

Antitrust

April 10, 2025, 12:49 PM PDT

Burger King Loses Bid to Toss Ex-Employees' No-Poach Lawsuit

- **Former workers argue no-poach agreements are 'unreasonable'**
- **Case revived after Eleventh Circuit reversed lower court ruling**

Burger King Corp. failed again to shed an antitrust suit alleging the fast food chain violated the Sherman Act through its no-poach agreements by barring employees from being recruited by other franchise locations.

The former workers plausibly pleaded that Burger King's "no-hire agreement" is unreasonable, but the US District Court for the Southern District of Florida declined Wednesday to rule on what standard of review to use under Section 1 of the Sherman Act. "More factual development is necessary," Judge Jose E. Martinez said.

The case was revived after an August 2022 ruling from the US Court of Appeals for the Eleventh Circuit said "Burger King and its franchisees compete against each other."

The appeals court ruling reversed Martinez's March 2020 decision that the workers overreached in their argument that the no-poach agreements were "per se unlawful."

The fast food chain argued that the workers failed to state a claim under Section 1 of the Sherman Act and failed to allege Burger King and its affiliates "engaged in wrongful conduct," and that claims before October 2014 are time-barred.

The former workers alleged the fast food giant and its affiliates "have together colluded to depress wages and employment opportunities of employees who work in Burger King branded restaurants throughout the United States," the Wednesday decision said.

The former employees plausibly claim that the agreements are horizontal, Martinez said. Horizontal restraint of trade claims fall under per se unlawful violations, which don't have a defense or justification for the violation.

The former workers also sufficiently alleged that Burger King and its affiliates played a role in the no-poach scheme, arguing that there were "concerted efforts" to reduce compensation for people involved in the suit, eliminate competition among the franchise locations, and restrain the ability to seek better pay, benefits and advancement, Martinez said.

Burger King argued that claims before October 2014 should be time-barred because the franchise agreements were accessible and the workers failed to allege "an affirmative act," the decision said.

The former employees alleged Burger King concealed its misconduct in part by misleading employees and telling them employment terms and conditions varied by location, the decision said.

"In fact, franchisees' hiring decisions were constrained by the no-hire agreement and were not truly independent," Martinez said.

The former workers are represented by Robbins Geller Rudman & Dowd LLP, Kessler Topaz Meltzer & Check LLP, McCune Wright Arevalo LLP, Lieff Cabraser Heimann & Bernstein LLP, Podhurst Orseck PA, Radice Law Firm PC, Scott & Scott Attorneys at Law LLP, Gibbs Law Group LLP, Sampson Dunlap LLP, and Brandt Law LLC.

Burger King is represented by Boies Schiller Flexner LLP and Heise Suarez Melville PA.

The case is Arrington v. Burger King Corp. , S.D. Fla., No. 18-cv-24128, 4/9/25 .

To contact the reporter on this story: Randi Love in Washington at rlove@bloombergindustry.com

To contact the editor responsible for this story: Rob Tricchinelli at rtricchinelli@bloombergindustry.com

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Burger King must face workers' antitrust lawsuit over wages, judge rules

 [reuters.com/legal/litigation/burger-king-must-face-workers-antitrust-lawsuit-over-wages-judge-rules-2025-04-10](https://www.reuters.com/legal/litigation/burger-king-must-face-workers-antitrust-lawsuit-over-wages-judge-rules-2025-04-10)

Mike Scarcella

April 10, 2025



The logo of Burger King is seen outside a shop in Vienna in Vienna, Austria, June 21, 2016. REUTERS/Leonhard Foeger/File Photo Purchase Licensing Rights  , opens new tab

April 10 (Reuters) - Fast food giant Burger King must face a lawsuit accusing it of restricting worker mobility and suppressing wages at its nationwide restaurant franchisees, a federal judge ruled on Wednesday.

U.S. District Judge Jose Martinez in Miami said in his ruling  , opens new tab that workers in the proposed class action had provided enough factual support to let their lawsuit move forward for now.

The lawsuit, first filed in 2018, accused Burger King and related corporate entities of violating U.S. antitrust law through the use of “no hire” agreements at thousands of franchises across the country.

The agreements generally barred franchises from hiring a worker from another, at least for six months.

Burger King and attorneys for the workers did not immediately respond to requests for comment. Burger King has denied any wrongdoing.

The plaintiffs include current and former Burger King employees who worked at restaurants in Illinois and other states from at least 2010, court papers show.

The lawsuit is seeking unspecified monetary damages and class-action status on behalf of thousands of Burger King workers.

“In a properly functioning and lawfully competitive labor market, Burger King and its franchisees would compete for labor,” the lawsuit [opens new tab](#) said.

In seeking dismissal of the lawsuit, Burger King said the workers had provided no evidence that the no-poach agreement kept wages lower than they otherwise would have been.

Martinez in his order said the workers had plausibly shown that the Burger King no-hire agreement was an “unreasonable” restraint on the labor market.

Last year, the U.S. Supreme Court turned down a bid by McDonald’s to shut down a similar proposed class action claiming it violated antitrust laws by prohibiting franchisees from poaching employees from other McDonald’s restaurants.

The case is Jarvis Arrington et al v. Burger King Worldwide et al, U.S. District Court, Southern District of Florida, No. 1:18-cv-24128-JEM.

For plaintiffs: Joseph Meltzer of Kessler Topaz Meltzer & Check, and Richard McCune of McCune Wright Arevalo

For defendants: Stuart Singer and Carl Goldfarb of Boies Schiller Flexner

Read more:

US House panel launches antitrust probe of medical residency system

Veterinary interns, residents allege suppressed wages in antitrust lawsuit

Group of engineering firms to settle ‘no poach’ antitrust claims

Ex-Burger King workers get another bite at ‘no-hire’ conspiracy lawsuit

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

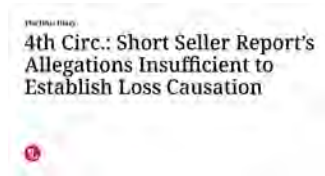
- Suggested Topics:
- Litigation
- Regulatory Oversight

4th Circ.: Short Seller Report's Allegations Insufficient to Establish Loss Causation

K [dandodiary.com/2025/04/articles/securities-litigation/4th-circ-short-seller-reports-allegations-insufficient-to-establish-loss-causation](https://www.dandodiary.com/2025/04/articles/securities-litigation/4th-circ-short-seller-reports-allegations-insufficient-to-establish-loss-causation)

Kevin LaCroix

April 10, 2025



As I have noted in prior posts (most recently here), courts have over time evinced a continuing skepticism of securities class action lawsuit allegations based on short-seller reports. The short sellers' financial incentives and their reliance on anonymous sources have caused courts to be wary of securities suit allegations based on their reports. In a recent Fourth Circuit decision in a case in which the plaintiffs' allegations were largely relied on a short-seller's report, the appellate court affirmed the district court's dismissal of the case, based on the plaintiffs' failure to adequately allege loss causation. The court's opinion provides several interesting observations about securities suit allegations based on short sellers' reports.

The Fourth Circuit's April 8, 2025, opinion in the IonQ case can be found here. Nessim Mezrahi's April 9, 2025, *LinkedIn* post about the appellate court's decision can be found here.

Background

IonQ develops quantum computers. dMY Technology Group, Inc. III (DTG) was a special purpose acquisition company (SPAC). DTG completed an IPO on November 12, 2020. On September 30, 2021, IonQ became a publicly traded company as a result of its merger with DTG.

On May 3, 2022, IonQ was the subject of a research report by short-seller Scorpion Capital. Among other things, the report asserted that IonQ is "a scam built on phony statements about nearly all key aspects of the technology and business." The report also stated that the Company reported "fictitious revenue via sham transactions and related-party round-tripping." According to the subsequently filed securities lawsuit complaint, the IonQ's share price declined on this news.

In addition to the various factual allegations, the short-seller's report also contained several disclaimers. First, the report acknowledged the short-seller's financial incentives. Second, the report disclaimed that it was making any representations about the accuracy of the material and information on which it relied. Third, it acknowledged that the report does not contain all of the information that the confidential sources provided, acknowledged that the sources may have received confidential information (and thus may have had incentives to provide information the short-seller wanted), and acknowledged that the accounts of the confidential sources information may have been "paraphrased, truncated, and/or summarized solely at our discretion, and do not always represent a precise transcript of those conversations."

The Lawsuit

As discussed here, on May 31, 2022, a plaintiff shareholder filed a securities class action lawsuit in the District of Maryland against IonQ and certain of its officers. The complaint alleges that in connection with the SPAC merger and in subsequent public statements, the defendants misrepresented the company's product, prospects, and financial performance. The allegations in the complaint were largely reliant on the assertions in the short seller report. The defendants filed motions to dismiss, which the district court granted, among other things, on the grounds that the plaintiffs had failed to adequately alleged loss causation.

Following the dismissal, the plaintiffs sought leave to file a second amended complaint, seeking to try to cure the defects the district court had identified in granting the motion to dismiss. The plaintiffs attached a proposed second amended complaint to their motion. The court denied the plaintiffs' motion for leave to replead, holding that the proposed second amended complaint failed to remedy the defects, in particular with respect to loss causation. The plaintiffs appealed.

The April 8, 2025, Opinion

In an April 8, 2025, opinion written by Judge Steven Agee on behalf of a unanimous three-judge panel, the Fourth Circuit affirmed the district court's refusal to allow the plaintiffs leave to replead their allegations, holding that the "proposed second amended complaint fails to state a claim and allowing amendment would thus be futile."

The crux of the appellate court's decision has to do with the plaintiffs' attempts to plead loss causation. The court noted that in order to plead loss causation, a plaintiff must allege with plausibility and sufficient specificity the "revelation of new facts suggesting that the defendant perpetrated a fraud on the market." The first requisite to adequately plead loss causation is "pointing to the emergence of new facts in the market that reveal the truth behind a company's fraud."

The plaintiffs allege, in order to support their theory of loss causation, that the “truth emerged” when the short-seller’s report “disclosed” the alleged shortcomings with the defendant company’s product, representations about its product, and financial performance.

The appellate court noted that “we have not yet had occasion to consider whether a short-seller publication, like the Report, can plausibly expose the truth of a company’s fraud as needed to plead loss causation.” The appellate court did note that the Ninth Circuit has had occasion to consider these questions and has concluded that “similar publications cannot meet the pleading standard, noting further that other courts have appropriately set a “high bar” that plaintiffs must meet in “relying on self-interested and anonymous short-sellers when attempting to plead loss causation.”

Relying on the Ninth Circuit’s standards, the appellate court said that the plaintiffs here “failed to clear the high bar of showing that the Report revealed the truth of IonQ’s alleged fraud on the market.”

The short-seller’s report here “relies on anonymous sources for its nonpublic information and disclaims its accuracy.” Indeed, the report’s acknowledgement that it edited the confidential statements is “particularly troubling because it gives Scorpion Capital the kind of editorial license that could allow it to say just about anything and cloak it in the imprimatur of truth in order to make a buck.” The short-seller’s disclosures and disclaimers “lead to the conclusion that the character of the Report rendered it inadequate to reveal any alleged truth to the market.”

The plaintiffs tried to oppose this conclusion by arguing that this holding would “prevent defrauded investors from relying on legitimate short-seller reports.” The appellate court said that its holding does “not impose a categorical ban on short-seller reports to plead loss causation,” adding that “in appropriate circumstances a short-seller report’s financial motivation may not disqualify it” from supporting loss causation allegations. However, when a short seller’s report “makes the kind of disclaimers” as here, “its potential evidentiary value evaporates.” The appellate court emphasized the disclaimers set out in this report make it “implausible these statements accompanied by those kinds of disclosures, published by an activist short seller, would reveal some new truth to the market.”

The plaintiffs sought to rely on four news reports that followed the short-seller’s revelations as suggesting that the report’s revelations caused the company’s share price to decline. The court said that the articles “do not credit the Report’s *revelation* of IonQ’s fraud as contributing to the decline in the share price so much as they credit the *allegation* of fraud as a contributing factor.” The news articles on which the plaintiffs sought to rely “do no more than suggest a possible correlation between the Report’s publication and IonQ’s stock price,” adding that “as the district court noted, correlation does not equal causation.”

Discussion

The Fourth Circuit's conclusion here that the short-seller's report's allegations are not sufficient to establish loss causation reflects a healthy skepticism, based in large part on the short-seller's financial motivation, but also based in significant part on the extensive disclaimers the short-seller itself included in its own report.

Interestingly, the appellate court went out of its way to emphasize that it was not saying that the allegations in short-seller's report could *never* be sufficient to establish loss causation. It was saying that particularly where the short-seller's report contains the kind of disclaimers as were included here, there is particular reason to question whether the short-seller's report is sufficient to establish loss causation.

In my view, securities suit allegations based exclusively on short-seller reports should always be considered with skepticism. As discussed here, in January 2023, when Southern District of New York Paul Englemayer granted the defendants' motion to dismiss in the *DraftKings* securities class action lawsuit (which was also based on allegations from a short seller's report), he noted that given the short seller's economic incentive, a short seller's allegations "must be considered with caution." He also noted that where the short-seller's report is based on unidentified and unspecified confidential sources, allegations based on confidential sources must meet certain standards to corroborate their reliability. In the *DraftKings* case, after reviewing the anonymous sources quoted in the short-seller report at issue in that case, Judge Engelmayer said that the statements "suffer from all the indicia of unreliability that have led courts often not to credit attributions to unnamed sources in short-seller reports."

That is, whether or not a short-seller's report contains the kinds of disclaimers that accompanies the report at issue here, courts should consider allegations based on short-seller's report, as Judge Englemayer said, "with caution." But where, as here, the report contains extensive disclaimers such that, as the appellate court said here, "potential evidentiary value evaporates," and the short seller's report should be, as was the case here, "disregarded as proof of the revelation of new information to the market."

It was particularly of interest to me that the court did *not* find that the short-seller's report did not cause the company's share price to decline; in fact, the appellate court expressly acknowledged that the company's share price did decline after the report was published. The appellate court was careful to distinguish between the *revelation* of fraud (of the kind that could establish loss causation) and the *allegation* of fraud (which alone are insufficient to establish loss causation), a critical distinction in considering whether the plaintiffs had sufficiently alleged that "new information" had been disclosed to the marketplace for purposes of pleading loss causation.

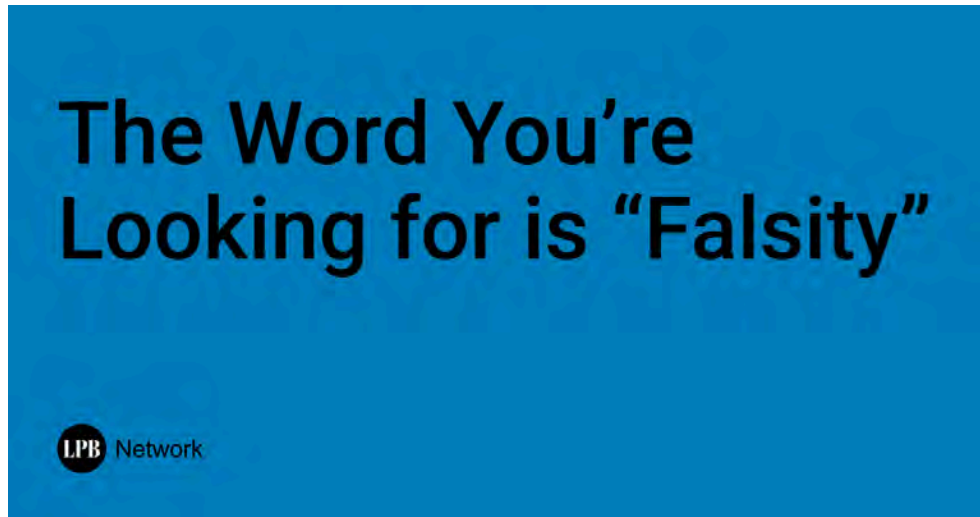
I also think it is important to note that this case is a SPAC-related lawsuit, a fact that I noted and emphasized at the time this case was first filed. This aspect of the case is important to highlight because quite a number of the SPAC-related suits that have been filed over the last several years are, like this one, based on allegations that first surfaced in short-seller reports. The district and appellate courts' consideration of the short-seller report allegations here could prove relevant in many of the other SPAC-related lawsuits that have been filed.

The Word You're Looking for is "Falsity"

 [businesslawprofessors.com/2025/04/the-word-youre-looking-for-is-falsity](https://www.businesslawprofessors.com/2025/04/the-word-youre-looking-for-is-falsity)

Ann Lipton

April 11, 2025



This week, in *Defeo v. IonQ*, the Fourth Circuit headed down a path of holding that short seller reports categorically can never reveal the truth of a fraud to the market – and therefore cannot establish loss causation in a Section 10(b) case – before pulling up at the last minute and concluding maybe they can, if the report is backed up by empirical facts. In general, though, according to the court, since the reports often rely on anonymous sources that they admit are selected and paraphrased to paint a negative narrative, they cannot support the element of loss causation in the usual course.

We've been here before. It is bizarre to me that courts would look at *actual market movement* in response to an accusation of fraud and decide, *on the pleadings*, that no reasonable investor would take the accusation seriously. They did! They did take it seriously, right there. You can tell because the stock price went down.

The concern that is transparently motivating the court is that the short seller may be misrepresenting the evidence of fraud. But if that's the case, there's an element for that – *falsity*. If the plaintiffs cannot establish falsity, that's reason to dismiss the complaint. But the Fourth Circuit received the appeal in a procedural posture where loss causation was the only issue on the table, and so that's what it went with.

Consider the implication here. Suppose the short seller got it right, and exposed a real fraud. Later, the company admits to everything. At that point, the stock price doesn't move because the truth was already baked in. Now, injured shareholders have no recourse – unless courts do that other bizarre thing they do which is assess loss causation *not* based on what caused the stock price movement, but on whether an allegation that resulted in price movement was ultimately proved to be true at a later date. Which, once again, is an attempt

to express doubt about a claim through the loss causation element even when, by hypothesis, falsity and scienter are well-pled. That is not the role that loss causation is supposed to play in a securities class action.

Now, one could imagine a scenario where a short seller makes wild, unsubstantiated accusations, triggering a stock price drop, the plaintiff investigates, and it turns out – by pure, stopped-clock luck – the accusations turn out to be true. In that scenario, the one might say the losses *really weren't* caused by the fraud – they were caused by wild accusations. But, as I previously blogged, doctrinally, the argument would be that wild accusations were an intervening cause unrelated to the original fraud. Which is a totally fine argument! But hardly something that can be assessed on the pleadings, and surely not the most plausible inference at the motion to dismiss stage.

No doubt, there is manipulation in the short seller market. And, apparently, at least some of the time, traders who react to a short seller report are *not*, in fact, relying on the report in a traditional sense – they're using it as a kind of Schelling Point to coordinate pump and dumps. If that's the case, then, yes, I agree, traders did not "believe" the report and the report should not have been taken to have informed the market. But, once again, that cannot be assessed based on the pleadings alone – that's the kind of thing you need real evidence on, which surely can be gathered (looking at commentary on message boards, the history of that particular short-seller and responsive trades, etc). The Fourth Circuit's armchair financial analysis, which just assumes away actual market evidence, substitutes doctrine and, perhaps, a distaste for securities litigation, for empirics.

And another thing. On this week's *Shareholder Primacy* podcast, Mike Levin and I talk about one of the pending securities class action lawsuits arising out of Elon Musk's acquisition of Twitter, and about the notion of a Certificate of Bad Corporate Governance. Here at Apple, here at Spotify, and here at YouTube.

Suit Against 1-800-Flowers Holder Among First on 2025 Stock Fall

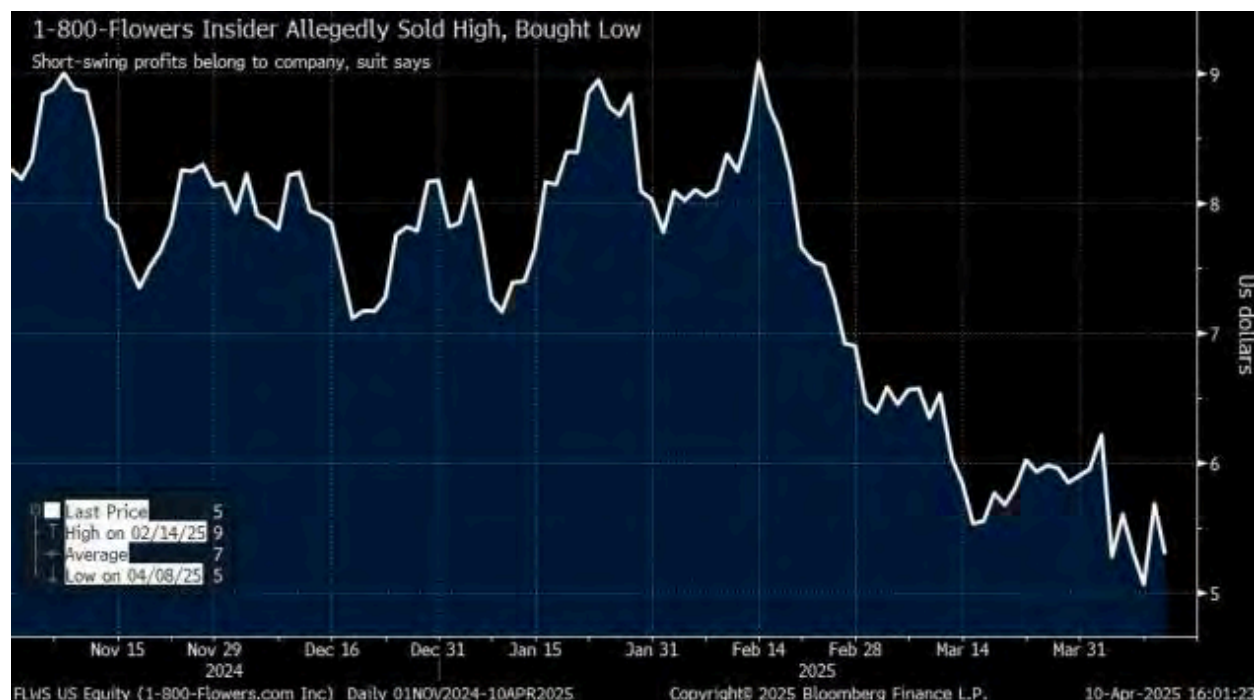
- **COURT:** S.D.N.Y.
- **TRACK DOCKET:** [No. 1:25-cv-02945](#) (Bloomberg Law subscription)

One of the first securities suits stemming from 2025 market volatility has hit a major holder of 1-800-Flowers stock, claiming the investment fund improperly profited from trading within a six-month span.

Fund 1 Investments LLC is a 1-800-Flowers.com insider because it owns more than 10% of the company's stock, investor Dennis J. Donoghue says on behalf of the company. The fund sold Class A common shares on Nov. 4, 2024, according to the complaint, filed Wednesday in the US District Court for the Southern District of New York.

The Rincón, P.R.-based fund realized an estimated \$80,000 in short-swing profits by buying "larger numbers of such shares" within six months, "including between March 18, and March 27, 2025," Donoghue says.

That period in March saw some volatility as talk of possible tariffs rattled Wall Street.



Section 16(b) of the Securities Exchange Act and a related regulation aim to prevent corporate insiders from profiting from short-swing trading, or trading in their company's stock within a six-month period.

A different, long-running short-swing trading case against a major 1-800-Flowers shareholder group is proceeding in the same district after the US Supreme Court declined to take up the defendants' argument that the plaintiff lacked standing to sue.

Donoghue seeks damages on his short-swing trading claims.

1-800-Flowers didn't immediately respond to an emailed request for comment on behalf of itself and the fund.

David Lopez, who practices in Southampton, N.Y., and Miriam Tauber, who practices in New York, represent Donoghue.

The case is Donoghue v. 1-800-Flowers.com, Inc. , S.D.N.Y., No. 1:25-cv-02945, 4/9/25 .

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

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

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Litigation

April 11, 2025, 10:05 AM PDT

Peloton Investors Ask to Revive Pandemic Demand Claims on Appeal

- **Investors' lawyer told appeals court Peloton misled inventory**
- **Said the district court didn't take well-pled claims as true**

Peloton Interactive Inc. investors should get claims that the fitness giant misled them on post-pandemic inventory reopened because the district court didn't weigh their allegations correctly at that stage, their counsel told an appellate court Friday.

There appeared to be some interest among the US Court of Appeals for the Second Circuit judges in whether a statement of "democratizing" fitness as a reason for an August 2021 bike price reduction could plausibly have misled investors. But they pushed back during oral arguments on whether a February 2021 statement on robust demand was false when it was made, and the judges posited the probability that Peloton did have strong customer appetite and just was producing too many bikes.

The lower court misapplied the pleading standards in supplanting Peloton's arguments for their own well-pled complaint, Karin E. Fisch of Grant & Eisenhofer PA, who represents one of the plaintiffs, said. Their complaint filed in the US District Court for the Southern District of New York included more than 30 confidential witnesses claiming that demand was waning and inventory was too high in 2021, Fisch said. Meanwhile then-top leaders stated it would perform a price reduction for the "democratizing" of fitness, demand wasn't softening, and inventory levels were appropriate, she said.

But those individual statements have to be viewed holistically, both in their timing and in context of other information the company was providing, Melissa Arbus Sherry of Latham & Watkins LLP said for Peloton and former officers and directors. The investors' complaint wasn't particular enough to support their allegations, and a confidential witness alleging inventory issues didn't appear to be high up enough in the company to have the requisite knowledge to discuss the price reduction or other issues, Sherry said.

Peloton had been transparent about seasonal demand levels that spring and summer, and it had released figures about rising inventory levels, Sherry said. The reason inventory was high before Thanksgiving 2021 was due to expected holiday season demand, she said, because Peloton didn't want to run into an issue of inventory shortage and delayed shipments as it did during heightened pandemic demand.

Circuit Judges Jon O. Newman, Denny Chin, Steven J. Menashi sat on the panel.

The District Court

The case centers on whether Peloton misled investors after heightened desire for at-home exercise equipment during Covid-19 lockdowns wound down. Peloton said on Nov. 4, 2021, that its inventory levels had skyrocketed and it was reducing its 2022 earnings guidance by about \$1 billion, investors said in their brief; share prices fell 35% the next day. The proposed class would include those who got stock from Feb. 5, 2021, through Jan. 19, 2022, per their second amended complaint—before news outlets began reporting that Peloton had to halt production due to excess inventory and waned demand, they said.

The Southern District of New York last Autumn dismissed the proposed class action filed by Robeco Capital Growth Funds SICAV - Robeco Global Consumer Trends and the City of Hialeah Employees' Retirement System, finding the alleged misstatements to be inactionable forward-looking projections, boastful optimism, or mere opinions.

The pension plan and investment company said in their brief that Judge Andrew L. Carter Jr. mischaracterized both the alleged misrepresentations and the thrust of their complaint. He wrongly sided with Peloton's "unsupported" version of the facts, they said.

Peloton countered that each statement was true when made in its brief, adding that it and then-executives told the market in real-time that unprecedented pandemic demand wouldn't continue and it quantified its growing inventory in federal filings.

They said the district court correctly dismissed alleged misstatements as puffery, forward-looking statements, or opinions.

Peloton's \$14 million settlement in a different a securities fraud class action over treadmill safety issues got court approval last year. Top brass also settled insider trading claims involving the treadmill issues. It's facing different shareholder litigation concerning a bike safety recall in the Eastern District of New York.

Bernstein Litowitz Berger & Grossmann LLP also represents the plaintiffs-appellants.

The case is City of Hialeah Emps. Ret. Sys. v. Peloton Interactive, Inc. , 2d Cir., No. 24-2803, oral arguments 4/11/25 .

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

To contact the editors responsible for this story: Andrew Harris at aharris@bloomberglaw.com; Kiera Geraghty at kgeraghty@bloombergindustry.com

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Litigation

April 10, 2025, 12:24 PM PDT

Apax's Thoughtworks Deal Hit With Pension Fund Court Challenge

- **COURT:** Del. Ch.
- **TRACK DOCKET:** [No. 2025-0346](#) (Bloomberg Law subscription)

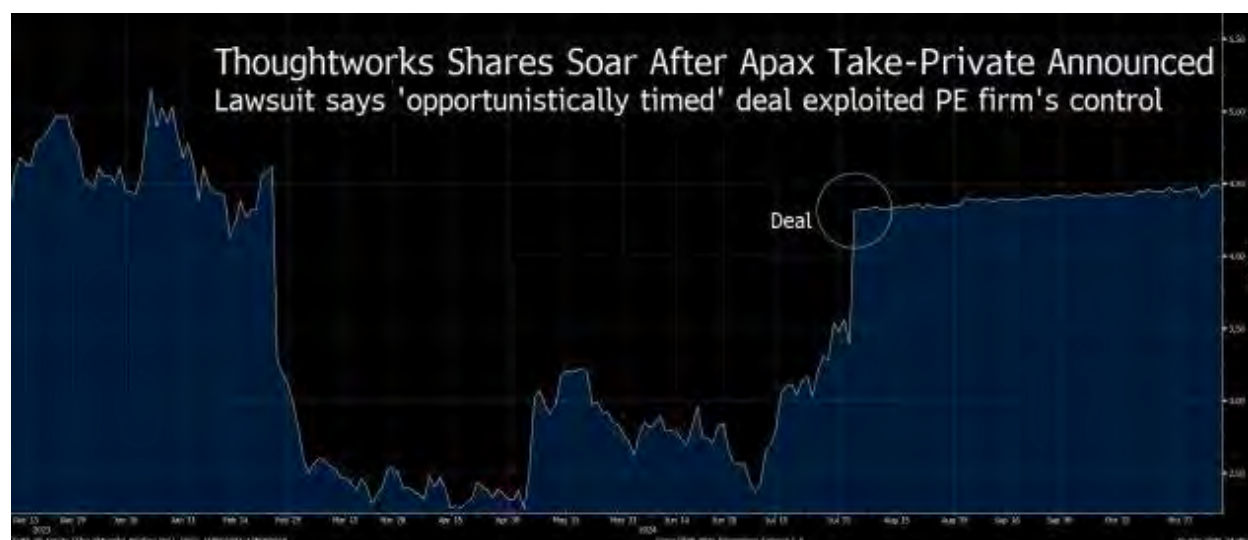
Apax Partners LLP wielded its controlling stake in Thoughtworks Holding Inc. to back the tech company into a corner and take it private at a discount, according to an unsealed lawsuit.

Two pension funds are challenging the transaction in court, saying Apax exploited its inside track and dominance over the board to block competing bids and force through a \$1.75 billion acquisition. The private equity firm knew its opportunistically timed buyout—for barely a third of what Apax agreed to pay a year earlier, before it “left the company at the altar”—reflected temporary headwinds pushing Thoughtworks shares to near their all-time low, the suit says.

London-based Apax, which has owned a majority of Thoughtworks shares since taking it public in 2021, “used its superior insider knowledge of the company’s prospects and its control to capitalize on the company’s seemingly vulnerable state,” according to the proposed class action filed in Delaware’s Chancery Court.

Thoughtworks was trading above the \$4.40-per-share deal price when the transaction closed in November, according to Bloomberg data.

Apax declined to comment Thursday. Chicago-based Thoughtworks said through a spokesperson that the company can’t comment on legal matters but remains “focused on our business, clients, and employees.”



The allegations echo a recurring theme in the elite business court, which has issued a wave of landmark decisions in recent years cracking down on self-dealing by influential insiders. Hand-wringing by dealmakers who slammed the rulings for gumming up the works escalated into a full-blown panic after several high-profile companies moved to other states. A major legal overhaul followed in March.

The fast-tracked legislative push reflected an effort by Gov. Matt Meyer (D) to address concerns that Delaware's judges were sowing uncertainty with a know-it-when-I-see-it approach to key issues, including categories like controlling stockholders and director conflicts of interest. The law lowered the barriers to insider transactions while raising new guardrails around judicial discretion.

'Beholden'

But Apax, which held a 61% equity stake and a reliable board majority, controlled Thoughtworks by any measure, according to the lawsuit made public April 8. That makes the acquisition the kind of cash-out deal that still has to overcome elevated court scrutiny unless it includes robust protections for public investors, the court complaint says.

The investment firm allegedly rejected those safeguards outright, refusing to condition the buyout on the approval of minority shareholders because it was clear they'd never go for the price. A transaction committee consisting of board members "beholden" to Apax then made only the most perfunctory effort to negotiate better terms before caving, the suit says.

Meanwhile, the committee's financial advisers revised their forecasts downward to match the unfair price thanks to a contingency-based fee structure that gave them a powerful incentive to get the deal done, according to the legal complaint.

The lawsuit was originally filed under seal April 2 by the Genesee County Employees' Retirement System, the Laborers' District Council and Contractors' Pension Fund of Ohio, and Think Investments LP, a San Francisco investment firm described in the filing as Thoughtworks' largest minority investor before the transaction.

They're represented by Bernstein Litowitz Berger & Grossmann LLP, Labaton Keller Sucharow LLP, Vanoverbeke, Michaud & Timmony PC, and Block & Leviton LLP. Apax, Thoughtworks, and its board members haven't yet made court appearances, according to the court docket.

The case is Genesee Cty. Emp. Ret. Sys. v. Nathoo , Del. Ch., No. 2025-0346, complaint unsealed 4/8/25 .

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

To contact the editor responsible for this story: Carmen Castro-Pagán at ccastro-pagan@bloomberglaw.com

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

[Securities Law News](#)

April 10, 2025, 8:07 AM PDT; Updated: April 10, 2025, 9:28 AM PDT

Cantor, Lutnick Beat Lawsuit Over BCG Partners Restructuring (1)

- BGC investor failed to seek board probe or show conflicts
- Ruling bucks a trend of Delaware court decisions in Up-C cases

Cantor Fitzgerald LP and its billionaire ex-CEO, US Commerce Secretary Howard Lutnick, prevailed in court Thursday against a challenge to the restructuring of BGC Partners Inc., an affiliated brokerage.

A Delaware judge rejected claims that the deal to simplify BGC's capital structure—by transforming it from a publicly traded partnership into an ordinary corporation—reflected a conflict-riddled effort to grow Cantor's controlling stake. The BGC investor leading the lawsuit failed to seek an internal board investigation before going to court or show it would have been futile to try, the judge said.

Lutnick stepped down from his role as longtime leader of the financial services giant when he joined Donald Trump's second presidential administration, pledging to divest business interests including his controlling Cantor stake. In recent days he has run interference for Trump's chaotic tariff rollout, reassuring his Wall Street peers there was a method to the madness roiling global financial markets.

The former Cantor chairman has a net worth of \$1.9 billion, according to the Bloomberg Billionaires Index.

Thursday's preliminary decision—ending the BGC case without a trial—bucked a trend in Delaware's Chancery Court, where multiple judges have tentatively favored shareholders challenging reorganizations by publicly traded partnerships, also known as umbrella partnerships or "Up-C" corporations. Up-Cs have multiple classes of stock: common shares in a publicly traded parent, equity units in an operating subsidiary dating to before the company's public listing, and voting-only class B shares pegged to those partnership units.

Many of the parallel cases remain pending. But rulings by several different judges in cases involving Apollo Global Management Inc., Carlyle Group Inc., Foundation Building Materials Inc., and GoDaddy Inc. have signaled the elite business court is wary of potential conflicts plaguing the restructurings, which usually pay a lump sum to buy out tax benefits tied to the pass-through units held by early investors. Most of the lawsuits say influential insiders pushed companies they controlled into overpriced tax buyouts.

Other similar claims have taken aim at the restructurings involving Atlas Energy Solutions Inc., Funko Inc., KKR & Co., and Virtu Financial Inc.

‘No Side Payment’

The BGC lawsuit differed slightly from most of the other Up-C cases. It focused not on a tax buyout but on allegations that Cantor exploited the reshuffling, which created BGC Group Inc., to increase its voting control and dilute other investors by acquiring an unfair amount of high-vote Class B stock.

Vice Chancellor Lori W. Will didn’t directly consider the merits of those claims. Instead, the judge focused on a narrow threshold issue: whether they were asserted “directly” on behalf of stockholders, on a class action basis, or “derivatively” on behalf of BGC. Because shareholder derivative claims technically belong to the corporation itself, damages in derivative cases are typically paid into a company’s coffers by its officers, directors, controlling stockholders, or insurers.

For the same reason, derivative claims fall within the board’s purview, which means shareholders can usually only pursue them after showing conflicts of interest prevented a majority of directors from making an impartial decision about whether to sue their fellow corporate leaders.

Although the investor behind the lawsuit tried to portray it as an equity dilution case involving wrongdoing between or among stockholders, the allegations at their core focused on the type of overpayment that could only harm BGC as a whole, Will found.

“Unlike the cases relied on by the plaintiff, there was no side payment that diverted value from minority stockholders,” she wrote. “The harm complained of is an overpayment to Cantor by BGC in the form of class B shares. The benefit of any recovery would flow to BGC, with its minority stockholders benefitting indirectly.”

That’s a classic derivative claim, the judge said.

Cantor and Lutnick are represented by Young Conaway Stargatt & Taylor LLP and Cooley LLP. The shareholder, Martin Siegel, is represented by Block & Leviton LLP and Friedman Oster & Tejtcl PLLC.

The case is Siegel v. Cantor Fitzgerald LP , Del. Ch., No. 2024-0146, 4/10/25 .

(Updates with additional details throughout the story.)

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

To contact the editors responsible for this story: Andrew Harris at aharris@bloomberglaw.com; Carmen Castro-Pagán at ccastro-pagan@bloomberglaw.com; Drew Singer at dsinger@bloombergindustry.com

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Class Action

April 11, 2025, 5:29 AM PDT; Updated: April 11, 2025, 6:43 AM PDT

Freshworks Beats Investor Suit Over IPO Financial Results (1)

- Judge said lead plaintiff failed to allege recoverable losses
- Investor didn't sufficiently tie stock decline to omissions

Freshworks Inc. defeated allegations that the software company misled investors over its financial expectations before its initial public offering, with the stock sliding after disappointing fiscal results released shortly after.

No omission caused share prices to fall below the IPO price based on the "uncontested evidence" presented, and the law prevents investors from recovering for drops above that level, Judge Charles R. Breyer said for the US District Court for the Northern District of California while granting Freshworks' motion for summary judgment.

Freshworks had shed most of lead plaintiff Mohan R. Sundaram's proposed class action claims before Breyer ordered the case to be closed on Thursday. But Breyer previously declined to toss an allegation under Item 303 of Securities and Exchange Commission Regulation S-K, which covers the nondisclosure of "known trends" before an IPO. Freshworks had said that claim should've been dumped because the stock remained above the offering price when the market responded to its disappointing third fiscal quarter of 2021 results a couple weeks after its IPO, and that later stock drops weren't caused by that revelation.

Breyer agreed. Freshworks went public on Sept. 22, 2021, at \$36 per share; its filings at the time included its second fiscal quarter of 2021 figures, "but not its weaker interim Q3 2021 numbers," he said. Sundaram purchased 1,000 shares at \$46 a pop the day after, the judge said.

Sundaram alleged omitting the 3Q21 numbers pre-IPO violated Item 303. However, the investor didn't sufficiently plead any "genuine dispute of material fact as to whether the alleged omissions actually caused any recoverable loss," Breyer said.

Freshworks disclosed those figures Nov. 2, 2021, Breyer said. Freshworks stock tumbled 14% the next day and another 8% the day after—still remaining above the IPO price, he said. Share prices "hovered around \$40 per share (plus or minus a few dollars) for several weeks," Breyer said, falling below \$36 for the first time on Nov. 15, 2021.

Sundaram sold all of his shares at \$14.99 each on Jan. 13, 2023, Breyer said. The investor sued Freshworks, executives and board members whom he said signed IPO-related documents, and its IPO underwriters in November 2022 for alleged Securities Act of 1933 violations.

Scott & Sundaram v. Freshworks, Inc. , N.D. Cal., No. 3:22-cv-06750, 4/10/25 Scott Attorneys at Law LLP is lead counsel for Sundaram and the proposed class, which would've included investors who got stock traceable to Freshworks' IPO. The Schall Law Firm is additional counsel for Sundaram. Cooley LLP represents Freshworks and certain leaders. Orrick, Herrington & Sutcliffe LLP represents the underwriters. None of these firms immediately responded to emails seeking comment.

Sundaram v. Freshworks Inc. , N.D. Cal., No. 3:22-cv-06750, closed 4/10/25 .

(Updates with context throughout.)

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

To contact the editors responsible for this story: Drew Singer at dsinger@bloombergindustry.com; Carmen Castro-Pagán at ccastro-pagan@bloomberglaw.com

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Potential Blockbuster \$362.5 Million Settlement Proposed to Resolve Long Standing Securities Fraud Class Action Against General Electric

insights.issgovernance.com/posts/potential-blockbuster-362-5-million-settlement-proposed-to-resolve-long-standing-securities-fraud-class-action-against-general-electric

ISS Insights

April 11, 2025



On November 25, 2024, plaintiffs Sjunde AP-Fonden and The Cleveland Bakers And Teamsters Pension Fund (together “Plaintiffs”) moved Judge Jesse Furman of the U.S. District Court for the Southern District of New York (the “Court”) for preliminary approval of a proposed \$362.5 million cash settlement, which will resolve securities fraud class action claims against the General Electric Company (“GE” or the “Company”) and its former CFO (together “Defendants”).¹ Plaintiffs stated that the parties reached the proposed settlement after seven years of “highly contested and vigorous litigation” and less than a month before trial in the action was set to commence. The Gravamen of Plaintiffs’ surviving allegations in the action were that GE’s public disclosures during the relevant time period concealed material facts concerning GE’s reliance on intercompany factoring transactions to offset weakness in its power unit’s cash flows from operations, thereby inflating the price of GE common stock. Plaintiffs alleged that investors were harmed when the truth was revealed over a series of alleged partial disclosures.

Plaintiffs’ Allegations

Prior to the events underlying this action, GE's renowned former CEO, Jack Welch, had built GE into a conglomerate that was one of the largest and most famous companies in the world. But after Welch had left GE, the 2001 recession and the 2008 great financial crisis occurred, and the Company's fortunes and share price began to lag. Ultimately, the Company has split into different companies by business lines, such as aviation or health care, while today various technology companies have market capitalizations far larger than any former GE division.

Six amended complaints were filed in this action.² Plaintiffs at one point had made claims against GE and a number of the Company's executives, involving two primary alleged frauds. First, Plaintiffs claimed that GE covered up massive liabilities in its long-term care insurance ("LTC") business—insurance policies sold to cover the cost of end-of-life care in nursing homes and other facilities. They alleged that GE had mispriced these policies resulting in looming obligations. Plaintiffs asserted that GE concealed these liabilities by removing certain disclosures about LTC liabilities from the Company's SEC filings, representing that GE had exited the LTC business successfully, and refusing to quantify reserves directly attributable to LTC policies in GE's financial statements.

Second, Plaintiffs claimed that GE misrepresented the performance of its power unit through various accounting manipulations related to long term service agreements ("LTSA's") on power plants, turbines, and generators. The timing of recognition of revenues on such contracts is complicated, but Plaintiffs alleged, among other things, that GE used a variety of faulty assumptions about contracts to inflate revenues. Most pertinently, Plaintiffs alleged that to inflate the cashflow of GE's power unit, the Company relied on an unsustainable and costly process of factoring the receivables from LTSA's by selling them to GE's capital business in exchange for cash—effectively bringing cash flows to the present at the expense of future cash flows.

Plaintiffs asserted that because of these two alleged frauds, GE's stock price was inflated, and investors were harmed when its stock price declined when the truth was revealed over a series of disclosures.

Brief Summary of the Seven Years Long Litigation

The litigation was indeed long and sprawling. The initial complaint was filed on November 1, 2017, and the Court later appointed a lead plaintiff, which eventually filed two amended complaints. However, on February 20, 2018, Plaintiffs filed a new action against GE and certain of its executives, expanding both the scope of the allegations and also the length of the asserted class period. Plaintiffs intervened and moved the court to reopen the lead plaintiff appointment process, which the Court granted. Ultimately the Court appointed Plaintiffs to take charge of the action. This was an unusual event, since the prior lead plaintiff and lead counsel were removed from leadership of the case.

Plaintiffs filed four more complaints on July 23, 2018; October 17, 2018; October 25, 2019; and May 13, 2022. The Court granted two motions to dismiss in part on August 29, 2019 (ECF No. 185) and January 29, 2021 (ECF No. 206), Plaintiffs' motion for class certification in part on April 11, 2022 (ECF No. 314), and Defendants' motion for summary judgment in part on September 28, 2023 (ECF No. 413). After a class notice was sent out, 318 shareholders requested exclusion. The parties represented that they also prepared extensively for trial, including by filing a joint pretrial statement, various evidentiary motions, and an amended trial submission. When the parties reached the proposed settlement, trial was imminent.

Ultimately, at the time of settlement, only claims remained against GE and its former CFO, and the Court had dismissed all allegations except those related to GE's factoring of LTSA receivables. Further, the Court had eliminated certain alleged corrective disclosures.

SEC Proceedings Against GE Result in a \$200 Million Fair Fund

Separate from the class action, the SEC had established a Fair Fund of \$200 million in civil money penalties paid by GE to resolve the SEC's charges for failing to disclose material information relating to the Company's power and insurance businesses. The SEC had found that:³ GE had misled investors by not explaining that \$1.4 billion in 2016 and \$1.1 billion in the first three quarters of 2017 of GE's power segment's profits stemmed from reductions in costs estimates on LTSAs; that GE failed to disclose that its reliance on factoring of LTSA receivables increased present industrial cash flow at the expense of future years; and that GE had failed to disclose rising claim costs and resulting potential for materials losses in its LTC business. The SEC intended the fund to compensate investors who purchased GE common stock through a US stock exchange between October 16, 2015, and January 16, 2018. The claims deadline was October 19, 2022.

The Proposed \$362.5 Million Class Action Settlement

If the terms of the class action settlement are approved, the class as previously certified by the court in the action—all persons and entities that purchased or acquired GE common stock between February 29, 2016, and January 23, 2018, inclusive and were damaged thereby—could be eligible for a share of the settlement. A settlement hearing is scheduled for April 24, 2025, and the deadline for filing a claim is June 20, 2025. Importantly, this would rank as one of the top 100 private securities class action recoveries in the United States ever, if approved, is one of the largest settlements announced in 2024, will feature prominently in the 2025 settlements, and likely is the end to a sprawling and hard-fought litigation involving a marquee company.

Plaintiffs contend that the \$362.5 million proposed settlement amount is appropriate as it recovers 8%-36% of the \$1 to \$4.5 billion in potential recoverable damages and because of risks of prevailing at trial.

Investor Class Action Details		ISS SCAS 
Proposed Settlement Amount	\$362.5 million	
Security	General Electric Company (GE) common stock	
Class Period	Between February 29, 2016 and January 23, 2018, inclusive	
Citation	<i>Sjunde AP-Fonden and The Cleveland Bakers and Teamsters Pension Fund v. General Electric Company, et al.</i> , No. 1:17-cv-08457-JMF (S.D.N.Y.)	
Jurisdiction	US District Court for the Southern District of New York (S.D.N.Y.)	
Plaintiffs	Lead Plaintiff: Sjunde AP-Fonden Additional Plaintiff: The Cleveland Bakers and Teamsters Pension Fund	
Plaintiffs' Counsel	Lead Counsel: Kessler Topaz Meltzer & Check, LLP Local Counsel: Grant & Eisenhofer, P.A.	
Proposed Claims Administrator	JND Legal Administration	
Claims Deadline	June 20, 2025	
Settlement Hearing Date	April 24, 2024	

www.issgovernance.com/scas

¹ *Sjunde AP-Fonden and The Cleveland Bakers and Teamsters Pension Fund v. General Electric Company, et al.*, No. 1:17-cv-08457-JMF. See, at ECF No. 475 for Plaintiffs' settlement memo and ECF No. 476 for the settlement agreement.

² *Id.* at ECF Nos. 73, 83, 157, 179, 191, and 327. See *id.* at ECF No. 1 for the initial complaint.

³ *In the Matter of General Electric Company*, No. 3-20165.

"No portion of this insight constitutes legal or financial advice, and no attorney-client relationship is intended or is established."

Second Circuit Rejects Interveners in Sri Lanka Bondholder Suit

- Bank clients' claims don't relate to the bond case, court said
- Tried to intervene Sri Lanka historic debt default lawsuit

Hamilton Reserve Bank Ltd. clients can't intervene in the bondholder's suit against the Democratic Socialist Republic of Sri Lanka over its historic debt default—their claims don't substantially overlap, a federal appeals court said Thursday.

The US Court of Appeals for the Second Circuit affirmed a 2024 district court decision to block Jesse Guzman, Ultimate Concrete LLC, and Intercoastal Finance Ltd.'s from intervening on their theory that Hamilton used their \$50 million deposit and interest to purchase some Sri Lankan bonds in 2021 while allegedly making up excuses for not returning funds. The US District Court for the Southern District of New York correctly applied a "common nucleus of operative fact" standard, which queries whether a court has jurisdiction over claims that arise from the same facts as the ones in front of it, said Circuit Judge Gerard E. Lynch.

Hamilton, the owner of more than \$250 million Sri Lankan bonds which matured in 2022, sued the island nation's government after it refused to pay on them. Over a year and a half into the case and after discovery closed, Guzman and his companies moved to intervene.

They alleged that since the bank purportedly used their funds to purchase bonds, they're entitled to direct payment from them under a constructive trust theory. So they need to prove Sri Lanka's liability to Hamilton to recover the money, and their claims overlap to intervene, their brief said.

But the long list of transactions and interactions with Hamilton employees the would-be intervenors alleged have nothing to do with bonds, and the purported wrongs are completely different from the Sri Lanka case, Lynch said for the panel, which also included Circuit Judges Beth Robinson and Alison J. Nathan. And, he said, "only the final two paragraphs of their complaint's factual recitations even mention the bonds."

"Even assuming for the sake of argument that Appellants' legal theory is tenable, the facts necessary to prove Appellants' claims—and the relationship between those claims and the bonds—are still almost entirely unrelated to the facts relevant to the underlying case," Lynch said.

"We are gratified that the Second Circuit adopted our position, and upheld the District Court's ruling in favor of Hamilton Reserve Bank," said attorney Tom M. Fini of Catafago Fini LLP, who represents Hamilton, the plaintiff-appellee.

Hamilton's case against Sri Lanka is still pending before the S.D.N.Y. as the nation's worked on restructuring its debt. It officially exited sovereign default in December.

McKool Smith PC and Gordon Davis Johnson & Shane PC represent the attempted intervenors, the appellants. Attorneys didn't immediately responded to emails seeking comment.

The case is Hamilton Reserve Bank v. Sri Lanka , 2d Cir., No. 24-1459, affirmed 4/10/25 .

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

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

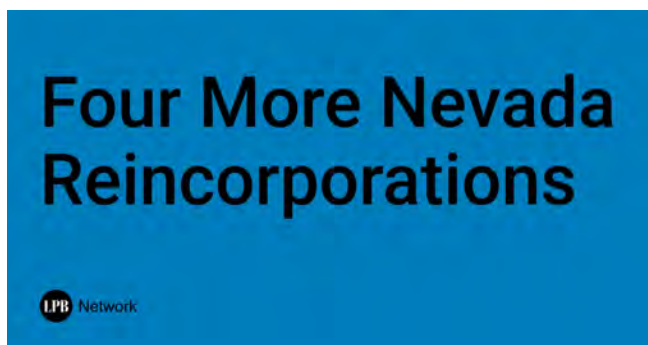
© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Four More Nevada Reincorporations

 [businesslawprofessors.com/2025/04/four-more-nevada-reincorporations/](https://www.businesslawprofessors.com/2025/04/four-more-nevada-reincorporations/)

Benjamin P. Edwards

April 11, 2025



Last week I highlighted three Nevada reincorporations and one Texas reincorporation after Delaware passed SB21. A week has passed, and there are four more. The new firms are:

- Madison Square Garden Entertainment Corp.
- Madison Square Garden Sports Corp.
- Xoma Royalty Corp.
- BAIYU Holdings, Inc.

This brings my total post-SB21 reincorporations to eight. Seven to Nevada and one to Texas.

The stated reasoning here appears consistent with what happened the week before.

MSG Entities

Rather than break out MSG Sports and MSG Entertainment separately here, I'm just going to draw from MSG Sports. Although I haven't run a redline or anything to confirm, the stated rationale seems the same for both firms. There are three main bullet points for it:

1. ***Nevada Law Provides More Predictability and Certainty in the Underlying Laws that Impact Decision-Making***
2. ***The Nevada Redomestication Reduces the Risk of Opportunistic Litigation Against the Company, and its Directors and Officers, Which Can be Time-Consuming, Burdensome and Expensive***
3. ***Expected Savings From Not Having to Pay a Franchise Tax in Delaware***

Xoma Royalty Corp.

Xoma makes many of the points others have highlighted. It also indicates that it thinks it might be able to get a better deal on D&O insurance by coming to Nevada.

We anticipate potential cost savings in Director and Officer (“D&O”) insurance premiums from expected reductions in the future of litigation and litigation costs, including attorneys’ fees, which can be significant for corporate litigation.

BAIYU Holdings

BAIYU is a fairly small company by public company standards. For them, the cost difference between Delaware and Nevada may be most material. This is what they lead off with in their rationale:

Among other things, Nevada Reincorporation will eliminate our obligation to pay the annual Delaware franchise tax that will result in significant savings to us in the future. Under Nevada law, there is no obligation to pay annual franchise taxes and there are no capital stock taxes or inventory taxes. In addition, under Nevada law, there are minimal reporting and corporate disclosure requirements and the identity of the corporate shareholders is not a part of the public record. Otherwise, the general corporation laws of the States of Delaware and Nevada are quite similar as both states have liberal incorporation laws and favorable tax policies. . . .

Takeaways

As I’m watching this space, I’ve been surprised by the volume declaring for Nevada. We’re at the start of proxy season and if this rate continues, a significant number of firms will be switching. I’m not certain that’s going to be the case now. Sphere, and the two MSG entities are all related.

There is still a degree of uncertainty out there about whether SB21 will be constitutional under Delaware law. I’ve had a chance to skim through the argument for declaring it unconstitutional under Delaware’s constitution and it seems like a colorable claim. That said, I would still be surprised if the Delaware Supreme Court declared it unconstitutional.

The D&O premium discount could be highly significant if it materializes, but I’m not aware of any insurer now offering better rates to Nevada entities. The D&O Diary covered this possibility for Delaware firms after SB21 recently:

There are a lot of assumptions behind these questions about D&O insurance premiums. First and foremost, the question assumes that the new statutory provisions will affect Delaware corporate litigation sufficiently to reduce insurers' anticipated loss costs. While I certainly expect the new amendments to have a positive impact on Delaware litigation (positive, that is, from the perspective of corporate defendants and their insurers), no insurer is going to cut its premiums based solely on possible future changes; the insurers will want time and experience to be able to see whether and to what extent the changed litigation environment will actually result in less litigation and better outcomes. It will be some time (in my view, more than just one year) for insurers to be sure of the benefits and to be able to quantify the benefits. I don't see the insurers cutting their rates just because of the Delaware legislation before that.

There is another important reason insurers might hesitate to cut prices because of possible Delaware litigation benefits. That is, none of these various legislative changes under consideration have anything to do with securities class action litigation. Securities suits represent the largest severity exposure related to public company D&O insurance. This exposure is not going away. Given the anticipated securities litigation loss costs, the D&O insurers are likely to try to resist price reductions, even if there turns out to be an improvement in loss costs resulting from Delaware litigation.

Although we've seen more action, we haven't yet seen any changes in the preferred jurisdictions for IPOs. If some firms start to pick Nevada over Delaware for their IPO, that's probably a strong signal. With the current tariff-related market turmoil, I don't know when IPOs will pick back up.

Subscribe Now

Litigation

April 11, 2025, 7:00 AM PDT

A New Litigation Financing Solution Is Available to Law Firms

Atlantic's Bob Koneck and Richard Butters explain the steps and benefits of obtaining a commercial loan from a bank or credit fund and an insurance policy that de-risks the loan's recourse feature.

There is a new, cheaper, and more client-friendly financing solution to support law firm alternative fee arrangements, or AFAs, that involve partially or fully contingent fees—a commercial loan from a bank or credit fund coupled with an insurance policy that de-risks the recourse feature of the loan.

AFAs require tremendous investment over a lengthy period with no certainty of recovery. Sometimes law firms self-fund this investment or seek their own external capital. Other times clients seek external capital to fund the investment.

Law firms lack the full range of capital solutions available to other businesses. In most jurisdictions, Rule 5.4 prohibits non-lawyer equity capital, so firms must rely on funding via recourse or nonrecourse debt.

A recourse credit facility from a commercial bank or credit fund is the simplest and cheapest external funding source. This type of commercial loan isn't secured by specific cases—it's a general obligation on the firm—and repayment isn't contingent on case outcomes.

Traditional Funding

Firms focused on personal injury or class actions often are comfortable assuming some recourse obligations. But most other firms have historically avoided using commercial loans to fund AFAs.

The main reason for this avoidance is that firms are risk-averse and unwilling to use billable hour revenue to repay a commercial loan, which they must do if the firms' plaintiff-side AFA matters yield inadequate recoveries.

So firms often resort to nonrecourse litigation funders. According to a new Westfleet Advisors survey on the nonrecourse commercial litigation finance market, these funders committed \$2.3 billion to new litigations last year, with almost 40% of it going to matters involving the largest 200 law firms.

But the survey results also showed a drop in total commitments compared with prior years, reflecting a "tighter" capital market for nonrecourse funding.

Nonrecourse funders cover the out-of-pocket costs and some of the legal fees to litigate cases involving AFAs in exchange for a right to repayment contingent on a successful case outcome. Firms thus avoid having to possibly use billable hour revenue to repay the funding facility, if the funded cases are unsuccessful.

These are real benefits for law firms and their clients, but they come with downsides. Funders in nonrecourse facilities assume risk—they face a total loss. They mitigate this risk with rigorous due diligence, which can be lengthy and exacting. And they price their capital to reflect the high risk, which can make the facility expensive.

A New Option

Firms may now instead consider a cheaper and newer option: a de-risked recourse credit facility from a bank or credit fund. This is a two-step process.

Step 1: The law firm obtains, or better yet uses, an existing commercial loan from a bank or credit fund to cover hard costs and a portion of its hourly equivalent fees as they accrue on cases subject to AFAs.

This capital would be comparatively cheap. The lender would have recourse to the firm for repayment of the principal and interest—and no contingent right to benefit from successful case outcomes.

The law firm and client would therefore retain the benefit of a large recovery. And given the recourse feature, the lender is less likely to put firms and their clients through rigorous case due diligence.

Step 2: The firm de-risks the recourse feature of the commercial loan.

It does this by separately securing a contingent risk insurance policy that insures the projected (and/or already accrued) hard costs and a portion of the projected (and/or already accrued) hourly fees on a portfolio of insured AFA cases.

In other words, the policy provides the firm with a right to recover from the insurer the costs and a portion of the fees accrued on insured AFA matters if the firm doesn't instead recover those costs and fees from the insured cases.

The policy may even be expandable, allowing the firm to add coverage—and thus financing—for future cases onboarded after securing the policy.

The maximum limit on this policy could match or exceed the amount the firm would owe under the commercial loan. If the firm's contingency fee recovery exceeds the policy limit, the insurer pays nothing. If the firm recovers less than the policy limit, the firm makes a claim on the policy and the insurer pays out up to the policy limit.

The firm either recovers sufficient fees on the AFA cases to easily repay the inexpensive commercial loan or, if the cases end poorly, makes a claim on the insurance policy and uses the insurance proceeds to repay the commercial loan. The policy therefore de-risks the recourse feature of the loan.

Array of Benefits

Through this structure, law firms unlock multiple benefits.

They tap cheaper and more flexible bank or credit fund capital to support AFAs. They and their clients retain the substantial financial upside on AFAs, which nonrecourse funding often requires firms or clients to forfeit.

And because a commercial loan isn't secured by specific cases, it is arguably not "litigation funding," which could exempt it from litigation funding-related discovery considerations.

What's more, law firms using this structure may have a competitive advantage in servicing existing clients and engaging new ones.

After securing the insurance, the firm could later add coverage, subject to insurer approval, for the costs and a portion of the fees to litigate a new matter for an existing or prospective client.

The firm then could finance the new matter with drawdowns on the commercial loan, which the firm de-risked with the added insurance coverage. This would create an efficient and economical funding solution to offer clients in need of AFAs.

In contrast, competing firms might require those same clients to either wait as the firm decides whether to assume the full risk of the AFA or endure the possibly lengthy and demanding process of securing expensive nonrecourse funding.

These advantages, among others, may increasingly motivate firms to finance AFAs with a de-risked commercial loan.

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

Author Information

Bob Koneck is a senior vice president at Atlantic. He previously worked at a leading commercial litigation funder and practiced as a commercial litigator.

Richard Butters is an executive director at Atlantic. He previously worked in structured finance as a director at Barclays Bank.

Write for Us: Author Guidelines

To contact the editors responsible for this story: Daniel Xu at dxu@bloombergindustry.com; Rebecca Baker at rbaker@bloombergindustry.com

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Class Action

April 10, 2025, 9:38AM PDT

Weight Watchers Gives Google, Facebook Health Info, Suit Claims

- **COURT:** S.D.N.Y.
- **TRACK DOCKET:** [No. 1:25-cv-02944](#) (Bloomberg Law subscription)

Weight Watchers websites provide the personal information of users to Google, Facebook, and other tracking services, according to a proposed class action alleging violations of the Electronic Communications Privacy Act.

Several services on Weight Watchers International websites encourage providing personal data, sometimes health-related, in an effort to personalize a weight loss journey. But WW International allegedly provided that data and other identifiable information to third parties, despite promises in its privacy policy, according to the suit filed Wednesday in the US District Court for the Southern District of New York.

WW International allegedly pledged that it would never share the information of users of its Weight Watchers Clinic—WW International's telehealth service—without written consent.

The weight loss business' general privacy policy said that it collects health information, but according to the complaint it failed to disclose that it would be shared with third parties, and only vaguely discussed tracking.

The complaint highlights data sharing with Google, Facebook, Amplitude—a data analytics company that “effectively creates dossiers on individuals by tracking them across all devices”—and others. Data shared with Amplitude may have gone to TikTok and Snapchat programs, the suit said. None of the tracking service providers is named as a defendant.

The plaintiffs said that WW International shared information like their gender, height, diabetes status, and mental health information, alongside weight and other data points.

They sought to represent a nationwide class of WW International website users whose information was provided through tracking software. WW International said in a recent financial report that it has more than three million subscribers.

The complaint brought invasion of privacy and unjust enrichment claims, as well as one for violations of ECPA. It also brought claims under the California Invasion of Privacy Act and New York business law.

The suit asked for nominal, statutory, and punitive damages; attorneys' fees; and an injunction blocking WW International from breaking the law.

WW International didn't immediately respond to a request for comment.

Judge Ronnie Abrams is assigned to the case.

Milberg Coleman Bryson Phillips Grossman PLLC and Lowey Dannenberg PC represent the plaintiffs.

The case is Giorgio v. WW Int'l , S.D.N.Y., No. 1:25-cv-02944, complaint 4/9/25 .

To contact the reporter on this story: Ufonobong Umanah in Washington at
uumanah@bloombergindustry.com

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

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Lawsuit alleging racism in Louisiana's 'Cancer Alley' revived on appeal

 [reuters.com/legal/government/lawsuit-alleging-racism-louisianas-cancer-alley-revived-appeal-2025-04-10](https://www.reuters.com/legal/government/lawsuit-alleging-racism-louisianas-cancer-alley-revived-appeal-2025-04-10)

Nate Raymond

April 10, 2025

A gavel and a block is pictured at the George Glazer Gallery antique store in this illustration picture taken in Manhattan, New York City, U.S., August 18, 2020. REUTERS/Andrew Kelly/Illustration Purchase Licensing Rights , opens new tab

April 10 (Reuters) - A federal appeals court has revived a civil rights lawsuit which alleges a south Louisiana parish engaged in discriminatory land-use practices that placed polluting industries in majority-Black communities on a stretch of land nicknamed "Cancer Alley."

A three-judge panel of the New Orleans-based 5th U.S. Circuit Court of Appeals on Wednesday held , opens new tab that a trial court judge was wrong to toss the case by three faith-based community groups in St. James Parish on grounds that it had not been brought in time.

"Now we can finally get back to the urgent work of addressing the public health emergency caused by the parish's constant and easy approval of every request by any petrochemical company seeking to operate in these majority-Black communities," Pam Spees, a lawyer for the plaintiffs at the Center for Constitutional Rights, said in a statement.

A lawyer for the parish did not respond to a request for comment.

The groups – Inclusive Louisiana, Mt. Triumph Baptist Church and RISE St. James – sued in 2023, alleging that the disproportionate placement of petrochemical plants in majority Black areas violates the U.S. Constitution's 13th Amendment as a vestige of slavery and their equal protection rights under the 14th Amendment.

The lawsuit said no major polluting facilities have been approved by the council in white communities in the parish in 46 years, while dozens of "dangerous and extractive facilities" have been located in Black communities.

U.S. District Judge Carl Barbier had tossed those and other claims on grounds that the plaintiffs had sued too late over a land use plan the parish adopted in 2014 which categorized two heavily populated districts as "industrial," allowing plants to be built there.

However, U.S. Circuit Judge Carl Stewart, writing for Wednesday's panel, said that the lawsuit was not challenging a discreet government action a decade ago but rather a longstanding pattern and practice of racially discriminatory land use decisions.

Stewart, an appointee of Democratic President Bill Clinton, pointed to allegations that fell within the statute of limitations period which were not time-barred concerning actions the parish took in August 2022.

At that time, the organizations alleged in their 2023 lawsuit, the parish declined to issue a moratorium on "polluting industry" in majority-Black communities while granting white residents' request for a moratorium on the solar industry.

"While it is unclear at this pleading stage whether these alleged incidents of discrimination can ultimately prove a violation of the Organizations' constitutional or statutory rights, as alleged they plainly fall within the applicable one-year limitations period," Stewart wrote.

He said the trial judge had also wrongly concluded that the groups lacked standing to pursue claims their religious rights were violated, saying they had raised sufficient allegations that the parish's land use practices restricted their access to the cemeteries of their enslaved ancestors.

His opinion was joined by U.S. Circuit Judges Catharina Haynes, an appointee of Republican President George H.W. Bush, and Patrick Higginbotham, an appointee of Republican President Ronald Reagan.

The case is *Inclusive Louisiana v. St. James Parrish*, 5th U.S. Circuit Court of Appeals, No. 23-30908.

For the plaintiffs: Pam Spees of Center for Constitutional Rights

For St. James Parrish: Carroll Devillier of Breazeale, Sachse & Wilson

Read more:

Toxic gas in Louisiana air far exceeds safe levels, EPA estimates, US study finds
Louisiana residents claim systemic racism in petrochemical plant approvals
Our Standards: The Thomson Reuters Trust Principles. [↗](#), opens new tab

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

Trump's EPA, Alongside Citibank, Face Litigation Surge Over Termination of Greenhouse Gas Reduction Grants

 [law.com/nationallawjournal/2025/04/10/trumps-epa-alongside-citibank-face-litigation-surge-over-termination-of-greenhouse-gas-reduction-grants](https://www.law.com/nationallawjournal/2025/04/10/trumps-epa-alongside-citibank-face-litigation-surge-over-termination-of-greenhouse-gas-reduction-grants)

Sulaiman Abdur-Rahman

April 10, 2025

What You Need to Know

- Several nonprofits filed a complaint against the Trump administration and Citibank alleging the co-defendants unlawfully froze their access to billions of dollars in federal EPA grants.
- Counsel for the plaintiffs include Jenner & Block; Howell Shuster & Goldberg; Foley Hoag; Venable; and Zimmer, Citron & Clarke.
- Kirkland & Ellis represent co-defendant Citibank.

President Donald Trump's Environmental Protection Agency and co-defendant Citibank face a surge of litigation in the U.S. District Court in Washington, D.C.

At least five nonprofits since March 8 filed individual lawsuits alleging the EPA and Citibank froze their access to billions of dollars in federal Greenhouse Gas Reduction Fund grants in violation of the Administrative Procedure Act and Fifth Amendment to the U.S. Constitution.

Counsel for the plaintiffs include Jenner & Block representing Climate United Fund; Howell Shuster & Goldberg representing Coalition for Green Capital; Foley Hoag representing Power Forward Communities; Venable representing Inclusiv Inc.; and Zimmer, Citron & Clarke representing Justice Climate Fund.

Jenner & Block is one of the major law firms targeted by Trump.

U.S. District Judge Tanya Chutkan of the District of Columbia extended a temporary restraining order Tuesday preventing the co-defendants from terminating or transferring GGRF funds until April 15 as she considers whether to grant or deny the plaintiffs' motion for a preliminary injunction.

"EPA's termination of each Plaintiff's grant is 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law' under the APA in several respects," counsel for Climate United, CGC and PFC wrote in their motion for a preliminary injunction. "EPA violated Plaintiffs' right to due process by freezing and then terminating Plaintiffs' grant funds without notice or an opportunity to be heard."

The GGRF is a \$20 billion federal program created by former President Joe Biden promoting renewable energy generation. Citibank administers GGRF deposit accounts and has frozen plaintiffs' access to their GGRF grant awards under orders from the Trump administration, according to their complaints.

The states of California, Illinois, Maine and Minnesota have also filed a related lawsuit against Citibank and the EPA seeking injunctive relief to restore grantee access to federal GGRF funds.

Defense Counsel

Kirkland & Ellis represent Citibank in the consolidated cases before Chutkan.

"Plaintiffs have no likelihood of success on the merits of their claims against Citibank because Citibank fully complied with its contractual obligations under both the Financial Agency Agreement and the Account Control Agreements," counsel for Citibank wrote in a brief filed Monday. "Plaintiffs' allegations at most establish that Citibank performed as EPA and the Department of Treasury have directed."

U.S. Department of Justice attorneys representing the EPA argue Chutkan as a district judge lacks jurisdiction to hear the plaintiffs' APA and Fifth Amendment due process claims, citing the recent U.S. Supreme Court order in U.S. Department of Education v. California filed April 4.

"In its *per curiam* Order, the Supreme Court concluded the government was likely to prevail in showing that the district court lacks jurisdiction under the APA to enjoin the government's termination of education grants and order it to continue funding the grants," DOJ attorneys wrote in a notice. "The Order is directly relevant to this case because plaintiffs' motions for preliminary injunction raise the same jurisdictional question."

Congressional Probes

While litigating their cases in D.C. federal court, the plaintiffs challenging the EPA and Citibank also face heavy oversight scrutiny from U.S. Rep. James Comer, R-Kentucky, chair of the U.S. House Committee on Oversight and Government Reform.

Comer on March 27 sent letters to eight organizations—including the plaintiffs Climate United, CGC, PFC, Inclusiv and JCF—stating he has "concerns" with any organization that "sought to receive American taxpayer dollars" through the Biden-era GGRF program.

The Comer-led House Oversight Committee requested information and documents from the organizations by April 10.

When Comer launched his investigation targeting GGRF grantees, Paul Hastings litigation partners Ronak D. Desai and Renato Mariotti issued a client alert warning about the potential risks private-sector companies can face when subjected to congressional inquiries.

“Congress has very potent name and shame powers,” Desai said Wednesday in an interview with the National Law Journal. “The mere act of getting a letter from Congress wanting information ... is always one of the variables in the decision-making on how to respond. There may not be legal exposure at that given point of time, especially in the absence of that compulsory process, but there’s certainly what we call the name-and-shame harm.”

“One of the challenges that comes with a congressional investigation is it can be a focal point for an intersection of a variety of different issues or problems that face the company,” Mariotti said Wednesday in an interview. “Civil cases can come out of a congressional investigation, and of course there’s potential press, media and PR issues. So a company has got to carefully navigate that landscape, and a lot of that involves trying to get ahead of the investigation ... and try to make sure you anticipate what those potential challenges are going to be so that you can shape your response to the congressional inquiry accordingly.”

Kirkland & Ellis on behalf of Citibank filed court documents arguing its client complied with a Feb. 17 FBI request to freeze GGRF grants for “possible criminal violations, including 18 § U.S.C. 371 (Conspiracy to defraud the United States)” and a March 4 edict from the U.S. Treasury Department directing Citibank not to disburse funds from any of the GGRF accounts.

This action was surfaced by Law.com Radar, which delivers real-time alerting on new litigation across more than 2,600 state and federal courts. Click here to get started and be first to act on opportunities in your region, practice area or client sector.

Law.com Radar

NOT FOR REPRINT

© 2025 ALM Global, LLC, All Rights Reserved. Request academic re-use from www.copyright.com. All other uses, submit a request to asset-and-logo-licensing@alm.com. For more information visit Asset & Logo Licensing.

Who Got The Work

Attorneys from Latham & Watkins have entered appearances for Neumora Therapeutics and other defendants in a pending securities class action. The complaint, filed Feb. 6 in New York Southern District Court by the Rosen Law Firm, accuses the defendants of failing to disclose risks and uncertainties in clinical trials of the company's major depressive disorder medication Navacaprant. The case, assigned to U.S. District Judge John P. Cronan, is 1:25-cv-01072, Chang v. Neumora Therapeutics, Inc.

[Read More](#)

Who Got The Work

Attorneys from Barnes & Thornburg have entered appearances for two senior executives of Allarity Therapeutics in a pending securities lawsuit. The complaint, filed March 12 in Massachusetts District Court by the U.S. Securities and Exchange Commission, contends that despite the U.S. Food and Drug Administration's Feb. 2020 recommendation that Allarity submit a new drug trial before seeking approval of its cancer treatment candidate dovitinib, Allarity submitted a flawed application in Dec. 2021 without conducting a new trial and secured a \$20 million investment without disclosing the FDA's admonition. Co-defendant Stefano Carchedi, a senior executive for Allarity, is represented by Troutman Pepper Locke. The case, assigned to U.S. District Judge Patti B. Saris, is 1:25-cv-10599, Securities and Exchange Commission v. Carchedi.

[Read More](#)

New Suit - Trade Secrets, Civil RICO

Electric vehicle charging network Electrify America sued Tal Pinco, Connor Griffith and Travis Dehning in a trade secret theft and civil RICO lawsuit brought by electric vehicle charging network Electrify America on April 10 in Washington Western District Court. The complaint, filed by Gordon Rees Scully Mansukhani, accuses the defendants of engaging in a coordinated scheme to steal valuable materials such as charging cables and equipment to sell as scrap metal. According to the complaint, the defendants also obtained and used the plaintiff's confidential and proprietary information from the company's electric vehicle charging stations, allegedly by gaining unauthorized access to key boxes and equipment cabinets. The case is 2:25-cv-00652, Electrify America LLC v. Pinco.

[Read More](#)

Litigation

April 11, 2025, 8:17AM PDT

Lawyers in FIFA Case Sanctioned for Errors Allegedly Made by AI

- **Filings 'rife' with citation, quotation errors, judge says**
- **Attorneys must pay defendants' fees related to flawed motions**

Attorneys with Reyes Lawyers PA and Olmo & Rodriguez Matias Law Office PSC were sanctioned by a federal judge over extensive errors in filings that were alleged to have been drafted with the help of artificial intelligence, in a lawsuit over control of professional soccer in Puerto Rico.

The plaintiffs' lawyers must pay attorneys' fees incurred by the defendants in relation to four filings that contained "dozens" of "striking" errors, Judge Raúl M. Arias-Marxuach of the US District Court for the District of Puerto Rico wrote in a Thursday opinion.

The firms are representing Puerto Rico Soccer League NFP Corp., the media outlet Futbol Boricua Inc., and a number of individual plaintiffs in a racketeering and antitrust suit against the Fédération Internationale de Football Association; the Confederation of North, Central America and Caribbean Association Football; and others. The plaintiffs accuse the defendants of conspiring to restrain trade with the purpose of maintaining control over soccer's federative arm in Puerto Rico, Federación Puertorriqueña de Fútbol Inc.

The plaintiffs' firms were accused by the defendants of using generative AI tools to write several court filings that contained "multiple citation errors."

Arias-Marxuach previously ordered the plaintiffs to show cause to explain the errors. The judge said Thursday the filings were "rife with citations for content that did not exist in the underlying opinion." Case citations were also improperly formatted, attributed to the wrong courts, or provided inaccurate party names. Although the court could locate similar citations for some cases, "their contents do not align with Plaintiffs' representations," Arias-Marxuach wrote.

The firms claimed the "immaterial" errors were an oversight, and argued there's no evidence they used AI to write the motions.

But whether AI was used or not is "immaterial, what matters is that the Plaintiffs provided the Court with a litany of inaccurate information in support of their claims," Arias-Marxuach said. The plaintiffs' counsel "cannot be said to have behaved with the requisite 'thoroughness and preparation' given their admitted haste in drafting the Motions and dozens of errors that resulted."

Arias-Marxuach warned the plaintiffs' counsel that "if further problems of this nature or gravity happen again," the court will move to revoke Ibrahim Reyes' pro hac vice status and refer the attorneys for disciplinary proceedings.

Paul, Weiss, Rifkind, Wharton & Garrison LLP; Sidley Austin LLP; and others variously represent the defendants.

The case is P.R. Soccer League NFP Corp. v. Federación Puertorriqueña de Fútbol, D.P.R., No. 3:23-cv-01203, 4/10/25 .

To contact the reporter on this story: Mallory Culhane in Washington at mculhane@bloombergindustry.com

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

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Judge raps 'astonishing example of plagiarism' in climate suit



legalnewsline.com/stories/670835797-judge-raps-astonishing-example-of-plagiarism-in-climate-suit

Daniel Fisher

April 11, 2025

Climate Change



Efron | <https://www.davidefronlaw.com/>

SAN JUAN, P.R. (Legal Newsline) - A federal judge in Puerto Rico sanctioned the lawyer representing the City of San Juan in a climate lawsuit for “an astonishing example of plagiarism” by copying entire passages from legal filings by other municipalities on the island in their own climate cases.

Some 40 cities filed a class action against Exxon Mobil, Chevron and other oil companies in 2022, seeking climate change-related damages. A year later, “for unknown reasons,” San Juan hired local personal-injury attorney David Efron to file the city’s own climate suit, wrote U.S. District Judge Aida M. Delgado-Colon in an April 9 order proposing \$7,000 in sanctions.

The San Juan lawsuit “is almost a word-for-word carbon copy” of the class action, which was drafted by lawyers at Milberg Coleman Bryson Phillips Grossman and Smouse & Mason, the judge said. Not only does it contain the same spelling errors but at least once Efron left in a reference to “this class action,” when he represents a single plaintiff.

“Evidently, San Juan’s complaint is a poorly plagiarized version of the complaint in the Municipalities’ Case,” the judge wrote.

Defendants found evidence of similar copying in other filings totaling more than 400 pages, the judge wrote. “As in law school, passing someone else’s work off as one’s own is wrong as a matter of fact and professional ethics,” Judge Delgado-Colon said. This isn’t a case of using a “template or standard form document,” the judge said.

“The misconduct is taking another lawyer’s work for a different client, filing it verbatim in this case — apparently without due review or regard for the client’s specific circumstances,” the judge said. The apparent plagiarism raises concerns under Rule 11 – the rule of procedure requiring attorneys to fully investigate claims before putting them in a lawsuit – the judge said.

Chevron has mounted a Rule 11 challenge to a similar lawsuit by the State of Rhode Island, where outside attorneys at Sher Edling used cut-and-paste language from identical suits in other states to suggest the oil company had oil wells and refineries in the state, which it does not. Sher Edling, in response, says Chevron is ignoring the phrase “and/or” in the sentence listing its activities, which it says means not all of them occur in Rhode Island.

Efron also missed deadlines for his client to file important motions, offering as an excuse he was in trial on another case.

“Attention to other matters in his book of business did not relieve Attorney Efron from his duty to exercise a minimum degree of diligence to make sure that he complied with this case’s Deadlines,” the judge wrote. She ordered Efron to show cause within 15 days as to why he shouldn’t be fined \$7,000.

The judge said monetary damages “would be insufficient to address” the plagiarism allegations. Finally, she ordered her clerk to notify San Juan Mayor Miguel Romero of her order.

Efron, like several other prominent U.S. personal-injury lawyers, relocated his practice to Puerto Rico. He was ordered there to pay \$5.5 million in a divorce settlement in 2001. An arbitration panel later awarded UBS Financial Services \$9.7 million, since reduced to \$6.5 million, for his tactics in the long-running legal fight with his ex-wife.

ORGANIZATIONS IN THIS STORY

Us District Court For The District Of Puerto Rico

Amid Law Firm Silence on Trump, Hundreds of Big Law Partners Unite on LinkedIn



law.com/nationallawjournal/2025/04/11/amid-law-firm-silence-on-trump-hundreds-of-big-law-partners-unite-on-linkedin

Molly G Smith

April 11, 2025

This article first appeared on Law.com International Edition.

More than 350 Big Law partners have joined a group called Law Firm Partners United, intended as a forum for partners to speak up when their firms "choose to remain silent," particularly in response to President Donald Trump's recent actions against large law firms.

The group was established on LinkedIn by Goodwin Procter Silicon Valley partner Neel Chatterjee and indicates a growing appetite among corporate lawyers to resist Trump's recent onslaught against Big Law firms, as their employers cut deals with the administration to a chorus of criticism.

Its members have chosen to remain anonymous.

"There is a saying that democracy dies in silence," the group's bio reads. "The goal of this group is ensure that we protect democracy by not being silent."

It comes as major law firms, including Skadden, Arps, Slate, Meagher & Flom and Paul, Weiss, Rifkind, Wharton & Garrison strike deals with the Trump administration to avoid the kind of executive orders that have impacted firms such as Perkins Coie, which is fighting the order.

One insider told Law.com: "Ultimately, the group believes in providing partners with space to discuss what's happening, because they feel unable to do so inside their firms.

"There are multiple threads going at any one time," the person said. "It's still early, so we don't yet know what this will become."

In a recent post to LinkedIn, Chatterjee said: "LFPU is now over 300 partners strong. If we assume that each partner on average generates \$2 million per year, that would represent \$600 million in revenue and our group would be bigger than some firms in the Amlaw 100."

Access is restricted to partners from Am Law 200 firms, but the ripple effect has been immediate. The group has attracted attention from associates, retired partners, and even law firms offering support—including pro bono hours.

"It's already taken on a life of its own," commented a member.

Some partners are particularly frustrated by external commentary that they should simply leave firms that remain silent or do not align with their personal idea of what is right or wrong in this situation.

"The idea that we can just jump ship because we don't agree is ridiculous," the insider said. "We have ethical responsibilities to our clients, and staff who rely on us to show up. There would be conflicts, walking away isn't that simple and for partners it can take months."

Asked how involved they were in their firm's decision to stay quiet, the person said: "Not involved at all. Look at Kirkland [& Ellis] as an example—they have over 1,500 partners. You couldn't get that many people to agree on lunch, let alone this."

Chatterjee is a seasoned litigator with a track record of taking on high-stakes, increasingly contentious cases. His work includes civil rights litigation for same-sex couples navigating online adoption, as well as current cases involving ICE detainees, protest-related arrests, Silicon Valley homelessness, and protections for survivors of domestic violence.

LinkedIn has fast become the favored platform for lawyers to voice opinions, even when they are at odds with their employers.

Rachel Cohen, a former associate at Skadden, publicly resigned by posting her conditional notice letter on LinkedIn. In the post, she wrote: "This is not what I saw for my career or for my evening, but Paul Weiss' decision to cave to the Trump administration on DEI, representation and staffing has forced my hand. We do not have time. It is now or it is never, and if it is never, I will not continue to work here."

Cohen later testified before Democratic members of the Congressional Judiciary Committees on April 7, addressing concerns about threats to the rule of law in the U.S.

Goodwin did not immediately respond to a request for comment.

Editor's Note: This article first appeared on Law.com International Edition.

NOT FOR REPRINT

© 2025 ALM Global, LLC, All Rights Reserved. Request academic re-use from www.copyright.com. All other uses, submit a request to asset-and-logo-licensing@alm.com. For more information visit Asset & Logo Licensing.

You Might Like

April 09, 2025

Expected to 'Fight' Trump's Executive Order With a Lawsuit, Susman Godfrey Has Battled Critics Before

 [law.com/therecorder/2025/04/10/expected-to-fight-trumps-executive-order-with-a-lawsuit-susman-godfrey-has-battled-critics-before-](https://www.law.com/therecorder/2025/04/10/expected-to-fight-trumps-executive-order-with-a-lawsuit-susman-godfrey-has-battled-critics-before-)

Brenda Sapino Jeffreys

April 10, 2025

What You Need to Know

- Houston's Susman Godfrey was targeted by the Trump administration with an executive order the president signed on Wednesday.
- The firm has called it unconstitutional, and said it will "fight" it, presumably with litigation.
- The firm has taken a tough stance in the past when confronted with criticism of its diversity programs.

Susman Godfrey, the Houston-founded trial firm targeted on Wednesday with an executive order signed by President Donald Trump, has characterized the order as unconstitutional and vowed to "fight" the order, presumably by filing a lawsuit.

The Am Law 100 firm has a history of not backing down. When an affirmative action opponent threatened two years ago to sue the firm over diversity programs, Susman Godfrey responded by expanding them.

If it sues the government, Susman Godfrey would join three other prominent firms that have responded to executive orders against them with litigation—Perkins Coie, Jenner & Block and Wilmer Cutler Pickering Hale and Dorr. Federal judges have temporarily blocked parts of Trump's executive orders against the three firms, and each has asked a court for permanent relief.

The executive order against Susman Godfrey is similar to those against other firms, including the suspension of security clearances, the elimination of any government contracts with the firm and limiting the firm's access to government buildings. Government contractors are also required to disclose their work with the firm, and Susman's practices will be reviewed under Title VII to look for any racial bias.

"Anyone who knows Susman Godfrey knows we believe in the rule of law, and we take seriously our duty to uphold it," the firm said in a statement on Wednesday evening. "This principle guides us now. There is no question that we will fight this unconstitutional order."

The firm declined further comment on Thursday.

In the executive order, Trump said the firm "spearheads efforts to weaponize the American legal system and degrade the quality of American elections. Susman also funds groups that engage in dangerous efforts to undermine the effectiveness of the United States military through the injection of political and radical ideology, and it supports efforts to discriminate on the basis of race."

The order also said the firm "engages in unlawful discrimination, including discrimination on the basis of race. For example, Susman administers a program where it offers financial awards and employment opportunities only to 'students of color.'"

That may refer to the firm's Susman Godfrey Prize, which, according to the firm's website, is awarded annually to students of color who are finishing their first or second year at an eligible law school. Prize recipients receive \$4,000 and ongoing mentoring from partners and associates at the firm.

The firm has earlier taken a tough stance against criticism of its diversity efforts.

In 2023, instead of scaling back its commitment to diversity in response to a letter from affirmation action opponent Edward Blum suggesting the firm could be sued over its diversity programs, Susman Godfrey expanded the programs. The firm was reacting to a letter from the American Alliance on Equal Rights asking if the firm's 1L Diversity Fellowship and the Susman Godfrey Prize for Students of Color will be awarded in 2024 and if any changes will be made to the programs' criteria regarding the consideration of race, as well as what role race will play in the future of the programs.

The firm did make some changes to the programs while expanding them. For the Susman Godfrey Prize, which is offered to law students of color, the firm increased the number of awardees to 20 from 12 and increased the prize money to \$3,500 (now \$4,000). The prize no longer includes an offer for a summer clerkship, but it does continue to provide mentoring to the winners.

Also, the wording on the firm's website about the 1L Diversity Fellowship was clarified in 2023 to make it clear that any first-year law student who has overcome hardships or disadvantages may apply and explain that experience, including those who are members of a group that has been historically underrepresented in the legal profession.

In other areas outlined in Trump's order, the firm may not have been previously forced to respond to criticism. For instance, it is unclear in the order which groups the firm has funded that engage in efforts to "undermine the effectiveness" of the U.S. military, or what efforts the firm supports that discriminate on the basis of race.

The firm has taken on matters adverse to the Trump administration.

The firm handled the Dominion Voting Systems defamation suit against Fox News that settled on the eve of trial in 2023 with the defendant agreeing to pay \$787.5 million to Dominion, a Susman Godfrey client. The firm also represents Dominion in litigation against Newsmax, and on Wednesday a judge in Delaware ruled that the broadcaster aired false and defamatory statements about Dominion. That case is set for trial later this month.

Susman Godfrey represents Dominion in other litigation, including again Trump supporter Mike Lindell, founder of MyPillow.

Susman Godfrey was also among the more than 500 signatories on an amicus brief filed April 4 in support of Perkins Coie in its litigation against the federal government. Susman Godfrey also helped a group of 27 former senior government officials to file an amicus brief in support of Perkins Coie.

While some Big Law firms are fighting the executive orders at the courthouse, four others have come to agreements with the administration either after being hit with an executive order, or before to proactively avert an order. Those firms are Paul, Weiss, Rifkind, Wharton & Garrison; Willkie Farr & Gallagher; Skadden, Arps, Slate, Meagher & Flom; and Milbank.

NOT FOR REPRINT

© 2025 ALM Global, LLC, All Rights Reserved. Request academic re-use from www.copyright.com. All other uses, submit a request to asset-and-logo-licensing@alm.com. For more information visit Asset & Logo Licensing.

You Might Like

April 11, 2025

Fenwick Sees Revenue Gains Despite Dip in Fee Earners

By Samson Amore

🕒 4 minute read

Strong Demand Across Transactional Practices Led to 9.2% Revenue Boost at Foley & Lardner

🕒 5 minute read

April 09, 2025

Trump Talks Deal With Three Massive Law Firms as Others Fight

- Deals would bring White House pro bono pledges to at least \$640 million
- Litigation firm Susman Godfrey vows to join firms fighting orders

At least three of the world's largest law firms are discussing a joint deal with the Trump administration to avoid punitive executive orders.

Kirkland & Ellis, Latham & Watkins, and Simpson Thacher & Bartlett would commit at least \$300 million combined in pro bono legal services to causes advocated by Trump under a proposed agreement with the White House, according to two sources familiar with the situation. The agreement, which the firms want to also resolve investigations of their diversity programs for possible discrimination, would bring the total amount of free services pledged to at least \$640 million.

"We have a lot of law firms that have paid me a lot of money," Trump said Thursday in a Cabinet meeting. "Now we have the final four or five," he said, suggesting other firms are at the table.

The president wants lawyers at firms to work on issues related to tariffs, he said. He also plans to use the firms to help with an effort to ramp up coal mining across the country, he said April 8.

Representatives for Kirkland, Latham, and Simpson Thacher did not immediately respond to comment requests.

The president has issued a string of executive orders targeting firms for their ties to his perceived enemies and work on causes he opposes. The orders—against Perkins Coie, Paul Weiss, WilmerHale, Jenner & Block, and Susman Godfrey—threaten to revoke lawyers' security clearances, restrict their access to federal buildings, and cancel their clients' government contracts. Three of those firms won court rulings temporarily blocking the orders, while Susman Godfrey said it also plans to fight the order against it.

The president withdrew an order against Paul Weiss after the Wall Street firm struck a deal, including \$40 million in pro bono work. Skadden, Milbank LLP, and Willkie Farr later reached preemptive deals, committing at least \$100 million apiece.

The country's largest law firms mostly declined to sign an amicus brief backing Perkins Coie in its suit against Trump.

To contact the reporter on this story: Justin Henry in Washington DC at jhenry@bloombergindustry.com

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

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

JPMorgan Analyst's 'Redacted' Report Spells Out Fear of Trump

A JPMorgan Chase & Co. strategist whom Jamie Dimon has lauded as “one of our firm’s great thinkers” is taking an unusual approach to highlight fears on Wall Street over speaking out against the Trump administration.

On Monday, before Donald Trump pivoted on tariffs, **Michael Cembalest** ended a 45-minute client presentation about the levies with a caveat. After calling the president’s plan a “sledgehammer, brute force” approach, the JPMorgan analyst said he withheld certain material with his firm and colleagues in mind.

His remarks built on a report from last week in which he voluntarily blacked out several passages. He titled it *Redacted: Straight talk from the CEO front lines on Liberation Day*, invoking Trump’s branding for the day the tariffs were announced.

That said, I don't think tariffs are the only issue causing US CEO business confidence to decline. I believe the following issues are also negatively impacting CEO confidence and capital spending plans on the front lines, so let's talk about them frankly. Some of these items may be partially redacted due to [REDACTED]:

- The White House issued a series of executive orders targeting [REDACTED] solely due to prior employees of these firms [REDACTED]. The orders call for a review to determine if the [REDACTED] and employees of the firm should be stripped, and a review of federal contracts [REDACTED]. The orders also seek to limit [REDACTED] hiring [REDACTED], their access [REDACTED] and [REDACTED] with [REDACTED] personnel
- Trump has stated that [REDACTED] engage in "grossly unethical misconduct" and issued a memorandum to the attorney general and secretary of homeland security, directing them to seek sanctions and file ethics complaints against [REDACTED]
- The [REDACTED] issued condemnations and called for congressional action. In response, the Administration began prohibiting [REDACTED] and is threatening its [REDACTED]. The WSJ wrote that "Mr. Trump's decision to use government power to punish [REDACTED] going back to John Adams and the Founders"
- Some targeted [REDACTED] firms have [REDACTED], creating the perception for CEOs that there is a [REDACTED] system in Washington. [REDACTED] agreed to end its [REDACTED], acknowledged [REDACTED] and agreed to spend \$40 million [REDACTED] causes that [REDACTED] supports
- The new chair of the [REDACTED] has been writing directly to the largest media [REDACTED] CEOs, accusing them of eroding [REDACTED], threatening [REDACTED] and challenging their [REDACTED]. Prior [REDACTED] commissioners under Bush have expressed alarm at what's going on, claiming that the new chair is already [REDACTED]. Last year, the President suggested that broadcasters [REDACTED] should lose their licenses
- The Administration warned the CEOs of [REDACTED] that the White House would not look favorably on them if they raised prices in the wake of tariff increases, which some perceived [REDACTED]; the President now states that he does not care if [REDACTED] prices increase

The redacted report by JPMorgan's Michael Cembalest regarding CEO sentiment following "Liberation Day."

Source: JPMorgan Chase & Co.

"This is the first time I've ever had to do a call where I had to think about the things that I was saying, not just in terms of how they reflect our views on markets and economics," Cembalest said in his presentation, adding that he had never before taken such considerations into account in a career spanning more than 30 years.

"People are being held accountable for their views and the things that they say in ways that they probably shouldn't be," he said. "So I've said most of what I wanted to say on this call — but not all of it."

While Trump has since paused much of his audacious tariff plan, Cembalest's points on self-censorship are still reverberating on Wall Street. They raise a question that's becoming more relevant by the week: How candid can one be about the administration at a time when its policies are fueling widespread turmoil in markets? Even this week, billionaire Trump supporters concerned about his tariffs padded their criticism with praise.

"Michael covered the goals, opportunities and risks of the administration's policies," a JPMorgan representative said in a statement. Cembalest, who is chairman of market and investment strategy for the bank's asset and wealth management division, declined to comment. Both his report and a video of his talk are on the bank's website.

'Anticipatory Obedience'

Cembalest didn't specifically reference Trump in the closing remarks of his presentation. But they were made against an unmistakable backdrop. The administration has targeted large law firms, universities and media outlets that it views as adversarial to its ideals and objectives. In doing so, it has upended long-held norms around the US government's relationship to those institutions.

Nadine Strossen, who was president of the American Civil Liberties Union from 1991 to 2008, warned about a climate of "anticipatory obedience."

"You cannot have a democratic form of government without accurate information and the opportunity to debate and discuss policy," she said. She said these questions aren't unique to Trump, and apply to the Biden administration's approach with scientists in the Covid-19 pandemic too.

"Every administration is going to use every tool it has to push its agenda," Strossen said.

Trump's team is seeking to "eliminate waste, fraud, and abuse in the federal government. This includes law firms and universities that are in violation of federal law," a White House spokesperson said in a statement.

Corporate Reticence

Big corporations and trade groups appear particularly cautious about rankling the administration. At the Retail Industry Leaders Association — a group of firms including Target Corp. and Home Depot Inc. — the general counsel paused an effort to bring a lawsuit against the administration on tariffs, even though the group found it would have a good chance of succeeding on merit.

Major law firms Paul Weiss, Skadden Arps and Willkie Farr have agreed to provide tens of millions of dollars in pro bono work aligned with priorities of the administration to avert Trump's executive actions targeting their industry.

Banks are also under scrutiny. In March, the Trump Organization — now run by the president's sons, **Eric Trump** and **Donald Trump Jr.** — sued Capital One Financial Corp. over allegations of "de-banking" following the Jan. 6, 2021, riots in Washington. President Trump also went after Bank of America Corp. CEO **Brian Moynihan** in a surprise broadside at the World Economic Forum in Davos earlier this year.

Read More: 'Were You Lying?': The Great CEO Flip-Flop Over Trump Hits Davos

That means comments in public forums by bank employees — used to adhering to guardrails put up by their compliance departments, public relations teams or layers of managers — are being closely watched.

Mike Mayo, a prominent banking analyst at Wells Fargo & Co., has a personal take on what one confronts when being too outspoken.

"I paid the price a couple of times" for being too blunt, said Mayo, who added he hadn't seen Cembalest's report. "The risk of backlash is always there — whether it's from individuals, corporates or the government."

On Wall Street, Cembalest is a widely followed senior analyst, known for refusing to invest with funds tied to **Bernie Madoff** because his group couldn't reverse-engineer how the financier made money. A key associate of JPMorgan's billionaire whisperer, **Mary Erdoes**, he doesn't shy away from controversial takes.

Still, Cembalest highlighted in his Monday presentation that he wanted to include criticism from a wide-ranging group of voices about the tariff-calculation formula — but he said he was told not to do so.

"I had a bunch of their pithy and critical responses," he said on the webinar. "Our compliance people didn't want me to include them because they felt they were one-sidedly negative."

Dick Bove, the now-retired analyst notorious for his blunt commentary, says that the kind of pressure Cembalest pointed out is real and in some ways unprecedented.

"A guy once called me after I published one of my reports and said if he saw me walking down the street in New York, he will run me over with a car," said Bove, who retired from Odeon Capital last year after a more than five-decade career at various brokerages.

"People always come after you," he said. "But I never imagined it would reach the point where you worry about your own government. But I do believe it has reached that level."

(An AI summary previously at the top of this story was removed because of misquotations.)

--With assistance from **Hadriana Lowenkron**.

To contact the reporters on this story:

Annie Massa in New York at amassa12@bloomberg.net;

Sridhar Natarajan in New York at snatarajan15@bloomberg.net;

Hannah Levitt in New York at hlevitt@bloomberg.net

To contact the editors responsible for this story:

Brian Chappatta at bchappatta1@bloomberg.net

Pratish Narayanan

© 2025 Bloomberg L.P. All rights reserved. Used with permission.

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Where Were Big Tech's CEOs on Tariffs?

 [wired.com/story/plaintext-tech-ceos-silent-trump-tariffs](https://www.wired.com/story/plaintext-tech-ceos-silent-trump-tariffs)

Lauren Goode

April 11, 2025



If you logged on to X or Bluesky this past week, you were likely swept up in the onslaught of posts about Trump's reciprocal tariffs and the plunging stock market. And, if you follow the tech industry as closely as I do, you probably also noticed who *wasn't* posting about the tariffs: many of the same tech founders and CEOs who flanked Trump on Inauguration Day in January. Jeff Bezos, Tim Cook, Sundar Pichai, and Mark Zuckerberg have kept mum on the topic of tariffs (although both Pichai and Zuckerberg have continued posting about AI). Meanwhile, Elon Musk—well, we'll get to that.

The silence was deafening, considering that the “magnificent seven” collectively lost trillions of dollars in market value following Trump's tariff announcement last week. But there's a cold logic behind these tech leaders holding their tongues in public—particularly for those who sell hardware. The US has become a highly volatile nation where the whims of the president must be taken into consideration before using any political chip or making a public statement, especially in an environment where that statement could be irrelevant an hour later.

Plaintext Newsletter by Steven Levy

WIRED editor at large Steven Levy draws on his unmatched list of contacts to provide the long view on tech. Delivered on Fridays.

By signing up, you agree to our user agreement (including class action waiver and arbitration provisions), and acknowledge our privacy policy.

“The sand doesn't stop shifting long enough to make a cogent statement,” one top communications executive, who has worked closely with two Big Tech CEOs, tells me.

Professor Answers Supply Chain Questions

Tech CEOs aren't *actually* staying silent. They're simply lobbying behind the scenes on their own behalf. Niki Christoff, a Washington, DC, political strategist and former aide to Senator John McCain during his 2008 presidential campaign, says most of the strategizing around trade rules—and conversations with Trump's staff—are happening through back channels right now. "There's a lot of personal dialing and trying to get deals done," she claims.

During Trump's first term, Cook carefully cultivated a direct relationship with the president in order to lobby him on issues like trade and immigration. I have a hard time imagining Cook isn't using that direct line now. Nvidia chief executive Jensen Huang, who did not attend the inauguration ceremony, reportedly went to a \$1-million-a-head dinner at Mar-a-Lago last week. Shortly afterward, the White House walked back plans to implement export controls on some chips that Nvidia sells to China.

Private back channels allow each tech leader to lobby for specific tariff exemptions. The kind of exemptions that would benefit Nvidia, such as more lenient policies on semiconductor imports for GPUs, differ from what Apple might be angling for, considering the company's supply chain complexity and its reliance on China. "Broadly opposing tariffs is not useful if business leaders can get exemptions on their own products," Christoff points out.

At the same time tech CEOs are letting trade organizations, like Business Roundtable, which represents a number of big tech firms including Alphabet and Amazon, do some of their lobbying for them, sources tell WIRED. Business Roundtable CEO Joshua Bolten put out a statement urging the administration to "swiftly reach agreements" with its trading partners and to implement "reasonable exemptions." The CEOs have also been able to hang back while bankers like JP Morgan Chase CEO Jamie Dimon make public assertions about the lasting negative impact of tariffs on the economy, and while billionaire hedge funder Bill Ackman keeps tweeting through it. (And really, what tech CEO wants to be part of a roundup story that also includes the market-cratering tweets of an anonymous X user named "Walter Bloomberg"?)

There have been a few outliers. Amazon CEO Andy Jassy said he believes Amazon's vast network of third-party sellers might end up passing the cost of tariffs on to consumers. Last week Microsoft CEO Satya Nadella sat alongside Bill Gates and former Microsoft CEO Steve Ballmer for an interview with CNBC's Andrew Ross Sorkin, who asked about tariffs. Ballmer told Sorkin he "took just enough economics in college to [know that] tariffs are actually going to bring some turmoil" and that the "disruption is very hard on people."

Nadella was more circumspect and took Sorkin's probing as an opportunity to tout artificial intelligence. "In the short term, I look at it and say, whatever happens, whatever readjustment happens, we are for the first time really supplying what is the essential, nondurable commodity called intelligence," Nadella said. He went on to say that his second

consideration right now is how much compute power the world will need in 25 to 50 years. “I want to keep those two thoughts and then take one step at a time, and then whatever are the geopolitical or economic shifts, we will adjust to it.”

If that doesn't work out, Nadella has a promising second career in dodgeball.

Among Trump's inauguration crowd, Musk is now the exception. He, too, has made direct appeals to Trump to drop the tariffs but has also loudly called Trump's top trade adviser Peter Navarro a “moron” and “dumber than a sack of bricks.” Musk later apologized, adding that the comparison “was so unfair to bricks.” This was after Navarro called Musk a “car assembler”—not a car manufacturer—whose business relies heavily on cheap parts sourced outside of the US. Musk has maintained that Tesla sells the “most American-made cars.”

At least Trump's buddy-in-chief is willing to stick his neck out, even if the other CEOs aren't. Except, Musk's remarks on tariffs are so obviously self-serving. I'm going to go out on a limb and guess that he doesn't care about the health of the average citizen's retirement account, considering how ruthlessly he's championing the firing of federal employees and the dismantling of government agencies. If Musk's not tiptoeing around the president's volatility, perhaps it's because he's a purveyor of his own unique brand of chaos.

Not that long ago, Big Tech leaders might have taken to the public square to issue statements about major social and political issues that affected their employees and the public at large. But these remarks were mostly performative, and we should never have pretended, or allowed ourselves to be convinced, otherwise. Behind the curtain, they were always working the gears of a brutally capitalistic machine. Now, for them, public silence is golden, and private lobbying is worth the world's stores in gold, especially when faced with an injuriously erratic president.

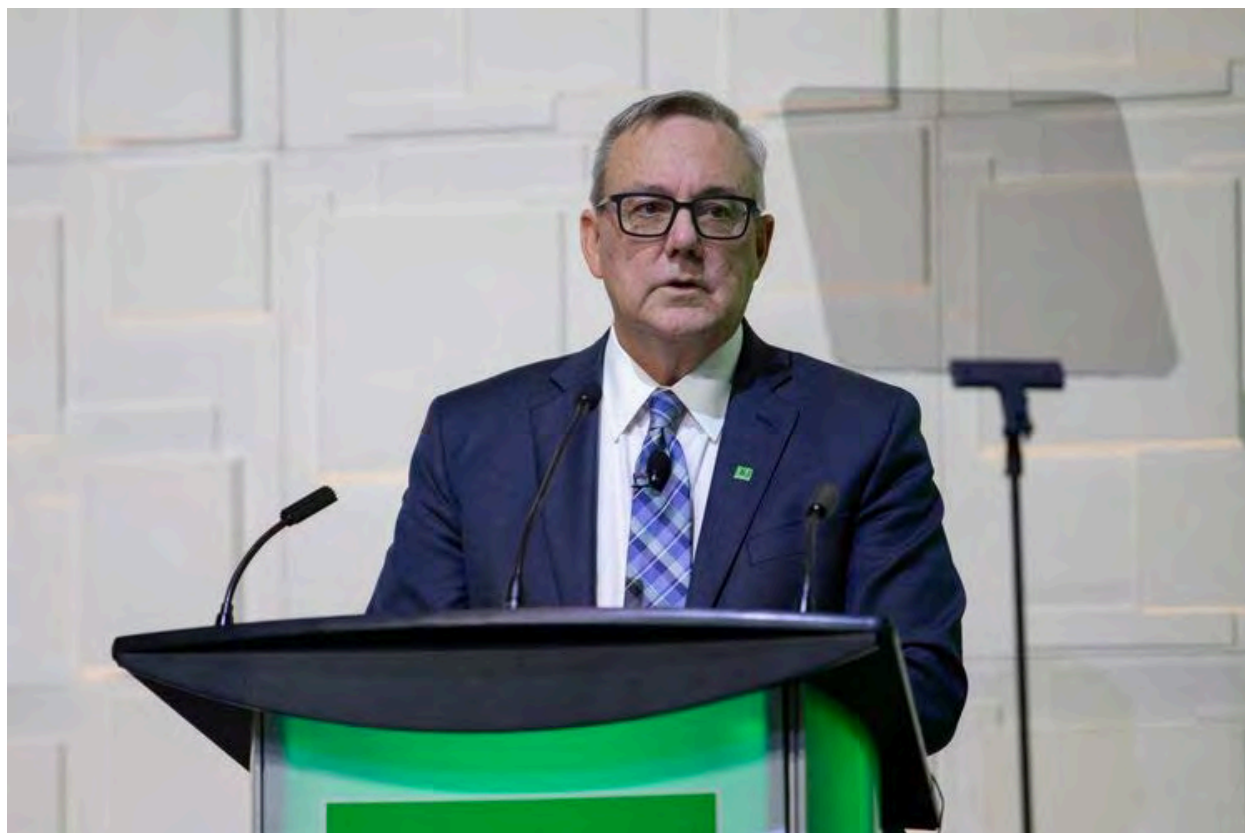


TD's Laundering Settlement 'Darkest Day' for Bank, Chair Says

Toronto-Dominion Bank experienced the "darkest day" in its 170-year history when it reached a \$3.1 billion settlement over the company's failure to catch and stop money laundering at numerous US branches, board Chair **Alan MacGibbon** said Thursday.

MacGibbon's comments came during the bank's annual general meeting in Toronto, which marked the first time executives and directors have faced shareholders in person since the October settlement with US law enforcement and regulators.

"I apologize to all investors," MacGibbon said. The settlements were "extraordinarily painful" for the bank, which has roots dating back to 1855, and Toronto-Dominion is committed to change, he said. MacGibbon cited renewal at the board level, with five directors deciding not to stand for reelection at Thursday's meeting, and other steps aimed at taking accountability.



Alan MacGibbon speaks during Toronto-Dominion Bank's annual general meeting in Toronto on April 10. Photographer: Chloe Ellingson/Bloomberg

The criminal and civil resolutions stemmed from sweeping investigations into multiple criminal money-laundering rings using Toronto-Dominion to launder hundreds of millions of dollars. It became the first bank in the US to plead guilty to conspiracy to commit money-laundering and, on top of the fines, it faces an asset cap on growth in its American retail-banking division.

The company's annual meeting lasted three hours and was dominated by investor questions about the money-laundering scandal, with one shareholder attracting a round of applause after a series of questions about how the events unfolded and the bank's response.

MacGibbon himself has said he'll step down as chair by the end of this year. He's held the role for just over a year, but has been a board member since 2014.



Raymond Chun speaks during Toronto-Dominion Bank's annual general meeting in Toronto on April 10.
Photographer: Chloe Ellingson/Bloomberg

In the wake of changes at the board and after discussions with the bank, shareholder group Investors for Paris Compliance withdrew an earlier proposal calling for an outside review of board governance and the bank's criteria for choosing directors.

It was the first annual meeting for Chief Executive Officer **Raymond Chun**, who took the helm at the bank in February, almost three months earlier than planned. Former CEO Bharat Masrani remains with TD as an adviser through July.

Chun called the money-laundering failures “unacceptable” and said the bank has been decisive in its response. “We are making consistent progress every day, with more work ahead.”

Read More: The Criminal Money Laundering Scams That Cost TD Bank Billions

To contact the reporter on this story:

Christine Dobby in Toronto at cdobby1@bloomberg.net

To contact the editors responsible for this story:

Sally Bakewell at sbakewell1@bloomberg.net;

Derek Decloet at ddecloet@bloomberg.net

April 10, 2025, 4:07 AM PDT

Global Rule Change Hikes Audit Checks on Risk of Firm Collapse



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

Binance A Crypto Laundering 'Get-Away Driver,' Suit Says

By **Greg Lamm**

Law360 (April 10, 2025, 6:24 PM EDT) -- A group of cryptocurrency owners who said they were targeted by online thieves and ransomware have filed a proposed class action alleging the cryptocurrency exchange Binance ran a loose ship that provided the cybercriminals with a platform to launder and hide the stolen property.

The plaintiffs allege Binance Holdings Ltd. lacked an effective anti-money laundering program and disregarded "know your customer" rules, which allegedly turned Binance.com into "a magnet and hub for criminals," according to a **complaint** filed on Wednesday in federal court in Washington.

"Instead of preventing bad actors from using Binance.com as required under U.S. law, defendants took steps to ensure bad actors had access to the Binance Crypto-Wash Enterprise by turning a blind eye to the wide variety of money and cryptocurrency laundering they knowingly facilitated through Binance.com," it added.

The complaint alleges violations of the Racketeer Influenced and Corrupt Organizations Act, saying Binance became a critical part of criminal efforts to launder crypto by making the stolen digital assets untraceable.

"Binance.com became a preferred choice as the 'get-away driver' for a large number of bad actors," the complaint alleges.

The complaint names Binance and founder and former CEO Changpeng Zhao as defendants.

Zhao **was sentenced** in April 2024 to four months in prison for his failure to implement an effective anti-money laundering program at the global cryptocurrency exchange. As part of his deal with the government, Zhao agreed to step down from Binance.

In November 2023, **Binance agreed** to \$4.3 billion in fines and pled guilty to violating the Bank Secrecy Act and failing to register Binance.com as a money-transmitting business.

The company said it was complying with the federally required "know your customer" measure and had put restrictions on certain U.S. accounts. Binance also agreed to enhance its compliance program and appoint an independent compliance monitor to ensure it follows the terms of the plea agreement it struck with the government.

In Thursday's complaint, the plaintiffs — led by New York resident Charles Baratta and four other crypto owners from Ohio, Massachusetts and California — said they did not have accounts with Binance.

The plaintiffs said they were victims of internet thieves who duped them out of cryptocurrencies worth hundreds of thousands of dollars and then turned to Binance to seamlessly transfer the stolen crypto around the world without a trace.

"As a result of defendants' wrongful conduct alleged herein, cryptocurrency theft victims in the United States lost the ability to track and potentially recover their stolen cryptocurrency assets," the complaint alleges.

The plaintiffs seek to certify a nationwide class of people who have not recovered all their stolen cryptocurrency that was allegedly transferred to Binance.com accounts. The plaintiffs also want to certify New York, Ohio, Massachusetts and California subclasses.

The plaintiffs allege violations of the RICO Act and also bring claims of conversion and aiding and abetting conversion, according to the complaint. The plaintiffs also allege violations of California's Unfair Competition Law and the Massachusetts Consumer Protection Act.

The plaintiffs seek an unspecified amount of damages, including treble monetary damages, and legal costs.

Representatives for the plaintiffs and Binance did not immediately respond on Thursday to requests for comment.

Baratta and the other plaintiffs are represented by Lynn Lincoln Sarko, Derek W. Loeser and Chris N. Ryder of Keller Rohrback LLP, Samuel H. Rudman, Evan J. Kaufman, Jonathan A. Ohlmann and Eric I. Niehaus of Robbins Geller Rudman & Dowd LLP, and David C. Silver and Jason S. Miller of Silver Miller.

Counsel information for Binance and the other defendants was not available.

The case is Charles Baratta et al. v. Binance Holdings Ltd. et al., case number 2:25-cv-00639, in the U.S. District Court for the Western District of Washington.

--Editing by Philip Shea.



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

Meta Case Brings Customer-Facing Statements Issue To Fore

By **Samuel Groner** (April 10, 2025, 4:27 PM EDT)

Much has been written about Facebook Inc. v. Amalgamated Bank, the securities litigation against Meta Platforms Inc. arising from the Cambridge Analytica user data scandal and the U.S. Supreme Court's decision to **accept** certiorari and then, after oral argument, **dismiss** it as improvidently granted in November.[1]

Now that the case has returned to the U.S. District Court for the Northern District of California and is moving forward, it is worth revisiting an issue that arose in that case that has received less attention than the certiorari issue but may be just as significant.



Samuel Groner

Specifically, what types of statements are not made "in connection with the purchase or sale of any security" and therefore are not covered by Section 10(b) of the Securities Exchange Act?[2] U.S. Securities and Exchange Commission Rule 10b-5 parrots Section 10(b) in stating that it is unlawful for any person to make an untrue statement of material fact in connection with the purchase or sale of any security, but, like Section 10(b), does not provide further guidance about whether particular types of statements satisfy that requirement.[3]

In the Facebook case, the district court initially analyzed whether statements in Facebook's privacy policies were potentially actionable under Section 10(b) and Rule 10b-5, but, as described below, the same issue arises in relation to other customer-directed statements as well.

The Facebook Decision

When a company or its executives make a statement directly to shareholders — such as during an earnings call, or in SEC filings like Forms 8-K, 10-Q or 10-K — there is typically little debate about whether that statement was made in connection with the purchase or sale of any security. How about, though, when the statement is directed to the company's customers rather than to its shareholders?

That was one of the issues that the Northern District of California faced in the Facebook case. The plaintiffs alleged not only that Facebook's risk disclosures in its SEC filings were false or misleading, but also that statements contained in Facebook's privacy policies, which govern Facebook's relations with its users, were materially false or misleading.[4]

In evaluating whether a privacy policy statement can be actionable under Section 10(b) and Rule 10b-5(b), the district court examined whether privacy policies "are the types of documents that a reasonable investor would look at while making purchasing decisions." [5]

The district court, in its 2019 decision in the case, **found** that they are, analogizing them to detailed drug advertisements in sophisticated medical journals — which the U.S. Court of Appeals for the Second Circuit found to be actionable in 1998 in *In re: Carter-Wallace Inc. Securities Litigation*[6] — and distinguishing them from "simple" and "passive" advertisements that the U.S. Court of Appeals for the Ninth Circuit in 2017 found to be nonactionable in *In re: Lifelock Inc. Securities Litigation*. [7]

Carter-Wallace and Lifelock

In *Carter-Wallace*, the Second Circuit held that it was possible that detailed drug ads using technical language and published in sophisticated medical journals could constitute statements made in connection with a securities transaction, because ads of that nature explaining the attributes of a new drug could be "highly relevant" to those evaluating the stock of the company marketing the drug.[8]

The court explained that the fact that the information was found in an ad in a specialized medical journal, rather than in a publication specifically addressed to market participants, was not relevant because the journal in question was used by analysts studying the prospects of drug companies. The court further explained that an analyst might even find the ad more informative than a corresponding nontechnical statement to financial market professionals.[9]

The decisions by the U.S. District Court for the District of Arizona and the Ninth Circuit in the *Lifelock* case are particularly instructive on this issue.

In *Lifelock*, the plaintiffs alleged that the defendants' advertisements about the capabilities of LifeLock's customer alert and credit monitoring services were materially false or misleading in violation of Rule 10b-5(b). The district court **dismissed** the complaint in 2015, holding that those challenged statements did not meet the "in connection with" element, and contrasting the nonactionable advertisements with a company's annual reports, press releases and investment prospectuses, which are the typical sources of statements made "in a manner reasonably calculated to influence the investing public." [10]

The Ninth Circuit agreed and **affirmed** in 2017, explaining that one of the challenged advertisements was merely a descriptive chart indicating LifeLock's "Types of Protection," and holding that the idea that a chart of that nature had any potential to influence investors was "facetious." [11]

Other Relevant Case Law

A number of other district courts have reached similar conclusions to those reached by the district and appellate courts in the *Lifelock* case. For example, in *Howard v. Arconic Inc.*, the U.S. District Court for the Western District of Pennsylvania was faced with whether statements in customer brochures were made in connection with the purchase or sale of securities.[12]

The *Arconic* case arose from the tragic fire at the Grenfell Tower in London in 2017. One of Arconic's architectural products formed part of the tower's exterior cladding system. The plaintiffs claimed that Arconic violated the federal securities laws by failing to disclose alleged sales of the product for unsafe uses, and that one of the places where Arconic failed to make those disclosures was in customer brochures that it disseminated through its website.

The district court **dismissed** the claims in 2019, ruling that the plaintiffs had not adequately pled that the statements in Arconic's product brochures were made in connection with the sale of securities, and therefore that the statements could not form the basis for Rule 10b-5 liability.

The court agreed with Arconic's argument that it was implausible that statements in "customer-facing publications" like the ones at issue "would have made a significant difference to any reasonable investor's decisionmaking." That is because:

1. "The goal of the brochures [was] to persuade a customer to purchase Arconic's products, not its stocks";
2. The information in Arconic's brochures was not directly communicated to investors nor designed to be directly communicated to investors; and
3. Market professionals, in evaluating Arconic's stock, would not plausibly have used the brochures in the same way they would have used a detailed advertisement in a technical journal or an investment research report.[13]

Similarly, in *Lindblom v. Mobile Telecommunications Technologies Corp.*, the U.S. District Court for the District of Columbia held in 1997 that statements in press releases that described how a two-way paging system was supposed to work included where the service was available and sought to explain why "it ought to be of value to business people" were not made in connection with the purchase or

sale of any security, because the statements did not mention any financial data or relate the product to the company's profitability.[14]

As the court explained, the company "was not selling stock. It was selling or attempting to sell a paging system that was not performing to expectations. If purchasers of any commodity were entitled to complain of having been deceived by [the company]'s press releases it would be customers who subscribed to its flawed paging system," not shareholders.[15]

Takeaways

These cases suggest that companies should be aware that courts may determine that consumer-facing communications may be within the scope of the federal securities laws if they are the sorts of communications that investors, despite not being the intended audience, may nevertheless rely on due to the nature or substance of the communication.

For example, courts may rule that advertisements in technical or scientific journals containing information that may affect the company's potential or actual profitability may be more likely to have some connection to the purchase or sale of securities than advertisements in a newspaper describing a product's capabilities.

Among the potentially relevant factors for public companies to consider when evaluating a claim that a consumer-facing statement or other statement outside of typical investor-facing channels was made in connection with the purchase or sale of securities include the following:

- Who was the intended audience?
- What was the goal or objective of the statement?
- Was the statement directly communicated to investors?
- Do market professionals typically review the type of document containing the statement?
- How detailed is the information in the statement?
- How sophisticated is the publication in which the statement appears?
- Does the statement provide financial data or relate to the company's profitability?

These and other cases also suggest that securities plaintiffs may attempt to assert that statements in the following forums were made in connection with the purchase or sale of securities:

- Advertisements;
- E-commerce portions of a company's website;
- Privacy statements;
- Cybersecurity policies;
- Customer brochures or other customer-facing publications;
- Press releases describing a new product;
- Statements to consumers;

- Statements on product packaging;
- Statements to Congress, government agencies or regulators;
- A speech or commencement address — or any other public remarks, no matter the context — by a company's CEO; and
- Statements on X, formerly known as Twitter, or other social media, even if not directed to investors.

Conclusion

As the Facebook case proceeds, it will be interesting to see whether the plaintiffs continue to pursue allegations based on statements in Facebook's privacy policies and, if so, whether they can develop evidence to substantiate those allegations.

More broadly, until there is greater clarity in this area of the law, public companies may want to err on the side of caution and assume that statements in advertisements, brochures and other consumer-facing materials may be challenged by plaintiffs lawyers as alleged misstatements in connection with the purchase or sale of securities.

Samuel P. Groner is a litigation partner at Fried, Frank, Harris Shriver & Jacobson LLP.

Fried Frank law clerk Natasha Menon contributed to this article.

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] *Facebook Inc. v. Amalgamated Bank* , 604 U.S. 4, 4 (2024).

[2] 15 U.S.C. § 78j(b).

[3] 17 C.F.R. § 240.10b-5 (2014).

[4] *In re: Facebook Inc. Sec. Litig.* , 405 F. Supp. 3d 809, 822 (N.D. Cal. 2019).

[5] *Id.* at 834.

[6] *In re: Carter-Wallace Inc. Sec. Litig.* , 150 F.3d 153, 154 (2d Cir. 1998).

[7] *In re: Lifelock, Inc. Sec. Litig.* , 690 F. App'x 947, 953-54 (9th Cir. 2017).

[8] *In re: Carter-Wallace* , 150 F.3d at 156.

[9] *Id.* See also *In re: Apple Inc. Sec. Litig.* , 2020 U.S. Dist. LEXIS 96953 at *51 (N.D. Cal. June 2, 2020) (declining to dismiss claims based on statements in letter to Congress because the court determined that it was "plausible that 'reasonable investors would base their investment decisions' on Apple's representations to Congress").

[10] *Bien v. LifeLock Inc.* , 2015 U.S. Dist. LEXIS 196120 at *33 (D. Ariz. July 21, 2015).

[11] In re LifeLock, 690 F. App'x at 953.

[12] **Howard v. Arconic Inc.** , 395 F. Supp. 3d 516, 538 (W.D. Pa. 2019).

[13] Id. at 538-41.

[14] **Lindblom v. Mobile Telecommunications Techs. Corp.** , 985 F. Supp. 161, 164 (D.D.C. 1997).

[15] Id. See also **Hemming v. Alfin Fragrances, Inc.** , 690 F. Supp. 239, 244-45 (S.D.N.Y. 1988) (statements about product's qualities as a skin care treatment in a New York Times Magazine advertisement, on the packaging of the product, and in a brochure and pamphlet geared to consumers of the product were not made "in connection with" the purchase or sale of a security).

All Content © 2003-2025, Portfolio Media, Inc.



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

Purdue Cleared To Start Ch. 11 Claims Processing Early

By **Vince Sullivan**

Law360 (April 10, 2025, 2:45 PM EDT) -- A New York bankruptcy judge on Thursday approved Purdue Pharma's request to appoint claims administrators and begin processing the tens of thousands of claims against the drugmaker, reasoning that doing so ahead of plan confirmation would enable the debtor to make faster distributions to creditors.

U.S. Bankruptcy Judge Sean H. Lane said during a virtual hearing that allowing Purdue to get a head start on the arduous task of processing and analyzing the claims of personal injury creditors and third-party payor claimants would get most payments out on the effective date of the plan.

"I think this is an appropriate motion to move the case forward," Judge Lane told the parties.

Purdue filed the motion to appoint the administrators and impose claim submission and objection procedures alongside the official committee of unsecured creditors. An attorney for the debtor, Eli Vonnegut of Davis Polk & Wardwell LLP, said Thursday the rights of creditors would not be impacted by approval of the request.

"The goal of this motion is very simple," Vonnegut told the court. "We're trying to set the debtor up to get distributions out the door and into the hands of creditors as soon as possible after we present and confirm our modified plan."

The company proposed a Chapter 11 plan last month that was premised on a \$7.4 billion settlement with members of the Sackler family who once owned Purdue. A hearing to consider approving the plan disclosure statement is scheduled for late May, with plan confirmation slated for September.

In the meantime, with the court's approval of the motion Thursday, Purdue can begin processing personal injury claims and third-party payor claims by sending out relevant notices of the procedures to creditors. Those creditors will be asked to submit supporting evidence for their claims to the administrators, and the administrators will assess the validity of the claims and recommend to the debtor which to oppose.

Purdue will then file omnibus objections to claims that it feels are not adequately supported and should be disallowed, while the affected creditors will have the opportunity to respond to those challenges.

While some pro se individual claimants had filed responses to the motion, Vonnegut said the relief the debtor sought in no way implicated how the claims trusts would be administered, as those provisions will be considered in the context of plan confirmation.

J. Christopher Shore of White & Case LLP, who is representing an ad hoc group of personal injury claimants, told the court his clients supported the motion because it would set up most creditors to receive distributions as close to the plan effective date as possible and provide information to the debtor about how to fund claim reserves under the plan.

Purdue filed for bankruptcy in September 2019 and obtained confirmation of a Chapter 11 plan two years later that was premised on a settlement with the Sackler family. Under that proposal, the Sacklers were set to contribute \$4.5 billion into an opioid settlement trust in exchange for releases of claims against them held by third parties. The court confirmed the plan and releases, despite some

creditors opposing the granting of the releases to nondebtors.

After the U.S. Supreme Court nixed the plan by finding nonconsensual releases of third-party claims against nondebtors are not permitted under the Bankruptcy Code, Purdue went back to the mediation table with the Sacklers and creditor groups. The \$7.4 billion deal emerged, in which the Sackler family agreed to pay \$6.5 billion into a settlement trust while Purdue will contribute \$900 million.

The plan that formed around the settlement includes opt-in releases, through which creditors will have to decide to grant releases to the Sacklers. If they choose not to opt in, they will be free to pursue claims against the Sacklers in the tort system but will only be able to share in the \$900 million pot provided by Purdue.

Purdue is represented by Marshall S. Huebner, Benjamin S. Kaminetzky, Eli J. Vonnegut and Christopher S. Robertson of Davis Polk & Wardwell LLP.

The official committee of unsecured creditors is represented by Arik Preis, Mitchell Hurley, Sara L. Brauner and Theodore James Salwen of Akin Gump Strauss Hauer & Feld LLP.

The ad hoc group of personal injury claimants is represented by J. Christopher Shore, Michele J. Meises and Thomas E. Lauria of White & Case LLP and Edward E. Neiger and Jennifer A. Christian of ASK LLP.

The case is In re: Purdue Pharma LP, case number 7:19-bk-23649, in the U.S. Bankruptcy Court for the Southern District of New York.

--Editing by Covey Son.

All Content © 2003-2025, Portfolio Media, Inc.



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

Ready Capital Brass Face Suit Over Real Estate Loan Losses

By **Sydney Price**

Law360 (April 10, 2025, 4:37 PM EDT) -- Executives and directors of real estate finance company Ready Capital Corp. were hit with a shareholder derivative suit alleging they failed to disclose that the company's nonperforming commercial real estate loans were damaging its bottom line and would force it to take "aggressive action" to preserve its finances.

According to the complaint filed by shareholder Luc Vancampenhout on Wednesday, Ready Capital, which originates and services lower-to-middle-market loans, announced in March that it took "decisive" measures to stabilize its balance sheet going forward by fully reserving all nonperforming loans in its commercial real estate portfolio, causing the company's shares to fall nearly 27% in one trading day.

Prior to the announcement, Ready Capital did not tell investors that a significant amount of nonperforming loans in its commercial real estate portfolio were not likely to be collectible and that these "problem loans" were not accurately reflected in Ready Capital's financial statements, the suit alleges.

In addition to nominal defendant Ready Capital, its CEO Thomas E. Capasse, Chief Financial Officer Andrew Ahlborn and several directors are individual defendants in the suit.

Last year, Ready Capital falsely represented to investors that it had a solid market position, the suit alleges. For example, on an earnings call on Nov. 8, 2024, Capasse told investors that Ready Capital's commercial real estate portfolio "is showing stabilizing credit metrics," and that "Ready Capital is well positioned to capitalize on the tailwinds in the [commercial real estate] market," according to the suit.

A couple of weeks later, on Nov. 25, Ready Capital again told its investors that it had a "strong market position" carried by its commercial real estate portfolio and its "conservative approach to credit," the suit states.

Ready Capital continued to play up its market position for the next several months until March 3, when it reported a fourth-quarter 2024 net loss of \$1.80 per share and full-year 2024 net loss of \$2.52 per share, which it attributed to actions it took to stabilize finances, the suit states.

That day, Ready Capital's shares declined by \$1.86, or about 27%, to close at \$5.07 per share.

By marking its nonperforming loans to current values, Ready Capital significantly reduced its book value per share to \$10.61 compared to the prior quarter's \$12.59, according to the suit.

Additionally, the complaint alleges the individual defendants caused Ready Capital to overpay by approximately \$13.3 million to repurchase shares sold at artificially inflated prices during the relevant period.

"[T]he Individual Defendants caused the Company to repurchase 5,843,463 shares of its own stock, for a total of approximately \$42.9 million," the suit states. "Given that the price of Ready Capital stock was \$5.07 per share on March 3, 2025, after the corrective disclosures, the true value of the 5,843,463 repurchased shares was roughly \$29,626,357."

The individual defendants are accused of breaches of fiduciary duty, gross mismanagement, unjust enrichment and wasting corporate assets. The suit also notes the defendants are facing a securities class action over related alleged misconduct in the Southern District of New York.

Counsel for Vancampenhout and a representative of Ready Capital did not immediately respond to requests for comment on Thursday.

Vancampenhout is represented by Gregory M. Egleston, Thomas J. McKenna and Christopher M. Brain of Gainey McKenna & Egleston.

Counsel information for Ready Capital and the individual defendants was not immediately available on Thursday.

The case is Vancampenhout v. Capasse et al., case number 1:25-cv-02930, in the U.S. District Court for the Southern District of New York.

--Editing by Patrick Reagan.

All Content © 2003-2025, Portfolio Media, Inc.



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

Cantor Fitzgerald, Lutnick Beat BGC Stockholder Suit In Del.

By **Jeff Montgomery**

Law360 (April 10, 2025, 3:32 PM EDT) -- A claim misclassification doomed a stockholder suit accusing Cantor Fitzgerald LP and former BGC Partners CEO Howard Lutnick — now U.S. commerce secretary — of lining up unfair terms when BGC went public in 2023 in a deal that diluted its minority shareholders, a Delaware vice chancellor ruled on Thursday.

Vice Chancellor Lori W. Will, in a 35-page opinion, concluded that BGC stockholder Martin Siegel's suit wrongly asserted a single direct breach of fiduciary duty claim for damages on behalf of BGC stockholders against Cantor Fitzgerald and Lutnick in connection with Cantor's exchange of its limited partnership units in BGC for an outsized share of BGC's high-vote common stock.

The unfair terms, however, directly affected BGC, Vice Chancellor Will concluded, with minority stockholders purportedly suffering indirect or derivative harm because the deal diminished the per-share value of their holdings.

"There was no sale of the company, change of control, or diversion of consideration from the minority. BGC public stockholders sold nothing. They retained derivative standing after the reorganization," the vice chancellor wrote. "Any harm to the minority stockholders 'flowed indirectly to them in proportion to, and via, their shares in' BGC," the vice chancellor wrote quoting from a 2021 case, *Brookfield Asset Mgmt., Inc. v. Rosson*.

As a result, stockholders were obliged to follow the court's derivative claim playbook, by first making a pre-suit demand that BGC take action to recover the difference for the minority or instead show that the demand would have been futile.

"He made no attempt to do so," the vice chancellor wrote, adding separately: "The plaintiff was not deprived of derivative standing when the reorganization closed. The reorganization amounted to a 'corporate reshuffling'" that "reorganized and simplified the organizational structure of the BGC entities," without changing the economic interests of BGC's common stockholders.

BGC Partners announced in November 2022 that it would simplify its organizational structure from an umbrella partnership/C-corporation, more commonly known as an Up-C structure, to become a full C-corporation. When the conversion transaction closed on July 1, 2023, the company's name changed to BGC Group Inc., and its Nasdaq ticker symbol changed from BGCP to BGC.

Siegel's direct complaint alleged that "The reorganization was marred by an unfair process, conflicted advisors and a weak-willed committee of the old BGC board of directors that operated under a controlled mindset and acquiesced to Lutnick's demands."

It added: "Lutnick ran the show from start to finish, dictating the timeline and dominating negotiations."

After the reorganization, Cantor's voting power over BGC moved from 57.7% to 75.6%. While BGC's minority stockholders held the same number of shares before and after the reorganization, their combined voting power fell to 24.4% from 42.3%.

Nevertheless, the opinion found, "The economic and voting power dilution that allegedly harmed the stockholders flowed indirectly to them in proportion to, and via, their shares in [the corporation], and

thus any remedy should flow to them in the same way, derivatively via the corporation."

Siegel "cannot demonstrate an injury to the minority stockholders 'that is not dependent on [this] prior injury to the corporation,'" the vice chancellor wrote.

"In a corporate overpayment to a controlling shareholder claim, the amount of the overpayment deprives the corporation of assets to which minority shareholders only have a pro rata claim as residual claimants on the corporation's assets."

Counsel for the parties did not immediately respond to a request for comment.

The direct claims advanced by Siegel included claims that old BGC directors William Moran, Stephen Curwood and Linda Bell all had "disabling personal and/or professional relationships with Cantor and/or Lutnick," according to the complaint.

Moran is a personal friend of Lutnick and had served on boards of Lutnick-controlled companies, according to the complaint. Curwood and Bell are both indebted to Lutnick through their connections to Haverford College, to which Lutnick was said to have made at least \$65 million in donations.

Martin J. Siegel is represented by Kimberly A. Evans, Lindsay K. Faccenda, Irene R. Lax and Robert Erikson, Jason Leviton and Nathan Abelman of Block & Leviton LLP and Jeremy Friedman, David Tejtcl, Lindsay La Marca and David Rosenfeld of Friedman Oster & Tejtcl PLLC.

Cantor Fitzgerald L.P. and Howard Lutnick are represented by C. Barr Flinn, Paul J. Loughman, and Skyler A. C. Speed of Young Conaway Stargatt & Taylor LLP and Patrick Gibbs, Shannon Eagan, Sarah Lightdale and Bingxin Wu of Cooley LLP.

The case is Martin J. Siegel v. Cantor Fitzgerald et al., case number 2024-0146, in the Court of Chancery of the State of Delaware.

--Editing by Alex Hubbard.



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

Fla. Judge Won't Revisit 'Let's Go Brandon' Coin Class Cert.

By **Carolina Bolado**

Law360 (April 10, 2025, 6:13 PM EDT) -- A Florida federal judge won't reconsider his partial certification of a class of purchasers of meme-inspired cryptocurrency LGBCoin in a suit alleging the price of the tokens cratered after its much-hyped plan to sponsor the coin's eponymous NASCAR driver fell apart.

U.S. District Judge Paul G. Byron on Tuesday denied a request by hedge fund CEO James Koutoulas and LGBCoin Ltd. to reconsider his decision certifying the class because they failed to present any new evidence or legal arguments or to explain how the judge erred.

A motion for reconsideration is an "extraordinary remedy" that cannot be used to relitigate old matters or raise arguments that could have been raised before the order, he said.

"Yet, defendants do not explain how the court clearly erred, nor do they present any discussion as to the court's analysis or application of Rule 23," Judge Byron said. "Defendants, instead, rehash their arguments regarding whether LGBCoin is a security."

The judge also declined to pause the lawsuit, so the defendants could appeal the class certification decision to the Eleventh Circuit.

Last month, Judge Byron **certified** a class of buyers solely related to their claims of the sale of unregistered securities, but not their claims of unjust enrichment, finding the plaintiffs failed to establish or provide a proper argument for predominance for the unjust enrichment claims. The class consists of all individuals who purchased the cryptocurrency between Nov. 2, 2021, and March 15, 2022.

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

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

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

The LGBCoin purchasers claim the cryptocurrency was created in part by Koutoulas, whom the investors describe as a Republican influencer.

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

Koutoulas called Judge Byron's decision "rather questionable."

"The SEC has stipulated that after its investigation, it cannot even allege that LGBCoin is a security, or any wrongdoing on my part," Koutoulas said. "We hope that the Eleventh Circuit overturns this, the final outstanding count of this baseless class action, quickly."

An attorney for the plaintiffs declined to comment.

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

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

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

--Additional reporting by Katryna Perera. Editing by Kristen Becker.

All Content © 2003-2025, Portfolio Media, Inc.



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

2nd Circ. Says Investor Can't Join \$250M Sri Lanka Bond Suit

By **Katryna Perera**

Law360 (April 10, 2025, 10:30 PM EDT) -- The Second Circuit on Thursday held that a U.S.-based investor can't intervene in a lawsuit between the Sri Lankan government and Hamilton Reserve Bank over more than \$250 million in foreign bonds, finding that the investor failed to show how his property interest in the bonds overlapped with the bank's claims.

A three-judge panel for the Second Circuit issued a published **opinion** saying the district court applied the correct standard when it dismissed claims from Jesse Guzman and his companies Ultimate Concrete LLC and Intercoastal Finance Ltd.

The panel agreed with the lower court's finding that the intervenors did not allege claims that share a "common nucleus of operative fact" with Hamilton's claims against Sri Lanka, and therefore, the district court lacked supplemental jurisdiction over those claims.

According to the opinion, Hamilton holds roughly \$250 million of Sri Lankan government bonds that matured in July 2022. However, in April 2022, Sri Lanka declared a moratorium on principal and interest payments on its external debt, including the bonds held by Hamilton, and it failed to pay Hamilton when the bonds matured three months later.

Hamilton then sued the Sri Lankan government in New York federal court, and a year-and-a-half later, after discovery had concluded, Guzman and his companies moved to intervene in the suit, asserting claims that Hamilton had defrauded them and converted their property when it didn't allow them to withdraw funds they had deposited.

Guzman and his companies claimed they have a property interest in the Sri Lankan bonds because, according to them, Hamilton used their full deposit to purchase the bonds. However, the district court denied their motion to intervene.

"According to the district court, appellants' 'claims against Hamilton do not share a common nucleus of operative fact with Hamilton's claims against Sri Lanka,' because Hamilton's claims 'concern[] a default on sovereign debt and, in connection with the stay of the litigation, an international effort to restructure that debt,' while appellants' 'claims against Hamilton arise from their deposit of funds with Hamilton and Hamilton's refusal to repay deposited funds to the account holder,'" the opinion states.

In their appeal, the intervenors argued that the district court incorrectly applied the common nucleus of operative fact standard in their analysis and "ignored the well-established principle that a court necessarily possesses supplemental jurisdiction over intervention claims when the requirements for intervention as of right under Fed. R. Civ. P. 24(a)(2) are met."

Guzman and his companies said that because their claims meet the Rule 24(a)(2) standard, their motion to intervene should have been granted, according to the opinion.

However, the panel said Wednesday that the common nucleus of operative fact standard is the correct standard, and it supersedes the Federal Rules of Civil Procedure, as the rules "explicitly" state that a Federal Rule of Civil Procedure does not "extend ... the jurisdiction of the district courts."

According to the opinion, the intervenors alternatively argued that even if the district court did apply

the correct standard, it was still misapplied because there is a common nucleus of operative fact between their claims and Hamilton's suit against Sri Lanka. But the panel again disagreed.

"Even assuming for the sake of argument that appellants' legal theory is tenable, the facts necessary to prove appellants' claims — and the relationship between those claims and the bonds — are still almost entirely unrelated to the facts relevant to the underlying case," the opinion states.

"Appellants' complaint alleges a long list of financial transactions and interactions with Hamilton employees that have nothing to do with the bonds."

"And the wrongs alleged in the two complaints are entirely different: the essence of appellants' claim is that Hamilton refuses to pay its debt to appellants; the essence of Hamilton's claim is that Sri Lanka refuses to pay its debt to Hamilton," the opinion further states. "Thus, it is clear on the face of appellants' complaint that the facts underlying their claims do not 'substantially overlap[]' with the facts relevant to Hamilton's case against Sri Lanka."

In a statement to Law360 on Thursday, Tom M. Fini of Catafago Fini LLP, counsel for Hamilton, said the bank is "gratified" that the Second Circuit adopted its position and affirmed the lower court's ruling.

"As a creditor and investor in the Sri Lanka bonds, the bank also looks forward to a full and satisfactory resolution of its claim in its pending summary judgment motion," Fini added.

Counsel for the intervenors did not immediately respond to requests for comment on Thursday and the Sri Lankan government could not immediately be reached.

U.S. Circuit Judges Gerard E. Lynch, Beth Robinson and Alison J. Nathan sat on the panel for the Second Circuit.

The intervenors are represented by Robert L. Edwards of Gordon Davis Johnson & Shane PC and James H. Smith and Grant L. Johnson of McKool Smith.

Hamilton Reserve Bank is represented by Tom M. Fini of Catafago Fini LLP, Evan Kubota and Javier Bleichmar of Bleichmar Fonti & Auld LLP, and Lee S. Wolosky of Willkie Farr & Gallagher LLP.

Counsel information for the Sri Lankan government was not immediately available.

The case is Hamilton Reserve Bank Ltd. v. The Democratic Socialist Republic of Sri Lanka, case number 24-1459, in the U.S. Court of Appeals for the Second Circuit.

--Editing by Michael Watanabe.



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

9th Circ. Open To Sending Invisalign Antitrust Suit To Trial

By **Dorothy Atkins**

Law360 (April 10, 2025, 10:09 PM EDT) -- Two Ninth Circuit judges appeared open on Thursday to reversing Align's summary judgment win against a pair of class actions accusing Invisalign of monopolizing the clear braces and teeth scanners market, with one judge saying there is a triable factual dispute and another judge doubting Align's interpretation of antitrust law.

The judges' comments came during a hearing before a three-judge panel in San Francisco on appeals challenging U.S. District Judge Vince Chhabria's **February 2024 order** granting Align Technology, which makes the transparent dental aligner Invisalign, summary judgment in the antitrust case being pursued by two **plaintiffs classes** — a class of direct orthodontist purchasers and a separate class of consumers who indirectly bought Invisalign indirectly through orthodontists.

The plaintiffs accuse Align of refusing to deal in violation of Section 2 of the Sherman Act, which bans attempts to monopolize a market, by ending its interoperability agreement with 3Shape, a maker of an alternative scanning technology used to produce the dental aligners, and then suing 3Shape in 2017.

Align claimed in its antitrust defense that its move to sever ties with 3Shape strengthened its patent infringement case, since 3Shape fought the IP suit partly on the grounds that the two companies had a business relationship. Although the antitrust suit survived the pleading stage, Judge Chhabria tossed the claims on summary judgment, finding Align had sufficient business justification for ending its agreement with 3Shape and suing its competitor.

But class counsel appealed the ruling, and Joshua P. Davis of Berger Montague PC and Rio Pierce of Hagens Berman Sobol Shapiro LLP argued before the appellate panel Thursday that Judge Chhabria erred in refusing to send the dispute to trial.

Davis argued that case law, including the U.S. Supreme Court's 1992 ruling in **Eastman Kodak Co. v. Image Technical Servs. Inc.**,  instructs that when a defendant in an antitrust case has "mixed" motives for ending a business agreement, a trier of fact must determine whether procompetitive justifications outweigh anticompetitive effects. Given the significant evidence showing Align's patent fight was a pretext for ending its deal with 3Shape, a jury should decide the matter, he argued.

Pierce added that Judge Chhabria also erred by not considering Align's refusal to deal as part of "an overall Section 2" antitrust conspiracy, which also involves allegations of illegal bundling that resulted in Align products being sold for less than their average variable cost and evidence that Align's conduct foreclosed up to 55% of the market.

"It was somewhat mystifying that the district court took this approach to summary judgment because at motion to dismiss hearing he said they all in aggregate constituted a strong Section 2 claim," Pierce said, citing the Fourth Circuit's ruling **last year** in **Duke Energy Carolinas LLC v. NTE Carolinas II LLC**  as further support for analyzing such allegations in aggregate.

Pierce additionally argued that the lower court erred in finding Align was shielded under attorney-client privilege from handing over certain discovery related to its patent-protection defense.

"That's error," Pierce said. "You can't use legal advice as a sword and then deny the opposing party the access to the advice, because the opposing party can't adequately dispute the defense. So that's

an additional specific ground for reversal that I think has been deeply prejudicial to the litigation of the case."

An attorney from the Justice Department, which was **appearing** as an amicus party, additionally argued that the lower court applied the wrong antitrust legal standard under Kodak in tossing the case.

However, Align's counsel, Kannon K. Shanmugam of Paul Weiss Rifkind Wharton & Garrison LLP, argued that the lower court got it right in finding that Align had an "unquestionably proper" legitimate business justification to protect its IP rights in refusing to deal with 3Shape.

But U.S. Circuit Court Judge Richard Paez, appeared skeptical of Shanmugam's argument.

"One thing that troubled me about the district court's decision is that he said the strength of the evidence was sufficient as a matter of law," Judge Paez told the attorney. "It struck me, when I looked at the record here on that issue, that at least at a minimum, there is a genuine dispute of fact about what happened."

Judge Paez went on to note that a plaintiffs' expert suggested the patent-protection defense is "just a hoax."

"Why wouldn't that be enough for a jury? When you look at all the evidence and [they claim] it's all a hoax?" the judge asked.

Shanmugam argued that class counsel inject irrelevant issues into their legal arguments, but ultimately Judge Chhabria was well within his authority to find that the company had a legitimate justification in protecting its patent rights as a matter of law.

Shanmugam also noted that on remand in the Kodak case, the court clarified that IP protection is a "presumptively" valid business justification that courts must presume is legitimately procompetitive, and an IP protection defense can only be rebutted if a defendant acquires IP rights in fraudulent manner, which is not alleged to have occurred in this case, or if the business justification is pretextual.

But under relevant case law and even the American Bar Association's model instructions, courts aren't required to have an "independent inquiry" into whether an IP protection business justification is pretextual, Shanmugam argued.

However, Judge Paez noted that the plaintiffs pointed to an expert who testified that Align's purported reason for its patent litigation is questionable, because certain defenses in the patent litigation actually help the defendant.

"Why doesn't that raise a genuine triable fact over whether it was a legitimate justification?" Judge Paez asked again.

Shanmugam disagreed that the evidence suggests the case should go to the jury, and he again argued that Judge Chhabria was right to conclude there was no genuine dispute over whether the patent litigation was pretextual. He added that this isn't a scenario in which the patent litigation was found to be completely frivolous.

Even so, U.S. Circuit Court Judge Eric Miller doubted Align's argument that the court should apply a balancing test that favors the defendant.

"Under your test, I'm having trouble imagining how any plaintiff would ever get past summary judgment, because it seems like you practically always have some legitimate business justification that you can articulate," Judge Miller said. "It doesn't matter under your test if the procompetitive effects were big or small. It doesn't matter if it was a big part of your reasoning or not. Unless they come up with some evidence that it's just a lie, and you weren't thinking of that all, the defendant gets summary judgment."

But Shanmugam replied that Judge Chhabria required Align to show that it was concerned about its

patent rights, and the company presented "abundant such evidence" to support the defense. Before concluding, the attorney added that the lower court was right to reject the plaintiffs' attempts to aggregate their refusal to deal legal theory with other antitrust allegations into a single Section 2 claim.

At the end of the hearing, the panel took the arguments under consideration.

U.S. Circuit Court Judges Sidney R. Thomas, Richard Paez and Eric Miller sat on the panel.

Direct purchaser appellants Simon and Simon PC and VIP Dental Spas were represented during the hearing by Joshua P. Davis of Berger Montague PC.

Indirect purchasers appellants Misty Snow, Cecelia Garay, Celeste Hamilton, Angela Carnaghi and Justin Hansen were represented during the hearing by Rio Pierce of Hagens Berman Sobol Shapiro LLP.

The government was represented during the hearing by Patrick Michael Kuhlmann of the Justice Department's Antitrust Division, Appellate Section.

Appellee Align was represented during the hearing by Kannon K. Shanmugam of Paul Weiss Rifkind Wharton & Garrison LLP.

The case is Simon and Simon PC et al. v. Align Technology Inc., case numbers 24-1703 and 24-1783, in the U.S Court of Appeals for the Ninth Circuit.

--Editing by Kelly Duncan.

All Content © 2003-2025, Portfolio Media, Inc.



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

Live Nation Cites Amazon's Win In Urging Nix Of Antitrust Suit

By **Craig Clough**

Law360 (April 10, 2025, 6:28 PM EDT) -- An attorney for Live Nation Entertainment and Ticketmaster urged a California federal judge Thursday to rethink his tentative opinion to keep alive an antitrust case alleging monopolization of the concert ticketing market, saying the judge did not consider a recent Ninth Circuit decision in favor of Amazon that "maps 100%" to the case.

U.S. District Judge George H. Wu issued a written **tentative ruling** ahead of a hearing finding a motion to dismiss from the Live Nation Entertainment Inc. and Ticketmaster LLC should be largely rejected, and also previously refused to put the case **on hold** for a government enforcement action with similar allegations pending in New York.

Tim O'Mara and of Latham & Watkins LLP, who represents the companies, told Judge Wu near the beginning of the hearing that in the tentative opinion, he did not consider a **March decision** by the 9th Circuit the declined to revive a consumer antitrust suit against Amazon.com Inc., even though it was submitted to the court as a supplemental authority.

In the decision on [Hogan v. Amazon.com Inc.](#), a 9th Circuit panel said they were unpersuaded by weak arguments that the consumers suffered antitrust injury because Amazon allegedly charged third-party sellers anticompetitive shipping prices by incentivizing them to use its logistics services with the "Buy Box" feature, with the sellers then passing on the hikes to consumers.

O'Mara said that "Hogan maps 100% on this case" and is "indistinguishable" from the allegations against his client.

"Not really," Judge Wu said in response, although he invited the parties to argue the issue and later said he would take another look at the unpublished Hogan case.

In the matter before Judge Wu, proposed classes of consumers accuse Live Nation and Ticketmaster of monopolizing the ticketing services space following their 2010 merger.

Live Nation and Ticketmaster argued, among other things, in a motion to dismiss that the concertgoers lack standing to bring their claims because venues purchase the ticketing and concert promotion services that the companies allegedly monopolize. But the judge said in his tentative opinion that the consumers allege they overpaid for tickets as a result of the conduct.

The tentative ruling notes that the court overseeing the enforcement action from the U.S. Department of Justice and a group of states addressed the standing issue last month when **rejecting** a dismissal bid from the companies. That decision focused on the "substance" of the conduct rather than "antitrust legalese," and Judge Wu said that was the right approach.

The judge in the tentative opinion said he expects to reject arguments to dismiss claims under Section 1 of the Sherman Act, which bars unreasonable agreements to restrain trade. Live Nation and Ticketmaster argued that the complaint does not do enough to describe the specific contracts Live Nation and Ticketmaster have with venues, ticket brokers, artists and others.

In the Hogan ruling, the 9th Circuit panel found the consumers were alleging Amazon restrained competition in the business-facing logistics market, while the injuries the consumers had claimed occurred in the consumer-facing online retail market. The panel said the consumers' arguments fall

short of alleging they suffered antitrust injury in the market where competition was allegedly restrained.

"Any injury suffered by plaintiffs was incidental to the alleged scheme, not a means or necessary step of carrying it out," the panel said.

Kevin Teruya, who represents the plaintiffs, disagreed Thursday that the Hogan case was a direct match to his clients' allegations. In the Amazon case, the consumers had the allegedly monopolistic fees passed down to them by the third parties, whereas Live Nation and Ticketmaster are paid excessive fees directly by consumers, he said.

The judge said he would "clarify, if necessary, my views on Hogan" but appeared skeptical of O'Mara's arguments. The judge said he did not conclude from the Hogan case that the 9th Circuit "is justifying that which is alleged here," but later added, "Maybe I missed" that the "9th Circuit was cutting out a major source of antitrust law."

The customers are represented by Kevin Y. Teruya, Adam B. Wolfson and William R. Sears of Quinn Emanuel Urquhart & Sullivan LLP and Warren D. Postman of Keller Postman LLC.

Live Nation and Ticketmaster are represented by Tim O'Mara, Alicia R. Jovais, Andrew Gass and Samuel R. Jeffrey of Latham & Watkins LLP.

The case is Skot Heckman et al. v. Live Nation Entertainment Inc. et al., case number 2:22-cv-00047, in the U.S. District Court for the Central District of California.

--Additional reporting by Matthew Perlman and Greg Lamm. Editing by Vaqas Asghar.

All Content © 2003-2025, Portfolio Media, Inc.