.S. Supreme Court's ruling in **Comcast Corp. v. Behrend**, a decision that set limits on class certification when damages cannot be measured on a classwide basis.

"Fidelity to the plain text of the Supreme Court's opinion requires that the district court's class certification order be reversed and that this court affirm Comcast's continuing vitality as a real constraint on class certification in securities litigation (and even beyond)," the brief stated.

The investors claim Boeing made false statements about its 737 Max fleet's safety before one of those planes had a door blow out in midair during a 2024 flight from Oregon to California, a highly publicized incident that led to multiple safety issues coming to light and **allegedly caused the company's stock price to drop** by more than 18%.

According to the brief from the law professors and former SEC officials, the investors' expert never specified a methodology for measuring damages that lined up with the theory of fraud the investors used as the basis for their claims. Such a methodology is necessary to meet the "rigorous analysis" requirement laid out in the Supreme Court's Comcast decision, the brief stated.

Instead of describing a damages calculation methodology, the brief stated, the investors' expert simply gave a definition for out-of-pocket damages that applies to any securities case without further detail. The ex-officials and professors argued that by **certifying the investor class**, the district court wrongly "accepted tautologies as replacements for methodologies" in a move counter to the Comcast precedent's requirements.

Boeing, in its March petition to the Fourth Circuit, also hammered on the Comcast ruling and argued that the investors' expert "did not even try" to lay out a methodology. According to both Boeing and the amicus brief, letting the certification order stand would render the Comcast decision meaningless in the context of securities litigation.

Todd Cosenza of Willkie Farr & Gallagher, counsel for the professors and ex-officials, said in a Wednesday email to Law360 that the Comcast decision's requirements doom class certification.

"Too often, district courts give plaintiffs a total pass at class certification with a vague promise to calculate damages at a later date," Cosenza said. "The Fourth Circuit should end that approach in the Boeing case by now granting the 23(f) petition" for permission to appeal the class certification order.

Counsel for Boeing and the investors did not immediately respond to requests for comment Wednesday.

The former SEC officials and law professors are represented by counsel from Willkie Farr & Gallagher

LLP.

The investors are represented by counsel from Labaton Keller Sucharow LLP, Robbins Geller Rudman & Dowd LLP, and the Law Office of Craig C. Reilly.

Boeing is represented by counsel from McGuireWoods LLP and Sullivan & Cromwell LLP.

The case is In re: The Boeing Company Securities Litigation, case number 25-135, in the U.S. Court of Appeals for the Fourth Circuit.

--Additional reporting by Jared Foretek and Linda Chiem. Editing by Robert Rudinger.

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Norfolk Southern Investors Appeal Train Derailment Ruling

By **Jessica Corso**

Law360 (April 2, 2025, 2:05 PM EDT) -- Shareholders of railroad operator Norfolk Southern Corp. have gone to the Second Circuit seeking to revive a proposed class action accusing the company of making false claims about its commitment to safety ahead of a 2023 derailment and toxic chemical spill in East Palestine, Ohio.

A notice of appeal was posted to the Second Circuit's docket on Tuesday by lead plaintiffs the Ohio Carpenters Pension Fund and the City of Pontiac Reestablished General Employees' Retirement System, which are seeking to overturn U.S. District Judge Lewis A. Kaplan's February decision **dismissing the suit**.

Judge Kaplan ruled that the funds' claims that Norfolk Southern misled investors didn't hold water because they were based on general and vague statements that didn't rise to the level of securities fraud. In dismissing the suit in its entirety, Judge Kaplan went beyond the recommendation of a magistrate judge who said that certain claims should be **allowed to advance**.

The lawsuit was filed in May 2023, just months after the train derailment, which suing shareholders argued caused the company's stock price to plummet.

The case is In re: Norfolk Southern Corp. Bond/Note Securities Litigation, case number 25-739, in the U.S. Court of Appeals for the Second Circuit.

--Additional reporting by Linda Chiem. Editing by Daniel King.

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Binance Can't Send All Investors' Claims To Arbitration

By **Caroline Simson**

Law360 (April 2, 2025, 10:23 PM EDT) -- Crypto exchange Binance has suffered a setback in its bid to send a proposed class action filed by investors to arbitration in Singapore, after a New York federal judge partially denied the motion under an arbitration clause included in a 2019 unilateral update to its terms of use.

U.S. District Judge Andrew L. Carter Jr. on Friday denied the motion to compel arbitration for a group of plaintiffs who had purchased tokens between April 1, 2017, and Feb. 20, 2019, the date the crypto exchange rolled out its amended terms of use. Those amended terms added language stating that any disputes would be arbitrated under the rules of the Singapore International Arbitration Centre.

The judge then denied without prejudice the motion to compel arbitration with respect to a second group of plaintiffs whose claims accrued after that February 2019 date but before they had actual notice of the arbitration clause. In his reasoning relating to this second group, the judge said he needed more information before he could decide whether and to what extent the SIAC arbitration clause would apply.

"The court encourages the parties to think further about the downstream effects of such a determination on the pendency of this litigation and, if necessary, to provide the court with supplemental briefing as outlined in the conclusion of this opinion," the opinion states later.

Among the questions remaining is whether the 2019 terms of use can be applied retroactively, the judge wrote, saying he is "not satisfied with the conclusion that all of [the plaintiffs'] claims that predate their actual notice are subject to arbitration." He cited California law — which he determined earlier applies in the case, alongside Nevada and Texas law — which says that contracts are "illusory" if they contain provisions allowing contract modifications to apply retroactively to claims that have already accrued.

Judge Carter also sought "further elucidation" from the parties as to the enforceability of a class action waiver included as a "passing reference" in the amended terms.

At issue in the case is an arbitration clause that was unilaterally added to Binance's terms of service in 2019. While an earlier version of the terms of service did not include such a clause, it did have a so-called change of terms provision stating that Binance could "amend this agreement and various rules from time to time as needed, and announce the same on the website, without any individual notice to you," according to the provision, which was quoted in Friday's opinion.

Any such amended terms would be announced on the website, the provision stated. If users continued using the Binance platform after that announcement, they would be "deemed as having accepted the amended agreement and rules," according to the provision.

When Binance amended its terms in 2019 to include the arbitration provision, an updated version of the terms was posted on its website.

Judge Carter concluded that the plaintiffs did not have "constructive" notice of the arbitration clause, since they did not receive individual notice of the amended terms. But they did have "actual" notice of the clause once they joined the litigation in April or June 2020, since the complaint splits subclasses of plaintiffs depending on whether they purchased their tokens before or after the

amended terms were rolled out, according to the opinion.

The plaintiffs in the case are residents of California, Nevada and Texas who purchased tokens on Binance and accuse the company of selling those tokens without obtaining a registration statement or registering as a broker-dealer, according to the opinion. They're now seeking damages and other relief arising from the company's alleged illegal offering and sale of securities.

The case is one of an avalanche of investor suits that hit crypto exchanges around April 2020 in the first widespread, coordinated effort to bring them into compliance with securities laws.

In November 2023, Binance agreed to pay \$4.3 billion to end a U.S. Department of Justice investigation into allegations that the company had failed to implement an anti-money laundering program. Binance founder Changpeng Zhao pled guilty to a criminal charge of failing to maintain an effective anti-money laundering program. Zhao and Binance also made \$150 million and \$2.7 billion settlements with the Commodity Futures Trading Commission.

The case is before the New York court again after being **revived** by the Second Circuit last year.

Counsel for the plaintiffs, Selendy Gay PLLC partner Jordan Goldstein, told Law360 that "on behalf of the class of Binance users, we are gratified by the court's careful ruling and look forward to this case moving forward."

Counsel and representatives for Binance could not immediately be reached for comment Wednesday.

The investors are represented by Jordan Goldstein and Corey Stoughton of Selendy Gay PLLC.

Binance is represented by Samson A. Enzer, Herbert S. Washer, Landis C. Best, Edward N. Moss and Miles C. Wiley of Cahill Gordon & Reindel LLP and Matt Gregory of Gibson Dunn & Crutcher LLP. Zhao is represented by Christopher Kercher, Jianjian Ye, Maheema Haque, Avi Perry and Emily Kapur of Quinn Emanuel Urquhart & Sullivan LLP.

The case is Lee et al. v. Binance et al., case number 1:20-cv-02803 in the U.S. District Court for the Southern District of New York.

--Additional reporting by Elliot Weld and Katryna Perera. Editing by Kelly Duncan.



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Endeavor-Silver Lake Deal Sparks Over \$1B In Appraisal Suits

By **Jeff Montgomery**

Law360 (April 2, 2025, 5:03 PM EDT) -- A growing number of investors in recently taken-private sports and entertainment giant Endeavor Group Holdings have sued in Delaware's Court of Chancery for a post-deal appraisal of more than \$1 billion in stock based on the deal price as of Wednesday, challenging the \$27.50 per share paid by private equity firm Silver Lake.

The claims for court appraisal — expected to increase in number by those close to the current cases — hit the court days after Silver Lake's March 25 closing on its Endeavor acquisition, in a deal described by the parties as having a \$13 billion equity value and a \$25 billion enterprise value.

"I expect this to be the biggest appraisal proceeding in the history of the Delaware courts by a significant margin," said A. Thompson Bayliss of Abrams & Bayliss LLP, counsel to many of the stockholders seeking appraisal. "This deal made a lot of sense for Silver Lake and the buy-side entities. For exactly the same reason, it did not make a lot of sense for minority investors."

Silver Lake declined to comment Wednesday.

In all, more than 40 million public shares were up for appraisal in the combined Court of Chancery cases as of Wednesday, with more expected to follow.

Silver Lake on March 3 blasted signs of an "appraisal arbitrage" effort, alleging "pervasive trading" by hedge funds after the deal was announced had driven Endeavor's price up. In a statement, the private equity firm declared that "appraisal entitles dissenters to the fair value of their Endeavor shares, not to amounts attributable to artificial inflation" by way of arbitrage.

"Against this backdrop, Silver Lake hereby advises all dissenters that it does not intend to pay them any merger consideration at closing — nor at any time until there is full resolution with respect to such appraisal claims — consistent with its rights under Delaware law," it said.

It could not immediately be determined how many Silver Lake and Endeavor insiders themselves had bought into the deal.

The cases, cumulatively, already amount to one of the largest appraisal moves in state history — and the largest since Delaware lawmakers amended the state's General Corporation Law in 2016 to discourage speculative litigation.

Driving the changes in 2016 were criticisms that investors at times acquired shares in order to gamble that an undervalued deal would, after litigation, earn them the higher price retroactively, with interest at the state's statutory rate of 5% over the Federal Reserve discount rate, including any surcharges, compounded quarterly.

At issue to date in the Endeavor suits are more than 33 million shares listed to multiple holders, ranging in share amounts from 110,000 shares held by Fifth Lane Partners Fund LP to 8.5 million held by two funds of HBK Capital. That total represents only about 90% of the Endeavor Class A shares.

The suits hit the court about a week after the deal's closing, with Heyman Enerio Gattuso & Hirzel LLP and Ronick Kramer Sadighi LLP representing six petitioners with about 15.8 million shares and

Abrams & Bayliss LLP representing eight others with more than 17 million shares.

Under the deal, Endeavor will remain the privately held parent of publicly held TKO, which owns World Wrestling Entertainment, Ultimate Fighting Championship and other interests.

Bayliss said TKO's public trading price on the March 24 closing suggested the deal was materially underpriced, without accounting for other price and process issues "and complications that seem likely to come to light in discovery."

After Silver Lake locked in the price it would pay to minority holders, Bayliss said, Endeavor "began monetizing assets, including via related party transactions, crystallizing the value of EDR's portfolio, all before the management-led acquisition closed. Free of conflicts, EDR and Silver Lake might have executed a similar playbook on behalf of all stockholders."

Endeavor is a global sports and entertainment company that includes entertainment agency WME and sports operations, event management, media production distribution and brand licensing through IMG.

It also provides live events and hospitality through On Location and operates the cultural marketing agency 160over90 as well as sports data and technology venture OpenBet, while also holding a majority interest in TKO Group Holdings.

The cases steered by Samuel T. Hirzel II and Brendan Patrick McDonnell of Heyman Enerio Gattuso & Hirzel LLP and Lawrence M. Rolnick and Steven M. Hecht of Rolnick Kramer Sadighi LLP include HBK Rodeo MS Ltd. and HBK Rodeo V2 Ltd, case number 2025-0340; Nineteen77 Global Merger Arbitrage Japan Ltd. et al., case number 2025-0341; HBK Rodeo MS Ltd. and HBK Rodeo V2 Ltd., case number 2025-0340; Nineteen77 Global Merger Arbitrage Japan Ltd. et al., case number 2025-0341; KL Special Opportunities Master Fund Ltd., case number 2025-0342; Cigogne Management SA on Behalf of Cigogne Fund-M&A Arbitrage and Cigogne Ucits-M&A Arbitrage, case number 2025-0343; North Commerce Parkway Capital LP and RK Trading I LLC, case number 2025-0344; and Fifth Lane Partners Fund LP, case number 2025-0345, all in the Court of Chancery of the State of Delaware.

The multiplaintiff LMR Multi-Strategy Master Fund Ltd. et al. v. Endeavor Group Holdings Inc., case number 2025-0326, is steered by A. Thompson Baylis, April M. Ferraro and Michael T. Manuel of Abrams & Bayliss LLP.

The parties FourWorld Special Opportunities Fund LLC, FW Deep Value Opportunities Fund I LLC, FMAP ACL Ltd., Athos Asia Event Driven Master Fund, BlueHarbour MAP I LP, 405 ACM Ltd., JD Squared Capital LLC and Hudson View Capital LLC are represented by A. Thompson Baylis, April M. Ferraro and Michael T. Manuel of Abrams & Bayliss LLP.

Fifth World Partners Fund LP is represented by Samuel T. Hirzel II and Brendan Patrick McDonnell of Heyman Enerio Gattuso & Hirzel LLP and Lawrence M. Rolnick and Steven M. Hecht of Rolnick Kramer Sadighi LLP.

Counsel information for Endeavor and Silver Lake was not immediately available.

--Editing by Philip Shea.



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Opendoor To Settle Shareholders' Real Estate Tech Suit

By **Jessica Corso**

Law360 (April 2, 2025, 7:48 PM EDT) -- Investors in real estate firm Opendoor Technologies Inc. said in a court filing Wednesday that they've struck a deal to end a lawsuit accusing the company of overhyping its pricing algorithm software prior to going public in a reverse merger with a special-purpose acquisition company.

Lead plaintiffs in the proposed class action and Opendoor say they have reached a settlement "in principle" and jointly asked an Arizona federal judge to stay further proceedings in the case while they hammer out the details, which weren't publicly available Wednesday.

"The parties are actively working to document the terms of a class-wide settlement and to file the necessary motions and documentation with the court for approval of the settlement," according to the filing. The parties said they would update the court about the progress of the settlement no later than June 1.

Neither representatives for Opendoor nor for the investors immediately responded to a request for comment Wednesday.

The settlement will end a lawsuit **filed in 2022** in the wake of a media report that Opendoor appeared to be losing significant money on real estate sales.

The complaint pinned the losses on the company's "iBuying" technology that promised to algorithmically adjust home offers to market conditions, but that suing investors' claim was defective.

They accused the company of overhyping the technology in selling itself to the market before it went public via a SPAC merger in 2020 and alleged that the company's stock price plummeted 94% after problems with its pricing algorithm were made public.

Opendoor initially won dismissal of the case before **it was revived** after a second look by U.S. District Judge Michael T. Liburdi last year.

The investors are represented by Michael Canty, James Christie, Guillaume Buell and Nicholas Manningham of Labaton Keller Sucharow LLP, Daniel Thiel of Clark Hill PLC, Aaron Castle of VanOverbeke Michaud & Timmony PC and Casey Sadler of Glancy Prongay & Murray LLP.

Opendoor is represented by Adam Hakki, Lyle Roberts, George Anhang and Billy Marsh of Allen Overy Shearman Sterling US LLP and John Gray of Womble Bond Dickinson US LLP.

The case is In re: Opendoor Technologies Incorporated Securities Litigation, case number 2:22-cv-01717, in the U.S. District Court for the District of Arizona.

--Additional reporting by Emilie Ruscoe. Editing by Jay Jackson Jr.



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Insurer Says \$9M OpenText Merger Settlement Not Covered

By Hope Patti

Law360 (April 2, 2025, 7:48 PM EDT) -- An insurer said it is not obligated to contribute to a \$9 million settlement in a shareholder class action stemming from Covisint's 2017 merger with software company OpenText, telling a Michigan federal court that the settlement does not constitute a covered loss.

In a **suit** filed Tuesday, Allied World National Assurance Co. contended that its first-layer excess policy under a tower of insurance issued to Covisint Corp. does not afford indemnity coverage for the underlying action brought against the company's former directors and officers.

Allied World asserted that its policy incorporated the primary policy's bump-up exclusion, which generally bars coverage for any amount an insured pays to resolve shareholder actions alleging that the compensation they received as part of an insured's merger or acquisition was inadequate or unfair.

"The [underlying] action alleges that the share price OpenText paid to Covisint's shareholders to acquire Covisint's stock was 'inadequate' and 'unfair,'" the insurer said. "The only damages sought in the [underlying] action represent an increase in price or consideration for the Covisint shares owned by the putative class members."

As such, Allied World contended that the \$9 million settlement amount does not constitute covered loss and, therefore, is not covered.

Allied World's suit comes after a Michigan federal court rejected the carrier's **bid to intervene** in a coverage suit initiated by Covisint's primary insurer, Wesco Insurance Co. In that case, the **court held** that Wesco's claims were moot because the insurer's coverage limit had already been exhausted.

Covisint shareholders Leslie Murphy and Vincent Martin III filed the class action against certain former Covisint directors and officers in Michigan state court in June 2017.

The operative pleading, a second amended complaint filed in February 2023, asserted a sole claim for breach of fiduciary duties against the directors and officers in connection with OpenText's acquisition of all outstanding Covisint stock, according to court filings.

Murphy and Martin said Covisint's merger agreement, under which shareholders would receive \$2.45 per share, was "fundamentally unfair" and deprived shareholders of "the true value of their investment in Covisint."

Wesco paid the former directors and officers' defense expenses in the class action under the policy's individual insurance coverage insuring agreement, according to Tuesday's suit. As the first excess insurer in the tower, Allied World said it paid the remaining defense expenses under the same insurance agreement.

The class action was ultimately settled in October 2024.

According to Allied World, third-level excess insurer Berkley Insurance Co. agreed to fund the settlement but later demanded that Allied World pay for a portion of the deal, which it refused to do.

Allied World noted that, unlike the policy it issued, the Berkley policy did not incorporate the bump-up exclusion.

"AWNAC is entitled to a declaration that the AWNAC policy does not afford any indemnity coverage for the Murphy action settlement," the insurer asserted.

Representatives of Allied World and Berkley did not immediately respond to requests for comment Wednesday. Contact information for the former directors and officers of Covisint Corp. was not available.

Allied World is represented by Andrew J. Kolozsvary and Brent H. Olson of Dykema Gossett PLLC.

Counsel information for the defendants was not available.

The case is Allied World National Assurance Co. v. Berkley Insurance Co. et al., case number 2:25-cv-10932, in the U.S. District Court for the Eastern District of Michigan.

--Additional reporting by Ganesh Setty. Editing by Amy Rowe.

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'Zero Support In The Bar': Judiciary Downsizes Amicus Project

By **Jeff Overley**

Law360 (April 2, 2025, 11:16 PM EDT) -- Faced with wide-ranging opposition and potential constitutional challenges, federal judiciary advisers Wednesday sharply scaled back plans to strengthen scrutiny of amicus briefs, a retreat that won praise from disparate corners of the legal industry.

The decision to abandon some draft amendments to Federal Rule of Appellate Procedure 29 — while also advancing modest changes to the rule, which governs amicus filings in circuit courts — was an unsurprising move after a fiery hearing in February and a public comment period that elicited hundreds of often-critical letters.

Wednesday's development occurred at a meeting of the Advisory Committee on Appellate Rules, part of the Judicial Conference of the United States, and effectively ended the panel's **efforts to require** that nongovernmental amici obtain leave of court and disclose certain details about their revenue sources.

"Based on the feedback we received, there is zero support in the bar for that proposal," Seton Hall University School of Law professor Edward Hartnett, who researches and drafts policies for the panel, said of the idea to require leave of court before the filing of amicus briefs.

"Less than zero?" U.S. Circuit Judge Allison H. Eid of the Tenth Circuit, who chairs the committee, added jokingly at the meeting in Atlanta.

Rule 29 already requires amici to obtain leave of court before lodging briefs regarding petitions for rehearing, but extending that requirement to all amicus briefs would have vastly expanded the obligation. Although the idea's few proponents **hoped to prevent** amici-related conflicts of interest that trigger recusal, opponents said problematic briefs can simply be struck from dockets, and they warned of a chilling effect, with some amici declining to invest time and money in briefs that courts might refuse to accept.

In circuit courts, amicus briefs are typically filed with the parties' consent, which is practically automatic in most cases. That approach is already stricter than the U.S. Supreme Court's relatively new policy, which **allows amicus briefs without consent**. When panelists Wednesday voted to ditch the leave-of-court idea, they also voted to preserve the consent requirement, saying it has some value.

"The requirement of consent has the benefit of filtering out frivolous amicus briefs, and in certain kinds of cases, we get flooded with what I call 'letters to the editor,'" U.S. Circuit Judge Sidney R. Thomas, a panelist and Ninth Circuit jurist, said Wednesday. "These are unrepresented, pro se people. ... As with most pro se filings, they tend to be pretty wild."

Opposition blurred familiar ideological lines, and during a Valentine's Day hearing, lawyers marveled at **the strange bedfellows vibe**. That vibe was still palpable after Wednesday's vote, when lawyers with divergent outlooks on many issues shared similar reactions with Law360.

"Rarely has there been so much agreement about a proposed amendment to a rule between the plaintiff [bar] and defense bar," Susan Steinman, senior counsel and senior policy director at the American Association for Justice, a group for trial lawyers, said Wednesday. "Today's vote to retain

the existing rule on party consent will save time and expense for parties, avoid motion practice and respect the time of federal appellate court judges."

Lawrence S. Ebner, general counsel of the Atlantic Legal Foundation, which often espouses limited-government views in its frequent amicus briefs, also offered praise, telling Law360 that the committee "exercised common sense by ditching the half-baked idea of requiring a motion for leave." Ebner added that "amicus filings in courts of appeals are more important than ever," because the Supreme Court now hears a historically small number of cases.

In another significant pullback Wednesday, the advisory committee voted 5-4 against requiring amici to disclose if a case's parties or counsel contributed 25% or more of their revenue in the prior fiscal year. Although a subcommittee had narrowly recommended approval of the disclosure duty, a memorandum for Wednesday's meeting acknowledged criticism "that it threatens free association and First Amendment rights," alluding to veiled threats of litigation that some groups have aired in recent months.

Winston & Strawn LLP appellate litigator Linda Coberly, a panelist and subcommittee member who opposed the 25% idea, said during Wednesday's meeting that there wasn't "a clear-cut articulation of a problem that we are trying to solve."

"It seems to me that it's unwise to pursue a rule change in the face of the kind of opposition that was raised to this change," Coberly said.

U.S. District Judge Carl J. Nichols, a committee member and jurist in Washington, D.C., echoed that view, questioning whether the revenue details would offer anything meaningful.

"I don't recall ... an appellate judge or district court judge who's ever said, 'I was hoodwinked,' or, 'I think there's even a risk that I was hoodwinked,' by not knowing this information," Judge Nichols said.

Sen. Sheldon Whitehouse, D-R.I., and Rep. Hank Johnson, D-Ga., in 2021 asked Judicial Conference officials to begin studying "inadequate funding disclosure" by amicus brief filers, and many observers since that time have questioned whether the committee was at risk of carrying water for lawmakers who had failed to convince Congress to pass **amicus-related legislation**.

"This sort of all came to the committee's attention because of a proposal or a suggestion or a nod by some elected officials," Kirkland & Ellis LLP partner George W. Hicks Jr., a committee member, said Wednesday. "Maybe it's a legislative situation and not a committee situation."

The committee on Wednesday did endorse a handful of amendments to Rule 29, including provisions intended to illuminate ties between amici and parties to cases. As one example, the amendments would require disclosure of whether a case's parties or counsel hold majority control in entities filing amicus briefs. Another provision would often require disclosure if someone pledged more than \$100 to bankroll an amicus brief.

The committee discussed Rule 29 for nearly three hours, and much of that time was spent rearranging and tweaking various sections and words. A representative of the panel told Law360 that the final text would not be released until a report is ready for the Committee on Rules of Practice and Procedure, often simply called the Standing Committee, which will review the Rule 29 revisions later this year.

--Editing by Jay Jackson Jr.



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Eligo Seeks Exit From Ohio Customer's Electricity Rates Suit

By **Madeline Lyskawa**

Law360 (April 2, 2025, 9:17 PM EDT) -- Private electricity provider Eligo Energy LLC has urged an Ohio federal judge to throw out a proposed class action alleging the company's variable rates are the result of "unbridled price gouging," saying the customer behind the suit saved money most months.

Eligo said in a motion filed Tuesday that when Thomas Orzolek enrolled with the company to receive electricity, Eligo offered no guarantee that he would save money or pay a lower rate than that charged by his utility. Yet, Eligo's rates were still lower than the utility's in 41 of the 52 months Orzolek was a customer, the company said.

Despite having saved money, Orzolek and his counsel — who the company said have brought dozens of similar cases against private energy providers — sued Eligo anyway, alleging the company breached the customer contract because its variable rates were higher than wholesale costs and utility prices in seven of the 52 months that Orzolek was a customer, Eligo said.

In his **Jan. 30 complaint**, Orzolek told the court that the variable rates Eligo charged him for electricity after he extended his contract in June 2022 could not possibly be based on the pricing structure factors outlined in its customer contract, which includes the cost of wholesale energy and the cost of renewable energy certificates to offset non-renewable energy usage.

Indeed, the variable rates Eligo charged between June 2022 and January 2023 were consistently higher than wholesale electricity and REC costs in that same time frame — about 99% higher on average, Orzolek said, accusing the company of breaching the customer contract.

However, the Seventh and Second circuits have both held that using wholesale costs and utility prices as bases for comparison is not enough to state a claim for breach of contract, Eligo said Tuesday. Orzolek similarly can't seek to hold the company liable for not charging him its fixed-rate prices, after he agreed to pay a variable rate upon extending his contract, Eligo said.

"Because wholesale costs, utility rates and historical fixed-rate offerings are not relevant comparators to show a breach of contract in a [competitive retail electricity service provider] contract containing market terms, this court should dismiss the complaint for failure to state a claim," Eligo said.

Moreover, the court should dismiss Orzolek's complaint because the Public Utilities Commission of Ohio has exclusive jurisdiction over competitive retail electricity service providers for claims that involve them supplying electricity, not the federal district court, Eligo said.

"Plaintiff attempts to plead around PUCO's exclusive jurisdiction by styling his complaint as a 'pure contract' action. However, Ohio law is clear that 'casting the allegations in the complaint to sound in tort or contract is not sufficient to confer jurisdiction upon a trial court when the basic claim is one that the commission has exclusive jurisdiction to resolve,'" the company said.

If the court declines to dismiss Orzolek's claims, Eligo said it should alternatively pause the litigation on the basis that Orzolek's and the putative class' claims are already represented by another class action previously filed by Orzolek's counsel in the Southern District of New York in early 2024.

Counsel for Orzolek did not immediately respond to requests for comment Wednesday.

Counsel for Eligo Energy declined to comment Wednesday.

Orzolek is represented by Jeffrey S. Goldenberg of Goldenberg Schneider LPA, D. Greg Blankinship of Finkelstein Blankinship Frei-Pearson & Garber LLP and J. Burkett McInturff of Wittels McInturff Palikovic.

Eligo Energy is represented by Ryan D. Watstein, Keith Dye and Leo O'Toole of Watstein Terepka LLP.

The case is Thomas Orzolek v. Eligo Energy LLC et al., case number 2:25-cv-00078, in the U.S. District Court for the Southern District of Ohio.

--Additional reporting by Tom Lotshaw. Editing by Janice Carter Brown.

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GoodRx, PBM Price-Fixing MDL Set In Rhode Island

By **Lauren Berg**

Law360 (April 2, 2025, 10:08 PM EDT) --

The Judicial Panel on Multidistrict Litigation on Wednesday consolidated in Rhode Island litigation alleging that GoodRx conspired with pharmacy benefit managers, including CVS Caremark and Express Scripts, to suppress reimbursements to independent pharmacies for dispensing generic prescription medications.

The panel determined that the cases — which have been filed in the Central District of California, the Eastern District of New York, Connecticut and Rhode Island — should be consolidated and transferred to the District of Rhode Island, noting in its brief **order** that it is a "relatively underutilized transferee district" that currently has no pending multidistrict litigation.

The district will also serve the convenience of the parties and witnesses, the panel said, adding that CVS Caremark is headquartered there.

Since October, more than a dozen proposed class actions have been filed alleging essentially the same conspiracy: that GoodRx and four pharmacy benefit managers — CVS Caremark, Express Scripts, MedImpact Healthcare Systems and Navitus Health Solutions — have used GoodRx's "integrated savings program" to engage in anticompetitive conduct, according to the order.

Specifically, the plaintiffs, which are independent pharmacies and nonprofit associations of pharmacies, allege the program involves an agreement between the PBMs and GoodRx to use GoodRx's price-aggregating algorithm to suppress the costs that PBMs pay for generic prescription medications dispensed by independent pharmacies.

The plaintiffs all seek to represent nationwide classes of "independent pharmacies that have been reimbursed for generic prescription medications pursuant to the integrated savings program," the order states.

All the suits name GoodRx as a defendant and all but two name the four PBMs as defendants. All plaintiffs assert claims of illegal price-fixing and restraint of trade in violation of the Sherman Act.

Eric J. Artrip of Mastando & Artrip LLC — who represents plaintiffs C&H Pharmacy, Propst Discount Drugs and Reeves Drug Store — told Law360 on Wednesday, "Although there were many jurisdictions that were appropriate given the defendants involved, we believe that Rhode Island is certainly an appropriate venue for the litigation of these cases."

"We look forward to moving the case along and ultimately achieving a positive result for not only our client, but effecting real change in the industry throughout the United States," he added.

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

The parties all agreed that the actions should be centralized, with the JPML noting the cases "share overlapping complex issues of fact relating to how the integrated savings program operates, the agreements among GoodRx and the four PBM defendants, the program's impact on independent

pharmacies, and the alleged damages," according to the order.

"Fact and expert discovery are likely to be extensive, complicated and time-consuming," the panel added. "Centralization will eliminate duplicative discovery and avoid the risk of inconsistent pretrial rulings."

But the parties did differ on where the cases should be centralized.

Lakhani Rx, whose case was filed in Rhode Island, and Pressman Inc., whose case was filed in New York, both supported centralization in Rhode Island. But plaintiffs in nine actions filed in California voted for centralization in the Golden State's Central District.

Meanwhile, GoodRx and the other defendants suggested the Eastern District of Missouri, where Express Scripts is headquartered and where its contracts require litigation to take place, or the Central District of California, where GoodRx is headquartered and where the majority of cases are filed.

The California case plaintiffs are represented by DiCello Levitt LLP, Lockridge Grindal Nauen PLLP, Pearson Warshaw LLP, Susman Godfrey LLP, Edelson PC, Mastando & Artrip LLC, Safirstein Law LLC, Girard Sharp LLP, and Boni Zack & Snyder LLC.

Plaintiff Pressman is represented by Reese LLP.

Plaintiff Lakhani Rx is represented by Levin Sedran & Berman LLP and Corrente Law.

Plaintiff Grey Dog IV is represented by The Ferraro Law Firm PA, Leeds Brown Law PC, Sultzer & Lipari PLLC and Clarkson Law Firm PC.

GoodRx is represented by David J. Lender, Jennifer Brooks Crozier and Alexandra Rose of Weil Gotshal & Manges LLP.

Express Scripts is represented by Mike Bonanno and Meghan A. McCaffrey of Quinn Emanuel Urquhart & Sullivan LLP.

Caremark is represented by Robert A. Atkins, Jacqueline P. Rubin and Natalie M. Pita of Paul Weiss Rifkind Wharton & Garrison LLP.

MedImpact Healthcare Systems is represented by Michelle Lowery and Richard Salgado of McDermott Will & Emery LLP.

Navitus Health Solutions is represented by James Peacock and Robert J. Herrington of Greenberg Traurig LLP.

The consolidated case is In re GoodRx and Pharmacy Benefit Manager Antitrust Litigation, MDL No. 3148, before the Judicial Panel on Multidistrict Litigation.

The associated cases include Keaveny Drug Inc. v. GoodRx Inc. et al., case number 2:24-cv-09379, Grey Dog IV v. GoodRx et al., case number 2:24-cv-09858, Minnesota Independent Pharmacists v. GoodRx et al., case number 2:24-cv-10297, Esco Drug Co. v. GoodRx et al., case number 2:24-cv-10543, CAAS LLC v. GoodRx et al., case number 2:24-cv-10899, Philadelphia Association of Retail Druggists et al. v. GoodRx et al., case number 2:24-cv-11023, and C&H Pharmacy Inc. et al. v. GoodRx Holdings Inc. et al., case number 2:25-cv-00082, in the U.S. District Court for the Central District of California; Weston Pillbox Inc. v. GoodRx et al., case number 3:25-cv-00063, in the U.S. District Court for the District of Connecticut; Pressman Inc. v. GoodRx et al., case number 1:25-cv-00115, in the U.S. District Court for the Eastern District of New York; and Bueno Pharmacy LLC v. GoodRx et al., case number 1:24-cv-00537, SDDDC LLC v. GoodRx et al., case number 1:24-cv-00550, and Lakhani Rx Inc. v. GoodRx et al., case number 1:25-cv-00003, in the U.S. District Court for the District of Rhode Island.

--Editing by Linda Voorhis.

Sprouts Hid Unsafe Heavy Metal In Sunflower Butter, Suit Says

By **Gina Kim**

Law360 (April 2, 2025, 8:31 PM EDT) -- Sprouts Farmers Market misleads customers into thinking its sunflower butter spreads sold under Sprouts' own brand is made with high-quality protein and safe to consume, despite containing dangerous levels of cadmium, which poses serious health risks, according to a proposed class action filed Wednesday in California federal court.



Sprouts customers filed a proposed false advertising class action in California federal court Wednesday accusing the supermarket chain of hiding dangerous levels of cadmium in its sunflower butter spreads. (Court Documents)

In a **43-page complaint** filed in the Southern District of California, two shoppers accused the supermarket chain of violating several Golden State consumer protection statutes by concealing the presence of the carcinogen in its sunflower butter spreads. Sprouts sells the sunflower butters under its own brand.

"A failure to disclose a fact constitutes actionable conduct if the omission goes to the central function of the product," customers Caryn Hart and Amanda Glover said. "Here, the products' central function is for people to safely consume the products. Sunflower butter that contains harmful cadmium in extremely high levels does not serve its central function."

Sprouts is misleadingly labeling its sunflower butters as being safe or healthy without mentioning the presence of cadmium, the two alleged.

"Defendant's front label protein statements are also likely to mislead reasonable consumers," Hart and Glover said, noting that sunflowers are a low-quality protein.

For example, the product labels tout that the butters provide eight grams of protein per serving, without including the percent of daily value for protein in its nutrition facts.

"The Food and Drug Administration ... prohibits such front label protein claims unless manufacturers also disclose in the nutrition fact panel how much of the recommended daily value for protein the product will actually provide," the shoppers said.

The main protein source in the butters are sunflower seeds, which don't provide much protein, according to the complaint. The Sprouts sunflower butters nutritionally provide as little as 60% of the protein quantity claim, the plaintiffs alleged.

"Consumers reasonably expect that defendant's products will actually provide nutritionally the full amount of protein per serving claimed on the front of the package," Hart and Glover said. "But defendant's products do not do so and instead contain low protein quality proteins."

The products at issue include Sprouts Creamy Unsweetened Sunflower Butter, Organic Creamy Unsalted & Unsweetened Sunflower Butter and Sprouts Creamy Sunflower Butter. The butters are advertised and labeled as being safe for consumption and made with nontoxic ingredients, the suit says. The product labels include images of bright sunflowers and statements like "made in small batches with roaster sunflower seeds" or "school friendly," according to the complaint.

The labels also tout that the butters are non-GMO; BPA-free; and free from peanuts, tree nuts, dairy, eggs, fish, sesame, shellfish, wheat or soy, the suit said.

However, testing of the sunflower butters revealed they contain high levels of cadmium, the customers alleged. Under California law, 4.1 micrograms is the maximum allowable daily value of cadmium exposure when ingested orally, Hart and Glover said.

A rival brand of sunflower butter made by Once Again contains less than the maximum allowable dose of 4.1 micrograms per serving of cadmium, the plaintiffs pointed out. Sprouts' unsalted butter contains 26.56 micrograms, while its Creamy Sunflower Butter tested positive for 11.84 micrograms of cadmium per serving, according to the suit.

The customers alleged they spent money they otherwise wouldn't have on the products, had it not been for Sprouts' conduct.

They seek to represent a nationwide class of all customers in the U.S. who bought the butters at issue for personal use and a subclass of Golden State consumers.

The complaint asserts causes of action under California's Consumer Legal Remedies Act, False Advertising Law and the Unfair Competition Law; breach of implied warranty; intentional misrepresentation; and unjust enrichment against Sprouts.

The shoppers are asking the court to certify their case, appoint them as class representatives and their attorneys as class counsel, and to order Sprouts to pay restitution, damages, attorney fees, and to engage in a corrective advertising campaign.

Representatives for the parties did not respond to inquiries seeking comment Wednesday.

The customers are represented by Zachary M. Corsner, Craig W. Straub and Lilach H. Klein of Crosner Legal.

The case is Caryn Hart et al. v. Amanda Glover, case number 3:25-cv-00792, in the U.S. District Court for the Southern District of California.

--Editing by Lakshna Mehta.



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Zoll Gets Parts Of Data Breach Class Action Tossed

By **Elliot Weld**

Law360 (April 2, 2025, 7:23 PM EDT) -- A Massachusetts federal judge released Zoll Medical Corp. from some claims brought by a proposed class of medical device customers whose personal data was released after two ransomware attacks, but kept alive claims of negligence, unjust enrichment and others.

Among the allegations dismissed in Monday's order by U.S. District Judge Indira Talwani are customers' claims related to an increase in spam and diminution in the value of their private information and several claims brought by individual plaintiffs.

According to the suit, Zoll confirmed in January 2023 that private customer data had been affected in a data breach and offered identity monitoring services to customers for two years, but did not inform them what data was stolen or what steps were being taken to secure the data moving forward. The data was later placed for sale on the dark web, the complaint said.

In December 2023, the company was hit with an email phishing attack that compromised current and former employee names, addresses, Social Security numbers and insurance information, the suit said.

Zoll said the customers were not injured by the data breaches and the suit was one of many "cookie-cutter complaints that mirror those that are flooding federal courts." Zoll said fraudulent debit and credit card charges allegedly experienced by some of the plaintiffs were not traceable to the breaches and that the mere exposure of private information does not amount to an injury under the law.

Judge Talwani said the financial fraud alleged by seven plaintiffs was enough to support their standing to sue and that it was fairly traceable to Zoll because "of the temporal and logical connection between the fraud and the data breach."

Zoll said no credit or debit card data was affected by the breach, but the customers plausibly alleged that the hackers could have used the private information lost in the breach with "unregulated data available elsewhere to assemble complete dossiers on individual victims," Judge Talwani said.

Judge Talwani also found that the customers had standing to continue with their claims of anxiety, emotional distress and injuries based on the argument that they would not have paid for Zoll's services had they known the company's data security was inadequate.

The judge also allowed the majority of the customers' negligence claims under the laws of several states to advance, with the exception of one claim under Kansas law, which the customers did not oppose. A negligence claim under Massachusetts law was allowed to advance because Zoll had a "special relationship" with its customers, who turned over control of their private information as part of that relationship, therefore giving rise to a fiduciary duty, the judge found.

A claim for breach of implied in law contract also survived, as the judge found that two customers relied on a reasonable expectation that their data would be protected, since Zoll agrees to be in compliance with laws such as the Health Insurance Portability and Accountability Act.

A group of customers from Florida was allowed to proceed with their claim under the Florida Deceptive and Unfair Trade Practices Act. Judge Talwani said that although the breach did not occur in Florida, Zoll advertised and offered services in the state that the customers allege were misleading,

creating a sufficient nexus to Florida.

At the same time, Judge Talwani dismissed the customers' claims related to an alleged increase in spam emails and phone calls. The plaintiffs only focused on the "inherent" value of their private information rather than the economic value and cited no cases for their theory that the information would lose inherent value by being accessed by other people, dismissing their claims for diminished value of their information.

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

Lead counsel for the class is Jean Martin of Morgan & Morgan Complex Litigation Group.

Zoll is represented by Gilbert Keteltas and Jams Rollinson of BakerHostetler.

The case is Smith v. Zoll Medical Corp., case number 1:23-cv-10575, in the U.S. District Court for the District of Massachusetts.

--Editing by Stephen Berg.

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