Opioid Judge Faces Recusal Request Over Handling of Alleged Ex Parte Communications

law.com/2025/04/03/opioid-judge-faces-recusal-request-over-handling-of-alleged-ex-parte-communications-

Amanda Bronstad April 4, 2025

What You Need to Know

- Ex parte communications are discussions a judge has with the parties or their lawyers outside the presence of the opposing parties.
- A Florida lawyer, Michael Kahn, made public statements at 2019 city council meetings about ex parte communications that a member of his legal team, Pete Weinberger, liaison counsel in the opioid multidistrict litigation, had with the judge.
- Polster has faced at least one prior motion for recusal and calls from pharmacy defendants to ban ex parte communications.

The federal judge overseeing thousands of opioid lawsuits faces a motion to recuse himself following accusations of *ex parte* communications he allegedly had with a lead plaintiffs' attorney.

U.S. District Judge Dan Polster, of the Northern District of Ohio, should recuse himself because of his potential "impartiality" in handling accusations about *ex parte* communications with Peter Weinberger, of Cleveland's Spangenberg Shibley & Liber, liaison counsel in the opioid multidistrict litigation, according to a motion filed Wednesday by lawyers for two pharmacy benefit managers that are defendants in opioid lawsuits.

Florida attorney Michael Kahn made the statements in 2019 at city council meetings while pitching the services of his team of plaintiffs' lawyers planning to sue opioid defendants. Kahn touted the "total access" and "inside information" that another member of his team, Pete Weinberger, liaison counsel in the opioid multidistrict litigation, had with the judge, according to court papers.

Weinberger could "literally pick up the phone and talk to the judge any day," Kahn said in one meeting, calling Polster a "tremendous plaintiff-oriented judge" who has "mandated, and is pushing, all of the defendants to settle."

"There is no question that Mr. Kahn's statements have undermined the integrity of this MDL," Alston & Bird's Brian Boone, a lawyer in Charlotte, North Carolina, for UnitedHealth Group Inc.'s OptumRX, and Jonathan Cooper, of Quinn Emanuel Urquhart & Sullivan in Washington D.C., for Express Scripts Inc., wrote in their recusal motion. "But the response to Mr. Kahn's statements has only further undermined the appearance of impartiality."

In particular, they wrote, Polster has twice refused to order the disclosure of the alleged *ex parte* communications, which are discussions a judge has with the parties or their lawyers outside the presence of the opposing parties, or recused himself from an evidentiary hearing last month to question Kahn, a solo practitioner in Melbourne, Florida.

“In view of those facts,” the defense lawyers wrote, “a reasonable observer would question the court’s impartiality and would perceive the response to Mr. Kahn’s statements as having obscured the truth of what occurred. That alone requires recusal.”

Neither Boone nor Cooper responded to requests for comment.

Polster, who has overseen the opioid docket since 2017, has faced at least one prior motion for recusal. In 2019, the U.S. Court of Appeals for the Sixth Circuit refused to recuse Polster after he made public statements about settling the cases. Months later, six pharmacies, including Walgreens and CVS, unsuccessfully called on Polster to issue an unusual order barring *ex parte* communications with himself or any of the three special masters as to "substantive matters," such as discovery deadlines and trial dates, as well as settlement discussions.

The same two pharmacy benefit managers also unsuccessfully attempted in 2023 to disqualify special master David Cohen after he inadvertently hit “reply all” on an email meant for himself.

‘Highly Disrespectful and Contemptuous’

Wednesday’s recusal motion dates back to a Feb. 24 motion filed by the pharmacy benefit managers to disclose the alleged *ex parte* communications. Attached to the motion were minutes of public council meetings in the Florida cities of Deltona, Palm Bay and Oviedo, and Clay County, and booklets provided by Kahn's legal team, which also includes Florida lawyers Jim Vickaryous, of Vickaryous Law Firm in Lake Mary, and John Romano, of Romano Law Firm in West Palm Beach.
“Mr. Kahn’s statements—and the brazenness with which he made them—are shocking,” they wrote. “*Ex parte* communications threaten the integrity of judicial proceedings.”

Polster did not order the release of the alleged *ex parte* communications but ordered Kahn to appear for an evidentiary hearing for questioning, noting that his comments “cast aspersions on the integrity of the court, certain counsel for the plaintiffs, and the MDL in general.” In a March 5 order denying disclosure of the *ex parte* communications, Polster found Kahn’s “bald, unsworn” public statements to be “unsupported hearsay.” He also refused to have

what the pharmacy benefit managers called a “neutral and disinterested judge” conduct the hearing, stating, “The court intends to examine Mr. Kahn thoroughly, and counsel for both sides will have a full opportunity to ask follow up questions.”
Six days after the March 12 hearing, Polster summarized Kahn’s testimony as having “misspoke” when using the term “*ex parte*” to be not credible.

Peter H. Weinberger of Spangenberg Shibley & Liber LLP speak at a Zoom press conference about the jury verdict in the Ohio opioids trial. Courtesy photos

“Mr. Kahn admitted he had no basis for making these statements,” Polster wrote. “He acknowledged that nobody ever told him Mr. Weinberger, or anyone else from the PEC, had engaged in, or was engaging in, *ex parte* communications with the court regarding any substantive matter, and that he had no personal knowledge of any such thing.”

Noting that Kahn had earned $1.8 million in contingency fees from opioid litigation, with another $250,000 on its way, Polster sanctioned him for $100,000.

“Such actions are highly disrespectful and contemptuous,” Polster wrote in his March 18 order.

When asked about the sanctions and his statements about the *ex parte* communications, Kahn told Law.com, “I was privileged to have worked with a skilled group of attorneys to battle the opioid scourge, which has contributed to the deaths of far too many Americans.”

Weinberger and a spokesperson for the plaintiffs’ executive committee in the opioid multidistrict litigation did not respond to a request for comment. Polster’s judicial assistant, Helen Norton, said, “A judge may not comment about a pending motion or litigation. The docket speaks for itself.”

Optum, Express Scripts seek to oust judge in opioid cases

reuters.com/legal/government/optum-express-scripts-seek-oust-judge-opioid-cases-2025-04-03

Brendan Pierson April 4, 2025

Medicines are seen in this illustration taken, June 27, 2024. REUTERS/Dado Ruvic/Illustration Purchase Licensing Rights, opens new tab

April 3 (Reuters) - Pharmacy benefit managers OptumRx and Express Scripts have asked the federal judge overseeing nationwide litigation over the opioid crisis to recuse himself from cases against them, claiming that the judge has had frequent backchannel communication with a plaintiffs' attorney.

In a motion filed in Cleveland, Ohio federal court, the PBMs cited reports that Michael Kahn, a Florida lawyer representing some of the cities and counties suing the companies, had repeatedly told potential clients that Peter Weinberger, a leading plaintiffs' attorney in the litigation, spoke to U.S. District Judge Dan Aaron Polster "every day" and got "inside information" from him.

Kahn also claimed that Polster was a "tremendous plaintiff-oriented judge" who put "enormous pressure" on defendants to settle, according to the PMBs.

A spokesperson for the plaintiffs' attorneys declined to comment. Helen Norton, an assistant to Polster, said the judge could not comment on a pending case.

Optum and Express Scripts told Polster in February about Kahn's statements, which they discovered by reviewing public records, and sought disclosure of all communications between plaintiffs' counsel and the judge outside defense counsel's presence.

Polster did not grant that request but ordered an evidentiary hearing at which Kahn was questioned last month. Kahn testified that he "misspoke" and had never been told that Weinberger engaged in frequent conversations with the judge.

Polster sanctioned Kahn with a fine of $100,000, finding that his statements were "without any factual basis" and "improperly cast aspersions upon the integrity of the court."

The PBMs, however, said that Polster's response, and refusal to disclose the communications they requested, were reason for him to recuse himself.

"There is no question that Mr. Kahn’s statements have undermined the integrity" of the litigation, the PBMs wrote. "But the response to Mr. Kahn’s statements has only further undermined the appearance of impartiality."

The opioid litigation, which includes thousands of lawsuits brought by local governments across the country, has already resulted in more than $50 billion in settlements resolving claims that drug manufacturers concealed the addictive pain drugs' risks, and that distributors and pharmacies ignored red flags that pills were being diverted into illegal channels.

Less attention has been paid so far to the claims against PBMs like UnitedHealth Group's (UNH.N) , opens new tab Optum and Cigna Group's (CI.N) , opens new tab Express Scripts. PBMs act as middlemen between drug companies, health plans and pharmacies to negotiate prescription drug prices and decide which drugs will be covered by insurance. The parent companies are also named as defendants in the case.

Plaintiffs allege that PBMs both colluded with drugmakers to promote dangerous drugs and failed to limit access to them in response to red flags. The cases against PBMs are still in early stages, with pretrial motions expected to continue into 2026.

Optum and Express Scripts have said that all the claims against them are without merit.

The PBMs in 2023 had sought, unsuccessfully, to get a special master removed from the case after being inadvertently copied on an email that they said showed he was biased.

The MDL is In Re: National Prescription Opiate Litigation, U.S. District Court for the Northern District of Ohio, No. 1:17-md-02804.

For plaintiffs: Jayne Conroy of Simmons Hanly Conroy; Joe Rice of Motley Rice; Paul Farrell of Farrell & Fuller; and Peter Weinberger of Spangenberg Shibley & Liber

For OptumRx: Brian Boone of Alston & Bird

For Express Scripts: Jonathan Cooper of Quinn Emanuel Urquhart & Sullivan

Read more:

Optum, Express Scripts want opioid special master out after reply-all email mishap
Purdue Pharma, Sacklers reach $7.4 billion national opioid settlement

Brendan Pierson reports on product liability litigation and on all areas of health care law. He can be reached at brendan.pierson@thomsonreuters.com.

Litigation

April 4, 2025, 9:26 AM PDT

Public Nuisance PBM Opioid Case May Belong Only in Federal Court

- **Judge wonders if counties' lawsuit is 'artful pleading'**
- **Counties say PBMs' federal and private work are separate**

Pharmacy benefit managers Express Scripts Inc. and OptumRx Inc. could face allegations of contributing to New York's opioid epidemic only in federal court after Second Circuit judges appeared wary of letting the claims proceed in state court.

Judges Joseph Bianco and William Nardini wondered how a state court would separate the federal work of the pharmacy benefit mangers, or PBMs, from their work with private clients to adjudicate the claims brought by 57 New York counties and municipalities.

"How are the damages going to be allocated?" Bianco of the US Court of Appeals for the Second Circuit asked an attorney for the counties. If the case stays in state court, he continued, then that court will have to decide how the federal actions will be severed from the private actions.

Andrea Bierstein of Simmons Hanly Conroy LLP, representing the counties, said the federal health plans would be treated as if they're "a different defendant."

"How do you excise that issue from a putative trial?" Nardini asked Bierstein.

Separating Claims

The counties and municipalities accusing the PBMs of contributing to a public nuisance arising from prescription opioids want the case to stay in state court.

The cases belong in federal court because they implicate Express Scripts and OptumRx's private and federal work—including providing healthcare to the US military and federal health programs, said Christopher Michel of Quinn Emanuel Urquhart & Sullivan LLP, representing the companies.

PBMs negotiate drug rebates with drug makers and create a list of covered drugs—known as a formulary—that's available to federal and private health plans. There's one singular negotiation for both federal and private work, Michel added.

Bierstein argued Express Scripts and OptumRx's work on behalf of their federal customers can be separated at trial from their work on behalf of their private clients.

Judge Pierre Leval was more skeptical than his counterparts of bringing the cases to federal court. It "doesn't seem justifiable" to put the federal court in a position of having to parse out each claim brought by the counties, he said.

Leval, however, also questioned whether the counties' case is "an artful pleading," a strategy used to bring federal claims to state court.

"I think it is, but there's no need to attach that label," Michel said.

Alston & Bird LLP also represents the PBMs. Napoli Shkolnik also represents the counties.

The case is Cnty. of Westchester v. Mylan Pharm. Inc., 2d Cir., No. 24-1639, oral argument 4/4/25 .

To contact the reporter on this story: Beth Wang in New York City at bwang@bloombergindustry.com

To contact the editor responsible for this story: Stephanie Gleason at sgleason@bloombergindustry.com

Plaintiff's Law Firm Apparently Mixed Up 'Equinoxes,' Defaming Luxury Gym, Equinox Claims

law.com/newyorklawjournal/2025/04/03/plaintiffs-law-firm-apparently-mixed-up-equinoxes-defaming-luxury-gym-equinox-claims

Alyssa Aquino April 3, 2025

Equinox has sued plaintiffs firm Levi & Korsinsky and its two founding partners for defamation, alleging they attempted to recruit plaintiffs for a potential class action against the luxury fitness gym over a data breach experienced by the similarly named nonprofit, Equinox Inc.

Equinox Holdings Inc. said the firm had “negligently and recklessly” harmed the gym by posting statements Nov. 19, 2024, on its site and TikTok saying that the gym had experienced a data breach in April 2024 that exposed the personal information of thousands of people, and that gym-goers could sue for damages. The postings were accompanied by a press release that was quickly picked up by MarketWatch, according to the campaign.

The firm began its “calculated and aggressive advertising campaign” without confirming whether the luxury fitness club had experienced a data breach, which it did not, Equinox said.

“Defendants never contacted Equinox to confirm the accuracy of Defendants’ alleged facts prior to publishing the false and defamatory statements regarding the nonexistent data breach at Equinox,” Equinox said in a complaint filed in the Supreme Court of the State of New York on Tuesday. Equinox is represented by LaRocca, Hornik, Greenberg, Kittredge, Carlin & McPartland.

“Upon information and belief, on or about November 18, 2024, attorneys for Equinox, Inc., a nonprofit human services organization based in New York that is unrelated to Equinox, issued a written public disclosure that on April 29, 2024, EI became aware of a data security incident,” the gym said.

Equinox is seeking $20 million for alleged defamation, trade disparagement, false advertisement and deceptive acts and practices.

Joseph Levi and Eduard Korsinsky, who were both named as plaintiffs alongside the firm they founded, didn't immediately respond to a request for comment.

Equinox collects members’ contact, payment and employment information, as well as data on their health and training goals, and the gym said the postings were “devastating” for its business reputation. Members were anxious and concerned, forcing Equinox to divert resources and manage the public relations fallout, according to the complaint.

The gym said it had to contact the Levi & Korsinsky several times over the next five days for the firm to fully take down the statements, remove the TikTok and issue a MarketWatch press release calling for readers to disregard its earlier Equinox statement.

But the actions don’t appear enough for Equinox, which said it had called for “prominent retractions of all defamatory and disparaging statements.”

“It was not until December 1, 2024, twelve days after Defendants’ original publication of a false and disparaging statement, that Defendants finally issued a 'Correction' on MarketWatch stating that Equinox was not involved in a data breach,” Equinox said. “By that time, countless members of the public had read Defendants’ defamatory statements and advertisements.”

Class Action

April 4, 2025, 9:00 AM PDT

Fluence Energy Leaders Sued Over Sag in Siemens, AES Alliance

- **COURT:** E.D. Va.
- **TRACK DOCKET:** No. 1:25-cv-00577 (Bloomberg Law subscription)

Fluence Energy Inc.'s directors and top executives are responsible for hiding the deterioration of the battery maker's relationship with founders and top customers Siemens AG and AES Corp., an investor alleges in a federal lawsuit.

The members of leadership failed to disclose a Siemens affiliate's state court counterclaim alleging Fluence breached a contract and committed fraud in connection with a California project, plaintiff Diaa Al Amad says. The shareholder derivative suit was filed Thursday in the US District Court for the Eastern District of Virginia.

The information about the counterclaim—and the founding companies' moves to divest their holdings in Fluence—was revealed in a Feb. 22, 2024 short-seller report by Blue Orca Capital, Al Amad says.

Yet Fluence's leaders pushed back, denying customer relationship difficulties and financial weakness, until a disappointing financial report nearly a year later, on Feb. 10, 2025, according to the complaint.

The revelations, and ensuing stock-price declines, exposed Fluence to class action liability, the costs of internal investigations and reforms, and other harms, Al Amad says.

Al Amad brings claims for breaches of fiduciary duties, unjust enrichment, abuse of control, gross mismanagement, waste of corporate assets, proxy misstatements, and contribution. The suit seeks damages, restitution, and corporate governance reforms.

Fluence didn't immediately respond to an emailed request for comment on behalf of itself and the individual defendants.

Spiro & Browne PLC and the Brown Law Firm PC represent Al Amad.

The case is Al Amad v. Nebreda , E.D. Va., No. 1:25-cv-00577, complaint 4/3/25 .

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

To contact the editor responsible for this story: Andrew Harris at aharris@bloomberglaw.com

A ‘Novel Issue’: Investor Sues Crypto Firm Bakkt Over Alleged Stock Price Deception

law.com/newyorklawjournal/2025/04/03/a-novel-issue-investors-sue-crypto-firm-bakkt-over-alleged-stock-price-deception

Michael A. Mora April 4, 2025

Bakkt and its top brass are facing a complaint in Manhattan federal district court over allegations they duped the market with overly rosy projections about the firm’s financial future—only for the truth to come crashing down, leaving investors with major losses.

The case dates back to April 2023, when Bakkt Holdings Inc., a technology company that builds software related to the selling, buying and storage of cryptocurrency, acquired Apex Crypto LLC, a platform for integrated crypto trading, which it renamed Bakkt Crypto. The acquisition provided Bakkt with new clients and financial tech partners, including Webull Pay LLC.

And before the acquisition of Bakkt Crypto, revenue generated from Bakkt’s crypto services had been immaterial, according to the complaint. However, that same year, revenue from crypto services accounted for over 93% of Bakkt’s revenue. Separately, Bakkt operates a “loyalty solutions” segment, which enables point redemption and fulfillment.

Then, on March 17, 2025, after market close, Bakkt disclosed that Webull was terminating its commercial agreement with them, effective about a month later. Bakkt also revealed that in the prior nine months ending Sept. 30, 2024, and the full year ending Dec. 31, 2023, Webull made up 74% of Bakkt’s crypto services revenue and 98% of Bakkt’s revenue was derived from crypto services.

In addition, Bakkt disclosed that Bank of America intends to terminate its loyalty services contract with Bakkt on April 22, that the bank made up 17% of Bakkt’s loyalty services revenue in the prior nine months ending Sept. 30 and customer cancellations will collectively result in a 73% loss in top-line revenue going forward.

As a result, Bakkt’s share price fell over 27% to close at $9.33 per share on March 18, on unusually heavy trading volume, according to the investor complaint. Now, the investors have filed a class action complaint—with the class period beginning on March 25, 2024—against Bakkt, its ex-CEO Gavin Michael, its CEO Andrew Main and its CFO Karen Alexander.

The investor lawsuit, brought by Robert V. Prongay and Rebecca Dawson of Glancy Prongay & Murray against the defendants, is based on three factors: first, that the defendants “misrepresented the stability and/or diversity” of its crypto services revenue;

second, that they failed to disclose Bakkt’s crypto services revenue was substantially dependent on a single contract with Webull; and third, that they misrepresented its ability to maintain key client relationships.
Ishmael Green, a partner at Diaz Reus in Miami, whose specialty includes crypto securities litigation, said the case deals with a “novel issue” over what is an omission in connection with the technical issue of Schedule K-1 and related financial disclosures.

“There were portions in the complaint where the plaintiff attorney highlights the fact that Bakkt went out of its way to disclose it has a large concentration of revenue in the specific customer base,” Green said. “That alone may be enough to offset anything that was not disclosed that Webull was such a large part of the revenue.”

Investors sue ByteDance for $58 billion over ‘rigged’ TikTok acquisition

courthousenews.com/investors-sue-bytedance-for-58-billion-over-rigged-tiktok-acquisition

Jeremy Yurow

The TikTok app icon is seen on a smartphone screen. (AP Photo/Kiichiro Sato)

(CN) — A group of investors is seeking at least $58 billion in damages from ByteDance, TikTok Inc. and ByteDance founder Yiming Zhang, whom it accuses Thursday of a conspiracy to maintain control over TikTok's U.S. operations in violation of antitrust laws.

TikTok Global, a Florida-based company formed by American investors specifically to acquire the social media platform's operations, claims ByteDance deliberately thwarted its acquisition efforts.

The lawsuit filed in the Southern District of Florida centers on events following the first Trump administration's 2020 executive order that required the Chinese-owned ByteDance to divest TikTok's U.S. operations due to national security concerns.

"Plaintiff would soon discover, the game was rigged from the start because ByteDance had other plans, plans that circumvented proper procedures, stifled competition and maintained ByteDance's control over TikTok's U.S. operations — all under the guise of compliance with the executive order," TikTok Global says in its suit.

TikTok Global is represented in the case by David P. Reiner of Miami-based law firm Reiner & Reiner.

According to TikTok Global, it submitted a $33.3 billion acquisition agreement to ByteDance on September 14, 2020. This proposal purportedly met all requirements set by the Committee on Foreign Investment in the United States, the government body overseeing foreign investments with national security implications.

However, TikTok Global claims that ByteDance ignored its compliant offer and instead pursued a partnership with Oracle Corporation that did not fully address the national security concerns outlined in the executive order.

The situation escalated, the investors say, when then-Treasury Secretary Steven Mnuchin announced on CNBC that Oracle had been selected as TikTok's "trusted technology partner" for U.S. operations. This announcement came just hours after TikTok Global had submitted its acquisition agreement.

"Despite the plaintiff being the only interested buyer to strictly follow all CFIUS procedures — and having transmitted a fully executable acquisition agreement at 5:04 AM — at around 9:00 AM EST Treasury Secretary Mnuchin appeared on CNBC and announced that Oracle had been selected as the 'trusted technology partner' for TikTok's U.S. operations," TikTok Global says.

TikTok Global claims this announcement misappropriated its brand and created market confusion that undermined its acquisition attempts. The investors suggest ByteDance coordinated with Mnuchin to bypass proper procedures and promote Oracle's proposal instead.

"The strategy was executed with ruthless precision, leveraging the nationwide reach of Mnuchin's CNBC announcement to deliberately undermine a valid, CFIUS-certified acquisition agreement for TikTok U.S.," TikTok Global writes.

TikTok Global was positioned to be led by Brad Greenspan, who has significant experience in social media as the founder of Myspace.com and former leader of eUniverse, Inc. Under his direction, eUniverse grew to become the eighth largest U.S. website property by 2001.

The investors also say that "plaintiff also believed it had a significant advantage as a result of the management it had recruited to participate in the CFIUS certification submission process and ultimately operate the post-acquired TikTok U.S. assets.”

Aside from Sherman Act antitrust violations, TikTok Global also brings claims of tortious interference with business relationships, unjust enrichment and violations of the Florida Deceptive and Unfair Trade Practices Act. TikTok Global is seeking not only billions in compensatory damages but also punitive damages and treble damages under the Sherman Act.

Additionally, the company is requesting preliminary and permanent injunctive relief that would require ByteDance to divest TikTok's U.S. operations to TikTok Global.

"Plaintiff TG is unequivocally entitled to recover these losses," the complaint said. "Their legitimate bids, compliant with all CFIUS requirements, were ignored, leaving them to bear the brunt of antitrust injury."

The lawsuit comes at a time of renewed scrutiny over TikTok's ownership and operations in the United States. In March 2024, the U.S. House of Representatives passed a bipartisan bill that would force ByteDance to divest TikTok or face a nationwide ban, citing national security concerns over the app's data practices and ties to the Chinese government.

In an about face from his 2020 executive order, President Donald Trump saved the popular social media app from an immediate ban on Inauguration Day, ordering enforcement to be paused until April 5. Companies like tech giant Amazon and Oracle have reportedly put in new bids to acquire TikTok ahead of the new but no less looming Saturday deadline.

ByteDance has vowed to fight any forced sale, while TikTok launched a public campaign defending its independence and data protections.

Follow @JeremyYurow
Categories / Entertainment, Financial, Technology

Class Action

April 4, 2025, 9:02 AM PDT

SelectQuote Beats Investor Suit Over Inflated Revenue Claims

- **Claims relied on inactionable projections, puffery, judge said**
- **Investors said insurance broker overhyped revenue pre-IPO**

SelectQuote Inc. defeated investor allegations that the online insurance broker overstated its revenue and mischaracterized its sales strategy ahead of its initial public offering.

Judge Alvin Hellerstein in Manhattan said that as in the previous complaint he dismissed, the lead plaintiffs' allegations relied on inactionable forward-looking revenue projections and mere boasts about its salespeoples' training. The judge, who sits in the US District Court for the Southern District of New York, ordered the case closed Thursday.

The proposed class action complaint failed to plead the level of intent or recklessness to deceive to bring securities fraud claims against SelectQuote and its leadership from the time of its 2020 IPO. The complaint, alleging they had access to contrary data on future renewal expectations without any specific reports or statements to back up that claim, wasn't sufficient, Hellerstein said.

The lead plaintiffs, a pair of pension funds, alleged the insurance broker's IPO documentation misled investors about its revenue and sales process. They said that SelectQuote engaged in aggressive selling tactics with undertrained salespeople, alleging that's something its then-managers should've anticipated would decrease renewal rate projections and impact revenue.

Share prices fell 83% from its $20-a-share IPO to 2022, when the stock collapsed 47% in a day after the company reported disappointing second quarter of fiscal year 2022 results, the funds said in their suit against SelectQuote, its then-leaders, another stockholder, and the company's IPO underwriters under the Securities Exchange Act of 1934 and the Securities Act of 1933.

Hellerstein also said the pension funds couldn't claim that that stockholder, a SelectQuote minority owner, was liable under a portion of securities law, as its ownership didn't plausibly give it the power to control the company's policies.

Lead Plaintiffs are West Palm Beach Police Pension Fund and City of Fort Lauderdale Police & Fire Retirement System. Bernstein Litowitz Berger & Grossmann LLP is lead counsel for them and the proposed class, which would have included those who got SelectQuote stock traceable to the company's IPO, or from May 20, 2020, through Feb. 7, 2022,

Wachtell, Lipton, Rosen & Katz represents SelectQuote and current and former officers and directors. Patterson Belknap Webb & Tyler LLP represents Brookside Equity Partners LLC, SelectQuote's largest shareholder ahead of its IPO. Orrick Herrington & Sutcliffe LLP and Weil, Gotshal & Manges LLP represent SelectQuote's IPO underwriters.

None of these firms immediately responded to emails seeking comment.

The case is In re SelectQuote, Inc. Sec. Litig. , S.D.N.Y., No. 1:21-cv-06903, dismissed 4/3/25 .

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

To contact the editor responsible for this story: Andrew Harris at aharris@bloomberglaw.com

Class Action

April 3, 2025, 3:01 PM PDT

Cutera, Shareholder Working on Bankruptcy Release Opt-Out Order

- **Lead plaintiff wants to opt out for all proposed class members**
- **Pension fund seeks to maintain class suit against executives**

A proposed class of Cutera Inc. shareholders are moving forward with a bid to jointly opt out of bankruptcy plan provisions that would release liabilities against company executives.

Judge Alfredo Perez of the US Bankruptcy Court for the Southern District of Texas on Thursday told the New England Teamsters Pension Fund and Cutera to craft conditional language providing a way for the pension fund to opt out of third-party releases in Cutera's Chapter 11 plan on behalf of other company shareholders.

The two-year-old class lawsuit accuses Cutera and its senior executives of overstating the sustainability of the company's revenue growth and making false statements related to the roll-out of a new acne-treating laser device. Although the pension fund was appointed to serve as lead plaintiff, the proposed shareholder class hasn't been certified and the case remains on hold in light of Cutera's bankruptcy filing in March.

Cutera argued that because a class hasn't been certified and company stakeholders were provided "robust notice" regarding the bankruptcy proceedings, the pension fund shouldn't be permitted the right to opt out of the releases on behalf of proposed class members or certify a class for the limited purpose of opting out.

Perez didn't rule on the pension fund's motion, but said that the parties should jointly draft an order providing a potential class opt out conditioned on the right of affected parties to assent to the proposed litigation releases. The opt out could also be rescinded based on other conditions, he said.

The dermatology and aesthetics device company filed for bankruptcy in early March with a pre-arranged reorganization plan supported by a majority of its lenders to shave about $400 million of debt and raise about $65 million in new money. The goal is to exit Chapter 11 as a private company by early May, Cutera said.

A hearing to approve the plan is scheduled for April 16.

Cutera is represented by Ropes & Gray LLP and Hunton Andrews Kurth LLP. The pension fund and proposed class are represented by Lowenstein Sandler LLP, Labaton Keller Sucharow LLP and Hagens Berman Sobol Shapiro LLP.

The case is In re Cutera Inc. , Bankr. S.D. Tex., No. 25-90088, hearing 4/3/25 .

To contact the reporter on this story: Alex Wolf in New York at awolf@bloomberglaw.com

To contact the editor responsible for this story: Maria Chutchian at mchutchian@bloombergindustry.com

Litigation
April 3, 2025, 11:12 AM PDT

Dropbox's Move Prompts Challenge to Delaware Corporate Overhaul

---

- **COURT:** Del. Ch.
- **TRACK DOCKET:** No. 2025-0354

A pension fund suing Dropbox Inc. over its recent shift to Nevada brought the first court challenge Thursday to last month's bitterly contested overhaul of Delaware corporate law.

The shareholder lawsuit targeting the tech company's relocation comes two months after news of the move turbocharged fears of a corporate exodus from Delaware—home to two-thirds of Fortune 500 companies, which fund more than a quarter of the state budget with billions in fees. The court complaint is under seal, but a public filing indicates it takes direct aim at both the reincorporation and the controversial legislation that took effect March 25.

The suit, filed by the Plumbers & Fitters Local 295 Pension Fund, seeks a declaration that sections of the statute violate Delaware's constitution, the filing says. It names the company and members of its board as defendants.

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

Senate Bill 21

The company is one of several high-profile businesses that sparked a panic in late January and early February by publicizing plans to leave the state, long known as America's corporate capital.

The defense bar had been sounding the alarm for more than a year about the consequences of a court crackdown on corporate self-dealing, pointing to online attacks by Elon Musk, who moved Tesla Inc. to Texas after losing a $56 billion court case in Delaware.

Within days of Dropbox's announcement, hedge fund billionaire Bill Ackman said he would take Pershing Square Capital Management elsewhere, and news leaked that Meta Platforms Inc. might also change its corporate home. Nevada, which has laxer liability rules, and Texas, which recently set up its own business court, have been the alternatives getting the most buzz.

That same week, the state supreme court made it easier for companies to leave with a ruling involving TripAdvisor Inc.

Gov. Matt Meyer (D), who took office in late January, responded by enlisting a panel to draft the legislation that became state Senate Bill 21. The statutory amendments were designed to lower the guardrails around insider deals, reduce shareholder access to texts and emails of board members, and strengthen a presumption that they're legally independent.

The drafting panel included a prominent scholar who has criticized the recent direction of Delaware law and three corporate lawyers—two of them former judges—whose firms have defended Musk and Facebook founder Mark Zuckerberg. Public records later emerged showing Meta executives had been in the backroom meetings that led to the legislation.

A coalition of shareholder attorneys, law professors, and institutional investors mobilized against the proposal, arguing the "billionaire's bill" would backfire by undercutting Delaware's elite judiciary and sending a message that tech oligarchs can relitigate court losses in the legislature. But the amendments ultimately sailed through an aggressively fast-tracked process.

Equitable Jurisdiction

The Dropbox dispute follows about a week later. Although the lawsuit itself likely won't be made public until next week under court confidentiality rules, it was filed by a firm, Prickett, Jones & Elliott PA, that three weeks ago sent Meyer a memo outlining its concerns.

The document, obtained by Bloomberg Law, argued that "safe harbor" sections of the new statute shielding many insider transactions from scrutiny unconstitutionally shrank the jurisdiction of Delaware's elite business court.

Provisions limiting "equitable relief" in a broad swath of deal cases—injunctions and other nonmonetary remedies—violate sections of the state constitution that require Delaware's Chancery Court to enjoy the same jurisdiction as the English High Court of Chancery in 1792, according to the March 10 memo.

The arcane concept of equitable jurisdiction—largely eliminated by the federal courts and other states—is the historical reason the leading US forum for corporate litigation also regularly hears disputes involving wills, trusts, real estate, legal guardianships, and the occasional dead horse.

The overhaul would "eviscerate the equitable principles and standards the constitutional court of equity has developed," the law firm memo said. "It overrules a dozen or more fiduciary duty precedents of the Delaware courts."

Dropbox and its board haven't yet made court appearances.

The case is Plumbers & Fitters Local 295 Pension Fund v. Dropbox Inc. , Del. Ch., No. 2025-0354, complaint filed under seal 4/3/25 .

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

To contact the editor responsible for this story: Naomi Jagoda at njagoda@bloombergindustry.com

Three More Reincorporations After SB21

businesslawprofessors.com/2025/04/three-more-reincorporations-after-sb21

Benjamin P. Edwards April 4, 2025

The recent amendments to Delaware law through SB21 may not stop many reincorporations from happening. Of course, if firms decide that SB21 gives them enough comfort to stay in Delaware, they probably won't announce that to the market.

As Proxy season starts heating up, we've got other reincorporations to Nevada happening. I wanted to track the reincorporations that have happened since SB21 passed on March 25, 2025. So far, I've got three on my card:

- Tempus AI (3/28/2025)
- Roblox (4/2/2025)
- Sphere Entertainment (4/3/2025)

Notably, these all came *after* Delaware passed SB21. It's worth considering the rationales these companies give for making the change. Here are select portions from each.

Tempus AI

Tempus picked Nevada for its statutory focus and to remove "ambiguity resulting from the prioritization of judicial interpretation." It found that Nevada offered a "more stable and predictable legal environment."

> The Board considered Nevada's statute-focused approach to corporate law and other merits of Nevada law and determined that Nevada's approach to corporate law is likely to foster more predictability than Delaware's approach at the current time. The Board believes that Nevada can offer more predictability and certainty in decision-making because of its statute-focused legal environment. NRS Chapter 78, which governs Nevada corporations. is generally recognized as a comprehensive and thoughtfully maintained state corporate statute. Among other things, the Nevada statutes codify the fiduciary duties of directors and officers, which decreases reliance on judicial interpretation and promotes stability and certainty for corporate decision-making. As we look to our planned growth, strategic decisions and plan for the years to come, removing ambiguity resulting from the prioritization of judicial interpretation can offer our Board and management clearer guideposts for action that will benefit our stockholders.
>
> The Board also considered the increasingly litigious environment in Delaware, which has engendered less meritorious and costly litigation and has the potential to cause unnecessary distraction to the Company's directors and management team and potential delay in the Company's response to the evolving business environment. The Board believes that a more stable and predictable legal environment will better permit the Company to respond to emerging business trends and conditions as needed.

Roblox

Roblox also identified Nevada as "stable and predictable."

> Our Board believes that there are several reasons the Nevada Reincorporation is in the best interests of the Company and its stockholders. Our Board and the NCGC determined that to support the mission of innovation of the Company it would be advantageous for the Company to have a predictable, statute-focused legal environment. The Board and the NCGC considered Nevada's statute-focused approach to corporate law and other merits of Nevada law and determined that Nevada's approach to corporate law is likely to foster more predictability in governance and litigation than Delaware's approach. Among other things, the Nevada statutes codify the fiduciary duties of directors and officers, which decreases reliance on judicial interpretation and promotes stability and certainty for corporate decision-making. The Board and the NCGC also considered the increasingly litigious environment in Delaware, which has engendered costly and less meritorious litigation and has the potential to cause unnecessary distraction to the Company's directors and management team. The Board and the NCGC believe that a more predictable legal environment will better allow the Company to pursue its culture of innovation as it pursues its mission.

Notably, Roblox also specifically discussed the DGCL amendments from SB21. It found that they were not enough to stay because they were “new, untested and subject to judicial interpretation and may not fully mitigate a variety of litigation and business planning concerns for the Company. This is the full paragraph:

> On February 17, 2025, the Delaware governor and legislative leaders announced legislative initiatives that would amend the DGCL in order to address recent concerns with transactional certainty and the litigation atmosphere in Delaware, including as a result of some of the high-profile cases that are considered reasons for why companies may choose to move out of Delaware and reincorporate into another state. These amendments to the DGCL, as modified and adopted (the “**DGCL Amendments**”), were recently approved by the Delaware legislature and the Governor of Delaware and have been enacted into law as of March 25, 2025. As noted above, our Board and the NCGC considered the DGCL Amendments in their deliberations regarding the Nevada Reincorporation and the course and process of debate over such provisions before the Delaware General Assembly. While Delaware law continues to evolve and address concerns including through the DGCL Amendments, the DGCL Amendments are new, untested and subject to judicial interpretation and may not fully mitigate a variety of litigation and business planning concerns for the Company. For the purposes of the discussion below, we have included summaries of certain of the key DGCL Amendments in the analysis of the DGCL for comparison to NRS provisions.

Roblox also highlighted the cost differences:

> The Company’s current status as a Delaware corporation physically located in California requires the Company to comply with franchise tax obligations in both Delaware and California. Typically, annual franchise taxes paid to the State of Delaware are approximately $250,000 for a company of our size, which will no longer be required to be paid if the Nevada Reincorporation is completed. If the Nevada Reincorporation is completed, our current annual fees in Nevada will consist of an annual state business license fee and a fee for filing the Company’s annual list of directors and officers based on the number of authorized shares and their par value which are de minimis amounts. The Company will continue to pay de minimis annual filing fees to qualify as a foreign jurisdiction in California, and there are certain immaterial fees associated with effecting the Nevada Reincorporation via conversion that the Company will be required to pay.

Sphere

Sphere also mentioned the Delaware amendments in its preliminary proxy:

> Like many corporations, Sphere Entertainment Co. was originally incorporated in Delaware. A large portion of U.S. corporations have historically chosen Delaware as their state of incorporation due to its reputation for having a well-defined legal environment. Because of the extensive experience of the Delaware courts and considerable body of judicial decisions, Delaware has garnered the reputation of offering corporations greater guidance on matters of corporate governance and transaction liability issues.
>
> However, the increasingly litigious environment facing corporations, especially ones with controlling stockholders, has created unpredictability in decision-making. For example, in 2024, the Delaware Supreme Court determined in *In re Match Group, Inc. Derivative Litigation*, 315 A.3d 446 (Del. 2024) that all transactions involving a controlling stockholder receiving a non-ratable benefit are presumptively subject to entire fairness review (*i.e.*, Delaware's most stringent standard) unless the transaction complies with the strictures set out in *Kahn v. M&F Worldwide Corporation*, 88 A.3d 635 (Del. 2014) ("*MFW*"). The *Match Group* decision confirmed what corporate and legal communities had viewed in recent years as an expansion in Delaware of the application of *MFW*, a case originally establishing the requirements that must be followed to lower the standard of review for freeze-out merger transactions between a controlled corporation and its controlling stockholder from entire fairness to the deferential business judgment standard. In March 2025, Delaware lawmakers amended the DGCL to provide that a controlling stockholder transaction that does not constitute a "going private transaction" is entitled to statutory safe harbor protection if it is approved in good faith by a committee consisting of a majority of disinterested directors or approved or ratified by a majority of the votes cast by the disinterested stockholders and the material facts regarding the transaction have been disclosed to the committee approving, or the disinterested stockholders voting on, the transaction. Although these amendments are intended to enable boards of directors and controlling stockholders to negotiate and structure transactions with more legal certainty, interpretative questions will remain as prior doctrines are reconciled with the new statutory mandates.

Sphere specifically discusses its past experiences with Delaware litigation:

> Sphere Entertainment Co. has experienced this trend in Delaware courts. Most recently, despite having the transaction negotiated, approved and recommended by committees of independent directors for both transaction parties, the merger of a subsidiary of the Company with MSGN (the "Networks Merger") in 2021 was subject to lengthy and costly litigation from our stockholders as well as stockholders of MSGN. The complaints alleged, among other matters, that the Company and MSGN board members and majority stockholders violated their fiduciary duties in agreeing to the Networks Merger and that the disclosures relating to the merger were misleading or incomplete. After two years, during which the lack of ability to pursue summary judgment led to extensive and costly discovery, (i) the derivative litigation brought by Company stockholders was settled for a payment to the Company of approximately $85 million, which was fully funded by the defendants' insurers, and (ii) the litigation against members of the MSGN board and majority stockholders for breaches of their fiduciary duties in negotiating and approving the Networks Merger was settled for approximately $48.5 million.

Sphere also highlights costs and local connections:

> Since Sphere Entertainment Co. was initially incorporated, the Company has developed a significant presence in the State of Nevada with the construction and opening of Sphere in Las Vegas. As a result, approximately 90% of the Company's property, plant and equipment is comprised of the Sphere in Las Vegas, and the majority of the Company's revenues for the six-month period ended December 31, 2024 were generated by the Company's Sphere segment. By contrast, the Company does not have any meaningful nexus to Delaware, other than Delaware being its state of incorporation. In addition, the Company's franchise tax obligations to Delaware have become significant, amounting to $250,000 in the most recent year, whereas annual business license and filing fees in Nevada are approximately $1,500.
>
> By redomesticating the Company from Delaware to Nevada, we believe we will be better suited to take advantage of business opportunities and that Nevada law can better provide for our ever-changing business needs and lowers our ongoing administrative expenses. Accordingly, our Board believes that it is in our and our stockholders' best interests that our state of incorporation be changed from Delaware to Nevada and has recommended the approval of the Nevada Redomestication to our stockholders.

Ultimately, SB21 may introduce a host of new worries for companies. I understand that there may already be a lawsuit challenging SB21's constitutionality under Delaware law. The *way* Delaware passed SB21 also raises big questions. Like many other law professors, I used to always teach that the Delaware legislature took its guidance from the Delaware Bar and passed the amendments given to it by the bar. Delaware abandoned that approach with

SB21. Functionally, this means that any Delaware-incorporated firm is going to need to watch Delaware politics because it may pass more changes in the future. You can no longer rely on an expectation that Delaware will continue to use a technocratic process to develop amendments.

Subscribe Now

Business Law Prof Blog

businesslawprofessors.com/2025/04/stuff-and-nonsense

Ann Lipton April 3, 2025

This week, I offer miscellaneous collection of things that caught my attention recently….

In Connection With. I've been keeping track of cases involving a pattern where, roughly, company A and company B are somehow related; company B makes fraudulent statements that affect company A's price; and shareholders of company A sue company B. Blog posts here and here and here and here and here and here – also, Mike Levin and I discussed the issue in a *Shareholder Primacy* podcast (here at Apple, here at Spotify, here at YouTube).

Anyhoo, the latest entry in this series is *In re General Motors Co. Securities Litigation*, 2025 WL 952479 (E.D. Mich. Mar. 28, 2025), where shareholders of GM brought Section 10(b) claims against both GM and its majority-owned subsidiary, Cruise, alleging that both companies made false statements about the state of Cruise's autonomous vehicle technology, and that the truth was disclosed when a Cruise car struck and dragged a pedestrian in San Francisco. Though the court concluded that plaintiffs failed to identify any false statements made by GM or its officers, Cruise officers – and the Cruise company, on its blog – had falsely described the state of the technology and the circumstances surrounding the accident, including disseminating a misleadingly-edited video of the crash. Without much trouble, the court went on to hold that Cruise's statements had been made in connection with the sale of GM securities, and allowed the claims against Cruise and its officers to proceed.

Which seems obviously correct! But I do point out that, without much coherence, the court in *In re Volkswagen AG*, 661 F. Supp. 3d 494 (E.D. Va. 2023), dismissed claims against Volkswagen's wholly owned American subsidiary, VWGoA, after VWGoA made that stupid joke about Volkswagen changing its name to Voltswagen. The court agreed the statements were false, made with scienter, in connection with trading in Volkswagen securities, but seemed to believe that if there was no claim against the parent, there could not be against the subsidiary either.

Meanwhile, of course, in *Klein v Altria Group*, 2021 WL 955992 (E.D. Va. Mar. 12, 2021), shareholders of the publicly-traded Altria were able to bring claims against JUUL, in which Altria had a *minority* stake, for making false representations about its business – but the *Klein* court had to distinguish *Ontario Public Service Employees Union Pension Trust Fund v. Nortel Networks Inc.*, 369 F.3d 27 (2d Cir. 2004), where shareholders of JDS Uniphase, which held a minority stake in Nortel, were not permitted to sue Nortel when JDS Uniphase's stock price dropped in the wake of revelations about Nortel's fraud.

So. You know.

***Nano, Nano*.**

Chancellor McCormick's decision in *Desktop Metal v. Nano Dimension* has attracted some attention; Nano agreed to acquire Desktop Metal; a disgruntled Nano shareholder then obtained control of the board and sought to avoid the merger, largely by regulatory foot-dragging with CFIUS.

It's a colorful set of facts but two things stood out for me. First, several weeks ago, I blogged about another broken deal, between Kroger and Albertsons, and how Albertsons also accused Kroger of regulatory foot-dragging. In that blog post, I pointed out that, even though – by its text – the merger agreement appeared to contemplate different levels of "effort" that the parties would apply to complete the merger, with a higher level imposed for obtaining regulatory approval, Delaware caselaw has traditionally refused to recognize "effort" distinctions in merger contracts.

Well, not anymore. I don't think it's relevant to the outcome, really – in *Nano*, the acquiring company was actively trying to avoid the merger, not merely applying imperfect effort – but in her decision, Chancellor McCormick casually acknowledged and accepted that the merger contract expected especially high efforts to satisfy CFIUS with lower levels of effort for other aspects of deal completion. *See* Op. at 15, 111. Albertsons will be happy.

The other thing that jumped out in *Nano* was, well, the chutzpah. In order to avoid Desktop's claims for specific performance, Nano argued that Desktop itself was in breach of the "Company Transaction Expenses" covenant, which prohibited Desktop from incurring expenses in excess of $15 million in connection with the agreement itself. What expenses did Desktop incur, do you suppose? If you guessed, litigation expenses to sue Nano to enforce the agreement, you are correct!

And nothing in the contract specifically … contradicted? … that interpretation, but McCormick was not having it:

> Desktop's argument is consistent with the parties' contractual scheme. The parties stipulate to specific performance in the event of breach. Nano's reading of Company Transaction Expenses would effectively preclude Desktop from seeking specific enforcement of the agreement by limiting its litigation budget. Nano has spent more than $17 million on this litigation. Nano's reading effectively means that only Nano has a right to zealously enforce the Merger Agreement due to the asserted cap on litigation fees. This is the sort of non-sensical result that would defy any party's reasonable expectations.

> If Nano correctly interpreted the definition of Company Transaction Expenses, the prevention doctrine precludes Nano from terminating the Merger Agreement based on a failure of the Transaction-Expenses Covenant. That is because Desktop never would have incurred "legal fees and expenses spent on this litigation" but for Nano's breaches of the Merger Agreement. Allowing Nano to benefit from its own breach by counting enforcement costs against the transaction expense cap would improperly reward contractual violations.

Empirical researchers: Lemme know if future merger agreements define capped "company transaction expenses" to exclude litigation expenses associated with enforcement, would you?

Investment Company Act vs. Takeover Defenses. I've blogged a couple of times about When Takeover Defenses Meet the Investment Company Act, in connection with Saba's activism at various closed end funds. Well, we have a third instance. Section 18(d) of the Investment Company Act says:

> It shall be unlawful for any registered management company to issue any warrant or right to subscribe to or purchase a security of which such company is the issuer, except in the form of warrants or rights to subscribe expiring not later than one hundred and twenty days after their issuance and issued exclusively and ratably to a class or classes of such company's security holders…

Which was given a workout when ASA tried to fend off Saba's activist attack by creating a flip in poison pill – all the usual features, rights to all shareholders, but if Saba increased its stake, Saba's rights would become void and everyone else's would be triggered. And, to get around the 120 day statutory limit, ASA's pill expired after 120 days, but the board just adopted a new one. And then another new one.

In *Saba Capital Master Fund, LTD. et al v. ASA Gold and Precious Metals*, 2025 WL 951049 (S.D.N.Y. Mar. 28, 2025), Saba argued that the successive pills violated the statute, and further that because Saba's rights exclusively were nullified after a triggering event, the rights were not distributed "ratably" among share classes.

Now, Section 18(d) of the Investment Company Act was part of the original statute in 1940, long before the poison pill was a twinkle in anyone's eye. The concern at the time, as far as I can tell, was substantive: closed-end investment companies had developed a reputation for adopting complex and manipulative capital structures, frequently for the benefit of insiders and affiliates.

Nonetheless, whatever its origin, the provision is there now and Saba argued it prohibited ASA's pill.

And it got a partial win! The court agreed that ASA's tacking scheme violated the Act; to interpret the Act to permit successive pills would render the expiration provisions meaningless. In so doing, the court relied on *SEC v. Sloan*, 436 U.S. 103 (1978), where the Supreme Court rejected a similar tactic by the SEC to get around a ten-day limit on trading suspensions. The court distinguished (unconvincingly) a 2007 decision out of Maryland, but mostly just seemed to think the Maryland court had got it wrong.

But the court rejected Saba's claim that the fundamental design of the pill, which nullified Saba's own rights, violated the ratable requirement, because Saba did, in fact, receive rights ratably with everyone else:

> Section 18(d) requires only that rights be issued proportionally, and in the context of this case, required only that Plan Rights be allocated on a pro rata basis to all shareholders. The Rights Plans issued a Plan Right, per share, to Saba just as it issued them to other shareholders, and accordingly, there is no violation.

I mean, especially given the original concerns of the ICA – special rights to insiders – I have my doubts about a statutory interpretation that allows the issuance of rights to everyone, but that are only exercisable by some. That said, any other interpretation would mean that closed-end funds can't issue pills *at all*, even for a limited duration, and I can see why the court might have been uncomfortable with that interpretation.

Still, the story's not over. Not only is ASA appealing, but it also just adopted another pill! Saba is now moving to enforce the original order.

Courts really don't like it when you intentionally issue false projections in order to make a merger look better, again. Hey, remember that time Vista Equity Partners kind of induced the CEO of Mindbody to breach his fiduciary duties when selling the company, and then got dismissed out of the Delaware case because of some odd procedural choices by the plaintiffs? (Mike Levin and I discussed that case in a podcast, too: here at Apple, here at Spotify, here at Youtube). Anyway, there was also a securities fraud case, in which the target shareholders alleged that Mindbody intentionally lowballed its future prospects in order to persuade shareholders to vote for the deal (that case settled).

Well, the Ninth Circuit just reversed a district court's dismissal of *another* case involving a Vista acquisition, where shareholders alleged, you'll never believe this, that the target lowballed its future prospects in order to persuade shareholders to vote for the deal.

As with the *Mindbody* case, the court almost seemed to go out of its way to redefine "forward looking" to avoid application of the PSLRA safe harbor. It held that representations as to how projections are *prepared* – in good faith, management's best judgment, etc – are *not* forward looking statements, and therefore, if false, are actionable. Here, they were, because the target had a business model of acquiring other companies, but inexplicably omitted acquisition growth in its latest (and only its latest) set of projections, without disclosing that fact to investors.

Also interestingly, the plaintiffs were permitted to proceed on a claim that the target misrepresented the contents of an ISS report. ISS had recommended that shareholders vote in favor of the merger, but only qualifiedly, with a scathing analysis; the target touted the headline but not the details. The reason this stands out is because ISS reports are, like, semi public. They're sold to institutional clients, and that means lots of people see them and have access to them – especially the kind of investors who are most likely to make an impact – even if they aren't made generally available.

Ordinarily, that's the kind of scenario that's ripe for a truth on the market argument, but this wasn't a fraud on the market case – it was a proxy fraud case! And in a proxy fraud case, the issue is whether shareholders were actually adequately informed, not whether information was incorporated into stock prices via informed trading. (Once, in the context of 10(b), the Ninth Circuit nicely drew the distinction).

That said, if the case goes much further, I do wonder if defendants will argue that, because the ISS report was made available to most of the largest shareholders, *their* votes were informed, and *their* votes were enough to win majority approval of the deal.

And another thing. On this week's *Shareholder Primacy* podcast, Mike Levin and I talk (again) about the amendments to Delaware law: what the final versions do, and What It All Means. Here at Apple, here at Spotify, and here at YouTube.

Subscribe Now

Massive New U.S. Tariffs: What Are the Potential D&O Liability Implications?

dandodiary.com/2025/04/articles/geopolitical-risk/massive-new-u-s-tariffs-what-are-the-potential-do-liability-implications

Kevin LaCroix April 3, 2025

In a move that the *Wall Street Journal* described as having the effect of "bringing down the curtain on U.S. support for the turbocharged globalization that powered the world economy for decades," on April 2, 2025, President Trump announced the imposition of massive new tariff duties on what the *Journal* described as "trillions of dollars in imports." The U.S.'s imposition of these tariffs has huge implications for international trade; the U.S. economy; the economies of other countries around the world; and the fortunes and prospects of individual companies seeking to operate in an increasingly fraught global economy. These developments also have significant implications for the potential liabilities of companies and their directors and officers, as discussed below.

The White House's April 2, 2025, Executive Order with respect to the imposition of the tariffs can be found here. An April 2, 2025, White House Fact Sheet that accompanied the tariffs can be found here.

The April 2, 2025, Imposition of New Tariffs

President Trump's April 2, 2025, tariff-related actions were of course not the first tariff moves of his second administration. His earlier tariff moves targeted specific countries and goods. This latest round of tariffs sweeps much more broadly, applies across the board, imposing tariffs on allies and foes alike, and imposes even higher tariffs on countries the White House considers bad actors.

The fundamental basis for President's Trump's imposition of the tariffs is his declaration that foreign trade and economic practices has created a national emergency, triggering the Presidential powers under the International Emergency Economic Powers Act of 1977 (IEEPA).

In reliance on his authority under the IEEPA, President Trump has imposed a 10% tariff on all countries that will take effect on Saturday, April 5, 2025. Some countries –including Australia, the United Kingdom, Turkey, and Saudi Arabia, for example — will face "only" this base 10% rate.

In addition to countries facing these baseline tariffs, other countries, those with whom the U.S. has the highest trade deficits, will face what the White House calls "reciprocal tariffs," in addition to the 10% baseline tariff. These additional, supposedly reciprocal tariffs will go into effect on Wednesday, April 9, 2025.

The countries subject to these additional tariffs include some of the U.S.'s most important trading partners, including the European Union (subject to total additional tariffs of 20%); Vietnam (46%); South Korea (25%) Japan (24%); South Africa (30%); and Taiwan (32%); and India (26%). Goods from China are to be subject to tariffs of 54% (inclusive of earlier tariffs).

Under the provisions of the White House's Executive Order, the tariffs are to remain in effect until such time as President Trump determines that the threat posed by the trade deficit and underlying nonreciprocal treatment is satisfied, resolved, or mitigated. Under the Order, the President also has the authority to modify the tariffs if a country retaliates or takes significant steps to remedy non-reciprocal trade arrangements.

Certain goods are exempted from the reciprocal tariffs including steel, aluminum and auto parts already subject to tariffs; copper, pharmaceuticals, semiconductors, and lumber articles; and energy and other minerals not readily available in the U.S. President Trump's "emergency" tariffs also exclude items excluded from IEEPA authority under 50 U.S.C. Section 1702(b).

What's Next?

The risk for everyone everywhere is that President Trump's imposition of these new tariffs proves to be only the first step in a protracted, multi-step process. As has been the case with the President's past tariff impositions, these latest actions could (and probably will) trigger retaliatory tariffs and other actions by other countries. The global economy seems poised for an trade war the likes of which the world arguably has not seen since the U.S's imposition of the Smoot-Hawley Tariff Act of 1930, which is generally viewed as having triggered a significant reduction in international trade and exacerbated the global economic downturn then in effect.

For companies participating in the global economy (which is to say, just about every firm except the very smallest enterprises), these developments can only have a significant impact on their operations and financial results.

In almost every case, the short-term impact will be disruptive. The long-term impact at this point can only be conjectured, as much depends on the responsive actions of countries subject to the tariffs, as well as the extent to which President Trump uses his authority under the Executive Order to alter the tariffs in response to other countries' reactions. (The possibility that that this entire exercise is a nothing more than a form of political theater designed to motivate various countries to negotiate new bilateral trade deals cannot be overlooked. By the same token, the possibility that the Trump Administration's tariff policies could shove the U.S economy into recession cannot be overlooked, either.)

The Potential Implications for D&O Liability

The CorporateCounsel.net Blog about the new tariffs (here), all of this arises at a time when U.S. reporting companies are middle of finalizing their annual reports on Form 10-K for the year ended December 31, 2024 and as the companies are beginning to prepare their earnings reports and quarterly reports on Form 10-Q for the first quarter.

These companies, Lynn notes, will have to consider a number of factors in updating their disclosures with respect to the tariffs. Among other things, the companies will have to disclose the extent to which the new tariffs will be imposed on the companies goods or on the goods the company uses in its production of its goods; how the tariffs will impact that price charged for its goods and the company's own costs for the materials it uses in producing its goods; the impact the tariffs will have on the availability of its production inputs; whether the tariffs will impact the demand for its goods; what the impact will be on the company from inflation that may result from the tariffs; and mitigation strategies the company may deploy to offset these various effects.

As Lynn further notes, as earnings season plays out over the next few weeks, "we are likely to see the impact on companies of the initial round of tariffs, which could offer insights on how these latest tariff actions could impact a broader range of companies in the second quarter and beyond."

While it will certainly be interesting to hear what companies have to say in the next few weeks, and it will of course be interesting (to say the least) to watch as events unfold in coming months in response to the U.S.'s imposition of trade duties, the longer run impact is far more uncertain. The tariffs may take effect as scheduled in the next few days, but the impact on prices (and therefore on inflation) may take longer to unfold. The impact on global investment may only be measurable in terms of years, as companies and countries await developments or modify their investment strategies to account for the new global trade order that President Trump seeks to create.

As Lynn correctly notes, what companies themselves say about the tariffs could prove to be critically important. Among the things I will be watching are company statements about how the tariffs will affect their operations and financial results. I will be particularly watchful for companies making statements asserting that they can avoid significant impact from the tariffs, for example by sourcing component parts or materials from alternative non-tariffed countries, or that they can pass increased costs along to their customers. Broadly reassuring statements could later look overly optimistic when viewed with the benefit of hindsight.

Perhaps more to the point, companies now will have to make a series of unaccustomed decisions, about where, how, and when to invest in an uncertain and undoubtedly changing economic environment. Strategies that may have worked in the prior relatively free international trade environment may no longer be viable in a world of trade barriers and retaliatory duties.

How all of this plays out remains to be seen. There are also of course many risks. Among the risks is that companies' strategies and corporate disclosures may later prove to have been ill-founded or inappropriately optimistic and subject to hindsight challenges by aggressive plaintiffs' lawyers. There is no way to know for sure now whether there will be D&O claims connected directly to the new tariff world we all now inhabit, but we are entering an era of geopolitical risk and uncertainty, which means a complex and unpredictable environment for companies to conduct their business. This could lead to liability risk and exposure and could lead to D&O claims.

Afterword

It is beyond this blog's remit to discuss the policy merits of President Trump's latest tariff moves. However, for those who are interested in these questions, I recommend the *Wall Street Journal's* April 2, 2025, editorial entitled "Trump's New Protectionist Age" (here). The *Journal* editorial is subtitled "Blowing up the world trading system has consequences that the President isn't advertising." The *Journal* editorial first notes that the overall economic impact of Mr. Trump's "tariff barrage" is unknowable—not least because we don't know how countries will react. The editorial then goes on to note that certain consequences are already emerging from "this new protectionist age."

Among other things, the editorial notes that "There will certainly be higher costs for American consumers and businesses." Longer term, the tariffs are likely to mean "the gradual erosion of U.S. competitiveness" and "the end of U.S. economic leadership." At the same time, the tariffs create "a major opportunity for China." The editorial ends by observing that "remaking the world economy has large consequences, and they may not all add up to what Mr. Trump advertises as a new 'golden age.'"

It is probably worth noting that just six months ago, in October 2024, *The Economist* magazine ran a cover article entitled "The U.S. Economy: The Envy of the World."

In case you are interested to know, the cover for the current issue of *The Economist*, just six months after the same magazine said America's economy is the envy of the world, is entitled "Ruination Day" (an obvious allusion to President's Trump's reference to his April 2 announcement of the tariffs as "Liberation Day"), with the lead article in the issue entitled "President Trump's Mindless Tariffs Will Cause Economic Havoc." The first paragraph of the lead article is a doozy:

If you failed to spot America being "looted, pillaged, raped and plundered by nations near and far" or it being cruelly denied a "turn to prosper", then congratulations: you have a firmer grip on reality than the president of the United States. It's hard to know which is more unsettling: that the leader of the free world could spout complete drivel about its most successful and admired economy. Or the fact that on April 2nd, spurred on by his delusions, Donald Trump announced the biggest break in America's trade policy in over a century—and committed the most profound, harmful and unnecessary economic error in the modern era.

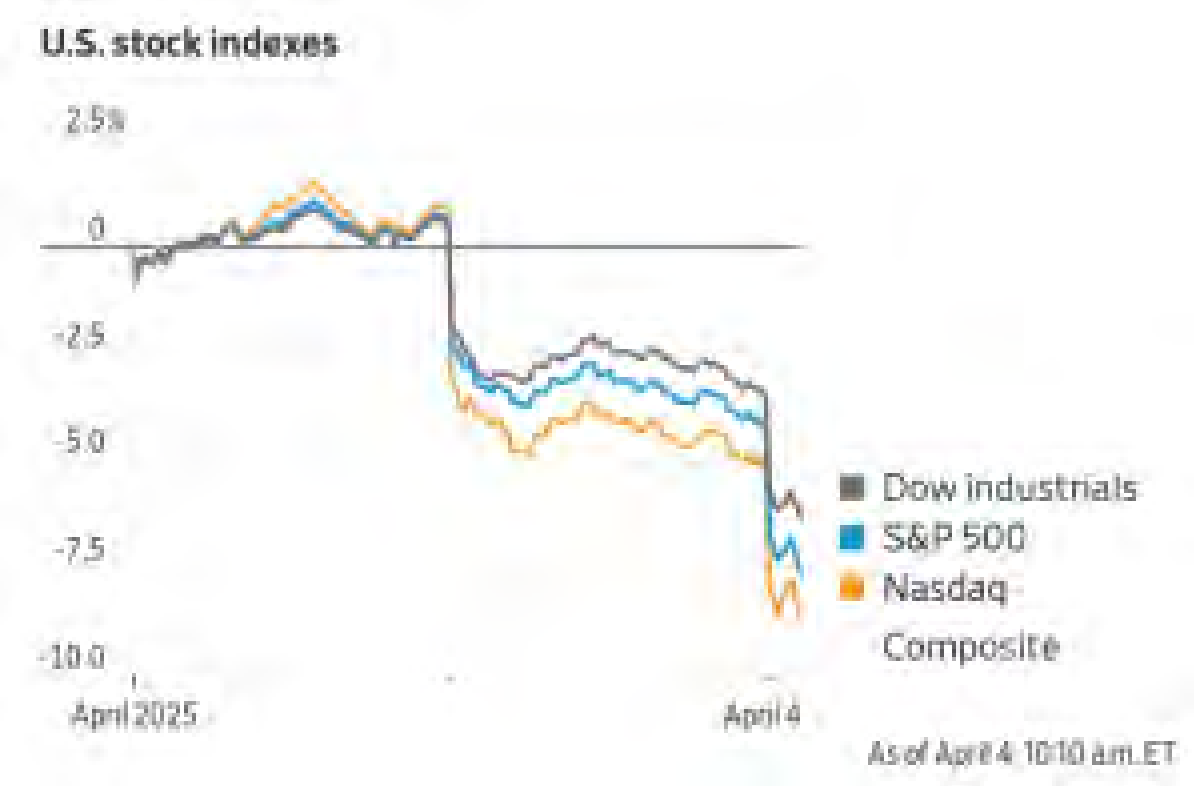
There is much more in the article in the same vein, only worse – much worse.

Private Equity Shares Tank Based on Trump Tariffs; Private Equity and Credit Crises Coming?

nakedcapitalism.com/2025/04/private-equity-shares-tank-based-on-trump-tariffs-private-equity-and-and-credit-crises-coming.html

By Yves Smith April 4, 2025

As China announced 34% retaliatory tariffs overnight, triggering a further swoon in European stocks and US equity futures, experts are grappling with which sectors and companies will be hit particularly hard. Even though this post focuses on private equity, we would be remiss in overlooking the continuing bloodbath. From the Wall Street Journal in Market Turmoil Deepens as China Sets 34% Tariffs on U.S.: Dow falls over 1,000 points; S&P 500, Nasdaq shed more than 3%:



> China lashed back at President Trump's tariffs, applying 34% levies on all imported goods from the U.S. Beijing said the levies would come into effect next Thursday, the day after a big part of Trump's promised tariffs go live. "China played it wrong, they panicked," Trump retorted.
>
> The market selloff continued Friday, with the China retaliation and recession fears pushing investors to sell stocks and hide in the safety of government bonds.
>
> Markets took little comfort from President Trump's willingness to negotiate over the tariffs. The levies announced late Wednesday were deeper and more aggressive than the business world expected. And even as Trump left the door open to making deals, he vowed new tariffs on drugs and microchips.
>
> Marco Rubio, Trump's secretary of state, acknowledged that "markets are crashing" but said economies weren't, and that global businesses would adjust to the new environment. Trump said investors were pouring money into the U.S., saying in a social-media post it was a "great time to get rich."

Clearly, pretty much no one is buying what Trump is selling. The old Wall Street adage is "Don't try to catch a falling safe."

Admittedly this post is speculative since pretty much no one (except specific manufacturers themselves) has granular data on the amount and country mix of foreign elements in their cost of goods sold. And it's remotely possible that some nations will get relief via sufficiently large acts of prostration.

However, Mr. Market worked out that Apple and Nvidia looked seriously exposed, and punished them suitably. Oddly, the press took less note of the bloodbath among big private equity stocks. This swan dive strong suggest that private equity fund limited partners like public pension funds (as in investors in the funds, as opposed to buyers of the public stocks) are in an even more perilous position. Remember, roughly 2/3 of the income at private equity funds comes from fees that have nothing to do with how well the investment does, like transaction fees, management fees, "fees for doing nothing" aka monitoring fees. By contrast, for fund investors, a simple way of thinking about private equity is to view it as levered equity.[1] Leverage amplifies gains and losses. So a levered portfolio will do worse in a bear market than one with no borrowings.

And remember, private credit, which are debt funds, often managed by big private equity firms, have private equity debt ("leveraged loans") as a substantial portion of their assets. Private equity firms already have a wee problem with bankruptcies among their portfolio companies. Unless there is a big U turn on the Trump tariffs, defaults and bankruptcies look set to rise, which have the potential to deliver losses to credit fund investors….who again have public pension funds, life insurers, private pension funds, foundations and endowments, and sovereign wealth funds as their big holders.

In addition, the blowback of more distress among private-equity-owned companies will be serious. Most are unaware of how significant private equity fund holdings are relative to the real economy. For instance, in its initial S-1 filing in 2007, KKR said the total staffing among all of its portfolio companies put it at the 5th biggest employer in the US. If anything, its share is likely to be larger now.

First to Bloomberg yesterday on the hit to private equity stocks:

> Shares of the biggest US private equity firms plunged on Thursday, some by the most since the early days of the pandemic, as US President Donald Trump's sweeping tariffs shocked global markets.
>
> Apollo Global Management Inc., Blackstone Inc., Ares Management Corp., Carlyle Group Inc. and KKR & Co. all tumbled at least 10% during the session after Trump announced the steepest tariffs in more than a century, threatening to wreak havoc on supply chains and crush economic growth.
>
> As of 1 p.m. in New York, KKR and Apollo were the second- and third-worst performers in the 73-company S&P 500 Financials Index.

The big reason for the share slump was that tariffs will make a difficult fundraising environment worse. As the Financial Times reported last month, in Private equity industry shrinks for the first time in decades:

> Private equity assets under management fell last year for the first time in decades as investors confronting a $3tn backlog of ageing and unsold deals pulled back from committing new funds to the sector.
>
> Buyout firms managed $4.7tn in assets as of June last year — down about 2 per cent from 2023, according to a report from consultancy Bain & Co.
>
> The decline in assets was the first since Bain began tracking industry assets in 2005.
>
> Even during the 2008 financial crisis, the private equity industry recorded modest asset growth, underscoring the magnitude of the challenges currently facing buyout groups.
>
> Fundraising has slowed sharply as private equity groups have struggled to sell assets and return cash to investors, causing large pension funds and endowments to retrench, said Hugh MacArthur, chair of Bain's global private equity practice….
>
> The proportion of a fund's net asset value that buyout managers return to their investors as cash has fallen to about half the historical average in recent years.
>
> The lack of distributions has squeezed pension funds, which need regular cash payouts to fund their commitments to retired workers.
>
> In 2024, the distributions from the private equity industry as a percentage of net assets fell to their lowest in more than a decade at just 11 per cent, Bain found.

Mind you, it's not that these companies can't be sold, but that they can't be sold at prices that are peppy enough to provide decent-looking returns. But the distortions of IRR mean that selling a company relatively early in a fund's life provides more of a goose to apparent returns than the true apples-to-apples of "public market equivalent".

Keep in mind also, unbeknownst to most outside the industry, private equity has increased the leverage of its strategy over time. Two of the big devices:

> Leverage on leverage, via borrowing at the fund level as well as the investee company level. These loans are called “subscription lines”. And guess what the source of the funding is? The yet-to-be-spent commitments of the limited partners! As in say, Apollo can hit up CalPERS if a fund in which CalPERS has invested and which Apollo has drawn down on its subscription line has a liquidity problem severe enough that Apollo can’t meet the subscription line obligations.
>
> Increased operating leverage. One might also call it asset stripping. For entities that owned their real estate, such as retailers, hospitals, and restaurants, private equity firms will sell the real estate to investors and lease the property back to the former owner. The price of the rental payments is set high so as to assure a hefty sales price for the real estate. Needless to say, the burden of the new high rent payments makes the business even more likely to fail. And particularly for retailers and restaurants, the reason they had owned their premises in the first place was that their industry was cyclical and they wanted to keep fixed obligations low so as to be able to ride out bad time.

So imagine what happens when these companies face both a cost squeeze and a big fall in demand due to the Trump tariffs. They will be failure-prone. And unlike in the private equity bloodbath of the late 1980s-early 1990s, private equity collectively is important enough to the economy that the scale of private equity business failures could intensify a downturn.

Now let’s consider what this mean for investors, particularly public pension funds. Private equity will under duress as stock prices as swooning. Private equity accounts for 14% of fund allocations, but some public pension funds like CalPERS are short of their targets. While private equity funds engage in a lot of fakery in their valuations (they are the only asset class not required to get independent valuations), pension funds, irrespective of what the valuations say, will feel even more squeezed due to private equity not returning anywhere near as much cash as expected via sales of portfolio companies.

And what about private credit funds? They are a new form of shadow banking. A recent Yale Law Review article estimated their total size as $1.5 trillion (by contrast, private equity weighs in at about $5 trillion). Note that the authors of the article worry about the secrecy as well as the concentrated power:

> First, as the corporate debt markets follow the equity markets in going dark, information about many large firms will be lost to the investing public. For better or worse, these firms will act with unprecedented discretion—having been shielded from the discipline and scrutiny of regulators, the trading markets, and the general public. Second, corporate debt—like corporate equity—will become the dominion of investment funds, some of which are already unimaginably large. These funds will influence everything from firm operations and strategy to corporate distress, with uncertain consequences.

Remember that private equity, like investment management generally, is a "heads I win, tails you lose" business. While they do obscenely well if their funds perform well, they make a very handsome living regardless (witness their use of private jets as a matter of right). If private equity owned companies start falling over, it will hit both private equity and private credit results. Quite a few public pension funds, from the Kentucky Public Pensions Authority to the aforementioned CalPERS, have government guarantees of pension obligations. So if these funds hit the wall, taxpayers will be on the hit for the shortfall. That is unlikely to show up in the form of an overt bailout or special assessment, but in intended-to-be-less-visible form of budget, as in service, cuts elsewhere.

———

[1] This take is actually flattering to private equity, which as we have been documenting for many years, has not outperformed public stocks since 2006. Long-standing rules of thumb held that private equity should outperform public stocks by 300 basis points (3%) to compensate for the greater risks of leverage plus illiquidity.

Litigation

April 4, 2025, 7:33 AM PDT

SeaWorld's $1.25 Million 401(k) Settlement Questioned by Judge

SeaWorld Parks & Entertainment Inc. workers must provide more information justifying the $1.25 million class settlement they negotiated over their retirement plan fees, a federal judge said in an order questioning damage calculations.

The workers said the 40,000-person settlement was a good deal because their total potential recovery in the case was about $10.8 million. But they didn't explain how this figure was calculated or include any statements from their designated expert, Judge Robert S. Huie said Thursday for the US District Court for the Southern District of California.

- Huie gave the workers an April 10 deadline for submitting additional information justifying the settlement amount
- The theme park operator is accused of failing to offer the cheapest share classes of certain 401(k) plan investments and overpaying plan service providers
- Huie has twice ruled that the case was viable, and last year he certified the dispute as a class action with subclasses tied to different recordkeepers the plan used during the relevant time period

Groom Law Group and Foundation Law Group LLP represent SeaWorld. Christina Humphrey Law PC, Tower Legal Group PC, and Paul J. Sharman of Alpharetta, Ga., represent the workers.

The case is Coppel v. SeaWorld Parks & Ent., Inc. , S.D. Cal., No. 3:21-cv-01430, 4/3/25 .

To contact the reporter on this story: Jacklyn Wille in Washington at jwille@bloombergindustry.com

To contact the editor responsible for this story: Blair Chavis at bchavis@bloombergindustry.com

Securities Law News

April 3, 2025, 8:31 AM PDT

ThedaCare's $980,000 Retirement Plan Fee Deal Clears Last Hurdle

ThedaCare Inc. workers challenging the Wisconsin health system's retirement plan fees received final court approval for their $980,000 class settlement.

The deal is slated to benefit about 18,820 people covered by ThedaCare's retirement plan since August 2014. It represents about 17% of their total estimated losses, according to court filings announcing the settlement.

- Judge William C. Griesbach on Wednesday signed the final approval order and granted the plaintiffs' request for nearly $390,000 in attorneys' fees and costs
- Griesbach's courtroom in the US District Court for the Eastern District of Wisconsin has been a hotbed of litigation over 401(k) plan fees, and his cases have seen multiple twists and turns as the US Court of Appeals for the Seventh Circuit has issued new guidance under the Employee Retirement Income Security Act
- ThedaCare is among the many health systems that have been targeted by litigation over their retirement plans, with several cases leading to to class-wide settlements

Morgan, Lewis & Bockius LLP represents ThedaCare. Walcheske & Luzi LLC represents the plaintiffs.

The case is Glick v. ThedaCare, Inc. , E.D. Wis., No. 1:20-cv-01236, 4/2/25 .

To contact the reporter on this story: Jacklyn Wille in Washington at jwille@bloombergindustry.com

To contact the editor responsible for this story: Brian Flood at bflood@bloombergindustry.com

Securities Law Prof Blog

Friday, April 4, 2025

New Securities Law Articles in Print

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

Mark R. Kubisch, *Constitutionally Suspect Interventions in the Shareholder Proposal Forum*, 59 Wake Forest L. Rev. 1155 (2024).

Jaiden Pokoski, Note, *Navigating the Complexities of Cryptocurrency Taxation*, 51 Fla. St. U. L. Rev. 809 (2024).

Marc I. Steinberg & Antonio R. Partida, *Undue Limitations in the Section 10(b) Purchaser–Seller Requirement*, 99 Tul. L. Rev. 1 (2024).

https://lawprofessors.typepad.com/securities/2025/04/new-securities-law-articles-in-print.html

News from Bloomberg Terminal
April 4, 2025, 10:22 AM PDT

Baltimore Sues DraftKings, FanDuel, Alleging They Drive ‘compulsive Gambling

The city filed suit against the sports betting companies Thursday, alleging they "have specifically targeted our most vulnerable residents."

By Des Bieler

(Washington Post) -- The city of Baltimore filed a lawsuit Thursday against sports betting companies DraftKings and FanDuel, accusing them of violating state and city law by engaging in "unfair and deceptive practices."

In a complaint filed with the Baltimore City Circuit Court on behalf of the city's mayor and municipal council, the two sites were accused of employing misleading promotions to lure people into signing up with their platforms, then using reams of data to identify users least able to resist enticements to keep gambling.

"These companies are engaging in shady practices, and the people of our city are literally paying the price," Baltimore Mayor Brandon Scott said in a statement. "DraftKings and FanDuel have specifically targeted our most vulnerable residents - including those struggling with gambling disorders - and have caused significant harm as a result. This lawsuit is a critical step to hold them accountable and protect all Baltimoreans."

Maryland legalized sports betting in 2021, and the following year saw the state launch mobile sports betting, with DraftKings and FanDuel among seven initial operators. Four more operators have since joined that group, but the lawsuit noted that DraftKings and FanDuel "have consistently led the pack." For January, according to state figures linked out of the filing, FanDuel (partnered with Maryland Live! Casino) had revenue of $278.5 million and DraftKings took in $178.9 million. The next-largest amount reported for that month was BetMGM's $51 million.

The lawsuit highlighted "bonus bets," or similar promotions, as primary mechanisms to get people to set up online accounts and induce them to "bet often [original emphasis] as soon as they join the platform."

"Some get hooked, and that's the point," stated the complaint, filed by Baltimore city solicitor Ebony M. Thompson and members of her team, as well as by the private law firm DiCello Levitt. "Defendants will relentlessly ping their users to bet and bet often, with compulsive gambling an inevitable result."

A spokesman for FanDuel said via email that the site "does not comment on pending lawsuits." A spokesman for DraftKings did not immediately respond Thursday to a request for comment.

The filing also named FanDuel's parent company, Ireland-based Flutter Entertainment, as a defendant. Flutter was said to own another online gaming company that collects scores of "attributes" for individual account holders, including "their propensity to gamble and susceptibility to marketing."

The companies then "leverage such data," per the complaint, to "(a) identify those who they can hook; (b) hook them; and then (c) keep them betting."

A more civic-minded use of such data could be to identify users suffering from or nearing a dangerous gambling problem and cut them off, or at least use push notifications to "encourage responsible behavior," the lawsuit said. Such practices have been adopted to a certain degree in the United Kingdom, which has had a much longer history of legalized gambling, but the two platforms named in Baltimore's suit were accused of doing "the opposite."

"DraftKings and FanDuel put corporate greed ahead of the well-being of Baltimoreans, getting users hooked to their gambling platforms and then leveraging troves of data to identify, target, and exploit the most vulnerable among them," Thompson said in a statement. "Their predatory practices have caused significant harm to our community, and we are taking action to hold them accountable and protect our citizens."

The lawsuit argued that online gambling posed a particular mental health problem even in the larger context of wagering. It cited figures from the Maryland Center of Excellence on Problem Gambling, which found that "disordered gambling" afflicted 20.8 percent of online sports bettors, as opposed to 11.3 percent of "traditional" sports bettors and three percent of those who did not participate in sports betting. Another study was cited for its finding that over 30 percent of "problem gamblers" report suicidal ideation, a "far greater rate than the general public or those suffering from other addiction disorders." In addition, problem gamblers were said to be more likely than their peers to engage in child or domestic abuse.

Maryland regulations were also cited in a particular passage stating, "A sports wagering licensee, directly or through a contractor or vendor on behalf of the licensee, may not ... [a]dvertise, market, promote, or offer, or conduct sports wagering in a manner that may adversely impact the public."

"The predatory practices of sports betting sites are a national problem," DiCello Levitt partner Adam Levitt said in a statement, "and the City of Baltimore is taking a lead role in efforts to curtail them."

Click Here to see the story as it appeared an the Washington Post website.

Click here to see the story as it appeared on the web site.

-0- Apr/04/2025 17:22 GMT

Litigation
April 4, 2025, 6:44 AM PDT; Updated: April 4, 2025, 7:05 AM PDT

Judge Allows Early Appeal of Westlaw AI Fair-Use Decision (1)

- **May trial postponed pending Third Circuit appeal**
- **Judge rejected fair use defense under four-factor test**

A federal judge granted Ross Intelligence Inc.'s request to pause its dispute with Thomson Reuters and allow it to appeal a recent order finding its AI-powered legal tool's ingestion of Westlaw headnotes isn't "fair use" under copyright law.

The first summary judgment ruling rejecting a fair use defense in an AI-training copyright suit is ripe for immediate appeal to the Third Circuit, Judge Stephanos Bibas said in a docket entry Friday. He issued an order postponing a jury trial on the remaining claims that was set to begin May 12 and certifying questions on the originality of the headnotes and fair use.

"Though I remain confident in my February 2025 summary judgment opinion, I recognize that there are substantial grounds for difference of opinion on controlling legal issues in this case," Bibas wrote. "These issues have the potential to change the shape of the trial."

Bibas' February decision rejected Ross' fair-use defense after finding two of the four fair use factors—the purpose of Ross' use of headnotes from Thomson Reuters Enterprise Centre GmbH's Westlaw legal research service and its harm to the market for the originals—favor Thomson Reuters. The opinion provided the first glimpse into judges' views on AI and fair use, a defense proffered by technology companies facing dozens of copyright lawsuits brought by authors, publishers, and other creators.

Even though this case involves non-generative artificial intelligence, attorneys said the decision would reverberate in pending cases against generative AI companies. Music publishers sought permission to highlight the opinion in their pending California federal lawsuit against Anthropic PBC over training on copyrighted song lyrics, and authors suing Meta Platforms Inc. over similar claims cited the ruling in a motion for partial summary judgment.

The February opinion reversed Bibas' own 2023 decision largely denying Thomson Reuters summary judgment on infringement and fair use.

Ross on March 18 asked Bibas to allow an interlocutory appeal, arguing his conflicting opinions about fair use and the copyrightability of the content illustrated the need for a quick appeal instead of waiting until after a jury trial.

The ruling is "already having dramatic influence over other copyright litigation matters involving AI" by understating the importance of originality and overstating the scope of copyright protection, Ross argued, necessitating immediate review by the US Court of Appeals for the Third Circuit.

Bloomberg Law competes with Westlaw in providing legal research services.

Crowell & Moring LLP, Potter Anderson & Corroon LLP, and White & Case LLP represent Ross. Morris, Nichols, Arsht & Tunnell LLP and Kirkland & Ellis LLP represent Thomson Reuters.

The case is Thomson Reuters Enter. Centre GmbH v. Ross Intel. Inc., D. Del., No. 20-cv-00613, mot. for interlocutory appeal and stay granted 4/4/25 .

(Updates with additional information from order beginning in the second paragraph.)

To contact the reporter on this story: Annelise Levy in San Francisco at agilbert1@bloombergindustry.com

To contact the editors responsible for this story: James Arkin at jarkin@bloombergindustry.com; Adam M. Taylor at ataylor@bloombergindustry.com; Patrick Ambrosio at PAmbrosio@bloombergindustry.com

OpenAI copyright lawsuits from authors, New York Times consolidated in Manhattan

reuters.com/legal/litigation/openai-copyright-lawsuits-authors-new-york-times-consolidated-manhattan-2025-04-03

Blake Brittain

April 3, 2025

OpenAI logo is seen in this illustration taken May 20, 2024. REUTERS/Dado Ruvic/Illustration/File Photo/File Photo Purchase Licensing Rights, opens new tab

April 3 (Reuters) - A U.S. judicial panel decided on Thursday to consolidate in New York several copyright cases brought by prominent authors and news outlets against OpenAI and its largest backer Microsoft (MSFT.O) , opens new tab.

The U.S. Judicial Panel on Multidistrict Litigation's order , opens new tab moves California lawsuits brought by Ta-Nehisi Coates, comedian Sarah Silverman and other writers to Manhattan federal court to be joined with similar cases from news publications including The New York Times (NYT.N) , opens new tab and authors including John Grisham, Jonathan Franzen and George R.R. Martin.

OpenAI proposed consolidating the cases in northern California, while most of the plaintiffs opposed centralizing the cases.

"We welcome this development and look forward to making it clear in court that our models are trained on publicly available data, grounded in fair use, and supportive of innovation," an OpenAI spokesperson said.

New York Times attorney Steven Lieberman of Rothwell Figg said the company looked forward to "continuing to prove in New York that Microsoft and OpenAI committed widespread theft" of its work.

A Microsoft spokesperson declined to comment on the decision.

Attorneys and representatives for the authors did not immediately respond to requests for comment.

The cases are part of a wave of high-stakes litigation against tech companies including OpenAI, Microsoft and Meta Platforms from copyright owners who allege that the companies used their material without permission to train AI systems.
Judges are just beginning to consider whether the tech companies are immune from the allegations based on U.S. copyright law's "fair use" doctrine, which allows for the unauthorized use of copyrighted works in some circumstances.

OpenAI asked the panel last year to combine 12 lawsuits from writers and news outlets into a single case for pretrial proceedings, arguing that they stemmed from "the same underlying allegations: that OpenAI used plaintiffs' copyrighted works to train certain large language models." The plaintiffs argued that their cases were too different to justify centralizing them.

The panel said on Thursday that joining the cases before U.S. District Judge Sidney Stein would "serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation."

Stein currently presides over the New York cases brought by the authors and the Times.

Read more:

Tech companies face tough AI copyright questions in 2025
NY court rejects authors' bid to block OpenAI cases from NYT, others

- Suggested Topics:
- Litigation

Blake Brittain reports on intellectual property law, including patents, trademarks, copyrights and trade secrets, for Reuters Legal. He has previously written for Bloomberg Law and Thomson Reuters Practical Law and practiced as an attorney.

Wall Street Will Regret Abandoning Climate Goals

Wall Street is pouring fuel on the climate fire.
Photographer: DAVID SWANSON/AFP

If a financial adviser advises you to cash in some of your 401(k) to cover living expenses, fire said financial adviser immediately and leave them the harshest possible Google review. Yet in its panicky retreat from the climate fight, Wall Street is doing just that, stealing from its own future wealth in exchange for short-term cash and comfort.

By deciding en masse to abandon climate ambition and embrace the fossil fuels destroying the environment, financial firms will make it more difficult to limit that destruction and the economic and financial reckoning it will bring.

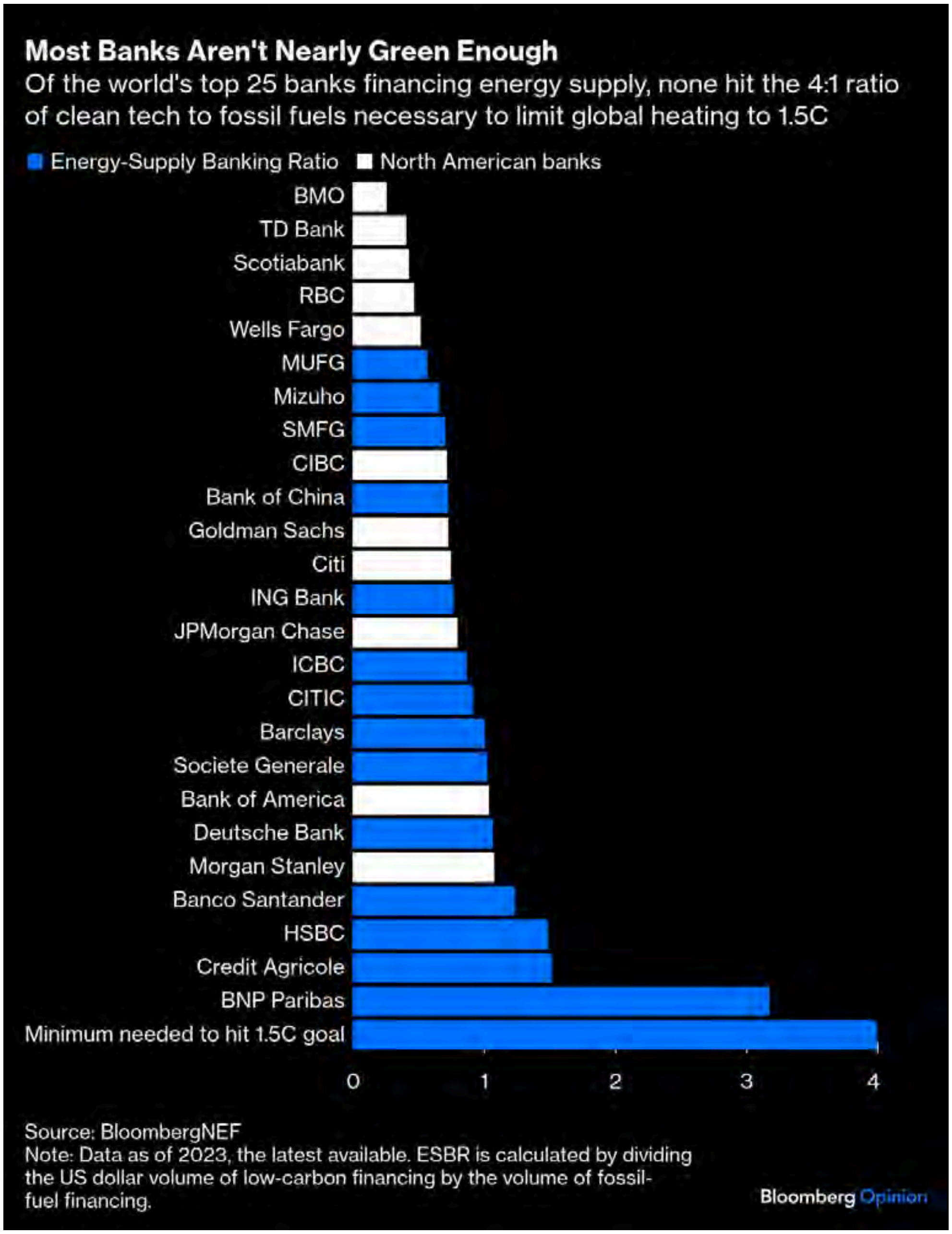
Several recent studies have suggested that letting the planet heat to 3 degrees Celsius above pre-industrial averages — the path we're now following — could slash global gross domestic product by a third or more. That's more than $30 trillion — the equivalent of wiping out the whole American economy. Unchecked climate change is "a recipe for permanent recession, meaning continuously shrinking economies, failing businesses, and significantly increased unemployment," UN Climate Change Executive Secretary Simon Steill said in a recent speech. Banks will always find ways to eat, of course. But when the pie is 33% smaller, everybody ends up hungry.

In a way, you can't blame the banks. Even before President Donald "Drill Baby Drill" Trump returned to the White House, other Republican politicians bankrolled by, and doing the bidding of, fossil-fuel firms were trying to retaliate against banks for trying to help save the planet. Attorneys general in 19 red states launched investigations of every member of the Net Zero Banking Alliance, a global coalition of firms pledging to align their businesses with the goal of eliminating greenhouse-gas emissions by 2050. Texas barred several banks and green-tinted money managers such as BlackRock Inc. from doing business in the state.

Under such pressure, and apparently not seeing enough profit in defending green policies, banks have taken Trump's reelection as a signal to drop the net-zero act and reopen their vaults to polluters, Bloomberg News's Alastair Marsh reported this week. Goldman Sachs Group Inc. fled the NZBA in December, and every other major US bank followed soon after, along with several in Australia, Canada and Japan. In February, Wells Fargo & Co. publicly abandoned its goal of zeroing out emissions in its financing portfolio by 2050. It probably won't be the last.

Most banks, including the ones leaving the NZBA, still have their own clean-energy transition plans, and they've promised to keep helping customers who want green financing. But if you follow the money, almost none of them are doing nearly enough.

In order to cap global heating at 1.5C, energy financing should favor green projects over dirty ones by a ratio of 4-to-1, according to BloombergNEF. In 2023, the latest data available, the ratio was a pitiful 0.89-to-1. Most US and Canadian banks, which have a lot of built-in fossil-fuel business, lag far behind even that woeful benchmark. In the past year, banks injected $730 billion into fossil fuels via loans, compared with $690 billion for the transition, according to Bloomberg News. In the nuclear winter of the Trump administration, that ratio will undoubtedly shrink.



One quote in Bloomberg's reporting on this trend is particularly revealing. "The world isn't on a path for net zero by 2050, and so any bank or asset manager that's being told to align lending or investment practices to that kind of pathway is aligning with a fictitious world," Aniket Shah, head of sustainability and transition strategy at Jefferies Financial Group Inc., told Marsh. (Jefferies, coincidentally, was one bank Texas found sufficiently loyal to fossil fuels; it became the state's top municipal-bond manager in 2023.)

This is a bit like my wife saying, "My husband's not sticking to his diet, so I might as well buy him more donuts." Also, the donut shop gives her a cut of the profit on every dozen. Just as it is possible for me to eat healthier, it is still physically possible — if just barely — for the world to achieve net zero and avoid the most catastrophic heating. It isn't a matter of engineering but of political will and financial means.

Banks are a key element in the “financial means” part of that, and they keep choosing to finance oil, gas and coal instead. They have pumped $6.9 trillion into those industries since the 2016 Paris agreement that set 1.5C as a warming target, according to a report by the Rainforest Action Network, the Sierra Club and others.

Again, the banks aren’t solely to blame. If society could get its act together and price carbon emissions to match the destruction they wreak on the world, then those tempting fossil-fuel deals would be far less plentiful and profitable for banks. Instead, the world’s political leaders keep carbon dirt-cheap, effectively subsidizing fossil fuels by another $7 trillion per year, according to the International Monetary Fund. Eliminating those subsidies alone, including real taxes on carbon, would more than cover the $5 trillion or so annually that BloombergNEF has estimated we will need to hit net zero by 2050.

While we wait for that miracle to happen, the world keeps getting hotter. The expensive natural disasters fueled by a chaotic climate are multiplying, threatening to blow a $2 trillion hole in the US housing market and create a nightmare for banks. And the transition to cleaner energy, with all the financial opportunity that brings, has its own economic momentum. Trump is apparently happy to cede such fertile ground to China, Europe and elsewhere. Banking customers may not be so happy to do so.

It was naïve to ever hope Wall Street would voluntarily save the world without some financial incentive. But avoiding climate change’s economic destruction and the smack of the political pendulum when it swings against fossil fuels again should be incentive enough. The reckoning could come sooner than banks may expect.

More From Bloomberg Opinion:

- Climate Change Is a National Security Threat: James Stavridis
- Super Pollutants Are Finally Getting Attention: Lara Williams
- A Test for One of the Biggest Coal and Gas Ports: David Fickling

Want more Bloomberg Opinion? OPIN . Or subscribe to our daily newsletter.
(Corrects fifth paragraph to say Goldman Sachs left the NZBA in December.)

Securities Law News
April 4, 2025, 2:01 AM PDT

Hedge Funds, Private Equity Quietly Invest in Litigation Finance

- **Hedge fund Davidson Kempner funding patent cases against Audible**
- **Private credit space is well suited to invest in litigation finance**

Davidson Kempner Capital Management was identified as the funder behind patent cases against Amazon's Audible Inc. last month, the first time the $35 billion hedge fund was publicly outed as a player in litigation finance.

It's a rare spotlight on hedge funds' role in the outside backing of lawsuits, a now $16.1 billion industry that private equity firms and multi-strategy investment managers have been cashing in on for years. Funders dedicated to the sector actively market their services to law firms, but some asset managers choose to remain below the fray with their presence only revealed in court documents or regulatory filings, if at all.

"The market for capital and litigation finance is much larger than just the traditional litigation funders that advertise," said Rebecca Berrebi, a litigation finance broker.

Asset managers often operate as limited partners investing in dedicated litigation finance funds, but they also directly back law firms and cases. Hedge funds co-invest with funders on deals to bankroll mass tort law firms or use insurance policies as collateral for loans. Berrebi says the private credit space is well suited to invest in litigation finance transactions, particularly portfolios.

BlackRock, Ellington Capital, Cliffwater, and Gramercy Funds Management also invest in court fights and the lawyers behind them.

BlackRock didn't respond to a request for comment. Davidson Kempner, Ellington Capital, Cliffwater, and Gramercy Funds declined to comment.

Some may deliberately avoid the limelight. Soros Fund Management has an analyst handling litigation finance and private credit, according to LinkedIn. He updated his profile to remove the reference shortly after Bloomberg Law reached out.

Funds' preference to remain in the background could be because financing litigation is overall a small portion of their portfolios. Or because some funders could be backing litigation against companies in which they separately invest. Davidson Kempner last year added a stake in Audible owner Amazon.com, according to a public filing.

Taking on Big Tech

Davidson Kempner is financing Audio Pod IP LLC's suits against Audible Inc. through an LLC, according to the court filing. Lawyers for Audible outed the company in a countersuit filed in a federal court in Manhattan.

"Audio Pod deliberately reached out beyond its state of formation in Virginia to exploit New York's robust financial market and obtain funding for its patent-assertion campaign against Audible," they said.

Audio Pod isn't the only patent-owning entity with ties to Davidson Kempner, public filings show. Davidson Kempner is linked to five other patent-owning entities that have sued major technology companies including Samsung, Hulu, and TikTok owner ByteDance.

The patent holders are NTECH Properties, Cyandia, Inc, Piranha Media Distribution, Secure Wi-Fi LLC, and Vasu Holdings.

Davidson Kempner Linked Suits

Entities linked to the hedge fund filed suits against tech companies

Patent-Owning Entity	Defendant
NTECH Properties, Inc.	ByteDance
Piranha Media Distribution, LLC	Hulu
Secure Wi-Fi LLC	Samsung
VASU Holdings LLC	Samsung
Cyandia Inc.	SAP America

Source: UCC-1 Filings Bloomberg Law

Instead of having a fund dedicated to litigation finance, some investment managers direct portions of their credit or alternatives fund toward litigation.

BlackRock revealed in SEC filings last year that it may use part of its credit fund to provide capital to plaintiffs and law firms. The financing is non-recourse, the company said, meaning it risks a complete loss if the cases it backs fail.

Investment firm Cliffwater has a piece of funder Gramercy's deal with UK law firm Pogust Goodhead according to a 2024 report. Gramercy announced in 2023 that it provided a $552.5 million loan to Pogust Goodhead, claiming at the time that it was the largest loan of its kind. At least $14 million of that came from Cliffwater, which contributed via two separate securities.

"A lot of these larger funds have gotten into litigation finance sort of opportunistically," said Berrebi. "They're not necessarily seeking it out, but it has come across their desk or they know somebody who's doing it."

Testing Mass Tort Waters

The mass tort market has been a huge target for litigation finance, with other capital sources also getting behind the suits.

Michael Kelley, a partner at Parker Poe who advises on funding deals, says he's seen institutional capital enter the space to provide dedicated marketing financing to mass tort law firms. Marketing is used to find clients for various torts by advertising on television, radio, and social media. He said they will invest alongside others or alone and provide smaller amounts, between $10 and 20 million. The capital is spread among different law firms and cases.

"It allows natural diversification, it allows them to get exposure into the mass tort space," said Kelley. "It's been a way for certain institutional investors to dip their toe in the US mass tort market."

Dedicated litigation funders were initially territorial, but have warmed up, Kelley said.

"We had some of the big traditional litigation funders out there who are regularly doing these large mass tort loans sort of say, 'no we're not gonna let anybody in the door,'" he said. "Then we explain to them that, well, think about it. You're not paying for this marketing."

Ellington Capital, which has $13.8 billion in assets under management, was revealed as a funder of a law firm involved in the Johnson & Johnson talcum powder litigation last year.

Alabama's Beasley Allen sued Smith Law Firm and Porter Malouf last year, alleging that the firms owe it more than $1 million in litigation expenses related to the J&J case. Beasley Allen also says Smith Law and its founder Robert Allen Smith pushed clients to vote in favor of a controversial settlement deal because of pressure to pay off a large debt—"perhaps as high as $240 million"—to its outside litigation funder.

Law firms and funders have faced issues with delays in payouts from long-running mass tort cases. The result has been more refinancing in the market. Kelley says other types of capital in the market could help with these issues.

“There is an opportunity in the industry for long-dated capital to come in, help certain of the lenders and funders who’ve been in it for a while to take some risk off the table,” he said.

To contact the reporter on this story: Emily R. Siegel at esiegel@bloombergindustry.com

To contact the editors responsible for this story:Alessandra Rafferty at arafferty@bloombergindustry.com, Chris Opfer at copfer@bloombergindustry.com; Sei Chong at schong@bloombergindustry.com

LIFESTYLE | CAREERS

Big Law Firms Struck a Truce With Trump—and Set Off a Clash With Recruits

Law students at top schools reconsider offers at Skadden and other firms while associates cancel interviews in protest

By *Lindsay Ellis* Follow

April 4, 2025 8:55 am ET

Georgetown Law graduates at commencement. PHOTO: AL DRAGO/BLOOMBERG NEWS

Campus recruiting is the newest front in the Trump-induced turmoil at some of the country's most prominent law firms.

In the days since Paul Weiss, Skadden Arps and other elite firms cut deals with the president to fend off punitive orders, their actions have set off protests and recruiting boycotts among the next wave of top young legal talent. Georgetown Law students canceled a recruiting event this week with Skadden Arps. A group of students and lawyers is circulating a missive on social media and over email, urging students at top schools to refrain from applying to the firms.

Several Columbia law students who signed on to start at the firms this summer are asking whether they can pull out of those commitments, one recruiter said. Junior lawyers at some firms, meanwhile, are rejecting their bosses' requests to interview summer associates.

The orders against several white-shoe law firms with ties to President Trump's political and legal adversaries have riven the clubby world of Washington big law, sparking internal debates over how to respond. This week, Willkie Farr and Milbank became the latest firms to strike agreements to avoid potentially crippling White House sanctions. Other firms such as Perkins Coie have filed lawsuits challenging the Trump orders.

Now, the agita is seeping into elite law schools. At top schools, first-year law students are beginning to apply to and interview with firms for summer 2026 internships. Prestige and pay—starting salaries can exceed $200,000—aren't the only selling points. Many aspire to big-law careers at certain firms because of pro-bono work that often runs counter to the administration's priorities, such as on immigration.

As those commitments shift, some law students say their enthusiasm for joining those firms is ebbing. Among other stipulations, the White House deals require the firms to move legal firepower to Trump priorities, like assisting veterans and law enforcement, and to disavow "illegal DEI discrimination." Some firms have removed or renamed webpages about diversity.

First-year law students "are staring down six-figure debt, and going to work at one of these highly ranked and big-paying, big-name firms is the dream for a lot of them," said Caleb Frye, co-president of Georgetown's energy law group.

"On the other hand," he said, "we're not looking to sacrifice our moral values to do so."

Skadden's Washington, D.C., office has in recent years held an exclusive recruiting event between the Georgetown energy law club and the firm's energy and infrastructure projects group, Frye said.

President Trump in the White House's Oval Office. PHOTO: ANDREW HARNIK/GETTY IMAGES

The club told Skadden on Monday that it wouldn't participate in this year's meet-and-greet, scheduled for Tuesday. Members were disappointed by the firm's concessions to Trump, and club leaders felt withholding student recruiting was an effective way to register that, Frye said.

"The supply chain for legal recruiting, for the legal profession, is law schools," he said. "Without the talent pipeline, there's not much there."

Paul Weiss and other firms that have negotiated truces with the White House say the decision was necessary for their business and their clients. Under the terms of the orders, their lawyers risked losing access to federal courthouses, and clients faced the possibility of having government contracts stripped.

Rethinking summer commitments

The clash is top of mind for first-year law students at Harvard Law School about to start recruiting, said Chris Egi, who was elected this week as co-president of the law school's student government. In a letter to students, more than 80 HLS professors wrote: "American legal precepts and the institutions designed to uphold them are being severely tested."

"Students are reconsidering how they're going to approach their career" and asking whether their prospective employer's values match their own, Egi said.

Bryson Malcolm, a New York-based legal recruiter, said he has heard from Columbia students who have committed to work at Willkie, Skadden and other firms that have since made concessions. Some want to know if it is possible to find another position at this stage.

His advice: If you want to stay in big law, wait out the next several months and see what plays out. Meanwhile, network.

Harvard Law School's Langdell Hall PHOTO: UCSPENCER GRANT/GHI/UCG/UNIVERSAL IMAGES GROUP/GETTY IMAGES

Before the Trump deal, Malcolm said he would recommend Paul Weiss to young professionals seeking big law firms with strong commitments to diversity. The firm advertises that it was the first major New York City firm to hire a Black associate and the first to make a woman partner. Now, Malcolm said, he isn't sure where he would send a lawyer with those priorities.

Thomas Sipp joined Skadden full-time in 2023 after learning about the firm's pro bono work, including on immigration and affirmative action. Over the weekend, he said, the firm's deal with Trump left him feeling "ashamed to show my face to my friends." He resigned Monday.

'Hijack recruitment'

One point of contention is the Trump administration's demand of 20 major firms for more information about their diversity and employment practices. On Wednesday, Georgetown students began circulating a spreadsheet detailing firms' responses to the inquiry and broader pressure, noting whether a firm is "complying in advance"—by, for example, removing a diversity page on its website—or has “caved to administration.” It has since been shared thousands of times online.

Rachel Cohen, who resigned from Skadden in March, has circulated guides for associates and students that aim to create a logjam in the recruiting process. “What we really want to do is give people the tools and organize within their firms,” she said.

One she posted Wednesday urged students to push career-services offices at law schools to block Paul Weiss, Skadden, Willkie and Milbank from participating in formal campus recruiting activities.

Another suggestion from the guide: “Hijack recruitment.” Apply to firms “that have actively capitulated to the current administration” and, when interviewing, ask employees sharp questions about their response.

“Then withdraw your application,” the guide read. “It wastes firms’ time and forces them to take law students seriously.”

Write to Lindsay Ellis at lindsay.ellis@wsj.com

Videos

Republican-led states demand 20 law firms disclose DEI practices

reuters.com/world/us/republican-led-states-demand-20-law-firms-disclose-dei-practices-2025-04-03

Sara Merken April 3, 2025

Texas Attorney General Ken Paxton speaks during the AmericaFest 2024 conference sponsored by conservative group Turning Point in Phoenix, Arizona, U.S. December 21, 2024. REUTERS/Cheney Orr/File Photo Purchase Licensing Rights, opens new tab

The U.S. Equal Employment Opportunity Commission

April 3 (Reuters) - Attorneys general from 12 Republican-led U.S. states sent letters on Thursday to 20 major law firms demanding information about their diversity, equity and inclusion (DEI) employment practices, building on a similar request to the same firms by the U.S. agency that enforces federal laws banning workplace discrimination.

Andrea Lucas, acting chair of the U.S. Equal Employment Opportunity Commission, warned last month that the firms' employment policies related to DEI may be illegal.

The letters , opens new tab, sent by a group of states led by Texas Attorney General Ken Paxton, said that information in the EEOC's request "indicates that your firm may have acted in violation" of federal and state law.

Two of the law firms named in the letter, Perkins Coie and WilmerHale, were also targeted by Republican President Donald Trump in executive orders that focused partly on their DEI policies.

Perkins Coie and WilmerHale have sued to challenge Trump's actions. Five other firms, including Skadden Arps and Milbank, have reached deals with Trump since targeting the legal industry, agreeing in part to adopt only merit-based employment practices.

Representatives from those firms did not immediately respond to requests for comment.

"The blatantly illegal employment discrimination perpetuated by law firms and other businesses under un-American DEI ideology must be brought to an immediate and permanent end," Paxton said in a statement.

The attorneys general said that the firms should comply with the EEOC's request for information and send the same details to the states by April 15.

Lucas said that some of the firms had publicly touted their commitment to diversifying their workforces and at least two had adopted explicit numerical goals for recruiting lawyers based on their race, ethnicity, sexual orientation and gender identity.

The EEOC's letter asked the law firms for information about the internships, scholarships and fellowships they offer to law students and their hiring and compensation practices, along with other detailed demographic information.

Reporting by Sara Merken; Editing by David Bario and Mark Porter

GOP State AGs Double Down on Law Firms Facing EEOC Letter

law.com/nationallawjournal/2025/04/03/gop-state-ags-double-down-on-law-firms-facing-eeoc-letter-

Brenda Sapino Jeffreys April 3, 2025

What You Need to Know

- A coalition of state attorneys general sent letters to 20 Big Law firms seeking hiring information.
- The same group of firms received a request from the EEOC suggesting their hiring practices may follow DEI.
- The group of attorneys general, led by Texas Attorney General Ken Paxton, said the firms' hiring may violation state laws.

Twenty Big Law firms that received letters in March from the Equal Employment Opportunity Commission seeking information about their diversity, equity and inclusion-related employment practices are now being asked to provide the same information to attorneys general in a dozen states.

Texas Attorney General Ken Paxton is leading a multistate coalition, including 11 other state attorneys general, that sent letters on Thursday to the 20 firms requesting information about their DEI policies.

“The blatantly illegal employment discrimination perpetuated by law firms and other businesses under un-American DEI ideology must be brought to an immediate and permanent end,” Paxton wrote in a press release on Thursday announcing the multistate effort.

Paxton wrote that he is "leading the charge" at the state level to support President Donald Trump's efforts to "end this insanity" and restore equal treatment.

"Employers should look at qualifications, not quotas, in their hiring decisions,” Paxton wrote.

The letter went to Perkins Coie; Kirkland & Ellis; Cooley; Latham & Watkins; Reed Smith; McDermott Will & Emery; A&O Shearman; Milbank; Debevoise & Plimpton; Morgan, Lewis & Bockius; Freshfields Bruckhaus Derringer; Morrison & Foerster; Goodwin Procter; Ropes & Gray; Hogan Lovells; Sidley Austin; Simpson Thacher & Bartlett; Skadden, Arps, Slate, Meagher & Flom; White & Case; and Wilmer Cutler Pickering Hale and Dorr.

Two of the firms — Perkins Coie and Wilmer — have sued over executive orders from the president. Skadden, Arps, Slate, Meagher & Flom and Milbank, have reached settlements with Trump, in which they promise not to use DEI in hiring.

The attorneys general wrote in the letter that Title VII of the Civil Rights Act of 1964 prohibits an employer from discriminating on the basis of race, color, religion, sex, or national origin, and state laws reinforce the same protections.

"The EEOC's letter to your firm flagged potential violations of employment discrimination laws, both at the federal and state levels—specifically, touting hiring practices that include diversity fellowships, setting hiring goals with targets for greater representation of minority groups, and DEI programs that entail unlawful disparate treatment in terms, conditions and privileges of employment," the attorneys general wrote.

They wrote that the practices may violate Title VII and state practices, and also state deceptive trade practices laws, and state authorities may be empowered to investigate.

The attorneys general ask the firms to provide them with the same information provided to the EEOC by April 15.

"Only through transparency can we be assured that Title VII and state laws are complied with, and that applicants are not being illegally discriminated against by policies that promote racial quotas and DEI," they wrote.

In addition to Paxton, the letter was signed by these attorneys general: Steve Marshall of Alabama, Treg Taylor of Alaska, James Uthmeier of Florida, Raul Labrador of Idaho, Ted Rokita of Indiana, Brenna Bird of Iowa, Kris Kobach of Kansas, Andrew Bailey of Missouri, Austin Knudsen of Montana, Gentner Drummond of Oklahoma, and Alan Wilson of South Carolina.

Trump's FCC 'Investigates' Disney For Not Being Racist And Sexist Enough

abovethelaw.com/2025/04/trumps-fcc-investigates-disney-for-not-being-racist-and-sexist-enough

https://www.facebook.com/ April 4, 2025

(Photo by Chip Somodevilla/Getty Images)

Trump FCC boss Brendan Carr isn't really interested in doing his actual job as head of the FCC. He's not interested in protecting consumers or markets from notoriously shitty telecom monopolies. He's not interested in protecting consumers or markets from harmful consolidation. He's not interested in addressing the fact the telecom industry just saw the worst hack in history.

What's he interested in? Harassing companies that don't adequately bend the knee to Trump. And harassing companies that aren't suitably racist or sexist enough for the Trump administration's liking.

Carr's already announced he's launching phony "investigations" into Verizon and Comcast for not being racist and sexist enough (read: having some bare-bones inclusivity efforts on a website). He's doing this by leveraging looming approvals for potential shitty mergers to bully these companies into submission. And because these companies are routinely stocked with abject cowards, it will probably work.

And Carr continues to expand his anti-civil-rights campaign on the taxpayer dime. Last week he announced he's also "investigating" Disney/ABC for not being racist and sexist enough. From NPR (which Carr is also "investigating" for being insufficiently deferent to christofascist clods):

> *"In a letter to Disney CEO Robert Iger, Carr said the FCC's Enforcement Bureau will review whether Disney or ABC have violated any FCC equal employment opportunity regulations. He added that the probe will apply to both past and current policies."*

As with all of these investigations, Carr is pulling his legal justifications entirely out of his ass. He's basically trying to claim that marginal efforts to be more inclusive are themselves in violation of anti-discrimination rules and laws. Rules and laws they're trying to destroy. It's circular logic gibberish designed to give a thin veneer of legitimacy to pointless bullshit harassment. Sayeth Carr:

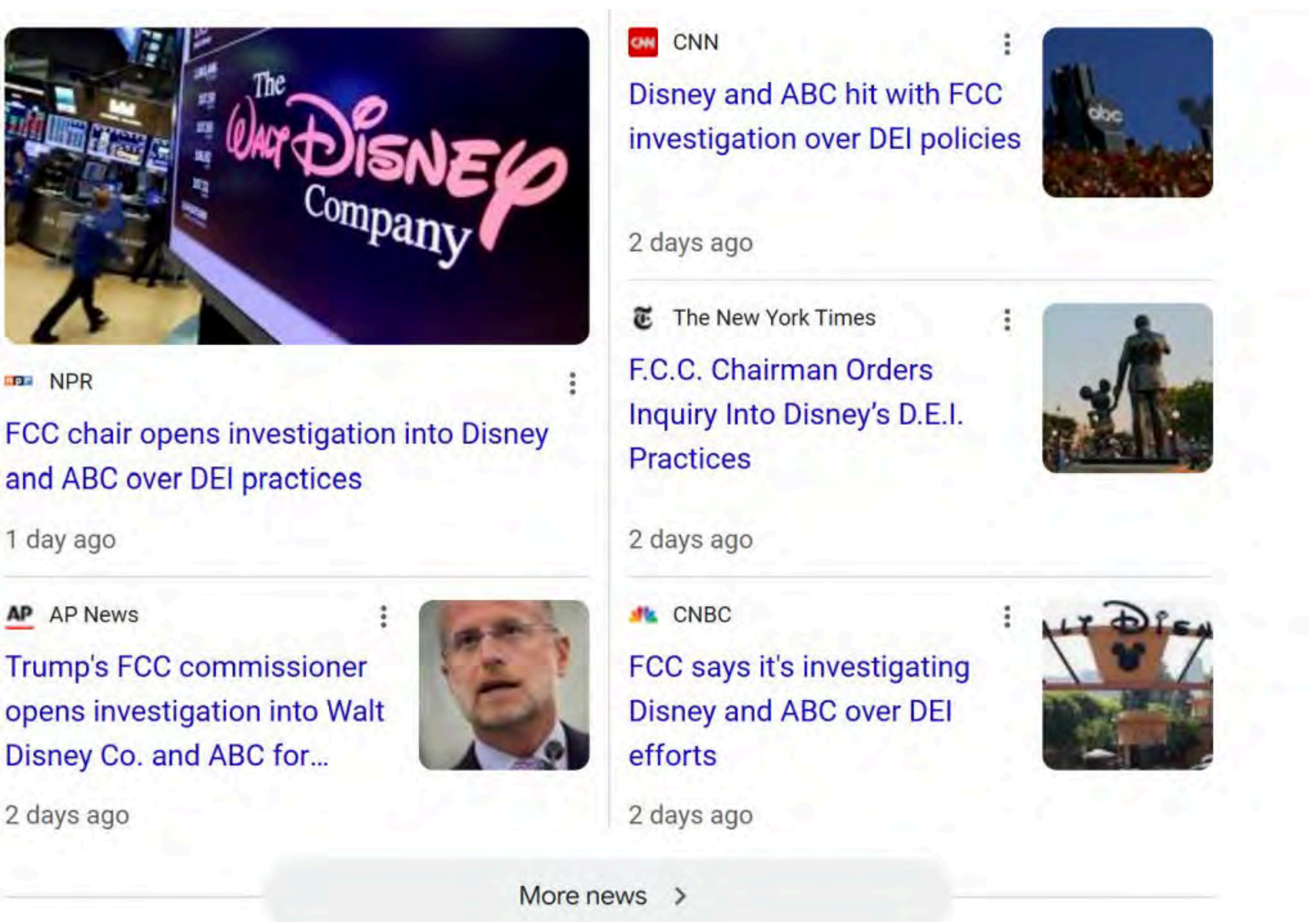
> *"Numerous reports indicate that Disney's leadership went all in on invidious forms of DEI discrimination a few years ago and apparently did so in a manner that infected many aspects of your company's decisions."*

In telecom, Carr has tried to re-interpret language in the Communications Act designed to prevent discrimination to attack efforts against discrimination. It will never hold up in even the shittiest of courts, but Carr of course doesn't care about that. He wants the publicity generated by the fake investigations to do the bullying. He wants to scare companies with fake, costly inquiries into nonexistent violations.

Disney, like most feckless U.S. corporations, has been happy to oblige so far, scrubbing their websites and earnings reports of references to equality and inclusion, shortening warnings on Disney+ about how older Disney content may feature racist stereotypes, and shuttering already flimsy programs designed to help marginalized populations.

Of course the U.S. press, many of them keen to avoid harassment or get tax cuts and merger approvals, have proven appropriately feckless in their news coverage of Carr's weird zealotry.

Authoritarian propagandists have hijacked the term "DEI" to help sanitize and normalize sexism/racism, and conflate half-assed corporate inclusivity initiatives with popular civil rights. Instead of saying Carr is "being racist," "being sexist," "embracing resegregation," or "attacking civil rights," they're quick to adopt the more sterile "he's investigating DEI" nomenclature:



And if you read through pretty much any coverage of these sham investigations, you'll find they all go out of their way to frame Carr's racist and sexist harassment of companies as serious adult policymaking. Because that's what you get when you let journalism consolidate at the hands of feckless trust fund brunchlords who are more interested in tax cuts and access than serving the public interest.

Carr's a weird zealot launching baseless investigations into companies because they're not being suitably racist and sexist enough for his king's liking. It's pathetic, and the collective press and corporate response so far has been equally so.

Trump's FCC 'Investigates' Disney For Not Being Racist And Sexist Enough

More Law-Related Stories From Techdirt:

Trump Earlobe Nibbler Brendan Carr Faces Inquiry Into His Broad Abuse Of FCC Power
Anchorage Police Department: AI-Generated Police Reports Don't Save Time
Iowa Book Ban Law Again Mostly Dead Following Return Trip To Federal Court

California Attorney General – FCPA “Violations Are Actionable Under California’s Unfair Competition Law”

fcpaprofessor.com/california-attorney-general-fcpa-violations-are-actionable-under-californias-unfair-competition-law

April 4, 2025

On February 10th, President Trump issued an Executive Order titled “Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security.”

Conduct in violation of the FCPA or involving the same core facts may also be actionable under other laws. (See here for the article FCPA Ripples).

Recently, California Attorney General Rob Bonta issued this Legal Advisory titled “Alert to Businesses on Violations of the Foreign Corrupt Practices Act.”

In pertinent part, the Advisory states:

> "The Attorney General emphasizes the need for all businesses and individuals to continue complying with all applicable laws, including the FCPA, regardless of the federal administration's pronouncements.
> Violations of the FCPA are actionable under California's Unfair Competition Law (UCL). . The UCL, which was enacted to preserve fair business competition and protect consumers, prohibits unlawful, unfair, and fraudulent business acts and practices. (Bus. & Prof. Code, § 17200 et seq.) The UCL "borrows violations of other laws and treats them as unlawful practices that the statute makes independently actionable." (Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co. (1999) 20 Cal.4th 163, 180.) Violations of federal laws and of criminal laws may serve as the predicate for a UCL cause of action. (E.g., Rose v. Bank of America, N.A. (2013) 57.Cal.4th 390, 394 [federal law]; Stop Youth Addiction, Inc. v. Lucky Stores, Inc. (1998) 17 Cal.4th 553, 559-560 [criminal law], abrogated by statute on other grounds.)
>
> The Attorney General may bring enforcement actions against businesses and individuals for violations of the UCL, including actions predicated on FCPA violations. (See Korea Supply Co. v. Lockheed Martin Corp. (2003) 29 Cal.4th 1134, 1144 [noting Court of Appeals' decision that UCL claim may be predicated on FCPA violation]. In addition to civil penalties, restitution, and injunctive relief, the Attorney General may obtain disgorgement as a remedy for UCL violations. (Gov. Code, § 12527.6.) Violations of the FCPA may also constitute unfair, deceptive, or abusive acts or practices under other states' laws, or give rise to liability under state or federal tax or securities laws. Accordingly, businesses should continue to maintain rigorous internal accounting controls and to ensure that they and their agents do not offer or pay anything of value to foreign officials to obtain or retain business."

In this accompanying press release Bonta stated: ""Illegal activity is still illegal. Paying bribes to foreign officials is not only unethical, it's also bad for business. Bribery erodes consumer confidence in the market and rewards corruption instead of competition. As the fifth largest economy in the world, California has a vested interest in defending honest business. Despite the Trump Administration's actions, I remind businesses in California that bribing foreign officials is illegal under California law and will not be tolerated."

House Republicans propose eliminating the state’s campaign finance enforcer

cleveland.com/open/2025/04/house-republicans-propose-eliminating-the-states-campaign-finance-enforcer.html

By Jake Zuckerman, jzuckerman@cleveland.com April 4, 2025

A protester holds a "Protect Democracy" sign during a protest against President Donald Trump outside the Ohio Statehouse on Wednesday, Feb. 5, 2025.Jeremy Pelzer, cleveland.com

COLUMBUS, Ohio – State House Republicans want to eliminate a regulatory body that enforces deadlines and accuracy of candidates’ campaign finance spending and fundraising reports.

While their proposed state budget doesn’t repeal the section of state law that created the Ohio Elections Commission 30 years ago, it reduces its budget from about $432,000 this year to $0 in the next two fiscal years.

The scrapping of the commission came after two Republicans in particular – Rep. Jean Schmidt, of the Cincinnati area, and House Finance Chairman Brian Stewart, of Pickaway County – grilled its executive director Philip Richter at a budget hearing last month. The two lawmakers cited cases brought against them by a self-described watchdog from the Cincinnati area who files many election complaints against Republicans. After years of legal back and forth, the commission found no wrongdoing from Stewart and fined Schmidt $50.

The Elections Commission’s primary purpose is enforcing Ohio’s campaign finance laws, including how candidates for public office report their spending and fundraising, and whether those reports are filed by legal deadlines.

But several House Republicans have aired grievances about the commission’s sluggish pace for moving cases; its nonlawyer voting members who are regularly late or absent for evidentiary hearings; and a lot of hassle for cases yielding fines that cost slightly more than a parking ticket.

The commission’s board is comprised of three Republicans and three Democrats all chosen by the governor, and one independent chosen by the six partisans. According to Richter, just two are attorneys. Richter is also a lawyer.

Stewart, a practicing attorney who as House Finance Chairman wields tremendous influence over the budget, said during a budget hearing last month that the Elections Commission regularly flouts the rules of evidence and civil procedure.

“Why not just send these cases to court where they can be dealt with by a judge who knows the law?” he asked.

Schmidt, who is not a lawyer, said during the hearing that it appears some members on the commission “may not understand the boundaries of the law” and “may not completely understand their role.”

OEC cases

Chris Hicks, a self-described watchdog from the Cincinnati area who regularly files complaints at the commission, brought several cases involving ex-Ohio House Speaker Larry Householder’s preferred slate of candidates in 2020. In broad terms, Hicks accused them of benefitting from ads that Householder’s political team placed, and not reporting those ads on their financial statements. Those ads were paid for as Householder’s operation was accepting millions from FirstEnergy, money a jury would later decide -- and the company would admit -- was a quid pro quo bribe.

Householder is now serving a 20-year prison sentence for taking those bribes -- conduct unrelated to cases Hicks brought against Stewart and Schmidt.

Hicks filed one such complaint against Stewart in March 2022, which was dismissed given a lack of evidence that Stewart knew about the advertisement beforehand. That dismissal came in February 2025, after what Stewart described as an overly onerous few years of hearings and legal filings.

Hicks filed a similar complaint against Schmidt, which led to a $50 fine.

Richter, in both addressing lawmakers in committee last month and in an interview Thursday, attributed the lag to a need to settle another case.

Hicks had also filed a similar elections complaint against Allen Freeman, a Householder-backed House candidate who was ordered to pay a $50,000 fine after the commission deemed he “actively participated” in the production of ads he failed to report. Richter cited a need to settle the Freeman case, given that Freeman, Schmidt and Stewart were accused of similar violations.

“My case had nothing to do with the other [Freeman] case,” Schmidt said in committee.

State Rep. Chris Glassburn, a North Olmsted Democrat, during the hearing last month questioned whether Richter ought to be discussing specific cases outside the context of a commission hearing.

"I know that some of the representatives have specifically brought up their own cases, but I am uncomfortable and find it inappropriate for you to be proactively talking about individuals cases here," he said.

In an interview Thursday, Stewart said the House is considering an amendment that would bring back something close to the Ohio Elections Commission but in a "quicker, streamlined, and less formal process."

He said it's unfair to force candidates to spend thousands of dollars on lawyers to appear before a panel that's ill equipped for its job.

"They don't know how to control a hearing like a judge would," he said.

What the OEC says

The Ohio Elections Commission is a fairly bare bones operation – it consists of Richter and two staffers, plus the seven board members. It was originally built to consider allegations of false statements made in campaign ads, but federal courts found this violated the First Amendment, which narrowed the scope of the office.

Richter, in an interview, insisted the commission provides value to the state. Something, or someone, needs to make sure candidates are filing honest and thorough campaign finance reports on time, he said. If reports are late or missing, candidates should be punished for those omissions to voters, he said.

He noted his office has fared well in the courts. The 10th District Court of Appeals upheld the $50,000 fine issued in the Freeman case, and the Ohio Supreme Court declined to take the matter up. The same appellate court upheld another case in 2012 against the Geauga County Constitutional Council for failure to register as a PAC in 2012.

Richter warned that without the Elections Commission, courts will be flooded with politically charged lawsuits they're not well equipped to handle. And the small-dollar nature of the cases could mean 88 county courts will follow 88 different legal standards.

And while the commission dishes out small fines, its decisions also can be devastating. Freeman was slapped with a $50,000 fine. In 2023, the Elections Commission settled a case with former Republican gubernatorial candidate Joe Blystone for $180,000 and a five-year ban on running for office over campaign finance violations. Enforcement is sometimes uneven. In 2022, longshot Democratic Secretary of State candidate Chelsea Clark was fined $500 for minor violations including having an improper name of her campaign committee.

"If the OEC isn't here, who's going to make those kinds of decisions?" Richter said. "If [campaign finance reports] are late, something should be done about that."

Tesla, chips, and banks tumble as China's retaliation stokes fears of widening trade war

reuters.com/markets/tech-bank-stocks-bear-brunt-china-retaliates-trump-tariffs-2025-04-04

Deborah Sophia April 4, 2025

People walk past an Apple store in London, Britain, January 13, 2025. REUTERS/Isabel Infantes/File Photo Purchase Licensing Rights, opens new tab

- China imposes 34% tariffs on US goods
- Tesla down 8%; machinery also among losers
- GE Healthcare falls on anti-dumping probe, export controls

April 4 (Reuters) - U.S. chip companies, banks and oil majors fell sharply on Friday after China retaliated to Trump's tariffs with steep duties, in an intensifying trade war between the world's two largest economies that cast a shadow on global growth.

China slapped additional duties of 34% on U.S. goods, set to go into effect April 10. It also announced curbs on exports of some rare-earths and added several U.S. firms to its export control list and the "unreliable entities" list, which allows Beijing to take punitive action.
The Reuters Tariff Watch newsletter is your daily guide to the latest global trade and tariff news. Sign up here.

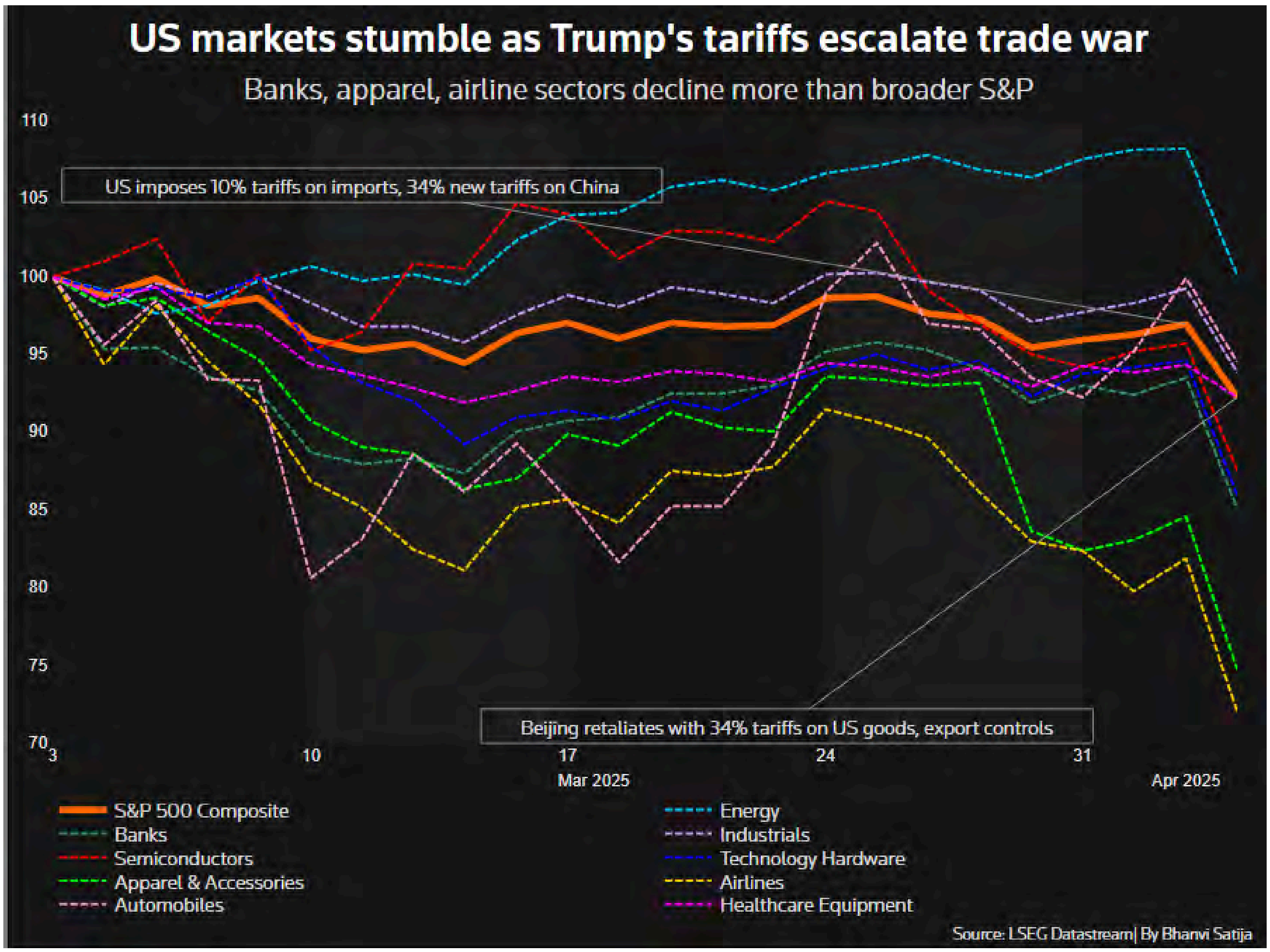
The action followed U.S. President Donald Trump's 34% duties on imports from China announced on Wednesday, which triggered a massive market meltdown on Thursday. The latest levies were on top of the 20% tariffs on China imposed earlier this year.
Investors were already fretting over potential supply chain disruptions, price hikes and demand destruction for everything from cars and smartphones to sneakers.
Shares of Tesla (TSLA.O) , opens new tab and Apple (AAPL.O) , opens new tab - among consumer tech companies with a large exposure to China - were down 8% and 4%, respectively. While both companies have local production in China, duties on U.S.-imported parts could squeeze margins and force price hikes.
"Several tech companies have established local supply chains in China. Most source components from China already, and hence, disruptions should be controllable, though we do expect price hikes on parts and components not being sourced from China," said Nishant Udupa, practice director at research firm Everest Group.

For Tesla, already in a bruising price war with local Chinese rivals, raising prices would pressure demand further.
"Apple's smartphone sales had already been declining in China for some time, faced with growing, cheaper competition. So, the prospect of steep import duties being imposed is likely to sharply erode sales even further," said Susannah Streeter, head of money and markets at

Hargreaves Lansdown.

Shares of Alphabet (GOOGL.O) , opens new tab, Microsoft (MSFT.O) , opens new tab and Amazon.com (AMZN.O) , opens new tab were subdued as they had limited exposure to China.

GE Healthcare's (GEHC.O) , opens new tab stock slid nearly 13%, following China's export controls on a rare-earth metal that is used in MRI scans. The country's announcement of an anti-dumping investigation into imports of certain medical CT tubes from the U.S. and India added to the worries.



Banks, oil majors and apparel stocks among those leading declines

SEMICONDUCTORS

Chip companies are set to face headwinds, too, although U.S. exports a much smaller amount of electronic equipment to China. Shares of Intel (INTC.O) , opens new tab,

Applied Materials (AMAT.O) , opens new tab and Qualcomm (QCOM.O) , opens new tab, all of which count on China for at least 30% of revenue, were down 5% to 8%.
The U.S. exported more than $15 billion worth of electrical and electronic equipment to China in 2024, with most of the value coming from integrated circuits, transistors and other semiconductor devices, according to economic data provider Trading Economics. In comparison, the U.S. imported more than $127 billion in electronic equipment from China last year.

"Semiconductors will feel a greater impact ... We're already witnessing a domestic ecosystem evolve in China, with direct alternatives for every major US semiconductor firm. This trend is likely to accelerate," Udupa said.

NATURAL RESOURCES

Crude prices, already under pressure from an expected OPEC+ oil output hike in May, added to the losses.

Oil majors Exxon (XOM.N) , opens new tab and Chevron (CVX.N) , opens new tab fell more than 5%. Top oilfield service company SLB (SLB.N) , opens new tab dropped 10%, and the biggest U.S. refiner by volume, Marathon Petroleum, (MPC.N) , opens new tab fell 6%. Chemicals company DuPont (DD.N) , opens new tab slid 12%.
"The trade war escalated, recession fears rise and consequently oil demand growth is to take a sizeable hit," said Tamas Varga, analyst at PVM.

China is also the largest market for U.S. agricultural products, even as imports of U.S. farm goods dropped last year.
Shares of top grain traders like Archer-Daniels-Midland (ADM.N) , opens new tab fell 8% while Bunge (BG.N) , opens new tab was down 6%. Fertilizer firms Mosaic (MOS.N) , opens new tab and CF Industries (CF.N) , opens new tab fell 10% and 8%, respectively.
China's tariffs on U.S. soybean exports would increase the cost to local customers, especially animal feed producers, and could prompt the country to source more from Brazil and Argentina, said Morningstar analyst Seth Goldstein.

BANKS

Banks' shares extended their declines from Thursday. The industry has been clouded by fears that a trade dispute could temper consumer confidence, reduce spending, weaken loan demand and pressure fees from advising on deals.

JPMorgan Chase (JPM.N) , opens new tab, the biggest U.S. bank by assets, sank 7%.

Wall Street titans Goldman Sachs (GS.N) , opens new tab and Morgan Stanley (MS.N) , opens new tab dropped more than 7% each.

MACHINERY

Heavy machinery makers Caterpillar (CAT.N) , opens new tab and Deere (DE.N) , opens new tab fell 5% and 4%, respectively, on concerns over demand from one of their largest overseas markets.
China is a major buyer of construction and agricultural equipment and a key player in global infrastructure spending.

RETAIL

Shares of major luxury and footwear firms reversed coursed after Trump said Vietnam's leader To Lam has offered to reduce tariffs on U.S. imports. Ralph Lauren's shares were up 2.5%, while Tapestry rose as much as 3.6%.

Nike gained 4%, Roger Federer-backed On jumped 7.2% and Lululemon Athletica rose 3%. The stocks had initially fallen after retaliatory tariffs by China, a major revenue contributor.

Reporting by Deborah Sophia, Seher Dareen, Niket Nishant, Zaheer Kachwala, Harshita Mary Varghese, Nathan Gomes, Manas Mishra, Ananya Mariam Rajesh and Bhanvi Satija in Bengaluru; editing by Arpan Varghese and Sriraj Kalluvila

Trump Informs Nation They Better Start Liking Those Little Canned Wieners

theonion.com/trump-informs-nation-they-better-start-liking-those-little-canned-wieners

The Onion Staff April 3, 2025

WASHINGTON—Saying that Americans should anticipate certain lifestyle changes as a result of his newly announced tariffs, President Donald Trump informed the nation Thursday that they better start liking those little canned wieners. “Hope you aren’t too attached to whatever fancy crap you eat now, because those little wiener dogs in the cans are coming back on the menu in a big way,” said Trump, adding that if Americans didn’t already have a good, long fork for fishing wieners out of the can, they were “sure as hell” going to need one soon. “You’re gonna eat ’em cold, and you’re gonna like ’em cold. Every meal. Don’t even think about trying to gussy them up with pickle relish. The only way you make it through these next few years is filling every shelf in your pantry with little canned wieners and knocking back the leftover hot dog water with a smile on your face. Buckle up, America. You live in ‘the wiener times’ now.” At press time, millions of Americans reportedly realized they could no longer afford the canned wieners.

No results found

Filter options

Securities Law News

April 3, 2025, 6:52 AM PDT

Staley Didn't Deliberately Lie About Epstein Links, Lawyer Says

A lawyer for **Jes Staley** said the former Barclays Plc boss never lied about his relationship with **Jeffrey Epstein**, disputing the British financial regulator's claims that he misled authorities.

"Mr. Staley cannot be proved to be responsible for a direct and deliberate lie," Robert Smith told a London court on Thursday, the final day of a bid to overturn Staley's lifetime ban from the UK finance industry.

Smith said the Financial Conduct Authority had focused on minor inconsistencies in Staley's comments about his relationship with the late pedophile financier. According to emails published as part of various legal proceedings, Staley and Epstein developed a friendship over years that included family trips to the latter's Caribbean island.

"What does it matter if Mr. Staley is reported to have told Mr. Gillies that he visited the island once if he told others it was twice and that he may have been three times?" Smith said on Thursday, referring to former Barclays director Crawford Gillies. "What does it matter if he had dinner with Mr. Epstein more than once annually?"

Jes Staley, former chief executive officer of Barclays Plc, arrives at The Rolls Building in London on Wednesday, March 5, 2025.
Photographer: Chris Ratcliffe/Bloomberg

Staley was banned and fined in 2023, with the FCA saying he "recklessly misled" authorities by allowing Barclays to downplay the relationship between him and Epstein, who died in 2019 while in jail on sex trafficking charges.

On Wednesday, lawyers for the regulator argued that Staley's "misleading statements in interview" during its probe would be sufficient grounds to bar him on their own.

Staley's behavior during the investigation "goes right to the heart of whether he can be relied on to act with integrity in the financial services industry," said Leigh-Ann Mulchahy, a lawyer for the FCA. "And those are sufficient to form a separate basis on which to consider prohibition."

Staley first got to know Epstein while working at JPMorgan Chase & Co. where he rose to become head of its investment banking arm. He has maintained that he cut off contact with Epstein when he took the top job at Barclays in 2015.

Thursday marks the final day of the hearing, following two weeks of testimony from Staley and an array of senior Barclays staffers and regulators last month. The upper tribunal will deliver a ruling at a later date.

LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Optum, Express Scripts Want Judge Ousted From Opioid MDL

By **Hailey Konnath**

Law360 (April 3, 2025, 11:40 PM EDT) -- Pharmacy benefit managers Optum and Express Scripts say the Ohio federal judge overseeing multidistrict opioid litigation should recuse himself because he "regularly communicates" with plaintiffs' attorneys in the litigation and is biased in favor of plaintiffs, according to a motion filed Wednesday.

Optum, which is a subsidiary of UnitedHealth, and Express Scripts said in their **filing** that they had "no choice" but to push for U.S. District Judge Aaron Polster to recuse himself on allegations that one of the plaintiffs' attorneys was telling existing and prospective clients that his co-counsel routinely speaks with Judge Polster outside of court.

That attorney, Michael Kahn, has 40 years of experience and mentioned that co-liaison counsel Peter Weinberger communicates with the judge, who Kahn described as "a tremendous plaintiff-oriented judge" who will get the defendants to settle via "enormous pressure," according to the motion.

"According to Mr. Kahn, Mr. Weinberger communicates ex parte with the court to get 'inside information,'" the PBMs said.

And that's not all, they said. "Since first learning about the statements, the court has twice summarily denied the PBMs' motion for disclosure of ex parte communications in the MDL — communications that, under the law, should not even exist," Optum and Express Scripts said.

The sprawling case alleging negligent sales of opioids was centralized in 2017. It involves claims by cities, counties and states where communities have been damaged by widespread addiction to narcotic painkillers.

Last month, Judge Polster **sanctioned Kahn** — who's based in Melbourne, Florida — and fined him $100,000 for making remarks to public officials in 2019 that Weinberger regularly engaged in ex parte communications with the court, and that the court was "plaintiff-oriented" and was pressuring defendants to settle. Kahn made the statements to encourage public officials to authorize contingency arrangements with him and his co-counsel to bring suits against opioid manufacturers, distributors and pharmacies, the judge said at the time.

At a hearing on March 12, Kahn admitted to the court that he had no basis for making the statements and that he "misspoke." He said he never intended to convey that Weinberger or anyone else among the plaintiffs' lead counsel ever met or communicated with the court outside the presence of defense counsel, according to the order.

Judge Polster, however, was unconvinced by the lawyer's explanation.

"It is hard to believe that an attorney with Mr. Kahn's experience did not understand the implication of his claim that lawyers from the [plaintiffs' executive committee] regularly engaged in ex parte communications," Judge Polster said. "The fact that Mr. Kahn made these unsubstantiated and improper statements on at least four occasions in 2019 adds to the severity of his conduct."

In Wednesday's motion, the PBMs noted that Judge Polster has denied — twice — their requests that Weinberger face questioning under oath about the purported ex parte communications.

"And the court denied the PBMs' request to have a disinterested judge preside over an evidentiary hearing about these issues — a hearing at which the court led the questioning of Mr. Kahn and allowed Mr. Weinberger (a witness with firsthand knowledge) to question Mr. Kahn," they said.

Those actions have prevented a "full inquiry" into the potential ex parte communications, the PBMs said.

"Mr. Kahn's statements and the events over the last five weeks require disqualification," they said. "On these facts, any reasonable observer would question the court's impartiality. Similar concerns recently compelled this court to disqualify itself in a separate matter."

Counsel for the parties didn't immediately respond to requests for comment late Thursday.

The plaintiffs' executive committee is represented by Jayne Conroy of Simmons Hanly Conroy LLP, Joseph F. Rice of Motley Rice LLC, Paul T. Farrell Jr. of Farrell & Fuller and Peter H. Weinberger of Spangenberg Shibley & Liber LLP.

The pharmacy benefit managers are represented by Michael J. Lyle, Eric C. Lyttle, Jonathan G. Cooper and Tara MacNeill of Quinn Emanuel Urquhart & Sullivan LLP and Brian D. Boone, Matthew P. Hooker, William W. Metcalf and Andrew Hatchett of Alston & Bird LLP.

The case is In re: National Prescription Opiate Litigation, case number 1:17-md-02804, in the U.S. District Court for the Northern District of Ohio.

--Additional reporting by Jeff Overley, Carolina Bolado and Jonathan Capriel. Editing by Michael Watanabe.

LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Bakkt Holdings Faces Suit Over Lost Crypto Revenue

By **Katryna Perera**

Law360 (April 3, 2025, 3:32 PM EDT) -- Bakkt Holdings Inc. and its top brass have been hit with a potential class action in New York federal court by an investor alleging that the crypto technology company and its executives misrepresented the stability of its crypto services revenue after it acquired a crypto platform.

Guy Serge A. Frankin filed **a complaint** Wednesday against Bakkt, its CEO Andrew Main, its former CEO Gavin Michael and its Chief Financial Officer Karen Alexander. The suit is on behalf of a proposed class of individuals and entities that purchased or acquired Bakkt securities between March 25, 2024, and March 17, 2025.

According to the complaint, Bakkt is a technology company that builds software for the sale, purchase and storage of cryptocurrency. In April 2023, Bakkt acquired Apex Crypto LLC, a platform for integrated crypto trading, and renamed it Bakkt Crypto.

The complaint said the acquisition provided Bakkt with a significant influx of new clients and financial technology partners, including Webull Pay LLC, a trading and investments platform.

Frankin says that before the acquisition, revenue generated for Bakkt from crypto services had been "immaterial," but following the deal, revenue from crypto services saw a major increase and became a major driver of Bakkt's revenue, accounting for 93.2% of it by the end of 2023.

Bakkt also operates a "loyalty solutions" segment of its business, which enables point redemption and fulfillment, including travel reservations, according to the complaint.

However, on March 17, 2025, Frankin said, Bakkt disclosed that Webull was terminating its commercial contract with Bakkt, effective June 14, 2025, and Bakkt revealed that in the prior nine months ended Sept. 30, 2024, and the full year ended Dec. 31, 2023, Webull made up 74% of Bakkt's crypto services revenue.

"The company also disclosed that Bank of America was terminating its loyalty services contract with the company, effective April 22, 2025. The company revealed Bank of America made up 17% of Bakkt's loyalty services revenue in the prior nine months ended September 30, 2024," the complaint said.

Frankin said the loss of those customers will result in a 73% loss of top-line revenue for Bakkt going forward and that when the cancelations were disclosed, Bakkt's share price fell by $3.50 or 27.3%, to close at $9.33 per share on March 18, 2025.

Bakkt additionally disclosed on March 20, 2025, that the loss of Webull "raise[s] substantial doubt about [the company's] ability to meet our obligations for at least 12 months from the date of issuance of these consolidated financial statements," the complaint said.

Frankin said that throughout the potential class period, the defendants made false and misleading statements about the stability and/or diversity of Bakkt's crypto services revenue, they failed to disclose that Bakkt Crypto's service revenue was "substantially dependent on a single contract with Webull" and misrepresented the company's ability to maintain key client relationships.

The suit seeks damages, attorney fees and a jury trial.

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

Frankin is represented by Rebecca Dawson, Robert V. Prongay and Charles H. Linehan of Glancy Prongay & Murray LLP and Frank R. Cruz of The Law Offices of Frank R. Cruz.

Counsel information for the defendants was not immediately available Thursday.

The case is Frankin v. Bakkt Holdings Inc. et al., case number 1:25-cv-02753, in the U.S. District Court for the Southern District of New York.

--Editing by Stephen Berg.

LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Del. Suit Challenges 'DExit' Corporate Law, Dropbox Move

By **Jeff Montgomery**

Law360 (April 3, 2025, 6:55 PM EDT) -- One of Delaware's oldest law firms on Thursday challenged the constitutionality of a corporate law overhaul pushed through the General Assembly last month in a declared bid to stem "DExit" corporate charter relocations to other states and protect the state's legal industry and $2 billion in annual corporate franchise fees.

Prickett Jones & Elliott PA, founded in 1888, filed the action on behalf of Plumbers & Fitters Local 295 Pension Fund as it voluntarily dismissed the union's five-week old suit seeking books and records on file-sharing giant Dropbox Inc.'s recent reincorporation in Nevada.

Dropbox was among several companies to drop their Delaware charters in recent months after a series of court rulings they said were unsupported and unfairly tilted toward plaintiffs. "DExit" quickly became a shorthand reference in litigation and legislative debates.

Although Prickett Jones' new suit remained under seal late Thursday, a summary document asserted that last month's key state General Corporation Law amendments violate Delaware's constitution. The suit also claims breaches of fiduciary duty by Dropbox and people named in connection with the company's reincorporation.

Voluntarily dismissed on the same day was the union's Feb. 26 suit seeking books and records on Dropbox's Jan. 28 vote to reincorporate in Nevada by written consent of Andrew W. Houston, Dropbox's chairman, CEO and controlling stockholder.

Delaware Gov. Matt Meyer began calling soon after the Dropbox move for changes in the state's corporation laws, citing in part allegedly unfair, unsupported and plaintiff-tilted court rulings. The complaint was echoed by the state's corporate bar, which helped in high-speed drafting of the amendments over objections from law firms that regularly represent stockholders.

Among the purported triggers was Chancellor Kathaleen St. J. McCormick's strikedown of Elon Musk's $56 billion, 10-year Tesla Inc. compensation plan, a ruling that set off a Tesla race out of Delaware to a new corporate home in Texas.

Also contributing to the heat is the Delaware Supreme Court's reversal of a decision that had dismissed a challenge to Match.com's 2019 reverse spinoff from Barry Diller-controlled IAC Interactive.

Dropbox announced its plan to recharter in February, citing in part a "more predictable legal environment" and concerns about Delaware's "increasingly litigious atmosphere."

Nevada has been actively promoting itself as a charter home alternative to Delaware, saying it has a more statute-reliant approach to corporate law rather than a court precedent focus.

Prickett Jones and Dropbox did not immediately respond to a request for comment.

Plumbers & Fitters Local 295 Pension Fund is represented by Michael Hanrahan, Corinne Elise Amato, Eric J. Juray, Stacey A. Greenspan, Kirsten M. Valania and Caitlin E. Whetham of Prickett Jones & Elliott PA and Lee D. Rudy, Eric L. Zagar and Lauren Lummus of Kessler Topaz Meltzer & Check LLP.

Counsel information for Dropbox Inc. in the new case was not immediately available.

The case is Plumbers & Fitters Local 295 Pension Fund v. Dropbox Inc. et al., case number 2025-0354, in the Court of Chancery of the State of Delaware.

--Editing by Brian Baresch.

LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

How Del. Law Rework Limits Corporate Records Requests

By **Jonathan Richman** (April 3, 2025, 5:27 PM EDT)


Jonathan Richman

The Delaware General Assembly **passed** a bill on March 25, amending the section of the Delaware General Corporation Law — Section 220 — that allows stockholders and beneficial owners to demand inspection of Delaware corporations' books and records.

The amendments generally narrow the scope of materials obtainable through an inspection demand, although they allow courts to order the inspection of a broader set of materials if a corporation does not maintain traditional types of documentation or if the requesting stockholder shows a compelling need for them. The amendments also allow corporations to require that any documents produced in response to an inspection demand be incorporated by reference in any complaint that the demanding stockholder might later file.

The amendments to Section 220 — part of a larger, controversial package of reforms apparently designed to encourage companies not to incorporate or reincorporate in other states — were passed in reaction to the proliferation of inspection demands, which corporations generally view as expensive and burdensome.

The new provisions could curtail the scope of those inspections. And corporations' ability to require that any produced documents be incorporated by reference in a subsequently filed complaint could assist defendants in framing a motion to dismiss the complaint at the pleading stage.

Background

The Delaware General Corporation Law's Section 220(b) has long allowed stockholders to make sworn, written demands "to inspect for any proper purpose, and to make copies and extracts from ... [a] corporation's stock ledger, a list of its stockholders, and its other books and records."

Delaware common law has developed the concept of a "proper purpose," which generally covers any purpose reasonably related to the demanding stockholder's rights as a stockholder, including to determine whether corporate misconduct has occurred. Delaware courts also have fleshed out what "books and records" are subject to Section 220.

Section 220 inspection rights are significantly narrower than discovery rights in litigation: They cover only those documents that are essential and necessary to allow a demanding stockholder to accomplish a proper purpose. Delaware courts, including the Delaware Court of Chancery's 2022 decision in Hightower v. SharpSpring Inc., have developed a taxonomy to help determine what books and records are essential and necessary:

- The first category — and sometimes the only category — that will be produced consists of formal board materials: "board-level documents that formally evidence the directors' deliberations and decisions and comprise the materials that the directors formally received and considered."
- The second category — informal board materials — generally includes "'communications between directors and the corporation's officers and senior employees, such as information

distributed to the directors outside of formal channels, in between formal meetings, or in connection with other types of board gatherings' and sometimes including 'emails and other types of communication sent among the directors themselves, even if the directors used non-corporate accounts.'"

- The third category — "Officer-Level Materials" — includes "communications and materials that were only shared among or reviewed by officers and employees."[1]

If formal board materials provide what is essential and necessary, a court will likely stop there and not require the production of materials from the other two categories. But if formal board materials do not suffice, a court might order the production of materials from those other categories.

Inspection rights thus enable stockholders to conduct a limited type of presuit discovery to frame more detailed, fact-specific complaints that might be less vulnerable to motions to dismiss. Indeed, the Delaware courts have expressly encouraged stockholders to use Section 220 for that purpose, hoping that tightly focused presuit investigations will discourage the filing of meritless lawsuits, especially derivative actions against corporate directors and officers.

The Delaware courts' wish to avoid a "ready, shoot, aim" approach from the plaintiffs bar has perhaps deterred some unfounded lawsuits that might otherwise have been filed, but it also has created its own type of monster. Section 220 inspection demands can impose significant burdens and expenses on corporations, and can lead to satellite litigation addressing the propriety of the presuit inspection demand itself, apart from any plenary lawsuit that might follow the demand.

Part of the problem — from corporations' point of view — has arisen from the arguably expansive construction that some courts have given to the phrase "books and records," which in some cases has included emails, text messages, and other types of electronic communications and informal documents. For example:

- In KT4 Partners LLC v. Palantir Technologies Inc., the Delaware Supreme Court held in 2019 that the Court of Chancery had abused its discretion in not ordering the production of emails in a situation where the company had not followed corporate formalities and had acted through email in connection with the alleged wrongdoing that the stockholder sought to investigate.[2]
- In Lebanon County Employees' Retirement Fund v. AmerisourceBergen Corp., the Court of Chancery in 2020 allowed stockholders to take a deposition to explore what types of books and records other than formal board materials existed because the company had "prevented the [stockholders] from obtaining any information about what types of books and records exist and who has them."[3]
- In Hightower v. SharpSpring Inc., the Court of Chancery held in 2022 that stockholders could inspect documents beyond formal board materials because of inconsistencies between board minutes and a proxy statement's description of events covered by the board minutes.[4]

The Delaware General Assembly has now cabined the scope of Section 220. The amendments are part of a broader set of reforms that appear designed to make Delaware look more corporation-friendly, and dissuade companies from incorporating or reincorporating in other states. Those other reforms establish safe-harbor provisions for actions and transactions involving directors, officers or controlling shareholders, and attempt to define who should be considered interested or not independent in matters involving the corporation.

The legislation has divided the plaintiffs and defense bars, as well as academics. The legislators themselves appear to have been more united: The bill **passed** in the Senate by a vote of 20-0 on March 13. The House **passed** the bill by a vote of 32-7 and rejected several amendments, including one that would have applied the reforms only to corporations that adopted charter provisions opting in to them. The governor **signed the bill** into law.

The 2025 Amendments to Section 220

New Section 220(a)(1) defines "books and records" to mean:

- The certificate of incorporation and bylaws, including any incorporated agreements or other documents;
- The minutes of stockholder meetings, and signed consents for any stockholder actions taken without a meeting, during the three years preceding the inspection demand;
- All written and electronic corporate communications to stockholders generally within the preceding three years;
- Board and board committee minutes, and records of any actions by the board or a committee;
- Materials provided to the board or a board committee in connection with any actions taken by the board or committee;
- Annual financial statements for the preceding three years;
- Any agreements under Delaware General Corporation Law Section 122(18) governing certain corporate contracts with stockholders; and
- Any director and officer independence questionnaires.

In terms of board-level materials, the definition of "books and records" seems generally consistent with the concept of formal board materials developed by Delaware courts. The definition does not appear to include informal board materials or officer-level materials.

However, if a corporation does not have minutes of stockholder meetings, signed consents evidencing stockholder actions without a meeting, minutes of board or board committee meetings, records of board or board committee actions, annual financial statements, or director/officer independence questionnaires (for listed public companies), new Section 220(f) authorizes the Court of Chancery to order production of additional corporate records "constituting the functional equivalent" of any such nonexistent materials, and impose reasonable restrictions on the use of those additional materials. In those circumstances, Section 220(f) might be construed to include informal board materials.

New Section 220(g) authorizes a court to compel inspection of a broader set of "specific records" "only if and to the extent" that the requesting stockholder "has made a showing of a compelling need for an inspection of such records to further the stockholder's proper purpose," and the stockholder "has demonstrated by clear and convincing evidence that such specific records are necessary and essential to further such purpose."

This provision — an addition to the original bill — appears to have been designed to address some of the plaintiff-side criticisms of the proposed law, and preserves the possibility of a broader production of corporate records in circumstances of "compelling need," perhaps even including officer-level materials.

New Section 220(b)(3) allows corporations to condition the production of books and records on the requesting stockholder's agreement that "any information included in the corporation's books and records is deemed incorporated by reference in any complaint filed by or at the direction of the stockholder in relation to the subject matter referenced in the demand."

The amended statute does not affect stockholders' discovery rights in litigation with the corporation, or the courts' power "independently of [Section 220], to compel the production of corporate records for inspection and to impose reasonable restrictions" on their use.

Implications

The new amendments could help narrow the scope of Section 220 inspection demands and reduce the burdens that corporations face in complying with them.

However, it is difficult to determine whether the new definition of "books and records" would have changed the outcome of past decisions because of the "compelling need" provision in Section 220(g). The application of that provision would appear to demand a fact-specific analysis of the circumstances in which it is invoked, and Section 220(g) authorizes courts to expand the definition of "books and records" in compelling circumstances.

Moreover, because Section 220(f) authorizes the production of the "functional equivalent" of certain books and records where a corporation does not maintain formal versions of those documents, it appears to confirm the Palantir court's ruling allowing such production. But the overall thrust of the statutory amendments could lead courts to err on the side of restrictiveness rather than leniency.

In any event, though, the efficacy of the limited list of documents now covered by Section 220 could depend on the extent to which a corporation maintains standard, formal records of its operations: official minutes, consent forms, records of board actions, financial statements, officer/director independence questionnaires, etc. If a corporation does not keep those records, courts will likely be willing — as some have been in the past — to allow demanding stockholders to inspect a broader set of books and records. That broader set could include emails, text messages and other informal materials, all of which can be expensive and difficult to locate, review and produce.

The amendments therefore put a premium on good corporate recordkeeping, without which some benefits of the new law might prove illusory. However, Section 220(g) still leaves open the possibility of broader inspection rights in limited circumstances, even where a corporation has maintained full "books and records" as defined in the statute.

The new provision allowing corporations to condition the production of books and records on the demanding stockholder's agreement that those materials will be incorporated by reference in any subsequently filed complaint can create a significant litigation advantage for defendants. When defendants move to dismiss a complaint, the court generally must accept as true all well-pled factual allegations except to the extent publicly available documents or documents referred to in the complaint suggest otherwise.

The new Section 220(b)(3) extends the scope of what defendants can use in a motion to dismiss: They now can use anything in the documents produced in response to the books and records demand even if the complaint did not cite, refer to or depend on that particular document.

Incorporation of the full Section 220 production thus enables defendants to rely on materials they otherwise might not have been able to use at the pleading stage; it also undercuts plaintiffs' ability to select only the documents most helpful to them while ignoring other documents that undermine the complaint's contentions. Some Delaware courts had previously allowed this approach to incorporation, but Section 220 now codifies it.

The statutory availability of this new defensive tool could affect how corporations write their minutes of board and stockholder meetings. The more specificity those minutes contain, the more potential ammunition defendants might have when faced with a stockholder derivative action.

For example, if a stockholder suit contends that the directors breached their fiduciary duties by taking (or not taking) certain actions, and if the minutes of board meetings show — without waiving applicable privileges — that the directors discussed the particular issue, asked questions, weighed pros and cons, sought professional advice where appropriate, and otherwise made a considered decision, the defendants can use those minutes in a motion to dismiss to argue that they acted appropriately and did not violate their fiduciary duties.

Conversely, if the minutes do not mention the particular issue at all, or if they say only that the issue was raised, defendants will have less material to work with at the pleading stage. Some Delaware decisions have already considered the contents of corporate minutes — including the absence of discussion about a particular issue — when assessing the strength of stockholders' allegations at the pleading stage.

We will see whether the amendments to Section 220 and other provisions of the Delaware General

Corporation Law will assuage recent concerns in some quarters about Delaware's supposed unfriendliness to corporations and help preserve Delaware's continued primacy as a seat of incorporation.

Jonathan E. Richman is a partner at Brown Rudnick LLP.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] Hightower v. SharpSpring, Inc. , 2022 WL 3970155, at *9 (Del. Ch. Aug. 31, 2022) (internal quotations omitted).

[2] KT4 Partners LLC v. Palantir Techs., Inc. , 203 A.3d 738 (Del. 2019).

[3] Lebanon Cty. Emps.' Ret. Fund v. AmerisourceBergen Corp. , 2020 WL 132752, at *26-27 (Del. Ch. Jan.13, 2020).

[4] Hightower v. SharpSpring, Inc., 2022 WL 3970155 (Del. Ch. Aug. 31, 2022).

LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

ADM Faces Del. Derivative Suit Amid Accounting Fraud Claims

By **Jeff Montgomery**

Law360 (April 3, 2025, 7:17 PM EDT) -- Agricultural supply chain giant Archer-Daniels-Midland Co. was hit with a derivative complaint Thursday in Delaware's Court of Chancery, seeking damages from 17 current or former officers entangled in claims of years of fraudulent accounting and disclosures involving its nutrition segment.

Stockholder Jean T. Livingston said in the 205-page complaint that those named in the suit have admitted to violating company policy and generally accepted accounting principles while allegedly overstating profits of the company's nutrition segment — its newest and most important — every year from 2018 through 2023.

Compensation for those sued was tied to the nutrition segment's performance, the suit says, "which created a motive to continue and conceal the fraud."

ADM did not immediately respond to a request for comment.

The suit hit the court in Delaware less than a month after an Illinois federal judge refused to dismiss a direct stockholder suit pointing to improper accounting practices and "robust" claims of knowingly false statements about the segment's profitability.

The scandal already has cost several individuals their jobs, and forced the company's restatement of financial results amid investigations by both the U.S. Securities and Exchange Commission and U.S. Department of Justice.

Among other alleged accounting transgressions, the company was accused of charging below market rates for intercompany sales of raw materials to the nutrition segment, overstating its profits and distorting investors' analysis of the company.

"When the truth about the accounting fraud was revealed — including overstating nutrition operating profit by as much as 25% over six years — the company's stock price declined dramatically, erasing more than $8 billion in market capitalization," Thursday's Delaware complaint says.

In January 2024, the company placed then-chief financial officer, Vikram Luthar, on leave effective immediately and disclosed that it was investigating accounting procedures in its nutrition segment. Other disruptions followed, including delays in release of the company's fourth-quarter and full year 2023 earnings.

Those named in Thursday's suit were alleged to have personally gained from the bogus profitability picture, which sent the company's stock up from $35 per share to nearly $100. Five officers cashed out nearly $107 million and received more than $150 million in compensation.

The SEC's investigation, however, was disclosed only after the stock sales. Federal probes included grand jury subpoenas to current and former employees, with forced retirement and other sanctions for some of those involved.

Counts in Thursday's suit include breach of fiduciary duty, gross mismanagement, waste of corporate assets, unjust enrichment and aiding and abetting breaches. Eight of the 17, including CEO Luciano, were accused of insider trading valued at $110 million.

Nutrition segment president and ADM senior vice president Vincent Macciocchi was forced to retire and forfeit up to $2 million in stock awards. Luthar was fired under an agreement with the government while Ray Young, chief financial officer before Luthar, resigned from public company board positions after the revelations.

The insider trading defendants "knew that this information was not intended to be available to the public" and would have significantly reduced the market price of company stock had it been public, Thursday's complaint says.

It seeks damages caused by those named, an order for disgorgement of "illicitly gained proceeds," corporate governance reforms and payment of attorney fees, expert fees and related expenses to the plaintiffs.

The case is Jean T. Livingston, derivatively, on behalf of Archer-Daniels-Midland Co. v. Juan Luciano, et al., case number 2025-0329, in the Court of Chancery of the State of Delaware.

Jean T. Livingston, derivatively, is represented by Blake A. Bennett of Cooch & Taylor PA and Thomas McKenna, Gregory M. Egleston and Christopher M. Brain of Gainey McKenna & Egleston.

--Editing by Marygrace Anderson.

LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Southwest Gets Second Shot At Tossing Investors' Outages Suit

By **Catherine Marfin**

Law360 (April 3, 2025, 7:05 PM EDT) -- A Texas judge said Thursday he plans to rewrite his decision on Southwest Airlines' request to dismiss a shareholder class action over a disastrous 2022 holiday travel season because the Fifth Circuit may require a more thorough record of the extent of the airline's knowledge about the risks of its outdated technology.

U.S. District Judge Drew B. Tipton told the parties after a hearing Thursday that he would allow them to address whether the plaintiffs had adequately pled the airline's scienter, or knowledge of wrongdoing, as required by the Private Securities Litigation Reform Act before rewriting his order. He previously denied Southwest's bid to dismiss the suit in a one-paragraph order entered in December, which Southwest had asked to reconsider.

Judge Tipton said that after supplemental briefings, he could change his mind about preserving the shareholders' suit.

Southwest counsel Michael A. Swartzendruber of Norton Rose Fulbright told the court that all the facts the shareholders alleged were public before they filed their January 2023 **complaint**, including through press reports, disclosures from the company, and "vitriolic" complaints from its union.

"There's nothing left to be repealed here," he told the court.

Swartzendruber told Judge Tipton that the airline's public admissions go back as far as 2016, and some are directly quoted in the shareholders' complaint.

After flight disruptions occurred in late 2021, for example, the airline publicly stated that it had a "continued strain on resources" and needed better tools for recovery in case of flight disruptions, and it cautioned of "too few options" to get flights back on track in the event of disruptions, Swartzendruber said.

In a complaint led by investor Arthur TerOganesian, the shareholders claimed that the airline knew that its technology needed updating and that its so-called point-to-point route structure could mean that Southwest was hit harder by inclement weather. The suit came after extreme winter weather during the 2022 holiday travel season caused thousands of flights to be called off.

After it was revealed that Southwest's outdated technology was the cause of the extended delays, Southwest stock fell 12% over the course of just a few trading days, TerOganesian alleged.

Swartzendruber said Thursday that over a year before the 2022 winter storms, Southwest had publicly disclosed that it was planning on upgrading its systems after the 2022 travel season.

He told the court that just because there is "daylight" between the way Southwest and the union characterized the technology does not mean that the airline intentionally misled its investors.

But the shareholders' attorney Laurence J. Hasson of George Brothers Kincaid & Horton LLP said that the company's generalized statements of needing to "modernize and upgrade" do not count as disclosures that could have made investors aware of a possible "epic meltdown."

"What they're trying to do is put the facts on trial," he said. "Routine plans to modernize do not indicate that technology is deficient."

Noting that the parties were in court to discuss Southwest's reconsideration motion, Hasson said there is no requirement for Judge Tipton to enter a long opinion with his order.

"You don't think the Fifth Circuit may require more detailed analysis of the scienter requirement?" Judge Tipton asked.

Hasson responded that the word "analysis" doesn't necessarily mean Judge Tipton's order should meet certain criteria.

He added that the shareholders have included facts that weren't in the public domain, such as a data-driven proposal for improvements the pilots union gave the company.

"This was repeatedly ignored," Hasson said.

Judge Tipton allowed the parties to confer on a supplemental briefing schedule and inform the court of that schedule at a later date.

The shareholders are represented by Laurence J. Hasson, Joseph R. Seidman Jr. and Jeffrey McEachern of Bernstein Liebhard LLP and B. Russell Horton of George Brothers Kincaid & Horton LLP.

Southwest is represented by Michael A Swartzendruber and Peter Andrew Stokes of Norton Rose Fulbright.

The case is TerOganesian v. Southwest Airlines Co. et al., case number 4:23-cv-00115, in the U.S. District Court for the Southern District of Texas.

--Editing by Adam LoBelia.

LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Alsup Calls Out Anthropic Over Missed Discovery Deadlines

By **Lauren Berg**

Law360 (April 3, 2025, 9:52 PM EDT) -- U.S. District Judge William Alsup scolded Anthropic for again delaying discovery production in a proposed class action accusing the artificial intelligence startup of exploiting the copyrighted works of journalists and authors to train its large language model.

In a brief Wednesday **order** — issued in response to a letter from the writers filed that day — Judge Alsup reminded Anthropic that in late February it promised to produce by March 20 all responsive documents the authors sought in order to draft their opposition to a summary judgment motion the AI company was planning to file. At the time, Judge Alsup told Anthropic that if it didn't comply with the deadline, "summary judgment is off," the order states.

At a March 25 discovery conference, however, Anthropic told the court it had missed the deadline and blamed its vendor for the mishap, according to the order. Nevertheless, it argued the summary judgment motion should move forward because the documents it held weren't needed for the authors' opposition, the order states.

As a remedy, Judge Alsup told Anthropic's counsel that, until the authors get all the documents, the time they have to test any privilege Anthropic asserted for documents it didn't produce will come out of the number of days that Anthropic has to reply to the opposition filing, according to the order.

On Wednesday, Judge Alsup lamented the continuing delay, noting that Anthropic still hasn't kept its production promise. And even though it "at last" has provided its privilege log, Anthropic is now arguing that the authors have to show a material issue with its privilege assertions before they earn time to challenge the log, the order states.

But the judge said he has already granted the authors time to challenge the log.

"Anthropic made an agreement to produce documents by a given date," Judge Alsup said. "When Anthropic's production slipped, the court ordered that authors' time to oppose Anthropic's motion should slip apace."

"Then, rather than spend every moment ensuring its production did not slip again, Anthropic took time to come up with a strained reading of the court's order and send it off to authors — a reading which seems to suppose the court ordered little consequence at all for Anthropic's delays," he added.

So, Judge Alsup ordered that the authors' opposition to the motion for summary judgment be due seven days after all the promised documents are produced, and that Anthropic's reply be due four days after the opposition.

"When lawyers make agreements they must honor their word," the judge concluded.

But Anthropic filed its own **letter** Thursday in response to the writers' letter, saying it wasn't given a chance to respond before the court issued its order. The company told the court that the plaintiffs "tried to corner Anthropic into an aggressive interpretation of the court's order," and have "deliberately" misstated its progress toward document production.

For one thing, the plaintiffs failed to mention that they served their privilege log just one business day before Anthropic served its log, and that the service of such logs was never part of any discovery agreement, the letter states. What's more, the plaintiffs omitted that the parties discussed exchanging the logs in early April, according to the letter.

"Anthropic ultimately served its log on March 31, which was before plaintiffs said they needed it (until they opportunistically changed positions on the urgency of privilege logs after the [March 25] hearing)," the company said. "It strains credulity to imagine that plaintiffs have been prejudiced by the timing of these exchanges."

After reviewing the remaining documents to be produced, Anthropic says it anticipates handing over "at most" 500 documents by April 7, which gives the writers plenty of time fo review before their original April 17 opposition deadline.

The company asked that Judge Alsup reconsider his order and restore the original summary judgment briefing schedule, or to amend the order to give Anthropic at least 10 days to prepare its reply brief, according to the letter.

"Plaintiffs have overreached, misrepresented the record, and wildly overstated the prejudice they have suffered in service of an attempt to score an opportunistic procedural victory," Anthropic said. "Nor have they demonstrated that there was any actual 'need' for the extreme remedies they have sought and obtained."

Counsel for the writers declined to comment Thursday.

Andrea Bartz, Charles Graeber and Kirk Wallace Johnson, authors and journalists from New York and Los Angeles, **sued Anthropic** late last year, asserting that "large-scale theft" of copyrighted works was an "essential component" of the San Francisco-based company's business model and its flagship family of LLMs, called Claude.

According to the operative complaint filed in December, Anthropic downloaded pirated versions of the writers' works, made copies of them and then "fed these pirated copies into its models."

The writers said Anthropic hasn't tried to compensate them for using their work and actually took "multiple steps to hide the full extent of its copyright theft."

Regarding their allegations of copyright infringement, the writers said copyright law "prohibits what Anthropic has done here: downloading and copying hundreds of thousands of copyrighted books taken from pirated and illegal websites."

But Anthropic, which first signaled a **fair use defense** in answer to the authors' complaint, filed a redacted **motion for summary judgment** on March 27, arguing that its use of their works was transformative and thus "quintessential fair use."

Anthropic argues that while there was "no dispute" it used the authors' books as a tiny part of a corpus of data to train Claude, it used the books only as a "back-end step" to create the LLM and does not show the writers' books to end users.

Anthropic said its use of the books served a "fundamentally different purpose" from the books themselves and that such "transformative" use was one the Copyright Act "not only allows, but encourages."

Pointing to a 2015 Second Circuit ruling in a case involving Google, Anthropic said that scanning millions of books found in university libraries to create a searchable corpus from which users could view short snippets upon request amounts to fair use.

And in another case involving Google and Oracle, the U.S. Supreme Court in 2021 found that duplicating elements of pre-existing computer software in a new tool for developers on a potentially competing platform amounted to fair use, Anthropic added.

As for Claude, Anthropic said the LLM uses data resulting from "extensive analysis" of a corpus of works "to create a model of language itself."

"That makes Claude itself transformational," Anthropic said.

Also on March 27, the writers filed a redacted motion for class certification, seeking to certify two classes alleging claims of copyright infringement.

The authors said all the proposed class members' claims turn on the "legality of Anthropic's common course of conduct."

The authors said that because Anthropic acquired books with common methods, used the books in a common manner, and needed books for a common reason, "its conduct infringed all of the copyrights owned by members of each class, or none."

The writers further asked Judge Alsup to appoint Lieff Cabraser Heimann & Bernstein LLP and Susman Godfrey LLP as class counsel.

The authors are represented by Justin A. Nelson, Alejandra C. Salinas, Collin Fredricks, Rohit D. Nath, Jordan W. Connors and J. Craig Smyser of Susman Godfrey LLP, Rachel Geman, Jacob S. Miller, Danna Z. Elmasry, Daniel M. Hutchinson and Reilly T. Stoler of Lieff Cabraser Heimann & Bernstein LLP and Scott J. Sholder and CeCe M. Cole of Cowan DeBaets Abrahams & Sheppard LLP.

Anthropic is represented by Douglas A. Winthrop, Joseph Farris, Jessica L. Gillotte, Estayvaine Bragg, Angel T. Nakamura, Oscar Ramallo and Allyson Myers of Arnold & Porter Kaye Scholer LLP, Mark Lemley of Lex Lumina LLP and Joseph R. Wetzel and Andrew M. Gass of Latham & Watkins LLP.

The case is Andrea Bartz et al. v. Anthropic PBC, case number 3:24-cv-05417, in the U.S. District Court for the Northern District of California.

--Additional reporting by Gina Kim, Ivan Moreno and Rae Ann Varona. Editing by Michael Watanabe.

LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Atty Suspended Over Billing Lapses In State Street Case

By **Julie Manganis**

Law360 (April 3, 2025, 2:43 PM EDT) --
The former managing partner of Thornton Law Firm LLP has received a 30-day license suspension for his decision to sign an inaccurate billing declaration to a federal judge in an investor action against State Street Bank.

A Massachusetts high court justice ruled on Tuesday that Garrett J. Bradley had been negligent when he failed to read the document, filed in support of the firm's legal fees in a class action, before signing it.

The suspension falls below both the six-month suspension **recommended** by a bar disciplinary committee last year and the two-year suspension requested by the Office of Bar Counsel. Bradley had sought a public admonishment.

Both the Board of Bar Overseers and Bradley could seek to appeal the decision by Supreme Judicial Court Justice Dalila Argaez Wendlandt to the full court.

Bradley, a former Democratic state representative from the state's South Shore, had also worked for the Thornton firm for more than a decade when he was named managing partner in 2015.

At the time, Thornton was local counsel in a federal lawsuit against Boston-headquartered State Street Bank over allegedly inflated fees assessed to institutional investors, including retirement funds. That case settled for $300 million in 2016.

Labaton Sucharow LLP, the lead counsel in the class action, requested details of Thornton's and other firms' billings for the case in support of a $75 million attorney fee award.

Bradley later said he signed the declaration without fully reading it, believing much of it was "boilerplate" language.

However, the filing included misleading and false details, Justice Wendlandt said.

Those details included an assertion that the rates were customary for the firm, though it had only previously handled cases on a contingent fee basis, as well as a claim that it had 23 staff attorneys billing at $425 an hour when in fact they were actually contract lawyers whose rate was being shared among the plaintiffs' firms.

The filing also mischaracterized 17 of the attorneys as lead counsel and included Bradley's brother, a criminal defense attorney primarily handling court-appointed cases in a local district court, as a $500-per-hour contract attorney on the case.

"The record is unclear as to who proposed a rate of $500 per hour to work on a contract basis on the class action," Justice Wendlandt wrote, noting Bradley's brother typically received $53 per hour as a district court bar advocate.

Questions about the billings led to Massachusetts District Judge Mark L. Wolf vacating the original $75 million fee award and appointing a retired judge as a special master. Ultimately, the firms were **paid $60 million**, and Thornton was also ordered to cover the costs of the special master's investigation.

Justice Wendlandt said Bradley had failed to act diligently when he did not review the declaration before signing it and violated his duty of candor by failing to fully explain to the court how the firm came to the figures in the declaration, including how the $500-an-hour rate for his brother came to be and why the cost-sharing agreement covering contract attorneys was not disclosed.

"Considering the resources exhausted by the federal district court to remediate this matter," Justice Wendlandt said, describing four years of proceedings and the appointment of the special master, "the committee's finding that the respondent's conduct reflected poorly on his fitness to practice law is well-supported."

The Board of Bar Overseers declined to comment on Justice Wendlandt's order on Thursday. Counsel for Bradley did not immediately respond to a request for comment.

The Office of Bar Counsel is represented by its own Robert M. Daniszewski, Richard C. Abati and Joseph Berman.

Bradley is represented by George Vien and Michelle Pascucci of Donnelly Conroy & Gelhaar LLP.

The case is in re: Garrett J. Bradley, case number BD-2025-009, in the Supreme Judicial Court of the Commonwealth of Massachusetts.

--Additional reporting by Brian Dowling and Chris Villani. Editing by Philip Shea.

LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Bigelow CEO Denies Deliberately Misleading Tea Buyers

By **Craig Clough**

Law360 (April 3, 2025, 9:55 PM EDT) -- The CEO of R.C. Bigelow repeatedly denied from a California federal court witness stand Thursday that her company deliberately misled consumers by labeling its teas as "manufactured in the USA 100%," saying that the phrase — which a judge has already found to be false — was well-intentioned.

Peter Schneider of Schneider Wallace Cottrell Konecky LLP, who represents a class of California consumers suing the company for false advertisement, confronted Cindi Bigelow for several hours on the stand with various internal emails and documents showing **company executives were debating** in 2016 and 2017 if they could use a "Made in the USA" label or something similar on its tea products, even though most of the tea it sells comes from overseas.

U.S. District Judge Dean D. Pregerson, before trial, held R.C. Bigelow Inc. **liable for misleading consumers** about the overseas origins of some of its tea products; the jury is now to determine whether Bigelow intentionally lied as well as any damages the company might have to pay.

When shown an email she received in 2017 from an underling that included an attachment of the Federal Trade Commission's rules for the "Made in the USA" labeling, Bigelow said she was unsure if she ever read the attachment and relied on her team of executives to be educated on FTC rules and regulations. The email also included a recommendation the company use "manufactured and packed in the USA with teas grown" overseas.

Schneider asked if that was the label chosen for the packaging in 2017. In one of many instances, Bigelow's answer veered from the question and was stricken from the record when Schneider objected to it as nonresponsive.

"No, sir, we just wanted to focus on the fact that we manufacture our tea bags in the United States," Bigelow said. "There was no mal intent. We were just trying to get our message across that we are an American company, and we make our tea bags here, and we're proud of that fact. How can we share that with the consumer? We don't want people to think tea is grown in the United States. We actually in the tea industry, it's just not something that people would think is possible."

After the answer was stricken, Schneider launched into an analysis of the contents of the attachment, which included the FTC's requirement that in order to use the "Made in the USA" labeling, a product must contain "all or virtually all" domestic ingredients, and asked if "had she read" the document would she have been aware of that requirement.

"Yes, sir," Bigelow answered.

Schneider then asked if it is correct the document "says that 'all or virtually all' means that 'all significant parts that go into the processing of the product must be of U.S. origin. The product should contain no or negligible foreign content,' correct?"

"Yes, sir," she answered.

"And we know today, as we're sitting here, that your product contained mostly foreign content, right?" Schneider asked.

"I will say that when you consider the tea, you are absolutely right," Bigelow said. "We were talking about making the tea bags in the boxes and manufacturing."

In earlier testimony Thursday, Bigelow said nearly all the company's tea, the tea paper, the string for the tea bags and 60% of the botanical elements in the company's tea comes from overseas. Schneider reminded her of that testimony, then asked, "Is it your testimony that your product contains only a negligible amount of foreign content?"

Bigelow reiterated that the phrase "manufactured in the USA" was to refer to the company's American plants where the product is assembled.

"Please understand that," Bigelow said. "That's what we were doing. We were not trying to ever indicate that all of the tea was from the United States, sir."

Schneider again objected to the answer as being nonresponsive, and Judge Pregerson sustained the objection.

"Had you read this email, you would have learned what is on the screen now, would you have not?" Schneider asked.

"I would have asked my team to do that work, sir," Bigelow answered.

The consumers filed suit in 2020, and Judge Pregerson **certified a California-wide consumer class** in 2023. The judge granted partial summary judgment to the tea buyers this past summer, ruling that Bigelow's labeling was literally false and teeing up the question of damages for a jury.

The jury heard during an **opening statement** from Schneider on Monday that much of Bigelow's tea leaves come from overseas, including China and Sri Lanka.

Timothy Branson of Gordon Rees Scully Mansukhani LLP, who represents Bigelow, countered in his opening statement Monday that the line "manufactured in the USA" was meant as a reference not to where tea leaves are grown, but to the facilities in Connecticut, Idaho and Kentucky where Bigelow's products are blended and packaged.

Bigelow was called to the stand by the class as an adverse witness. When questioned by Branson, she said the company never meant to cause customers any confusion, as she believed it was generally understood that tea primarily comes from overseas. She also acknowledged the judge's ruling that the "manufactured in the USA 100%" is false, and said she understood the phrasing was "not OK."

She also gave a detailed background on the company, which she said was founded by her grandmother, Ruth Campell Bigelow, in 1945 after she blended a black tea in her kitchen.

The trial is scheduled to resume Friday.

The class is represented by Todd M. Schneider, Peter B. Schneider and Jason H. Kim of Schneider Wallace Cottrell Konecky LLP and Aubry Wand of The Wand Law Firm PC.

Bigelow is represented by Timothy K. Branson, Thomas R. Watson and Patrick J. Mulkern of Gordon Rees Scully Mansukhani LLP.

The case is Kimberly Banks et al. v. R.C. Bigelow Inc. et al., case number 2:20-cv-06208, in the U.S. District Court for the Central District of California.

--Additional reporting by Rachel Scharf. Editing by Brian Baresch.

LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

UFC Asks Court To Deny Class Cert. In Fighters' Antitrust Suit

By **Elaine Briseño**

Law360 (April 3, 2025, 6:53 PM EDT) -- UFC has urged a Nevada federal court not to certify a class of fighters in the second antitrust lawsuit it is facing over allegedly suppressed wages, saying the class is legally defective because the plaintiffs who filed the lawsuit cannot represent the group of fighters.

The organization is **finalizing** a $375 million, decade-long lawsuit with another group of mixed martial arts fighters that was filed by Cung Le in 2014. However, the lawsuit filed by UFC fighters Kajan Johnson, Clarence Dollaway and Tristan Connelly in June 2021 remains active. The parties had attempted to wrap both the Le and Johnson suits into the same settlement, but in June, U.S. District Judge Richard F. Boulware II expressed doubts, conveying concerns about the dollar figure and that it would resolve lawsuits at different points in the legal process.

UFC said in a Wednesday filing that the court should not certify the proposed class because Johnson and the other lead plaintiffs have not signed promotion agreements with the organization that included arbitration agreements or class-action waivers.

"No additional discovery is necessary to resolve this issue," UFC said. "The fighter contracts produced to date show that the majority of the putative class entered into arbitration agreements and class-action waivers. Because the named plaintiffs did not sign such agreements, they cannot be adequate class representatives."

The court should not delay resolving this "threshold question," UFC said.

The addition of arbitration clauses and class-action waivers occurred after 2017, which is the end point for the Le class, but before the Johnson suit was filed, according to the filing.

"The inclusion of arbitration clauses and class action waivers was one of several changes that distinguish the promotion agreements of much of the putative class in this case from those in Le," UFC said.

In addition, because the majority of the fighters in the Johnson proposed class signed agreements that said they would resolve disputes through arbitration, they have waived their right to participate in a class action, UFC argues. The organization cites Ninth Circuit precedent in Lawson v. Grubhub Inc. in asserting that fighters who have agreed to arbitrate cannot be members of any certified class.

The lawsuit accuses UFC of maintaining a monopoly on live, professional MMA bouts and suppressing competition, leading to anticompetitive wages and other antitrust injuries and damages.

The parties did not immediately respond to requests for comment.

The fighters are represented by Eric L. Cramer, Michael Dell'Angelo, Ellen T. Noteware, Patrick F. Madden, Najah A. Jacobs and Joshua P. Davis of Berger Montague, Richard A. Koffman, Benjamin D. Brown, Daniel H. Silverman and Daniel Gifford of Cohen Milstein Sellers & Toll PLLC, Joseph R. Saveri, Kevin E. Rayhill, Christopher K.L. Young and Itak Moradi of the Joseph Saveri Law Firm LLP, Don Springmeyer of Kemp Jones LLP, Robert C. Maysey and Jerome K. Elwell of Warner Angle Hallam Jackson & Formanek PLC, and Crane Pomerantz of Clark Hill PLC.

The UFC is represented by Christopher S. Yates, Aaron T. Chiu, Sean M. Berkowitz, Laura R. Washington and David L. Johnson of Latham & Watkins LLP, William A. Isaacson, Jessica E. Phillips, Brette M. Tannenbaum and Yotam Barkai of Paul Weiss Rifkind Wharton & Garrison LLP, and Donald J. Campbell and J. Colby Williams of Campbell & Williams.

The case is Johnson et al. v. Zuffa LLC et al., case number 2:21-cv-01189, both in the U.S. District Court for the District of Nevada.

--Editing by Kelly Duncan.

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

JPML Steers Pretrial Matters In OpenAI Copyright Fight To NY

By **Adam Lidgett**

Law360 (April 3, 2025, 8:41 PM EDT) -- The Judicial Panel on Multidistrict Litigation on Thursday decided to centralize the pretrial work for a series of copyright infringement and Digital Millennium Copyright Act lawsuits against OpenAI in New York federal court.

In an **order**, the JPML said a total of 12 cases — four in California federal court and eight in New York federal court already — would be joined together for pretrial proceedings before U.S. District Judge Sidney H. Stein and U.S. Magistrate Judge Ona T. Wang.

Not all the cases have identical claims, the JPML said, pointing out for instance that some accuse OpenAI of infringing copyrighted works by training its large language models, or LLMs, that fuel its popular ChatGPT chatbot with copyright protected works without permission from or compensation to the copyright owners, while other plaintiffs allege DMCA violations.

But the JPML said "these differences in claims and the underlying material alleged to be infringed do not present a significant obstacle to centralization given the substantial overlap in factual questions and discovery relating to defendants' training of their LLMs."

"It is not uncommon for transferee courts to establish separate tracks for actions involving differing claims that allow the actions to progress efficiently," the JPML said.

The cases **involve** numerous plaintiffs and include a putative class action that was brought in the Golden State. The litigation also includes lawsuits in New York brought by The New York Times Co. and other news organizations, and litigation brought by the Authors Guild along with award-winning writers including George Saunders, Scott Turow, Jonathan Franzen and Jia Tolentino.

The landmark litigation generally accused the quickly growing privately held AI company of rampant copyright infringement.

Comedian Sarah Silverman and "The Cabin at the End of the World" author Paul G. Tremblay **filed** the first copyright suits against OpenAI in the summer of 2023 in California federal court, and their cases were consolidated.

The Authors Guild's case **followed**, along with other lawsuits.

"We welcome this development and look forward to making it clear in court that our models are trained on publicly available data, grounded in fair use, and supportive of innovation," OpenAI said in a statement.

Steven Lieberman of Rothwell Figg Ernst & Manbeck PC, an attorney for plaintiff the Daily News, said in a statement to Law360 that he was "pleased that Judge Stein and Magistrate Judge Wang, who have worked so hard on this case, will be able to continue moving this case forward."

"We look forward to a jury determining that OpenAI and Microsoft have illegally copied millions of copyrighted articles," Lieberman said.

Counsel for plaintiffs Raw Story, AlterNet, Center for Investigative Reporting and The Intercept declined to comment.

Counsel for other parties could not immediately be reached for comment.

The MDL matter is In re: OpenAI Inc. Copyright Infringement Litigation, MDL number 3143, before the U.S. Judicial Panel on Multidistrict Litigation.

The California cases are Tremblay et al. v. OpenAI Inc. et al., case number 3:23-cv-03223, Silverman et al. v. OpenAI Inc. et al., case number 3:23-cv-03416, Chabon et al. v. OpenAI Inc. et al., case number 3:23-cv-04625, and Millette v. OpenAI Inc. et al., case number 5:24-cv-04710, all in the U.S. District Court for the Northern District of California.

The New York cases are Authors Guild et al. v. OpenAI Inc. et al., case number 1:23-cv-08292, Alter et al. v. OpenAI Inc. et al., case number 1:23-cv-10211, The New York Times Co. v. Microsoft Corp. et al., case number 1:23-cv-11195, Basbanes et al. v. Microsoft Corp. et al., case number 1:24-cv-00084, Raw Story Media Inc. et al. v. OpenAI Inc. et al., case number 1:24-cv-01514, The Intercept Media Inc. v. OpenAI Inc. et al., case number 1:24-cv-01515, Daily News LP et al. v. Microsoft Corp. et al., case number 1:24-cv-03285; and The Center for Investigative Reporting Inc. v. OpenAI Inc. et al., case number 1:24-cv-04872, in the U.S. District Court for the Southern District of New York.

–Additional reporting by Dorothy Atkins, Theresa Schliep, Ivan Moreno, Hailey Konnath and Bonnie Eslinger. Editing by Rich Mills.

LAW360®

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Crypto Co. Sentenced In Fed Market Manipulation Suit

By **Katryna Perera**

Law360 (April 3, 2025, 7:39 PM EDT) -- United Arab Emirates-based CLS Global FZC LLC has been sentenced in Massachusetts federal court on criminal charges over running a fraudulent "wash trading" scheme after it pled guilty to the charges in January and agreed to stop working in the U.S. cryptocurrency industry.

According to the U.S. Attorney's Office of the District of Massachusetts, CLS Global was ordered Wednesday to pay approximately $428,000 to the U.S. government, representing both a fine and seized cryptocurrency. The financial services firm was also sentenced to three years of probation, in which it is prohibited from participating in U.S. cryptocurrency markets.

In January, the firm, known in the cryptocurrency industry as a "market maker," **pled guilty** to one count of conspiracy to commit market manipulation and wire fraud and one count of wire fraud after being indicted in September.

CLS Global must also make annual certifications that its business practices conform to these prohibitions as part of its sentencing.

Prosecutors say the firm attempted to manipulate the crypto market by inflating the value of various cryptocurrencies through wash trading, a practice similar to a pump-and-dump scheme in which tokens are bought repeatedly and sold to appear more valuable to investors.

CLS Global was one of a group of "market makers," and others indicted last fall following an elaborate sting operation in which the government set up its own purported cryptocurrency business, NexFundAI, and an Ethereum-based token.

According to the U.S. Attorney's Office, CLS Global has also entered into a separate agreement with the U.S. Securities and Exchange Commission over related civil claims, and money seized from or paid by CLS Global will be credited in both the criminal and SEC resolutions.

The cases are U.S. v. CLS Global FZC LLC, case number 1:24-cr-10293, and Securities and Exchange Commission v. CLS Global FZC LLC et al., case number 1:24-cv-12590, in the U.S. District Court for the District of Massachusetts.

--Editing by Drashti Mehta.

LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

House Moves Stablecoin Bill Despite Dems' Conflict Concerns

By **Aislinn Keely**

Law360 (April 3, 2025, 6:56 PM EDT) -- The House Financial Services Committee advanced its federal framework for stablecoins just before midnight Wednesday following hours of markup during which Democrats raised concerns that the Trump family and administration officials' involvement with crypto ventures will create conflicts of interest.

The committee passed the STABLE Act with 32 members in favor and 17 opposed in an electronic vote, sending the proposed rules for issuers of stable-value tokens pegged to the U.S. dollar to the House floor. While the bill garnered bipartisan support, the markup also included more than a dozen failed votes on Democrat-proposed amendments, many of which sought to insert language that would limit or require disclosure of public officials' forays into the stablecoin market.

"With this stablecoin bill, this committee is setting an unacceptable and dangerous precedent validating the president and his insiders' efforts to write rules of the road that will enrich themselves at the expense of everyone else," said Rep. Maxine Waters, D-Calif., in her opening remarks.

Financial Services Committee Chair French Hill, R-Ark., and digital asset subcommittee Chair Bryan Steil, R-Wis., circulated the proposed STABLE Act in February, building on a Republican-led iteration from the previous session, which House lawmakers introduced when negotiations on a bipartisan bill broke down between then-Financial Services Chair Patrick McHenry, R-S.C., and Waters. STABLE stands for Stablecoin Transparency and Accountability for a Better Ledger Economy.

The bill would set both federal and state oversight regimes for bank and nonbank issuers of payment stablecoins and set standards around holding and investing reserves backing the tokens, how customer assets are to be held in custody, and reporting requirements to ensure every token is fully backed.

Hill argued during the markup that "the need for a payment stablecoin framework has never been more urgent."

"This bill is a necessary step towards providing regulatory certainty and ensuring the United States remains at the forefront of digital asset development," said Hill.

Democrats repeatedly raised concerns that the Trump family-backed crypto venture World Liberty Financial had announced plans to issue its own stablecoin days before the markup. They also highlighted Commerce Secretary Howard Lutnick's previous work with stablecoin issuer Tether during his time as CEO of Cantor Fitzgerald, which serves as Tether's custodian. Lutnick stepped down from Cantor after his nomination to the secretary role.

The White House directed Law360's comment request to the Commerce Department, which did not immediately respond.

Many lawmakers argued that the need for clear rules in a rapidly growing market weighed in favor of the bill. Rep. Gregory Meeks, D-N.Y., said he would support the bill despite finding it "completely inappropriate for the president's family to announce their intention to launch a stablecoin while he is in office."

"Though the president's actions have caused me to pause, the certainty issue and to make sure that we have the clear rules of the game, I am going to support the STABLE Act," Meeks said.

Lawmakers in both chambers have established stablecoin legislation as a priority this session, with Senate banking committee Chair Tim Scott, R-S.C., saying he intends to move a stablecoin bill in the Senate within **the first 100 days** of the administration. The Senate **passed** its GENIUS Act out of committee last month. GENIUS stands for Guiding and Establishing National Innovation for U.S. Stablecoins.

While the House stablecoin proposal has bipartisan support, including three Democratic co-sponsors in Reps. Sam Liccardo, D-Calif., Josh Gottheimer, D-N.J., and Ritchie Torres, D-N.Y., Democratic supporters still expressed concerns with hopes that agreements could be reached as the text heads to the floor. Liccardo introduced a failed amendment that would prohibit public officials from sponsoring, issuing, promoting or licensing a payment stablecoin.

"One would think this would be a fairly self-evident and obvious proposition," Liccardo said. "We want to avoid the inevitable conflicts of interest that arise where the president's appointees, such as the Secretary of the Treasury, are regulating the very product that provides unique and exclusive financial benefit to the president and his family."

Purchasing or investing in stablecoin ventures affiliated with a public official could become a way to curry favor, lawmakers argued, or issuers with links to the administration could seek a government bailout in the event of collapse.

But Hill and the STABLE Act lead Rep. Bryan Steil, R-Wisc., repeatedly argued that amendments addressing potential conflicts were unnecessary, asserting that the text already creates strong and equal protections for all issuers.

"The bill places universal requirements on issuers of all stripes, and so if you support consumer protection and innovation, you should vote for the underlying bill, although this amendment is unnecessary," said Steil.

Still, Hill and Steil indicated they'd be open to working with Democrats on concerns that taxpayer dollars could be used to bail out stablecoin issuers down the line. Steil also said he'd work with Liccardo on potentially beefing up the bill's penalties for unpermitted issuance of stablecoins.

Other points open to negotiation included finding a lower threshold for the bill's requirement that issuers be audited. The text currently requires audits for issuers of $50 billion in assets. Lawmakers also discussed potentially clarifying that stablecoin reserves should not include uninsured deposits, though Republicans rejected amendments on that point Wednesday.

Steil noted in his opening remarks that the STABLE Act has already seen "extensive" collaboration among members of the committee, industry stakeholders and the administration, and that the product fosters innovation while providing necessary guardrails.

"As digital payments in stablecoins continue to grow," Steil said, "the STABLE Act provides businesses, consumers and investors with the certainty they need to engage with emerging technologies."

--Editing by Amy French.

LAW360®

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Warren Calls For Investigation Into SEC's Crypto About-Face

By **Rachel Scharf**

Law360 (April 3, 2025, 10:14 PM EDT) -- U.S. Sen. Elizabeth Warren is asking the inspector general of the U.S. Securities and Exchange Commission to investigate whether President Donald Trump, his family or associates have had "undue influence" over the agency's recent moves to back off from regulating the cryptocurrency industry.

Warren, D-Mass., sent a **letter** to SEC Inspector General Deborah Jeffrey on Wednesday as ranking member of the Senate Committee on Banking, Housing and Urban Affairs. Warren highlighted Trump's close ties to and financial investment in the crypto industry, notably his family's backing of the digital asset venture World Liberty Financial.

"I write to ask the [office] to determine whether any White House officials or other affiliates of President Trump, his family or his business partners have had undue influence over recent SEC decisions on crypto-related policies, enforcement actions and regulations and, if so, whether those individuals have made or stand to profit off those decisions," Warren wrote.

While the SEC took a tough stance on crypto regulation under President Joe Biden, the agency has **eased off** under the Trump administration. It has dropped or paused a number of enforcement actions against crypto companies in recent months, including lawsuits against **digital exchanges** Coinbase and Binance and the founder of **blockchain network** Tron Foundation.

Warren's letter noted that Trump has ties to many of these companies; for instance, Coinbase's CEO recently attended a White House digital assets summit. Tron's founder Justin Sun is an official adviser to World Liberty Financial, said Warren, and recently made a $75 million investment in the Trump family-affiliated tokens.

The senator also raised concerns about the SEC's **new guidance** that so-called memecoins are not securities subject to its jurisdiction. The agency then appeared to follow through on this by **closing an investigation** into the viral Hawk Tuah memecoin, Warren said.

She said the decision to refrain from regulating memecoins could be a boon for Trump and the first lady, who benefit from their tokens $TRUMP and $MELANIA.

"Meme coins are known for their high volatility and scams including rug pulls," Warren wrote. "The Hawk Tuah coin was launched on December 4th at 10 p.m., collected $490 million in investments, and then cratered in value by 91% less than three hours later. Despite these schemes' clear harm to consumers, the SEC statement is designed to shield companies and individuals that create meme coins from potential litigation, including President Trump and first lady Melania Trump."

Warren asked the inspector general to review the SEC's crypto-related actions since Trump's inauguration and determine whether they all complied with the agency's policies and federal ethics laws.

Specifically, Warren asked whether the White House has been involved in the SEC's crypto policymaking, and whether Trump or his affiliates communicated with the agency ahead of the new memecoin guidance. She also asked the watchdog to identify who had advanced knowledge that it would be dropping or pausing the crypto enforcement actions.

Warren's office said in a statement Thursday that the letter "details how, since President Trump took office, the SEC has taken a series of extraordinary steps that appear to benefit the president's business interests."

"Ranking member Warren requested that the SEC OIG conduct a thorough review of all crypto-related decisions made by the SEC since Donald Trump's inauguration to answer her questions, including whether officials with conflicts of interest were involved in policymaking or enforcement actions," it said.

Representatives of the White House and the SEC did not immediately respond to requests for comment Thursday.

--Editing by Brian Baresch.
