

Litigation

April 14, 2025, 6:12 AM PDT; Updated: April 14, 2025, 8:12 AM PDT

NAPCO Must Defend Against Investors' Accounting Error Claims (1)

- Investors sufficiently pled stock sales implied fraud intent
- Didn't successfully allege liability claims against officers

NAPCO Security Technologies Inc. must battle investor claims that the alarm system developer overstated profits and inventory levels in accounting statements ahead of a record selloff.

Investors plausibly alleged NAPCO executives had the requisite level of intent for securities fraud claims through adequately pleading "unusual stock sales" and tying a financial restatement announcement to a 45% stock drop, Judge Brian M. Cogan of the US District Court for the Eastern District of New York said. But the amended complaint didn't sufficiently plead some securities liability claims against executives and board members pertaining to a 2023 secondary public offering, the court said, partially dismissing the suit April 11.

NAPCO announced in August 2023 that it needed to restate financial results for the first three fiscal quarters of that year, citing overstated inventories that resulted in the understatement of the cost of goods sold, Cogan said. These accounting errors caused NAPCO to overstate its net income and gross margin, he said.

The company's stock fell 45% the next trading day—its biggest ever one-day drop at that point, according to data compiled by Bloomberg going back to 1984.

Before this, NAPCO had bought up a ton of components, temporarily increasing its inventory value, after facing pandemic supply chain shortages, Cogan said. NAPCO filed for a secondary public offering in 2022 that would let CEO Richard Soloway and CFO Kevin Buchel sell millions of shares—in 2023, they offered 2.1 million shares combined for \$31.50 each, the judge said.

Throughout the proposed class period—Nov. 7, 2022, through Aug. 18, 2023—Soloway and Buchel, who is now also president and COO of the company, respectively sold 48.5% and 45.5% of their shares, Cogan said, highlighting sales close to financial announcements. Soloway netted around \$103 million and Buchel got about \$4.5 million, he said.

Investors sufficiently alleged the sales were unusual in timing and amount, supporting a plausible theory of motive and opportunity to commit fraud, he said.

"Notably, the officer defendants did not sell any stock during the year before the class period, nor have they sold any stock since the class period ended," Cogan said.

Lead plaintiff Donald W. Hutchings and an additional plaintiff, City of Warren Police and Fire Retirement System, brought fraud claims under the Securities Exchange Act of 1934 against NAPCO, Soloway, and Buchel. The pension fund, seeking to represent those who got NAPCO shares traceable to secondary public offering materials, asserted non-fraud claims under the Securities Act of 1933 against NAPCO, those executives, and current and one former board member, as well as two underwriters.

Cogan is allowing a liability claim against NAPCO and underwriters continue.

Robbins Geller Rudman & Dowd LLP and Johnson Fistel LLP are co-lead counsel for Hutchings. VanOverbeke, Michaud & Timmony PC represents the pension fund. Simpson Thacher & Bartlett LLP represents NAPCO and leadership. DLA Piper LLP (US) represents the secondary public offering underwriters.

Johnson Fistel said it doesn't comment on pending litigation; the other firms didn't immediately respond to emails seeking comment.

The case is Zornberg v. NAPCO Sec. Techs., Inc. , E.D.N.Y., No. 1:23-cv-06465, 4/11/25 .

(Updated with additional reporting throughout.)

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Newfound appreciation for private securities-fraud rights of action to protect the public

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**U.S. Supreme Court,
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Apr. 14, 2025

Despite the Supreme Court's long-standing recognition of private securities litigation as a vital supplement to public enforcement, cases like *Under Armour* and *Hertz* reveal how stringent pleading standards and procedural hurdles can undermine investors' ability to hold wrongdoers accountable often leaving justice to the luck of timing rather than the merits of the claim.



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For five decades, the U.S. Supreme Court has described private securities litigation as a "necessary supplement" to public enforcement led by the U.S. Securities and Exchange Commission. The unstated premise here is that government action is the primary tool for enforcing securities laws and that private suits play an important but complementary role in protecting the public.

But Congress never intended for investors to depend entirely on government action to vindicate their rights. By design, investors are needed to combat securities fraud because "[e]nforcement resources [at the SEC] are stretched thin, and the SEC alone cannot ensure a level playing field for honest market participants," according to a recent amicus brief filed by leading former SEC officials.

The recently settled case *In re Under Armour Securities Litigation*, No. 1:17-cv-00388-RDB (D. Md.), provides a useful illustration.

Under Armour was the subject of both SEC enforcement proceedings and private securities class action litigation. In 2016, Morgan Stanley published a damning report revealing slowing growth in the company's business, and early the next year, the company reported disappointing revenue growth, falling below 20% growth for the first time in 26 consecutive quarters. The stock fell sharply, and investors filed suit, alleging that Under Armour had fraudulently concealed that its rapid growth had actually been declining for over a year.

Despite Under Armour's alleged misconduct, the plaintiffs - hampered by the Private Securities Litigation Reform Act's discovery stay and demanding pleading standard - twice had their case dismissed. The court held that while the plaintiffs adequately pleaded the falsity of the defendants' statements both times, the law's "strong inference" of scienter requirement was not satisfied - although it was a close call.

While the appeal was pending, another shoe dropped. *The Wall Street Journal* revealed that Under Armour was under federal investigation for improper revenue recognition. Based on these new facts, the plaintiffs were able to execute a rare procedural maneuver to bring the case back from the appellate court, set aside the judgment in the district court, and file a third amended complaint. The third time truly was a charm. The district court denied the defendants' motion to dismiss the third amended complaint in full, finally allowing the case to proceed to discovery.

But here's the rub - the SEC found that Under Armour's conduct violated the securities laws and fined the company \$9 million. But investors persisted with their private suit and recovered *\$434 million* and significant corporate governance reforms as part of their settlement with the company. This result - recovering more than *48 times* the recovery achieved by the SEC and the second-largest securities recovery ever in the Fourth Circuit - underscores the importance of investors' private right of action for securities fraud.

While the *Under Armour* case was revived through an extraordinary procedure and the auspicious timing of the revelation of the SEC's investigation, the plaintiffs in *In re Hertz Global Holdings, Inc. Sec. Litig.*, No. 2:13-cv-07050 (D.N.J.), were not so fortunate. There, despite the plaintiffs' allegations in their fourth amended complaint citing Hertz's own financial restatement - which acknowledged "inappropriate accounting decisions" - the court dismissed the case with prejudice for failure to meet the PSLRA's stringent standard for pleading scienter.

Similar to *Under Armour*, a parallel SEC investigation of the *Hertz* defendants' conduct resulted in a \$16 million penalty and findings of fact that were inconsistent with the defendants' non-culpable explanation of the events set out in Hertz's restatement. The difference was timing: while in *Under Armour*, the *WSJ* revealed an SEC investigation while the case was still on appeal, in *Hertz*, the SEC order was not published until more than a year after the case was dismissed, and Federal Rule of Civil Procedure 60(b) prevented the plaintiffs from reinstating their case and adding the facts revealed by the SEC.

The enforcement of the federal securities laws should not depend on such happenstance. Nor should alleged fraudsters be given a roadmap such that delaying disclosure of their misconduct equates to justice denied. But, as the *Under Armour* and *Hertz* cases show, such has been the result of the PSLRA's demanding pleading standard. Thus, an unduly harsh application of the pleading standard may well continue to interfere with the ability of private securities-fraud actions to complement public enforcement of the securities laws.

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Class Action

April 14, 2025, 9:57AM PDT

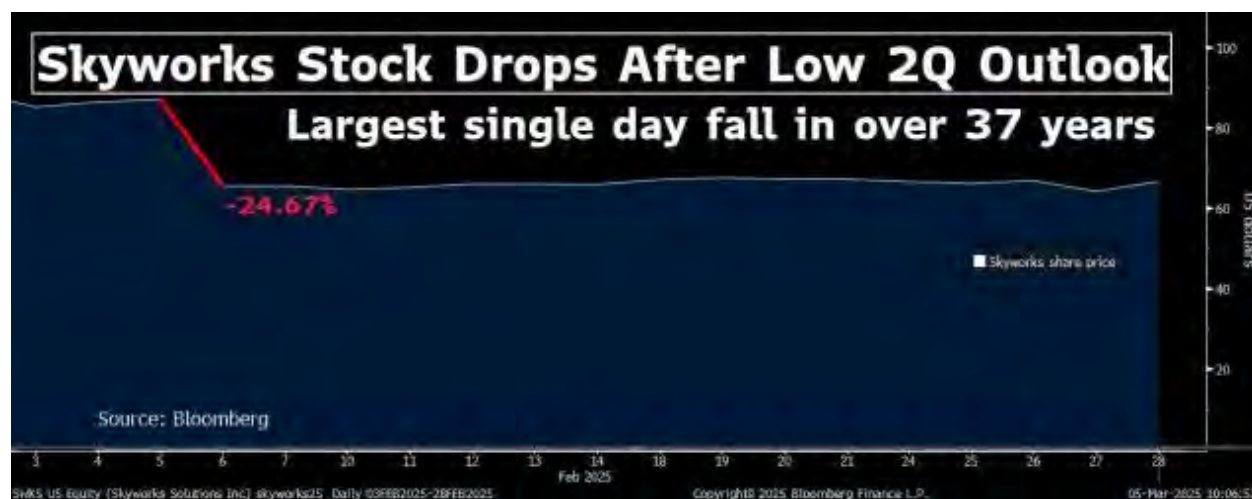
Apple Chipmaker Skyworks Leadership Sued Over Record Stock Drop

- **COURT:** C.D. Cal.
- **TRACK DOCKET:** No. [8:25-cv-00758](#) (Bloomberg Law subscription)

Skyworks Solutions Inc. management overstated its competitiveness in the smartphone upgrade market before announcing its Apple Inc. business share would shrink, leading to its biggest stock slide since 1987, a shareholder derivative action said.

Share prices plummeted almost 25% on Feb. 6, the day after the chipmaker announced future financial impacts from Apple's retreat and lower-than-hoped second fiscal quarter of 2025 revenue guidance, said the complaint filed in the US District Court in the Central District of California. It was the biggest single-day fall for the stock in over 37 years, according to data compiled by Bloomberg.

Skyworks' chief financial officer on Feb. 5 forecasted a 20% to 25% decline of its radio-frequency content position in the upcoming phone cycle for Apple, its largest customer, due to intensifying competition, the April 11 complaint said. CFO Kris Sennesael added that pull back would begin dampening revenue in the last quarter of fiscal year 2025 and throughout 2026, plaintiff Robert Groppo said.



Then-executives and board members harmed Skyworks' reputation and wallet by issuing rosy projections ahead of the stock drop, Groppo said. They exposed Skyworks to potentially expensive litigation and forced it to buy back more than 439,000 of its wrongly inflated shares, costing about \$39.5 million, he said.

Skyworks brass relied too much on the stability of its longstanding Apple partnership before the launch of its newest phone, misleading investors on the company's financial outlook, Groppo said. Skyworks leaders in the latter half of 2024 overstated its growth potential and ability to capitalize on changes to the smartphone upgrade cycle—including amid the rise of artificial intelligence—while delivering financial results, he said.

Groppo's is the second derivative action filed against Skyworks leadership since the February stock drop. A proposed class action alleging similar issues against Skyworks, its CFO, and former CEO is pending in the same court.

Wolf Haldenstein Adler Freeman & Herz LLP and Rigrinsky Law PA represent Groppo, who seeks damages against leadership for Skyworks, among other relief, for alleged wrongdoing spanning from at least July 30, 2024, through Feb. 5, 2025.

Groppo alleged securities law violations, breaches of fiduciary duties, unjust enrichment, abuse of control, and waste of corporate assets by Sennesael, former CEO Liam K. Griffin, and board members.

Neither Skyworks nor its counsel in the related proposed class action, Sidley Austin LLP, immediately responded to emails seeking comment.

The case is Groppo v. Griffin , C.D. Cal., No. 8:25-cv-00758, complaint filed 4/11/25 .

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Peloton shareholders ask Second Circuit to revive lawsuit over post-pandemic financial forecasts

 [courthousenews.com/peloton-shareholders-ask-second-circuit-to-revive-lawsuit-over-post-pandemic-financial-forecasts](https://www.courthousenews.com/peloton-shareholders-ask-second-circuit-to-revive-lawsuit-over-post-pandemic-financial-forecasts)

Cindy Cicchinelli, points out others on the screen listed to be cycling at the same time as she watches the online video while using her Peloton exercise machine in the workout room of her Pittsburgh townhouse.

(AP Photo/Keith Srakocic)

MANHATTAN (CN) — A Second Circuit appeals panel on Friday appeared hesitant to reverse a lower court's dismissal of a class action by Peloton shareholders, who accuse the company of making misleading statements about customer demand following a pandemic-era boom in sales for its stationary exercise bikes.

The shareholders accused Peloton of falsely reassuring investors that demand for its high-tech home fitness products remained robust, strong, and growing — even while they say the company knew sales were plummeting and inventory was sitting unsold.

The proposed class action securities case, led by Dutch investment firm Robeco, seek to recoup losses after Peloton's stock price declined more than 80%.

Were Peloton's statements to investors materially false, or were they nonactionable corporate optimism?

Like a Manhattan federal court, which dismissed the case in September, a three-judge panel of the Second Circuit grappled with those questions during in-person oral arguments on Friday.

“Expected sales? That sounds very forward-looking, if it's expected sales,” U.S. Circuit Judge Jon O. Newman, a Jimmy Carter appointee, pondered aloud during the 52-minute hearing.

“If demand is really a proxy for a number of customers, but you don't allege the number of customers, how can the statement be false?” Newman asked the shareholders' attorney.

Newman was joined on the panel by U.S. Circuit Judges Denny Chin, a Barack Obama appointee, and Steven Menashi, a Donald Trump appointee. The trio did not issue a bench ruling on Friday.

U.S. District Judge Andrew Carter Jr. sided with Peloton in September 2024, ruling that Peloton's statements were simply forward-looking and optimistic corporate “puffery” — not actionable fraud.

Carter, an Obama appointee serving in the U.S. District Court for the Southern District of New York, also noted that several optimistic statements about the company's future were accompanied by "very detailed warnings" — including that after lockdowns concluded, consumers would likely go back to their pre-pandemic fitness routines.

But on appeal, the shareholders argue Peloton went beyond puffery when it claimed demand for its products was increasing and robust and had not softened. They argue witnesses and internal company documents show that Peloton was hiding the truth from investors.

"The accounts of numerous confidential witnesses reveals the contrary truth: as demand waned because COVID-restrictions had eased and people returned to gyms, inventory levels continued to balloon at an inordinate pace," they wrote in an appeals brief. "That left [the] Peloton supply chain personnel struggling to find space for the excess inventory."

Peloton hopes the Second Circuit will affirm the lower court's dismissal. On appeal, the company argues inventory during the class period was not "excessive" because the company purposefully stockpiled inventory to improve delivery times. Peloton also argues that the "absence of particularized allegations that demand dropped substantially *before* February 2021 (and actual financial results to the contrary) is fatal" to the shareholders' arguments.

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Categories / Appeals, Business, Technology

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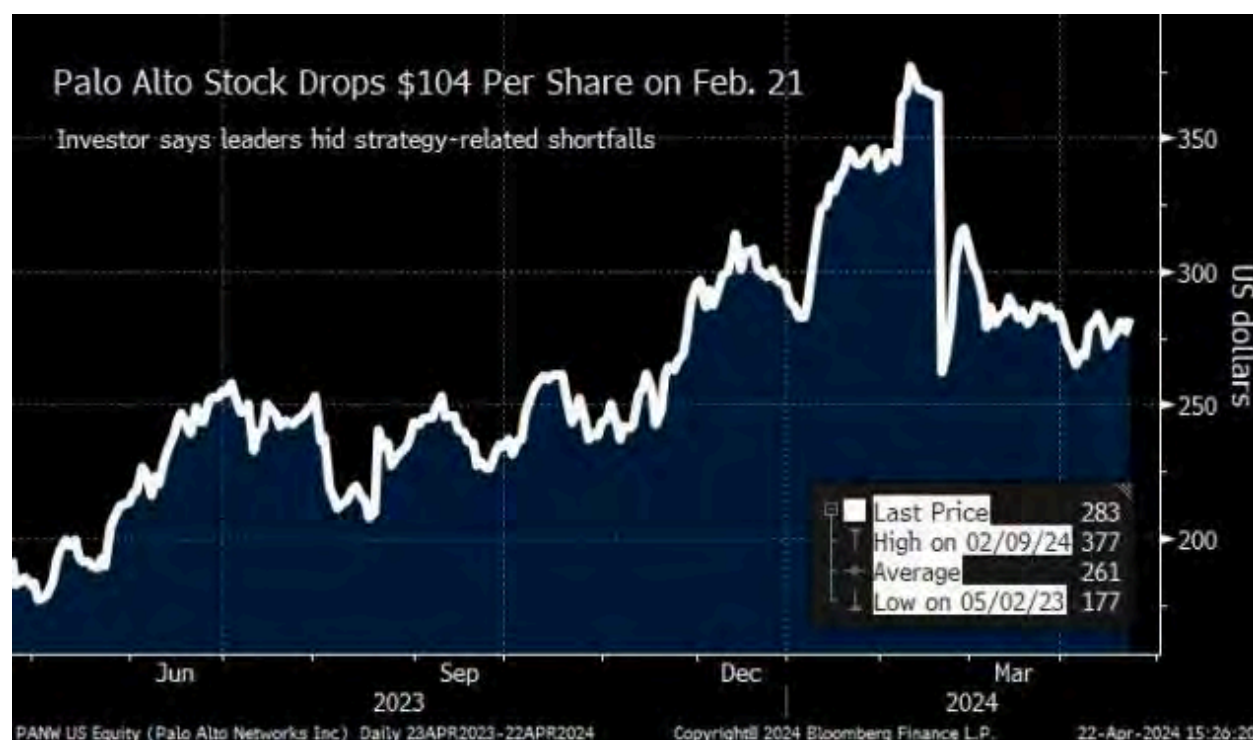
Litigation

April 14, 2025, 9:45 AM PDT

Palo Alto Networks Fends Off Class Claims Over 28% Stock Drop

Palo Alto Networks Inc. investors didn't adequately allege that misrepresentations propped up the cybersecurity company's stock price before its largest-ever selloff, a federal court ruled.

The investors failed to show financial projections, statements about sales strategies, and risk disclosures were false when made, Judge Charles R. Breyer said Friday for the US District Court for the Northern District of California. They also didn't show the necessary level of intent for securities fraud, or insider trading by CEO Nikesh Arora, Breyer said.



- The proposed class action alleged that Palo Alto Networks and its executives touted a sales strategy emphasizing streamlined access to its products, and failed to disclose that it was planning to start free trial periods; and its risk disclosures allegedly didn't flag the risks of selling to federal government clients
- A lowered guidance announcement was followed by a 28% stock price decline the next day, Feb. 21, 2024, and the events also prompted a derivative suit
- The allegations were overall too vague to support the securities fraud or insider trading claims, Breyer said, but the investors will have a chance to re-plead

Block & Leviton LLP is lead counsel for the investors. Morrison & Foerster LLP represents Palo Alto Networks and the individual defendants.

The case is In re Palo Alto Networks, Inc. Sec. Litig. , 2025 BL 124895, N.D. Cal., No. 3:24-CV-01156, 4/11/25 .

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[Securities Law News](#)

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Freshworks Beats Investor Suit Over IPO Financial Results (3)

- 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 were 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 & 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. Each firm declined to comment.

Cooley LLP represents Freshworks and certain leaders. Orrick, Herrington & Sutcliffe LLP represents the underwriters. Neither firm responded to emails seeking comment.

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

(Updates to include plaintiff's counsel declined to comment in the eighth paragraph.)

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This Week in Chancery Court: Carvana, Centerview, Flying Taxis

Delaware's Chancery Court will consider legal claims against Centerview Partners Holdings LLC filed by dealmaker David Handler, who says the boutique merger advisory firm defrauded him out of his equity stake after he founded a rival. The state's top court, meanwhile, will weigh a shareholder's insider trading claims against Carvana Co.'s largest investor, the father of its CEO.

No court activity is scheduled for Good Friday. Here's a look at other upcoming hearings of note:

Monday: Centerview Partners Holdings LP v. Handler, Del. Ch., No. 2022-0767, oral argument 4/14/25.

At issue: Handler first sued Centerview on his way out the door in 2022, saying it breached an oral partnership agreement by denying his stake when he started the competing Tidal Partners LLC. Vice Chancellor Sam Glasscock III ruled for the firm in April 2024. He said Handler was no more a "partner"—with the right to force open Centerview's books—than KFC's Colonel Sanders was a field officer. Handler responded with additional claims in a related case, saying Centerview and two of its principals, Robert Pruzan and Blair Effron, breached fiduciary duties and defrauded him by undermining a mutual understanding that Handler held a stake. They've moved to dismiss those claims, arguing the case reflects an effort to relitigate the earlier dispute.

Court action: Vice Chancellor Bonnie W. David, who took over the case after Glasscock retired last year, will consider the motion in Georgetown, Del.

Centerview Defeats Ex-Partner David Handler's Equity Claim

Monday: Witmer v. Armistice Capital LLC, Del. Ch., No. 2022-0807, oral argument 4/14/25.

At issue: A former investor in Aytu BioPharma Inc. sued its financial backers at Armistice Capital LLC in 2022, saying the hedge fund looted the company by forcing it to acquire two unprofitable affiliates, then unloading its own Aytu shares with insider trades at prices inflated by a Covid-19 testing deal. The lawsuit also initially targeted board members at the biotech, but they exited the litigation with a noncash settlement adopting corporate governance reforms. Armistice has moved to dismiss the rest of the case, saying the claims suffer from “myriad fundamental defects,” including the fact that Armistice made its stock sales after the testing deal was publicly announced, when it no longer counted as inside information.

Court action: Vice Chancellor Morgan T. Zurn will hear the motion in Wilmington, Del.

Armistice Capital Sued for ‘Looting,’ Insider Trades at Aytu Bio

Tuesday: Nielsen Consumer Inc. v. Nielsen Holdings Ltd., Del. Ch., No. 2024-1107, trial 4/15/25.

At issue: A former Nielsen Holdings Ltd. affiliate that spun off from the media analytics giant sued it in October for allegedly violating a master services agreement meant to preserve access to key data for both sides of the separation transaction. The heavily redacted lawsuit by Nielsen Consumer Inc. said the planned sale of two Nielsen Holdings segments to Circana LLC would threaten Nielsen Consumer’s competitive standing by handing its data over to a direct rival. Nielsen Consumer initially sought a court order that would have temporarily blocked the Circana deal, which at the time was expected to close as early as Nov. 14. But it withdrew that request after the deal’s closing was delayed until at least mid-April, and the two sides agreed to an expedited trial instead.

Court action: Vice Chancellor Nathan A. Cook will preside over a one-day trial in Wilmington.

Wednesday: Schertz v. Garcia II, Del., No. 446, 2024, oral argument 4/16/25.

At issue: A Carvana investor is trying to revive insider trading claims against businessman Ernest Garcia II, whose son co-founded the used car company. Chancellor Kathaleen St. J. McCormick in March 2024 threw out the litigation, which stems from regulatory problems Carvana allegedly suffered during the Covid-19 pandemic. The case is one of several lawsuits targeting Garcia and CEO Ernest Garcia III over the company’s pandemic-era finances.

Court action: The Delaware Supreme Court will hear the appeal in Dover, Del.

Carvana Sidesteps Investor Challenge to Covid-Era Refinancing

Thursday: In re Archer Aviation Inc. S’holder Litig., Del. Ch., No. 2024-0527, oral argument 4/17/25.

At issue: An investor is suing billionaire dealmaker Ken Moelis and other architects of Archer Aviation Inc.'s going-public merger for allegedly hyping the air-taxi startup with “wildly misleading” video footage. The case is part of a wave of litigation targeting the financial backers of special purpose acquisition companies after blank-check transactions—designed to let early-stage businesses bypass initial public offerings—receded from a boom in 2020 and 2021. The shareholder lawsuits generally say sponsors like Moelis, a serial SPAC founder, were driven by lopsided incentives to dupe investors into doomed deals. The Archer case is assigned to Vice Chancellor Lori W. Will, who has issued several landmark rulings related to the fading SPAC frenzy.

Court action: Will is set to weigh the motions to dismiss in Wilmington.

Moelis Sued Over ‘Sham’ SPAC Deal to Take Archer Aviation Public

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Bosch beats fraud claims related to Volkswagen 'Dieselgate' scandal

 [courthousenews.com/bosch-beats-fraud-claims-related-to-volkswagen-dieselgate-scandal](https://www.courthousenews.com/bosch-beats-fraud-claims-related-to-volkswagen-dieselgate-scandal)

A Bosch parking lot sits above the motorway in Stuttgart, Germany on August 30, 2009. (Mike Haller, CC-BY 2.0, via Flickr)

SAN FRANCISCO (CN) — Bosch, an auto parts supplier for Volkswagen, beat civil conspiracy and RICO claims in court after a federal judge said an Illinois auto dealer failed to show a concrete business loss resulting from the German car company's widely publicized 2015 diesel emissions scandal.

In a brief order Thursday, U.S. District Judge Charles R. Breyer granted summary judgment for Bosch, stating that the Volkswagen franchisee who brought the suit sought compensation for "intangible" injuries that couldn't be recovered under law.

"Because plaintiffs' injuries are either intangible (lost goodwill or brand value) or intractably tied up with intangible injuries (lost sales or property value), plaintiffs have failed to establish that they suffered an injury to business or property," Breyer ruled.

The case arises from a high-profile emissions scandal in 2015, when the Environmental Protection Agency discovered that Volkswagen violated the Clean Air Act by placing software in their diesel vehicles to cheat on emissions tests. As a result, each car could "sense" when it was being evaluated under controlled laboratory circumstances and adjust its performance to emit fewer emissions.

Once back on the road, the engines spewed nitrogen oxide pollution up to 40 times what is allowed in the U.S.

Following the scandal, regulators in several countries began investigating the company, and its stock price plunged by a third after the announcement.

Around this time, William Slevin, the president of the plaintiff companies behind the lawsuit, signed an agreement with Volkswagen to build a dealership in Elgin, Illinois, taking out several loans. Slevin claims he was motivated by the car company's past performance in the auto market and potential "future as a leader in environmentally friendly technologies."

Once the scandal dried up consumer desires for Volkswagen cars, Slevin said he and his companies were left holding the bag, suffering heavy reputational damage and lost sales.

Slevin was excited about the company's "turbocharged direct injection" diesel vehicles, which Volkswagen ordered its dealerships to stop selling shortly after the "Dieselgate" scandal.

The plaintiffs first sued Volkswagen and Bosch in late 2015 for violations of the Racketeer Influenced and Corrupt Organizations Act and for civil conspiracy under Illinois law. They later entered into a settlement with Volkswagen in 2018, leaving only their claims against Bosch unresolved.

After nine years of litigation, the judge found that claims the scandal "permanently tainted" the Volkswagen brand and led to a "diminution in brand value and brand loyalty" were not recoverable under the RICO Act. Harm to intangible interests like public perception, he said, were not injuries to business or property according to the law.

Breyer also rejected any backup arguments that the dealership suffered concrete financial damages because these injuries led to decreased sales of Volkswagen cars and the property on which they built the Elgin dealership decreased in value.

"But these claims merely 'cast in different language' the same basic theory — that the emissions fraud harmed Volkswagen's (and Plaintiffs') reputation and thus caused them harm," the Bill Clinton appointee ruled.

Even if the plaintiffs could plausibly connect these harms to their financial losses, the judge said they would have a tough time proving it was directly caused by Bosch's misconduct, which is required under RICO.

"For one, any reputational injuries were not caused by the underlying fraud, but by the fraud's discovery and publicization," Breyer found, adding that the Ninth Circuit has already confirmed that such a connection is too weak to establish a direct cause.

Attorneys for both sides did not immediately respond to a request for comment.

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Class Action

April 11, 2025, 12:16 PM PDT

Blue Shield of California Sued Over Health Data Leak to Google

- **COURT:** N.D. Cal.
- **TRACK DOCKET:** Nos. [4:25-cv-03213](#), [3:25-cv-03225](#), [3:25-cv-03228](#), [4:25-cv-03234](#) (Bloomberg Law subscription)

Blue Shield of California now faces a slew of litigation after it said that its Google website analytics tool was configured in a way that likely shared people's personal health data with the tech giant's advertising business.

"Google may have used this data to conduct focused ad campaigns back to those individual members," the health insurer said in an April 9 notice of data breach. The company, formally known as California Physicians' Service, was hit with four proposed class actions Thursday in the US District Court for the Northern District of California.

The data may include search criteria and results when people looked for a doctor; medical claim service dates and service providers; and users' city, zip code, gender, and family size, Blue Shield said. The notice said it severed the link last year between Google Analytics, which it used to internally track members' website usage, and Google Ads.

But "while characterized as a 'data breach,' no hacker or 'bad actor' obtained unauthorized access," Ellen Rentas Torres said in her complaint. Blue Shield "voluntarily shared information with Google."

"Tracking Technologies are not offered for 'free' to companies" solely for their benefit, but to get raw data that Google and other tech firms can turn "into a monetizable commodity, just as an oil company acquires crude oil to transform it into gasoline," Ana Maravilla's suit said.

Blue Shield declined to comment on ongoing litigation.

"We understand receiving a notice such as this can create concern, and we regret that member personal information may have been shared without authorization," the company's notice said. "Blue Shield takes the security of member information very seriously, and we are committed to maintaining their privacy."

The proposed classes that the four plaintiffs brought vary slightly, but generally cover visitors to Blue Shield's websites who had their data exposed. Some plaintiffs would like a California-specific class as well.

Maravilla asserted two claims under the California Invasion of Privacy Act, one under the California Confidentiality of Medical Information Act, and another under the Unfair Competition Law. She also brought a Electronic Communications Privacy Act claim, a breach of confidence claim, and several privacy causes of action. She seeks injunctive relief, damages, and attorneys' fees.

Ashley Johnson asserted similar claims to Maravilla and seeks similar relief, as did Rentas Torres.

A pseudonymous plaintiff, Y.W., asserted claims for unjust enrichment, negligence, breach of implied contract, and violations of the Electronic Communications Privacy Act. He seeks injunctive relief, damages, and attorneys' fees.

The cases haven't yet been assigned to a federal judge.

Israel David LLC and Moya Law Firm represent Y.W. Girard Sharp LLP represents Johnson. Kopelowitz Ostrow Ferguson Weiselberg Gilbert represents Rentas Torres. Milberg Coleman Bryson Phillips Grossman PLLC and Wucetich & Korovilas LLP represent Maravilla.

The cases are Maravilla v. Calif. Physicians' Serv. , N.D. Cal., No. 4:25-cv-03213, complaint 4/10/25 , Y.W. v. Calif. Physicians Serv. , N.D. Cal., No. 3:25-cv-03225, complaint 4/10/25 , Rentas Torres v. Calif. Physicians' Serv. , N.D. Cal., No. 3:25-cv-03228, complaint 4/10/25 , and Johnson v. Calif. Physicians Serv. , N.D. Cal., No. 4:25-cv-03234, complaint 4/10/25 .

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Class Action

April 14, 2025, 10:08 AM PDT

Live Nation, Ticketmaster Fail to Escape Consumer Antitrust Suit

- **Consumers paid higher ticket prices due to alleged misconduct**
- **Court finds plaintiffs sufficiently plead antitrust injury**

Live Nation Entertainment Inc. and its Ticketmaster LLC unit must face consumer plaintiffs' antitrust claims that they conspired to monopolize the ticketing services industry, after a judge mostly denied the companies' motion to dismiss.

Judge George H. Wu of the US District Court for the Central District of California in an April 11 ruling held that the consumer plaintiffs cleared a threshold issue in antitrust cases by adequately arguing that Live Nation had market power.

"The Court finds that Plaintiffs' allegations that Ticketmaster controls 60 percent of the alleged submarket, in conjunction with its allegations that Ticketmaster has grown despite higher fees than competitors in a market that disfavors new market entrants is sufficient at this stage to allege market power," Wu said.

Live Nation is also battling a suit filed last year by the Department of Justice, accusing it and Ticketmaster of thwarting competition in the live entertainment industry. The companies merged in 2010 to become the world's largest live music business.

Last year, Wu denied the companies' motion to compel arbitration in the consumer case, holding that Live Nation's arbitration agreement was substantively unconscionable. Live Nation has traditionally sought arbitration on consumer claims and in 2021 designated New Era ADR to settle the disputes.

Anticompetitive Allegations

A group of ticket buyers sued Live Nation and Ticketmaster in 2022, alleging they paid inflated ticket prices due to anticompetitive conduct by the companies, which included forcing concert venues to boycott Ticketmaster's competitors for ticketing services and making exclusive deals with major concert venues.

They also allege that New Era's terms of arbitration skewed heavily in Live Nation's favor.

Wu last week issued a tentative ruling in the case, saying the plaintiffs' injuries were neither "indirect nor speculative" as Live Nation argued.

In the April 11 decision, Wu said the plaintiffs adequately alleged that Live Nation and Ticketmaster violated Section 1 of the Sherman Act, which prohibits agreements that restrain trade.

"Plaintiffs have identified the what, how, and why of the agreements between Defendants and venues, and they have generally alleged the who, when, and where," Wu said.

He also denied Live Nation's motion to dismiss tying claims alleging Live Nation conditioned concert promotion on using primary ticketing services from Ticketmaster. Primary ticket buyers purchase tickets directly from Ticketmaster as opposed to a reseller.

"Plaintiffs' theory that venues are a buyer of both concert promotion services and primary ticketing services is plausible, and thus, the Court would not dismiss this theory," Wu said.

Wu concluded that the plaintiffs adequately alleged Live Nation's power in the secondary ticketing market that facilitates the resale of tickets by a seller as opposed to by the artist's promoter.

"Plaintiffs have alleged that Defendants' attempted domination of this submarket is derived from their domination of primary ticketing services for major concert venues, which the parties agree is a natural submarket," Wu said. "For this reason, the Court would not dismiss claims related to the secondary ticketing market for lack of market plausibility."

Amazon Parallels

Wu also shot down Live Nation's argument that there are parallels between the case and a consumer suit against Amazon.com Inc. that alleged the e-commerce giant forced third-party sellers to pay for its Fulfillment by Amazon service to gain access to a "Buy Box" area on product detail pages.

A Ninth Circuit panel recently dismissed the consumer plaintiffs' claims, saying they failed to plead antitrust injury from the shipping or logistics services market.

Live Nation cited the ruling in seeking dismissal on standing, but Wu said allegations in that case are "significantly different."

"Instead of a situation where a seller is between the defendant and the customer and is passing on fees to that customer but is still arguably disadvantaged by the defendant's conduct, in the case before the Court, Plaintiffs allege that Ticketmaster 'offers up-front payments and other subsidies [to venues] that can run into the millions of dollars' for the right to sell tickets directly to consumers," Wu said.

Wu did dismiss an allegation involving monopolistic agreements between Live Nation and artists, saying the plaintiffs "made no effort to contend" with Live Nation's assertion that such allegations lack the requisite detail.

Live Nation and Ticketmaster are represented by Latham & Watkins LLP. The plaintiffs are represented by Quinn Emanuel Urquhart & Sullivan LLP.

The case is Heckman v. Live Nation Ent. Inc. , C.D. Cal., No. 2:22-cv-00047, 4/11/25 .

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Executive at Tom Girardi's law firm gets 10-year sentence for wire fraud

 [reuters.com/legal/government/executive-tom-girardis-law-firm-gets-10-year-sentence-wire-fraud-2025-04-11](https://www.reuters.com/legal/government/executive-tom-girardis-law-firm-gets-10-year-sentence-wire-fraud-2025-04-11)

David Thomas

April 11, 2025

A gavel and a block is pictured on the judge's bench in this illustration picture taken in the Sussex County Court of Chancery in Georgetown, Delaware, U.S., June 9, 2021.

REUTERS/Andrew Kelly Purchase Licensing Rights , opens new tab

April 11 (Reuters) - The former chief financial officer of disbarred California attorney Tom Girardi's law firm has been sentenced to 121 months in prison for stealing millions of dollars in client funds.

Christopher Kamon, 51, was also ordered by a federal judge in Los Angeles to forfeit \$8.9 million. He pleaded guilty to two counts of wire fraud in October.

Federal prosecutors for the Central District of California asked for more than 10 years in prison for Kamon, while Kamon said he should only receive 30 months in prison. Kamon has been incarcerated in federal jail since his arrest in November 2022.

"This defendant played a key role in a long-running scheme led by Tom Girardi," U.S. Attorney Bill Essayli said in a statement. "For nearly 20 years, Kamon enabled Girardi's scheme to defraud vulnerable clients of the law firm."

A lawyer for Kamon did not immediately respond to a request for comment.

Both Kamon and Girardi, whose legal battle against Pacific Gas & Electric Co inspired the Oscar-winning film "Erin Brockovich," were charged in February 2023 with five counts of wire fraud for allegedly embezzling \$15 million from clients of their law firm Girardi Keese from 2010 to 2020.

Girardi was convicted by a federal jury of wire fraud in August 2024 following a trial in which he attempted to blame the missing funds on Kamon.

U.S. District Judge Josephine Staton is weighing whether to sentence Girardi to a federal prison or a medical facility.

Kamon was also facing separate criminal charges in Los Angeles for allegedly embezzling \$10 million from Girardi Keese. Prosecutors said Kamon used the embezzled funds on extensive home remodeling, exotic sports cars and an escort. Kamon's plea agreement resolved both California cases.

He is still facing separate criminal charges in Chicago for allegedly misappropriating more than \$3 million in client funds owed to families of the victims of the 2018 Boeing 737 MAX Lion Air Flight 610 crash in Indonesia. He has pleaded not guilty.

[Securities Law News](#)

April 11, 2025, 4:29 PM PDT; Updated: April 11, 2025, 4:42 PM PDT

Susman Godfrey Sues Trump to Fight 'Unconstitutional' Order (1)

- Susman Godfrey is sixth major law firm targeted by White House
- Three other firms won court rulings temporarily blocking moves

Susman Godfrey is the latest major law firm to take the Trump administration to court over an executive order aimed at its attorneys.

Susman on Friday filed a suit to challenge President Donald Trump's April 9 order, arguing that he violated the constitution by targeting the firm for its work in court. The firm asked a federal judge in Washington to freeze the order, which restricts lawyers' access to government buildings and directs agencies to terminate federal contracts with Susman clients.

"The President is abusing the powers of his office to wield the might of the Executive Branch in retaliation against organizations and people that he dislikes," the firm said in the complaint. "Nothing in our Constitution or laws grants a President such power; to the contrary, the specific provisions and overall design of our Constitution were adopted in large measure to ensure that presidents cannot exercise arbitrary, absolute power in the way that the President seeks to do in these Executive Orders."

Representatives for the White House didn't immediately respond a request for comment.

The suit makes Susman the fourth major law firm to challenge Trump over executive orders against them, which also strip lawyers of security clearances. It comes as a growing list of corporate firms—including Kirkland & Ellis and Latham & Watkins—strike preemptive deals with the president, pledging a total of \$940 million in free legal services to stay out of the bull's eye.

Houston-founded Susman's lawyers represented Dominion Voting Systems Inc. in a defamation lawsuit against Fox Corp., which ended with the company agreeing to pay a \$787.5 million settlement. The case was based on the network's reporting tying Dominion's voting machines to conspiracy theories about a stolen 2020 election. Susman is pursuing a similar suit against Trump advocate Mike Lindell, the chief executive officer of MyPillow.

"Susman spearheads efforts to weaponize the American legal system and degrade the quality of American elections," Trump said in the executive order.

Three other law firms—Perkins Coie, Jenner & Block, and WilmerHale—already secured court rulings temporarily blocking much of the orders against them. Those firms were targeted for their ties to lawyers who investigated Trump or worked on cases against him.

Covington & Burling was the first Big Law firm targeted by the president, who issued a memorandum stripping partner Peter Koski's security clearances because of his representation of former special counsel Jack Smith.

Susman is known for high stakes court fights for a wide range of clients. The firm often takes those cases on contingency fee arrangements, meaning its compensation depends largely on the outcome.

The firm, like the others suing Trump, detailed the potential harm posed by the order.

"All told, at least a third of the Firm's current active matters require Susman Godfrey lawyers to appear before federal courts or interact with federal agencies in some capacity," the firm said in the complaint. "And through its defamatory allegations against the Firm, the Order seeks to warn or drive clients away from engaging the Firm's services. "

"Simply put, the Order endeavors to foreclose the Firm from practicing law—for the perceived transgression of undertaking representations with which the President disagrees," Susman said.

Donald Verrilli, who served as solicitor general in the Obama administration, is representing Susman. Verrilli's firm, Munger Tolles & Olson, has emerged as a leading critic of Trump's executive orders. Munger lawyers organized an amicus brief on behalf of more than 500 law firms in support of Perkins Coie, Jenner & Block and WilmerHale.

"This goes far beyond law firms and lawyers," Susman Godfrey said in a statement. "Today it is our firm under attack, but tomorrow it could be any of us. As officers of the court, we are duty-bound to take on this fight against the illegal executive order."

The case is *Susman Godfrey v. Executive Office of the President*, D.D.C., 1:25-cv-01107, 4/11/2025

(Updated with additional reporting throughout)

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[Securities Law News](#)

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Simpson Thacher Lawyer Quits as Firm 'Capitulates' to Trump (1)

Exclusive

- 'I will not sleepwalk toward authoritarianism,' Siunik Moradian said
- Firms have pledged \$940 million in pro bono work to Trump

A Simpson Thacher & Bartlett associate quit his job after the law firm reached a deal with President Donald Trump to provide \$125 million in legal work.

Siunik Moradian fired off an email to colleagues on Friday, resigning moments after the firm announced the agreement. Simpson Thacher, along with several others, pledged pro bono or free legal services for Trump-aligned causes.

"By capitulating today, Simpson Thacher joins several other historic, powerful, influential and well-resourced law firms in bending the knee and kissing the ring of authoritarianism," Moradian said in the email, viewed by Bloomberg Law.

Firms have pledged \$940 million in pro bono work to avoid punitive executive orders, like those targeted at others over their ties to Trump's perceived enemies and work on cases against him. Simpson Thacher and three other firms also had federal investigations into their diversity programs dropped as part of the agreements.

Simpson Thacher's "primary goal was the best interest of the firm and what the Trump administration is doing right now goes beyond the best interest of the firm," Moradian said in an interview. "It goes beyond the best interest of me—a lawyer."

The third-year associate was based in Simpson Thacher's Los Angeles office. The Wall Street law firm is a corporate powerhouse, bringing in more than \$2.3 billion in gross revenue in 2023.

"This is really serious and it is really frustrating to see a law firm that is incredibly powerful and well-resourced not fight a fight that they are capable of fighting," he said. "I think that is a sentiment that a lot of people hold."

Moradian said several colleagues reached out in support immediately after he sent the email.

Simpson Thacher, along with Kirkland & Ellis, Latham & Watkins, Cadwalader, and A&O Shearman agreed Friday to commit at least \$600 million combined in pro bono legal services for Trump. They join the likes of Paul Weiss Rifkind Wharton & Garrison, Skadden Arps Slate Meagher & Flom, Willkie Farr & Gallagher, and Milbank LLP, which also struck deals with the president.

"Simpson Thacher's decision today fundamentally changes "who we are as a Firm," Moradian said, referencing an internal email sent by Simpson Thacher chair Alden Millard. "I make a different choice. I will not sleepwalk toward authoritarianism," Moradian.

Millard defended the deal as a "strategic decision" in his Friday email. "We know and understand that this development may weigh heavily on some of you and that you may not agree with the path we have taken," he said.

"Associates are talking about this. Law students are talking about it," Moradian said. "It's frustrating if the voice of attorneys—at large—opinion on this topic are these really sanitized statements by the head of these law firms that, quite frankly, are not taking any of this nearly seriously enough," he said.

Four firms hit with executive orders have opted to fight.

Perkins Coie, WilmerHale, and Jenner & Block won court orders temporarily blocking the orders, which threatened their lawyers' security clearances and access to federal buildings and directed agencies to tear up government contracts with the firms' clients. Susman Godfrey said Thursday it would challenge an executive order leveled against the firm hours earlier.

(Updated with comments from Moradian throughout)

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[Securities Law News](#)

April 11, 2025, 9:30 AM PDT; Updated: April 11, 2025, 1:41 PM PDT

Five Major Law Firms Cut \$600 Million Deals With Trump (3)

- Kirkland, Latham, Simpson, A&O, Cadwalader strike deals
- Litigation firm Susman Godfrey to fight the Trump orders

Five of the world's largest law firms made deals with Donald Trump to avoid punitive executive orders, as the president has now secured \$940 million in free legal services.

Kirkland & Ellis, Latham & Watkins, Simpson Thacher & Bartlett, A&O Shearman and Cadwalader contributed \$600 million through agreements Trump announced Friday on his social media platform.

Trump also agreed to end workplace discrimination investigations the Equal Employment Opportunity Commission brought against Kirkland, Latham, Simpson, and A&O Shearman on March 17. Cadwalader was not an EEOC probe target.

The firms "have affirmed their strong commitment to ending the weaponization of the justice system and the legal profession," the White House said in a statement.

With the new agreements Trump has built a stable of nine major law firms he can turn to for pet causes the legal operations must also agree to support—efforts such as aiding veterans, combatting antisemitism and ensuring justice system fairness. Trump's legal powerhouse represents a remarkable reversal from past years when he and his allies complained of top law firms ignoring their needs.

"The administration has great leverage over these firms," said Saul Gamoran, president and founder of Gamoran Legal Consulting. "The firms feared they would lose major clients and not be able to make it. They chose the practical decision over other considerations."

In addition to the five who made agreements Friday, four have previously promised to take on Trump causes—Paul Weiss, Skadden, Milbank, and Willkie Farr & Gallagher.

Trump started building his legal stable in late February with the first of a string of presidential directives that punished firms for ties to his perceived enemies and work against him.

The actions revoked lawyers' security clearances, restricted their access to federal buildings, targeted diversity programs and canceled clients' government contracts. Four firms hit with the orders are fighting Trump in court or have pledged to do so—Perkins Coie, WilmerHale, Jenner & Block, and Susman Godfrey.

The directives had the opposite effect on the nine firms. Paul Weiss made a deal with Trump after being hit with an order, and the other eight made agreements to avoid becoming targets.

"We made the decision to pursue this solution because at our very core our mission is to protect and support our people and our clients," Kirkland said in a statement. Simpson Thacher's leader told the firm in an email viewed by Bloomberg Law that, "Our primary goal was to protect the best interests of the firm."

Latham, A&O Shearman and Cadwalader didn't immediately respond to requests for comment.

Wall Street Titans

Friday's deals have four of the firms—Kirkland, Latham, Simpson, and A&O Shearman—devoting \$125 million each in pro bono "and other free" legal services. Cadwalader will provide \$100 million.

David Neff, a retired partner of Perkins Coie, questioned whether the settling firms can represent a client adverse to the Trump administration without running into conflicts. He said the moves "open up the door" for his former firm and others that are fighting Trump to win that business.

Collectively, the five firms that made deals Friday brought in close to \$20 billion in revenue in 2023, according to data reported by the American Lawyer. The country's largest law firms mostly declined to sign an amicus brief backing Perkins Coie in its suit against Trump.

Kirkland and Latham are the two biggest law firms in the world by revenue, a status they reached by guiding clients' private equity transactions as well as their mergers and acquisitions. Simpson has also built a reputation on Wall Street, as it represented Microsoft Corp. in its acquisitions of LinkedIn and GitHub.

Cadwalader is Wall Street's oldest law firm and was once home to deputy attorney general Todd Blanche before he was ousted for taking on Trump as a client. A&O Shearman is the merger product of UK-based legal giant Allen & Overy and Wall Street stalwart Shearman & Sterling.

Trump said this week he wants lawyers at the firms he reached deals with to work on issues related to tariffs, trade and coal mining.

"We signed with many law firms, the ones that we thought were inappropriate, and they've all agreed to pay," Trump said in the Oval Office on April 9, two days before his agreement with the five firms was announced. "We have another five to go."

(Adds analyst comment starting in sixth paragraph.)

We Need Law Students to Clean the Stain on the Legal Profession

Lawyers Defending American Democracy's Lauren Stiller Rikleen says law students can put pressure on Big Law firms that have made agreements with the Trump administration and encourage those that are resisting.

Now that nine of the largest firms in the US have chosen their own financial interests over protecting the rule of law, leverage in the form of courage remains hard to find. But law students may offer some hope.

Like the once-esteemed Skadden, the law firms Willkie Farr, Milbank, Kirkland & Ellis, Latham & Watkins, Simpson Thacher & Bartlett, Cadwalader, and A&O Shearman have preemptively cowed to the threat of an executive order by asking President Donald Trump how high they should jump. The answer, at least as translated to the rest of the profession, is high enough to allow the president to participate in running critical functions of their firms.

Paul Weiss, and these other firms will be remembered for handing over their culture and values to maintain the status quo of their economic stability. The general playbook has been for the firms to deliver a doleful message, sharing that their difficult but necessary decision was in the best interests of the firm's clients and employees.

These "arrangements" (they aren't settlements, as the door seems wide open for repeat intrusions once the administration becomes annoyed by future clients or new hires) result in the firms' collective severance of their once active commitment to diversity, equity, and inclusion. Instead, the new form of obedience is to offer bland statements ensuring they will continue to follow the law in their employment practices—hardly an inspirational message to young law students.

Each firm also has agreed to subject their pro bono programs to presidential approval. The placement of patriotic words around the nature of the pro bono cases the firms will be expected to accept obscures the real dilemma that will arise when trying to assign cases that are anathema to the civil rights and social justice causes that have historically energized associates in their pro bono work.

To paraphrase a former vice presidential candidate, there isn't enough lipstick in the world to disguise what happened here.

With few profiles in courage emerging from this stain on the profession, it may well be the newer entrants who can clean up its reputation. Skadden has already lost associates whose public rebukes were powerful testaments to their legal advocacy skills.

There are also reports that some associates are considering opting out of or otherwise refusing to be used to “sell” their firms to interview candidates. Perhaps these actions will inspire more associates to find their voices.

But another form of power in this battle for our justice system and the rule of law can be found behind desks in law schools around the country. Firms invest heavily in recruiting top talent and proudly tout the result of those efforts to their clients. But good students generally have choices. And they certainly have agency to ask questions.

Law students can do their part for democracy by agreeing to ask a certain set of questions in their interviews. After all, these are supposed to be conversations in which the firms put their best foot forward to sell themselves as a great place to work. Perhaps law students can drill down on those conversations by asking questions that reveal more, for example:

- How would you describe the firm’s culture?
- What is your philosophy about pro bono matters? What types of cases did you historically accept? Do you foresee that changing?
- How would you describe the firm’s values?
- How do you think the firm would respond if it were the target of a presidential executive order? What would be the process by which lawyers in the firm have input in the decision to file a lawsuit or seek a deal?
- How is the firm responding to pressures to drop its DEI commitments? Have the website statements been changed on these topics? What does DEI now look like here, particularly with respect to formerly marginalized communities?

Law students willing to engage on this topic could come up with a pointed list of questions to shed light on exactly what they will be facing in the years ahead with a federal government inching closer to full oversight of the legal profession. And they can also be clear in refusing offers at firms as to why they did so.

In any democracy, the lawyers are the guardrails. With our country heading toward autocratic rule, the question is whether lawyers will be actors in this drama facilitating the transition, or whether they will abide by their oath and their professional obligations to stand strong against unconstitutional edicts.

We see how some firms have chosen. But it isn’t too late for others in the profession, including those who are close to taking that solemn oath, to choose to keep our democracy.

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

With Trump Obtaining \$940M in 'Free Legal Services,' Will 9 Big Law Firms Now Face Talent, Brand and Conflict Issues?

 [law.com/nationallawjournal/2025/04/14/with-trump-obtaining-940m-in-free-legal-services-will-9-big-law-firms-now-face-talent-brand-and-conflict-issues](https://www.law.com/nationallawjournal/2025/04/14/with-trump-obtaining-940m-in-free-legal-services-will-9-big-law-firms-now-face-talent-brand-and-conflict-issues)

Abigail Adcox

April 14, 2025

Photographer: Al Drago/Bloomberg

Analysis

"The image hit to these firms has been enormous," including for the firms' associates and their image to law students, said Georgetown law professor Rima Sirota.

🕒 6 minute read

Law Firm Management

The original version of this story was published on The American Lawyer

With President Donald Trump now securing deals with nine Big Law firms to provide at least \$940 million worth of free legal services, more questions are emerging about the type of "pro bono" work the firms will actually provide. Trump has said he wants the firms to work on trade negotiations or coal leasing, but those matters must pass a conflict check, and it's not clear what would happen if a firm refuses the work.

Trump's term of "pro bono," after all, significantly differs from the definition firms have used to handle legal work for persons of limited means or to help organizations that serve people of limited means.

"What President Trump is talking about is more accurately described as free legal work for the government. He has been talking about these agreements like he has received hundreds of millions of dollars of free work in his personal piggy bank," noted Leslie Levin, legal ethics professor at the University of Connecticut.

At an energy event on Tuesday, Trump said, "I agree they've done nothing wrong, but what the hell, they give me a lot of money, considering they've done nothing wrong."

The pro bono agreements Trump has announced on social media say the "pro bono and other free Legal services" work would include helping veterans and public servants; "ensuring fairness" in the justice system; and combating antisemitism. Yet Trump repeatedly said in the last week said he wants these law firms to work on trade agreements.

So far, nine large law firms — Cadwalader, Wickersham & Taft; Kirkland & Ellis; Latham & Watkins; A&O Shearman; Simpson Thacher & Bartlett; Paul, Weiss, Rifkind, Wharton & Garrison; Willkie Farr & Gallagher; Skadden, Arps, Slate, Meagher & Flom; and Milbank — made agreements with Trump, pledging at least \$940 million, combined, in pro bono services to causes his administration supports.

One of the main issues that have been left underdefined in the agreements, as they've been reported, “is what is within the scope of matters that the firms have agreed to provide pro bono representation on, and who will determine whether a matter falls within that scope,” said Jessica Roth, a legal ethics professor at Cardozo School of Law.

On trade negotiations in particular, several law professors raised that it may not pass a client conflict check at firms.

“Trade negotiations are so wide ranging, impact so many interests, so many industries,” said Georgetown law professor Rima Sirota, adding that “given the size and scope of the law firms we're talking about, conflicts of interest seem inevitable.”

Levin, at the University of Connecticut, noted that any firm attempting to negotiate on behalf of the U.S. against a foreign government that is a current firm client would be acting in a way that is “directly adverse” to the current client. “This situation would require, at a minimum, consent by that government client before the law firm could represent the U.S. in tariff negotiations. I suspect that some foreign government clients would not consent,” she noted.

Brand and Talent

Several law firms, in internal statements circulated after the deals were announced, said no attorney would be forced to perform the pro bono work.

“The agreement does not dictate or restrict what pro bono matters we will take on moving forward,” Simpson Thacher said in an [internal memo](#).

Still, lawyers at firms that have made deals with Trump have publicly protested the terms of the pro bono work, saying Trump is bullying the firms into handling causes he supports for the foreseeable future.

[An open letter](#) from A&O Shearman associates, counsel and staff to firm leadership noted a deal with Trump is “detrimental to A&O Shearman's business interests both in the United States and internationally, in terms of client relationships, employee retention, recruitment, and the firm's US and global reputation, both now and in the future.”

Many observers have pointed to the talent implications for firms down the line. All nine law firms tend to pay at the top of the associate salary scale, but will associates and other talent choose top competitors that haven't made deals?

Presumably, law firms are making deals with Trump because they believe, among other reasons, that without doing this, their clients would flee to other firms, said Sirota at Georgetown.

"But overall, the image hit to these firms has been enormous in terms of the profession, certainly in terms of their own workforce, particularly associates, certainly also in terms of law students," Sirota said.

For employees who are watching from within these firms and law students considering working at these firms, "it's a serious consideration for them whether these are the workplaces where they want to spend their careers, as opposed to the firms that have stood up for the rule of law and resisted the President's attempts to coerce the lawyers to pursue his agenda," said Roth, of Cardozo.

Four other law firms are now suing Trump to permanently block his executive orders, including Susman Godfrey, which filed suit on Friday, as well as Perkins Coie, Jenner & Block and Wilmer Cutler Pickering Hale and Dorr. They are represented by Munger Tolles & Olson; Williams & Connolly; Cooley; and Clement & Murphy.

If the nine law firms making deals with Trump perform free legal work to achieve Trump's objectives, Levin said, "they are going to look like they have been completely cowed by the administration."

However, New York University legal ethics professor Stephen Gillers noted some firms may see the chance to work on trade negotiations as advantageous.

"Some firms may see the opportunity to negotiate trade agreements for the United States, as attractive, providing an experience that will enhance the firm's reputation and knowledge base. Associates may especially be attracted to that opportunity," Gillers said in an emailed comment.

Still, there will ultimately be some trade work that a firm would rather not accept, even if it can, noted Gillers.

Confrontation Coming?

If enough lawyers inside the nine firms balk at performing specific work Trump demands, it's unclear what will happen next. Several legal experts say it doesn't appear the agreements appearing on Trump's social media posts — which do not have signatures — are

enforceable.

Trump's recent remarks regarding trade agreements and coal "suggest that he may think the pro bono pledges are his to 'spend' however he wishes," Gillers said. "That may lead to a confrontation."

If the settlement agreements were intended to be enforceable, the drafting would have to be much more specific about what the firm is promising to accept. "Put another way, no competent lawyer would ever draft a contract with language like this," Gillers said, but adding he doubts that Trump ever envisioned having to go to court to enforce the terms of a settlement agreement.

Indeed, the agreements don't have language about protecting firms against a future executive order.

"If he becomes unhappy with how a firm was interpreting its obligations, it would be much swifter for him to issue a new executive order," Gillers added. "He does not need the courts."

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Susman Godfrey Becomes Fourth Law Firm to File Suit Over Trump Executive Order

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April 11, 2025

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

Ohio corruption scandal looms over FirstEnergy rate case

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NewsRoom

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Kathiann M. Kowalski, Canary Media

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The Ohio Statehouse in downtown Columbus. (Photo by David DeWitt, Ohio Capital Journal.)

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This article comes from Canary Media's Ohio Utility Watch newsletter, a monthly update on Ohio's HB6 power plant bailout scandal. Visit our newsletter page to sign up.

Welcome to Ohio Utility Watch, a newsletter tracking Ohio's ongoing public-corruption saga, often referred to as the House Bill 6 or HB 6 scandal. If you're new to the story, it revolves around the use of dark money by utility companies and others to pass roughly \$60 million in bribes to secure more than \$1.5 billion in ratepayer subsidies for aging, uneconomical coal and nuclear power plants.

Here are some developments from the last few weeks:

The state's consumer advocate wants regulators to reduce FirstEnergy's rate of return to reflect poor management practices that enabled bribes and corruption.

Environmental advocates say FirstEnergy's ratemaking case should consider grid disparities in disadvantaged communities.

Legislation that would remove HB 6's coal plant subsidies is moving full-speed ahead, along with incentives for more in-state power plants.

At a March 13 hearing, former FirstEnergy executives again declined to answer questions, citing their Fifth Amendment rights.

Should 'abysmal' management mean less profit from ratepayers?

Ohio's state consumer advocate and others say FirstEnergy should be penalized with a lower rate of return in its rate case due to the company's "egregious violation of laws and norms" in connection with the HB 6 scandal.

The Office of the Ohio Consumers' Counsel filed testimony on March 24 arguing, among other things, that the Public Utilities Commission should cut the company's requested rate of return on capital investments by at least half a percent. All told, the consumers' counsel says Ohio customers should pay FirstEnergy roughly \$132 million less for annual distribution charges.

FirstEnergy responded on March 31, arguing the corruption scandal has no bearing on its first ratemaking case since 2007. Although the company expected five years ago that it would need to reduce rates when a new ratemaking process began, it now wants \$183 million more per year from Ohio ratepayers.

The company has proposed that it earn a 10.8% rate of return on equity. That income generally functions as a reward to the firm for capital investments. An auditor hired by the commission suggested 9.63% based on its market analysis.

Ashley Brown, a former PUCO commissioner and past executive director of the Harvard Electricity Policy Group, said the company's "abysmal" management should be a factor, regardless of whether it's also addressed in other regulatory cases.

"I've never seen a better case for arguing performance should play a huge role in determining the rate of return," Brown said.

Read more:

FirstEnergy asks regulators to raise rates by \$183 million. Auditors say \$8.5 million (Cleveland.com)

FirstEnergy wants to raise prices following repeal of scandal-tainted legislation (Ohio Capital Journal)

Should equity affect rates?

Ohio environmental advocates say FirstEnergy's ratemaking case needs to address grid disparities for disadvantaged communities compared to elsewhere in the company's service area.

The Ohio Environmental Council filed testimony last month criticizing the utility's efforts to maintain and improve infrastructure for lower-income areas. The environmental group's filings include testimony by Shay Banton, a regulatory program engineer and energy justice policy advocate for the Interstate Renewable Energy Council.

"When utilities are requesting a return on investment, I think it's prudent for customers to know why those investments are being made and to make sure those investments are being made in an equitable way," Banton told Canary Media.

FirstEnergy's March 31 response argued that its ratemaking case is unrelated to the equity issues raised by the Ohio Environmental Council. However, company testimony filed on March 24 talks about various investments to maintain and improve reliability.

Read more:

SUPPORTSUBSCRIBE

Lots of demand, too little grid: The state of the US power sector (Canary Media)

Mapping tools help Ohio cities chart course for environmental justice (Canary Media)

Energy bills move ahead

Both houses of the General Assembly have passed bills to end HB 6's coal subsidies. Customers have paid roughly \$460 million for two 1950s-era coal plants since the law's subsidy mandate began in January 2020, according to the Office of the Ohio Consumers' Counsel. The consumers' counsel also estimates the plants have emitted almost 60 million tons of carbon dioxide, plus other pollutants, since then.

Ohio utilities oppose the bills, especially after lawmakers dropped language that would have let some charges continue as late as 2028. AEP Ohio "will continue to advocate for a reasonable timeline for transitioning the cost recovery," along with other changes, said spokesperson Scott Blake.

More broadly, the bills aim to attract new in-state electricity generation, primarily through tax incentives and regulatory changes. The Ohio House and Senate are now considering versions of each other's bills. Changes are likely before either becomes law.

Read more:

Ohio's big utilities fight repeal of scandal-tainted bill riders that cost customers billions of dollars (Energy and Policy Institute)

Ohio House passes bills to ax coal fees, attract new energy to the state (Cincinnati Enquirer)

Ohio lawmakers vote to repeal coal subsidies from scandal-ridden FirstEnergy bill (News 5 Cleveland)

Witnesses still aren't talking

Former FirstEnergy lobbyists and executives again asserted their Fifth Amendment rights and refused to answer questions under oath about issues related to HB 6 during a March 13 hearing at the Public Utilities Commission of Ohio.

Administrative Law Judges Megan Addison and Jacky Werman St. John told lawyers for the Ohio Attorney General to secure a court order for Joel Bailey, Ty Pine, Dennis Chack, and Justin Biltz to answer questions in subsequent depositions, for which Ohio law would grant them immunity from criminal prosecution.

The PUCO first directed the Ohio Attorney General to get judicial orders compelling the testimony in early December. What's different now is the witnesses' lawyers appear inclined to accept a court order and grant of immunity within boundaries to be outlined in that order. The terms are not yet known.

Meanwhile, an evidentiary hearing for three of the HB 6-related regulatory cases is scheduled to start on May 13. One case deals with corporate separation issues that were split off from another evidentiary hearing last year. The other two cases involve riders, including one that was ultimately found unlawful but for which customers paid roughly \$450,000.

In a separate proceeding, the Ohio Consumers' Counsel and Northwest Ohio Aggregation Coalition have appealed to the Ohio Supreme Court PUCO's decision to let FirstEnergy revert to a package of added bill charges while its new "electric security plan" case makes its way through the commission.

Read more:

Six years after bribery scandal, ousted FirstEnergy lobbyists still aren't talking to the PUCO (Cleveland.com)

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DeWine stunned by teachers' pension fund with firm accused of corruption

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Morgan Trau

April 14, 2025

"You're still on this story, huh?" the governor said to me as we were getting started with our 30-minute interview.



and last updated 1 hour and 54 minutes ago

COLUMBUS, Ohio — Ohio Gov. Mike DeWine is deeply concerned following a recent WEWS report in which we revealed hundreds of text messages of the relationship between a public official and an investment firm seeking to get access to tens of billions of dollars from the state. In an exclusive one-on-one interview, the governor finally addressed the alleged corruption scheme plaguing the retired teachers' pension fund.

"You're still on this story, huh?" the governor said to me as we were getting started with our 30-minute interview. "While others have lost attention — you stayed on it."

For the past year, we have dug into — and exposed — the controversy swirling inside the State Teachers Retirement System (STRS), a roughly \$100 billion pension fund for the more than 500,000 active and retired public educators in Ohio.

In summary, there has been constant fighting, two board resignations, and allegations of both a public corruption scheme and the mishandling of funds. There has been a senior staff dismissal and at least two senior staff resignations.

The scandal centers around former board member Wade Steen, board chair Rudy Fichtenbaum, and their relationship with investment firm QED Technologies, run by former Ohio Deputy Treasurer Seth Metcalf and Jonathan (JD) Tremmel.

This piece will be formatted as a Q&A, featuring moments from the half-hour interview. It has been lightly edited only for clarity and length, as well as to get to the crux of the comment.

Wade Steen and Seth Metcalf, the men with the relationship at the center of the conversation, also spoke with me in response to the governor's comments in their own Q&A that can be found here.

How we got here

In May of 2024, the governor received a 14-page anonymous whistleblower memo alleging a massive public corruption scheme brewing and moving quickly within STRS. In 2020, Metcalf and Tremmel set their eyes on STRS, according to the document.

The documents claim that they — despite having no clients and no track record — tried to convince STRS members to partner with them.

They couldn't impress the board members, mainly because of their lack of experience and also because QED was not registered as a broker-dealer or investment adviser. The men also didn't own the technology to "facilitate the strategy," the documents say.

So what exactly are Steen and Fichtenbaum trying to change, and what would QED allegedly attempt to do? Revise the investment structure. The men are seen as the leaders of the "reform movement." This fight began from a debate on how STRS should invest money — through the current system of actively managed funds versus an index fund. Active funds try to outperform the stock market, have more advisors, and typically cost more. Index funds perform with the stock market, are seen as more passive, and typically cost less.

In short, "reformers" want to switch to index funding, while "status quo" individuals want to keep actively managing the funds. Recent elections have allowed the "reform-minded" members to have a majority of the board.

The STRS memo claims QED and ORTA, the Ohio Retirement for Teachers Association, had worked together, specifically when it comes to elections, to get a more sympathetic — or willing — board.

Steen and Fichtenbaum had allegedly been bidding continuously, pitching QED's direct documents to board members and proclaiming the company's talking points to other staff.

Soon after, Attorney General Dave Yost filed a lawsuit to remove Steen and Fichtenbaum from the board, stating they were participating in a contract steering "scheme" that could benefit them. Yost started the investigation after the memo, now known as being prepared by STRS employees, alleged that Steen and Fichtenbaum had been bidding on QED.

The AG states that the pair should be removed because they broke their fiduciary duties of care, loyalty and trust when "colluding" with QED.

In late August, Yost filed several subpoenas against QED and others allegedly involved in this scheme. The same month, QED spoke out to us for the first time, and so did the AG.

As we have continued the dozens of reports on the topic, our investigation in September revealed that STRS was, once again, moving to hire a firm that allegedly lacked experience and personal ties to the board leaders, according to senior staff.

After our report, the board chose not to move forward with the firm that has been the subject of my investigations.

Communications obtained via a records request of a court filing reveal that QED associates consistently told then-board member Steen what questions to ask, gave him documents to propose, and pushed him to follow its plan.

Texts between Steen, Metcalf and Tremmel show that the pair consistently told the board member questions to ask and ideas of what to say and pushed him to follow their plan. There are hundreds of text messages.

Texts show a group chat between Steen, Metcalf and Tremmel. The pair constantly texted Steen during board meetings with advice, including numerous messages of "Vote!" and "Force the vote" when it came to policy and following QED.

"Thanks for the support today!" Steen said.

"Wade - you are a champion! We moved the ball down the field today and have time to recoup and refresh during the holiday!" Metcalf texted the group.

To read what the texts said, click [here](#).

Our reporting stunned the governor, he said, so after more than a year of requesting an interview with him, he agreed to a date in April 2025.

The governor responds

Why are we here? For the teachers to have money when they retire, DeWine said.

: "What is the importance of a healthy pension fund?"

Ohio Gov. Mike DeWine: "It's very important we have state systems, and this is the teachers' retirement fund, and we certainly want that to be a sound fund. That's always, always something that's a concern, and retired teachers have been concerned about not getting cost of living allowances in the past. The stability of a retirement fund, I think, is very important. It's not just the stability from an economic point, this is an area where stability and less drama is good."

Trau: "Clearly, if we look at the past two years, drama encapsulates what has been happening at STRS. What is going on from your perspective?"

DeWine: "Well, I think things have calmed down. I'm looking at it from afar, but it seems that the board is working, and working in a productive way. I think we've, at least for a while now, we've come over from that problem that we've had in the past."

The problems worsened in 2023. Initially appointed by former Gov. John Kasich, Steen has become somewhat of a martyr, many reformers told me. He was reappointed by DeWine when the governor started his administration, but the governor asked him to resign in 2023. Steen refused, so DeWine removed him. DeWine initially cited Steen's alleged poor attendance at board meetings as reasoning.

However, a court ruled that DeWine did not have the legal authority to remove Steen based on Ohio law, and thus, Steen was put back on the board in the spring 2024.

I asked the governor during our interview why he had removed Steen, to which he reiterated that his attendance was satisfactory. Steen disagreed.

Trau: "When I talked with your team in May of 2024, they told me that there was also a concern about his close relationship with the investment firm QED and that led you to have doubt in his fiduciary duty."

DeWine: "Well, there certainly was some information going around in regard to that, of course. Then when we got the document, it was an anonymous document, but it seemed to be well informed and I felt I wanted to, frankly, get that document over to elected officials who might have an interest in investigating or might have an obligation to investigate it."

Trau: "When it comes to the pension fund and the allegations that are against former board members, the current board chair – what kind of outcome could happen if these allegations are all true?"

DeWine: "Well, I don't really know. I've not followed the attorney general's suit that closely, but when you look at what you have been able to uncover, the things that have been filed in court... I would just call it a concerning set of facts. It's very concerning that you have that close a relationship, going back and forth between a member of the board and the company that wants a job, basically. They want to be hired and clearly, you see [Seth] Metcalf, for example, going back and forth. It just seems to me that that's very, very disconcerting. It's very upsetting, and it raises a lot of questions. Now, we'll see where the lawsuit goes and we'll see what the final verdict is. I'm not going to prejudge that at all, but based upon what you are reporting — yeah, it doesn't look very good."

Pulling out some of the text messages I obtained, I passed the documents to the governor to look through.

Hundreds of texts show Metcalf gave Steen questions to ask during board meetings, documents to propose, and pushed him to follow QED's plan.

"I think we can win this but I need to nuisance it," Steen texted in 2020, as he was pitching QED's proposal.

"I think you've got the votes! Make the motion! Announce that you have a solution," Metcalf responded.

Metcalf continually texted talking points, themes and direct quotes for Steen to follow while he was in the board meetings.

Steen followed his lead.

Trau: "What do you think about the fact that they were giving directions during board meetings and they were giving quotes to say and those quotes were then said out loud?"

DeWine: "It would be highly, highly, highly unusual for that to happen. A member of the board has a fiduciary obligation to all the people he or she represents. They have an obligation to the retired teachers. They have an obligation to people who are currently putting their money into that — current teachers. So, for that person to have that close of relationship with a person who is basically coming to the board and saying 'Hire us, we know what we're doing,' — yeah, it's not a normal situation, let's put it that way. Again, I can't judge it. All I can tell you is what you have seen and what you've pulled from the court documents."

Evaluating the text message threads with numerous legal and pension industry experts, each indicated suspicion, with Case Western Reserve University law professor, joined by others, adding that this could be used to argue there was a level of coordination.

Trau: "You are an attorney, and when you look at this, does this look like coordination to you?"

DeWine: "Well, I'm not gonna draw any legal conclusions, but just knowing what each role these players are supposed to be playing — they're not playing their normal roles. That's not what we would normally expect... The member of the board is supposed to be impartial and supposed to be making a judgment call based upon what is in the best interest of STRS, in this case, and ultimately in the retired teachers."

I referenced how familiar Metcalf and Steen spoke to each other.

Trau: "Should we be paying attention to the language that this investment firm is using when talking to a board member?"

DeWine: "Well, it's unusual language — let's just put it that way."

Trau: "Obviously, there are people who back Wade Steen extensively. There has been a legal fund with thousands of dollars given to him to fight the removal and to fight this current lawsuit against Attorney General Dave Yost. Some of these people, even with these text messages, say that this is political interference. How do you gain back the trust of these pensioners that believe that you and AG Dave Yost are wrong?"

DeWine: "Well, the only concern I've always had is for the board to function well and to make good judgments, do the best that they could for the retired teachers. I see retired teachers all the time. They've worked very, very hard. Teachers are the people that educate our kids. Everybody can remember a teacher, more than one teacher, who literally changed their life. These are important people and we need to do the best we can for them.

I don't want to be a member of the board. I'm not looking over everybody's shoulder. We just have to have a functioning board, that makes decisions based upon what is in the best interest of these teachers. When they pick the investment advisors, you would think that they would be picking people who are experienced and people who have a good track record. You're not always going to be successful with every investment, but what you have to look at is the totality of the investments."

Trau: "Do you feel vindicated by the texts coming out?"

DeWine: "Well, I don't know if vindicated. Look, we're simply after what's best for the retired teachers."

I noted how DeWine removed Steen during a critical election when the reformers took control of the board and then released the 14-page memo during another pivotal election when the reformers took a supermajority of the board. With this dominance, they would be able to start shifting the investment structure, something that reformers claim DeWine wants to prevent.

Trau: "Some argue that that timing is suspicious. Could you see why they would say that?"

DeWine: "Well, it's not true. We were trying to get the information out, for example, in regard to the memo we got. We, very quickly, got it over to six different officials, public officials, who we thought and believe they do have investigative authority, or have the ability to act, upon that memo. I really did not have the ability to act upon that memo... When you see very serious allegations like that, we have to get that document over to the people who have an obligation to take action."

I referenced the reformers' goal of switching the investment structure.

Trau: "Do you think that that would yield better results than right now? And should they have had the opportunity, if the majority on the board wants to do that, should they be able to do that?"

DeWine: "Well, if the majority wants to do that they certainly can do that. For the average citizen, I think investing in the stock market, following investment in funds that allow you basically to get the return or lack of return that the whole stock market is getting, that makes some sense... Pension funds take a more conservative point of view. They have to be paying out so much money every single month, they have to be paying out every single year, and they don't want to have a great risk, so they will be much more diversified even than that... And what Metcalf was selling was something that would be very, very unusual for a pension fund."

I noted Metcalf's history, asking why the governor thinks someone may be entered in giving 70% of a pension fund to a startup without the technology to pull off the plan. DeWine emphasized how Metcalf was not qualified.

There are real, valid concerns from educators — DeWine acknowledged — but as we have reported, STRS is doing better than most of the other state pension funds.

"I do hear from teachers about how much the advisors were getting paid," the governor said. "I think you have some people who are just looking at this and saying, 'Look, these people are paid too much money,' and look, those are legitimate discussions that people can have and they can believe they're getting too much or you can argue they're not getting too much. But those are, I think, some of the reasons that people were getting upset."

The investment staff get paid by salary and performance-based incentives (PBIs). Losing these bonuses could slash up to half of their salary, former STRS chief actuary Brian Grinnell told me in July.

The average yearly "salary" for STRS investment staff members was roughly \$230,300, that number including PBIs, as they have typically been approved for \$10 million in bonuses per year. The board voted to eliminate the PBIs to make the reformers happy, resulting in their major compensation advisor quitting and their fiduciary counsel telling them they were violating the law. They reinstated them soon after.

RELATED: Ohio educators upset with teachers' pension board backtracking with millions in bonuses to be given to staff

But it's been a tough few years financially, and it doesn't seem to be getting better. I noted this, the current look at the stock market, inflation, and the fiscal hits people faced from COVID. COLA could help retired teachers. The Retirement Study Council said they are on track to restore it in a decade fully.

Trau: "People are suffering with this and they are very upset. They are, many of them, blaming you for this oversight of the board. Is that fair?"

DeWine: "Well, I get one person on the board, so I only have one person on the board that I appoint. I guess you can blame the governor for anything, but my concern has been the same and my goal has been the same — and that is to have board members who are going to focus every single day on the best interest of the retired teachers."

Referencing how DeWine had said the board had calmed down, I mentioned their attempt to hire a consultant firm without relevant experience with ties to the board members. Our investigation disqualified them due to their staff contacting the board members during a "blackout period," when the interview process is underway and communicating isn't allowed.

Trau: "Are we not looking at it seriously by saying that it's calming down?"

DeWine: "Well, everything is relative. It certainly calmed down some. If I was a member of the board, I think I would remember my fiduciary obligation to the retired teachers and every decision I made doesn't mean every decision will be right, but what I would have in my mind every single day, every time I went to the committee meeting, every time I attended the meeting, every time I thought about this, 'What's in the best interest of the teachers and what should these investments be and who should be advising us.'"

Trau: "Some lawmakers have suggested that due to the controversy that is happening right now with the board, some of the voting power should be taken away from the educators — making them members of the board but just not voting members or taking down how many people. The teachers say that that would be undemocratic. Where do you stand?"

DeWine: "Well, I'm not advocating any kind of change. The board members are not experts, their job is to hire experts... Their job is to pick the right people who have a track record of investment and continue to have that oversight that the board should have."

RELATED: Ohio lawmakers may remove teachers' pension board voting powers as chaos continues

Talking about hiring the right people, I brought up the text messages and how QED still wants a job. Metcalf has said that their plan will work to bring in money, and they can make it better. Regarding the messages, I followed up with the governor on his concerns.

Trau: "When did you think it was unusual, was there a specific text message or was it just overall?"

DeWine: "Well, you're talking about what you pulled from the filings. Frankly, you put it all together in a form that people could read it. So I didn't read all those, I didn't have those pulled. I read it when you had it put together and you had all those laid out... Once you read

it, I think anybody reads it, would be concerned about it."

Trau: "When I've talked with QED, they've said that there's nothing illegal about potentially acting as consultants or advisors to Steen because they say they know more than him when it comes to the investment structure. Do you believe that you know he could just be talking to them for advice?"

DeWine: "Well, I think people can come up with their own conclusions on that."

Trau: "What's yours?"

DeWine: "Well, I again, I don't know what's in someone's heart. I don't know what's in their mind. I just know that is a very unusual relationship, a very close unusual relationship."

The governor wouldn't comment on whether Metcalf, who worked in state government for years, should have known better than to communicate with a board member in the way he did.

Trau: "Some critics argue that with your text messages with FirstEnergy CEO Chuck Jones, [where] they ended up putting \$500,000 in a dark money PAC for you, some argue that there's no difference between that and QED contacting. Is that fair?"

DeWine: "No, I don't think so. What we did is perfect, perfectly legal. You report contributions."

A public records request reveals that DeWine communicated frequently during his first run for governor with Jones and VP Michael Dowling. The pair held lavish fundraisers before he was elected, with Jones giving speeches about how DeWine would be great for "his company and shareholders," a speech I received said. Plus, Jones provided the now-governor money when he asked.

Referencing QED, I followed up. We had, earlier, talked about his thoughts on if there was a campaign waged behind the scenes to get certain people elected. He said he didn't know.

Trau: "Are you saying that there might be some financial involvement?"

DeWine: "I'm not alleging anything about what they were doing... People have a right to wage a campaign as long as they stay within the law. They have a right to raise money and they have a right to push somebody to be on STRS' board. To my knowledge that, per se, is nothing illegal about that. This is a free country. People have the right to speak out and they have the right to give money to a candidate and they have the right to advocate for that candidate."

Trau: "But the same people argue that the closeness in your relationship with FirstEnergy executives could be comparable to QED and Wade Steen, Rudy Fichtenbaum."

DeWine: "Well, it's a different situation. I mean the situation in regard to the board is that these two members of the board have a fiduciary relationship and a fiduciary obligation. And you have someone who is pitching them, not in their individual capacity. They weren't going to hire them to do their individual work. They were going to hire them as a member of the board and that is what is questionable I think."

Through a short back-and-forth, I clarified with DeWine about why he thought the communication was different.

"I think it is really comparing apples and pears or something, I think it's really different," DeWine continued. "This is a board which has a fiduciary obligation... They have a legal obligation to give their best judgment, so you read that and draw your own conclusions from that."

I brought up the future for Steen since he had told me during his last meeting for the board that he wasn't sure if he was entirely done with STRS yet. His supporters have suggested him for the executive director role, CFO, or CIO.

"Whether it's a wise move or not it's a different question," the governor answered. "I think it'd be a mistake to put Steen back on there. I'm not going to reappoint him."

Trau: "Moving forward, it seems the board has realized they can't do everything that they want to do with totally changing how the investment structure works. Do you think that this is going to have to be an ongoing process where eyes are on it at all times because people could still try to hire their friends?"

DeWine: "Well, I think the public's eyes, thanks to you... are on them, and that's always a good thing, They have to make these decisions out in public so I think that's that's a good thing."

We also touched on Signal, an encrypted app that deletes conversations within a set period of time. QED used Signal frequently to speak to Steen and Fichetnbaum, even recently as last year. They used it to talk to me, too, until I reported the existence of Fichtenbaum's deleted messages to them.

RELATED: Ohio teachers' pension fund chair still considering deal with controversial firm at center of scandal

Trau: "Should public officials be allowed to be using apps where they delete and they're encrypted?"

DeWine: "Well, we've got pretty good strong laws today, as you know. No matter what your means of conveyance, that really doesn't matter. That doesn't give you any legal protection. What makes you, makes the news media or anybody in the public, able to get information is if you were acting in your official capacity."

Trau: "Sure, we have them when they exist, but when it's Signal and they delete automatically within reading of them — should there be a prohibition on the fact that they can delete without being under FOIA (Freedom of Information Act that allows the public to records request and get access to documents)?

DeWine: "Look, as technology changes and it advances or regresses depending on how you want to look at it, we constantly should be looking at, see what needs to be changed. But I don't know in this case whether that should be changed or not."

Trau: "What do you think could be the best outcome in this situation to prevent against corruption under STRS?"

DeWine: "Well, the best outcome could be if there continues to be light on the subject, as they say, and these decisions are made out in the public. I mean, people are paying attention. You're paying attention... That's a good thing."

He noted the unpredictability of being tied to the stock market, especially now. It is good to have a diversified portfolio, he added.

Trau: "How do you get people to believe you when they think that you're trying to interfere against reform?"

DeWine: "Well, I have no reason to interfere against reform. I have every reason to try to make sure the retired teachers get a good deal, and that they're taken care of... What I don't want is to see chaos on that board, and what I don't want is bad investments and people be hired who do not have the experience to make those investments."

Trau: "What would your goal be? What is your one thing that you would want to say in this interview to pensioners and people who are struggling with the fact that they don't know what's going on?"

DeWine: "Well, I think the opportunity to know what's going on is better than it was. I think people are paying attention to this board, they're looking at it and that's a good thing. It's a very, very good thing."

To ask questions or provide comments about STRS, please email Morgan.Trau@news.com with the subject line "STRS COMMENT."

Sources are welcome and encouraged.

I have covered all different angles of this story, including ones focusing on the educators and their lack of COLA, how lawmakers are responding and investigations into archived meetings. Most stories are linked to the previous, but chronological order can be found by going to this page, scrolling down and clicking to the fourth page back to find the first piece.

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Former Ohio teachers' pension fund official says nothing was improper in texts

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Morgan Trau

April 14, 2025



COLUMBUS, Ohio — A former public official and an investment firm are defending themselves after Ohio Gov. Mike DeWine spoke out about their conversations after our reporting exposed their close relationship.

Former retired teachers' pension fund board member Wade Steen argued that nothing was inappropriate about his behavior, claiming the governor should be the one being looked into.

In an exclusive one-on-one interview, the governor finally addressed the alleged corruption scheme plaguing the State Teachers Retirement System (STRS).

RELATED: Ohio Gov. Mike DeWine stunned by teachers' pension fund behavior with firm accused of corruption

The day after that sit-down, I spoke with Steen and Seth Metcalf, the head of QED, the investment firm at the center of the scandal.

For the past year, we have dug into — and exposed — the controversy swirling inside the State Teachers Retirement System (STRS), a roughly \$100 billion pension fund for the more than 500,000 active and retired public educators in Ohio.

In summary, there has been constant fighting, two board resignations, and allegations of both a public corruption scheme and mishandling of funds. There has been a senior staff dismissal and at least two senior staff resignations.

The scandal centers around former board member Wade Steen, board chair Rudy Fichtenbaum, and their relationship with investment firm QED Technologies, run by former Ohio Deputy Treasurer Metcalf and Jonathan (JD) Tremmel.

This piece will be formatted as a Q&A, as it features moments from the 15-minute interview. It has been lightly edited only for clarity and length, as well as to get to the crux of the comment.

RELATED: Ohio Gov. Mike DeWine stunned by teachers' pension fund behavior with firm accused of corruption

How we got here

In May 2024, the governor received a 14-page anonymous whistleblower memo alleging a massive public corruption scheme brewing and moving quickly within STRS. In 2020, Metcalf and Tremmel set their eyes on STRS, according to the document.

The documents claim that they — despite having no clients and no track record — tried to convince STRS members to partner with them.

They couldn't impress the board members, mainly because of their lack of experience and because QED was not registered as a broker-dealer or investment adviser. The men also didn't own the technology to "facilitate the strategy," the documents said.

So what exactly are Steen and Fichtenbaum trying to change, and what would QED allegedly attempt to do? Revise the investment structure. The men are seen as the leaders of the "reform movement." This fight began from a debate on how STRS should invest money — through the current system of actively managed funds versus an index fund. Active funds try to outperform the stock market, have more advisors, and typically cost more. Index funds perform with the stock market, are seen as more passive, and typically cost less.

In short, "reformers" want to switch to index funding, while "status quo" individuals want to keep actively managing the funds. Recent elections have allowed the "reform-minded" members to have a majority of the board.

The STRS memo claims QED and ORTA, the Ohio Retirement for Teachers Association, had worked together, specifically when it comes to elections, to get a more sympathetic — or willing — board.

Steen and Fichtenbaum had allegedly been bidding continuously, pitching QED's direct documents to board members and proclaiming the company's talking points to other staff.

Soon after, Attorney General Dave Yost filed a lawsuit to remove Steen and Fichtenbaum from the board, stating they were participating in a contract steering "scheme" that could directly benefit them. Yost started the investigation after the memo, now known as being prepared by STRS employees, alleged that Steen and Fichtenbaum had been doing the bidding of QED.

The AG states that the pair should be removed because they broke their fiduciary duties of care, loyalty and trust when "colluding" with QED.

In late August, Yost filed several subpoenas against QED and others allegedly involved in this scheme. The same month, QED spoke out to us for the first time, and so did the AG.

As we have continued the dozens of reports on the topic, our investigation in September revealed that STRS was, once again, moving to hire a firm that allegedly lacked experience and personal ties to the board leaders, according to senior staff.

After our report, the board chose not to move forward with the firm that has been the subject of my investigations.

Communications obtained via a records request of a court filing reveal that QED associates consistently told then-board member Steen what questions to ask, gave him documents to propose, and pushed him to follow its plan.

Texts between Steen, Metcalf and Tremmel show that the pair consistently told the board member questions to ask and ideas of what to say and pushed him to follow their plan. There are hundreds of text messages.

Texts show a group chat between Steen, Metcalf and Tremmel. The pair constantly texted Steen during board meetings with advice, including numerous messages of "Vote!" and "Force the vote" when it came to policy and following QED.

"Thanks for the support today!" Steen said.

"Wade - you are a champion! We moved the ball down the field today and have time to recoup and refresh during the holiday!" Metcalf texted the group.

To read what the texts said, click here. [CLICK HERE](#).

Our reporting stunned the governor, he said, so after more than a year of requesting an interview with him, he agreed to a date in April 2025.

Steen, QED, STRS responds to the governor

: "There's still a lot of support for you from the STRS board and from the pensioners. How do you feel now that there is still this support for reform?"

Wade Steen: "I'm happy that there's support for reform. Everything I tried to do when I was on the board was restore [cost of living adjustments]. It was a benefit that was taken away... If I in any way contributed to getting that conversation started about how do we do a better job for the teachers in Ohio, I feel satisfied that I made a little bit of a difference."

Originally appointed by former Gov. John Kasich, he was reappointed by DeWine when the governor started his administration, but the governor asked him to resign in 2023. Steen refused, so DeWine removed him. DeWine originally cited Steen's alleged poor attendance at board meetings as reasoning.

However, a court ruled that DeWine did not have the legal authority to remove Steen based on Ohio law, and thus, Steen was put back on the board in the spring 2024.

I asked the governor during our interview why he had removed Steen, to which he reiterated that his attendance was unsatisfactory. Steen disagreed. However, I pressed DeWine on his updated statement from May 2024, months after the removal, in which his team said that there were concerns about Steen's involvement with QED.

Trau: "Do you find that suspicious that he's changing his mind now or do you think that this was always something that he was worried about? What do you take from that change?"

Steen: "I don't know what I would take. When I got a call from his staff person... her comment, and it's noted in numerous disclosures, was, 'We want to go in a different direction.' Didn't say who 'we' was, and I asked what direction that was because I reiterated that I had met with the governor's chief of staff just a few months prior, and the staff were very aware of what I was doing and what I was fighting for — which was for teachers. I said, 'I don't understand what's this different direction?' Never once did I get that answered. So if anything's hung in the back of my mind, it's 'they wanted to go in a different direction.'"

On his removal, he notes that the governor and Yost argue that "they want the same things I was fighting for, which is shocking."

Steen: "They want to restore cost of living, they want to improve performance, they want to make sure that the fund is doing the best job possible for teachers. I thought, 'Wow, that's exactly what I say,' but they wanted to go in a different direction? Why the argument from attendance to something else, I don't know. When my attendance was pulled, they found out

that it was actually very good, and better than many, so, maybe they had to come up with a different reason... My attendance was never a problem, when I saw that I was a little surprised."

I brought up to DeWine how Steen was removed during a critical election when the reformers took control of the board, and then he released the 14-page memo during another pivotal election when the reformers took a supermajority of the board. With this dominance, they would be able to start shifting the investment structure, something that reformers claim DeWine wants to prevent.

Throughout the past year, I've spoken to Steen about this — in which he argues that the governor wants to prevent true reform. Steen's supporters say the removal was to "silence" him.

The governor insists he has no reason to stop reform, but rather, he wants to stop possibly corrupt activity. The texts paint a picture between Steen and Metcalf that was "disconcerting," DeWine said.

Hundreds of texts show Metcalf gave Steen questions to ask during board meetings, documents to propose, and pushed him to follow QED's plan.

"I think we can win this but I need to nuisance it," Steen texted in 2020, as he was pitching QED's proposal.

"I think you've got the votes! Make the motion! Announce that you have a solution," Metcalf responded.

Metcalf continually texted talking points, themes and direct quotes for Steen to follow while he was in the board meetings.

Steen followed his lead.

Trau: "Do you think that they were appropriate?"

Steen: "Absolutely. I had conversations not just with Seth Metcalf, but with numerous people. Part of my job as a board member is to try to get information, know as much as I can. And as has been documented and you noted, I knew Seth from years prior — we go to the same church... So for me to try to better understand what's going on or ask people's opinion — whether it would be our staff, whether it be Seth Metcalf as an individual, whether it would be other people that are in the investment field that I know that never get mentioned — I didn't find that unusual."

RELATED: The alleged 'backdoor ties' between retired teachers' pension fund and investment firm

He doesn't know why his relationship with Metcalf was "the focus," he added.

Steen: "I ask a lot of people a lot of questions. The question I would have is, if you read the letter, the anonymous letter, from 2021 on, information had been provided by STRS staff to the attorney general. So for more than three years, they've been getting all kinds of information. Nothing in the letter is new, and yet here we sit a year after the attorney general made allegations and brought charges, and there's nothing — because there is nothing, there's no merit to it. It's almost weaponization... But clearly, if there was something, I would think in three years you would have some evidence. They clearly have none other than 'He spoke to this person.' OK, well, I spoke to a lot of people."

He was removed in 2023, so he missed some time, and then was not reappointed — so he has begun to "move on," he added.

Steen: "I feel like I did make a small contribution toward fighting for teacher benefits for retirees and trying to improve benefits in the future for active teachers not receiving them yet. I take some satisfaction in that, but my term's done."

He is focused on his job as chief financial officer of the Cleveland Metroparks and spending time with his grandchildren, he added.

Steen: "I really haven't thought much about it since then, other than when we have to file something in the court because these cases, as I understand, drag on for some period of time."

I brought up how the governor pointed out that QED was specifically trying to get a job.

Trau: "QED was specifically trying to get money for their startup to be able to work with you and work with STRS on investing. That's where he says it crosses a line."

Steen: "I don't know how to respond to that. I guess that the issue that I kept raising — I think everybody keeps missing — is that we have non-disclosure agreements with numerous groups that we make investments with, and I have been outspoken that there needs to be transparency, and yet no one, governor, AG, staff seem to be concerned about the fact that... investment staff make investments and the board does not know the details of those investments and are not provided when asked, they are denied access to that information."

He continued.

Steen: "And so, Morgan, I'd ask you as a reporter — does that concern you? That was really the crux of what started so much of this was, 'What are our fees with the hedge funds? What is in the agreements?' and at every turn I was denied, denied, denied. That's all I wanted — I wanted transparency. I want to know what are we investing in, who's benefiting from this?"

He was roadblocked on numerous occasions from trying to get information on investments from staff and information on how bonuses are given to staff members. Other information he wanted falls under different types of trade information and, thus, isn't disclosed.

Steen: "I don't want to say something is there because I don't know — I don't know what's there because we were never provided. I was never provided that information."

When it comes to Metcalf, he denied knowing whether they fully wanted a job.

Steen: "Whether or not QED was trying to get work, I guess people could say they were. I was intrigued by the idea."

Going on to say that in the 14-page memo, staff acknowledged they do something similar to QED's idea, so this wasn't out of the realm of the norm. I could not substantiate that through my multiple readings of the memo. The closest thing I found to that is the staff noting that it "was familiar with the use of similar strategies on a much smaller scale but was not aware they could achieve anywhere near the results suggested."

The former board member said that the investing didn't have to be with QED; he was just wondering if the "idea has merit," he said.

Steen: "I was pushing for more performance... I wanted our expenses done and I wanted our results better. That's what I think every oversight body should do — how do we do better? What ideas can we take from others and implement here. But, if that's the assertion — that I was trying to secure work for one person, that's not accurate. I wanted to know more about this idea. Was there merit? But the bigger idea was 'How do we restore cola for our retirees?' How do we restore benefits that were taken away from them? How do we do better time and again?"

He was removed for questioning the staff, he said.

Steen: "If someone tries to remove me, if someone tries to attack me because I'm asking how we do better, I guess I'll wear that because If I were on the board today, I would continue to say, 'How do we do better for teachers.' You've watched the meetings and you've been around, Morgan, long enough to know and see the questions I asked. I was pretty direct on my question about how do we do better? I think sometimes that made staff uncomfortable that they were being held into account, whether it be staff or consultants about how do we do better — they didn't really have a good answer."

I referenced how Steen said he would speak to multiple people for advice. In reference to Metcalf, he asked for edits on documents; he was given "themes" to bring up during meetings.

Trau: "How would you categorize or characterize that relationship?"

Steen: "Probably nothing more than input, like I would get through reading information, calling people that I know that do institutional investments in town for private sector pension funds and others — just personal friends. 'Hey, what do you guys think about this? What do you think about that idea? What do you think about the way we pay our bonus structure,' that kind of thing... So those are the kind of things that people would tell me that just raised questions for me."

He continued.

Steen: "But to your question, how would I categorize? Just someone I bounce an idea off of like anyone else. People would send me their thoughts, talk to me, go have coffee... I spent a lot of time trying to really understand what we were doing, what we were tasked with. I was really trying to do my job as a board member. But back to my relationship — it would be one where I was just seeking input or advice. That was all."

Trau: "Were you talking with other people during board meetings that were giving you direct quotes to say or they were giving you ideas on motions?"

Steen: "No, I wasn't — I didn't — no, no."

Then we got on the topic of DeWine's history with text messages.

Now-indicted FirstEnergy executives allegedly worked with DeWine and his team to pass legislation that was the result of the largest corruption scheme in state history, according to newly released text messages. DeWine denies knowing House Bill 6 was a bribe.

RELATED: New texts show FirstEnergy allegedly working with Gov. DeWine to pass House Bill 6

A public records request reveals that DeWine communicated frequently during his first run for governor with former FirstEnergy CEO Chuck Jones and VP Michael Dowling.

The pair held lavish fundraisers before he was elected, with Jones giving speeches about how DeWine would be great for "his company and shareholders," a speech I received said. Plus, Jones provided the now-governor money when he asked.

"Chuck. Can you call me?" DeWine wrote on Oct. 13, 2018 — less than a month before he faced off against Democrat Rich Cordray in the governor's race. "OEA put in million yesterday for Cordray."

"OK," Jones responded. "I'll call at 2:30."

Three days later, Dowling texted Jones and said, "Chuck — go ahead and call Mike DeWine on the \$500k. It's going to RGA's C(4) called state solutions. All set."

Jones responds, "OK. I'll call him around 5."

I explained to Steen how DeWine said the conversations were very different because FirstEnergy was just helping DeWine in an "individual" sense, whereas QED wants a job. [Click here to read more of the governor's stance.](#)

Steen didn't want to fully comment without knowing the entire quotation but did critique the governor — as many reformers do regarding the H.B. 6 scandal.

Steen: "I think they're even more different in that his relationship with Chuck Jones is much different. He was getting something from Chuck Jones. Chuck Jones gave him a campaign contribution. I got nothing. Again, three years of investigation. The assertion was 'Wade had a relationship.' The assertion was 'Wade got something.' The assertion was something was offered. Morgan, unless I've missed it, none of that's true. There's no evidence to that. The governor got a campaign contribution from First Energy, correct?"

Trau: "Got a few."

Steen: "Yeah, so if there is a difference — he got something... They are quite different. He's the governor. I'm a volunteer board member — just who we are in our positions is a lot different, too. I mean, the amount of authority and power one has, he's the governor, he got campaign contributions. I'm just a volunteer board member trying to work hard for teachers. It's interesting how, somehow, one's volunteer service somehow becomes this negative — that they have to wear this attack upon them. I guess the better question is why the attack upon me? Because I talked to one person? If you think about it and step back and and view it through that lens — why were they after this person so much?"

Trau: "Why do you think?"

Steen: "I'm not at liberty to say because our cases are still pending, but things are still moving forward."

What Steen didn't acknowledge was the fact that he has received thousands of dollars to fight his legal battle against not just his original removal from the board, but also the AG's lawsuit.

Robin Rayfield, who runs ORTA, put together a fund in 2023 to pay Steen's fees.

"I communicated with Wade," Rayfield said in an interview with me in May 2024. "I said, 'Well, do you wanna fight this?' And he goes, 'Let me think about it because fighting the governor is a tough thing to do...' But nonetheless, we stood with Wade and I said, 'Well, ORTA could potentially help you fight this.'"

Case Western Reserve University business law professor Eric Chaffee explained that this raises red flags.

"If you have certain benefits being paid to an individual, who's supposed to represent a complete group of people, from a segment of that group of people, it creates concerns that there are going to be policies that favor them," Chaffee said.

Last year, I obtained thank you cards that Steen wrote to pensioners for donating to his legal fund, adding that the "generous financial contribution" will allow him to "deliver" for teachers.

ORTA leader Robin Rayfield told me they ended up raising more than \$80,000 for Steen — but they recently started fundraising for Fichtenbaum due to the AG's lawsuit involving him as well as Steen.

In September, ORTA finally filled out the lobbying expenditures requirement. It showed that, in total, they spent about \$115,000 to support the two men. About \$87,000 went to Steen, and \$27,000 went to Fichtenbaum.

"In 23 years of reviewing lobbying expenditures, this is a complete outlier — we've seen nothing comparable," Legislative Inspector General Tony Bledsoe told me during our report exposing the money.

RELATED: Deja vu? Ohio teachers' pension fund moves to hire firm that staff say has no qualifications

This means both Steen and Fichtenbaum, the chair, are using donations from a section of members to pay their legal fees.

After telling me he had to get onto another call, abruptly ending the interview, Steen added that the H.B. 6 scandal should be the story to focus on.

I was able to squeeze in one final question.

Trau: "Are you interested in going back on the board or being executive director or CIO?"

Steen: "No, I'm very happy in what I'm doing here at the Metroparks."

Metcalf declined an interview but did provide a statement.

"I'm grateful this matter is now in a court of law, where the evidence will show that QED's interactions with the STRS board were lawful, ethical and appropriate," Metcalf emailed. "Whistleblowers Steen and Fichtenbaum collaborated with QED to unravel a web of misinformation and expose a system enriching STRS employees at the expense of Ohio educators."

I also reached out to the STRS team to ask them how they viewed the conversations between Steen and QED.

Their spokesperson told me they don't comment on pending litigation, but provided a copy of their ethics policy, which includes provisions stating that no one on the board can "Vote, authorize, recommend, or in any other way use his or her position to secure approval of a Board or System contract (including employment or personal services) in which the Board Member or employee, a family member, or anyone with whom the Board Member or employee has a business or employment relationship, has an interest; Solicit or accept any compensation, except as allowed by law, to perform his or her official duties or any act or service in his or her official capacity; Solicit or accept anything of value from anyone doing business with the Board or System."

There is no evidence of any kickbacks, Steen and QED argue, so this wouldn't apply.
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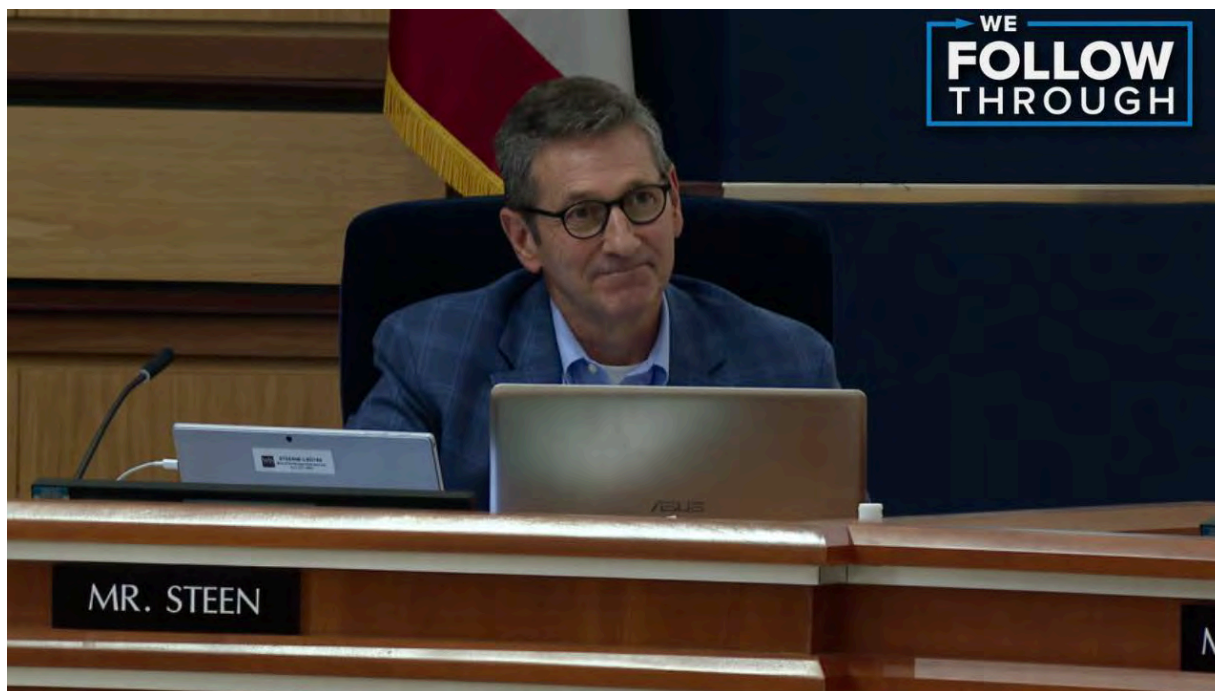
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Texts shed light on investment firm's involvement with teachers' pension

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Morgan Trau

March 20, 2025



Wade Steen sitting at his desk in the STRS board room, hearing reformers thank him for his work

and last updated 7:00 AM, Mar 21, 2025

COLUMBUS, Ohio — An investment firm worked extensively with an embattled former member of the retired teachers' pension fund, according to text messages in newly released court documents.

Communications obtained via a records request reveal that QED associates consistently told then-board member Wade Steen what questions to ask, gave him documents to propose and pushed him to follow its plan.

Seth Metcalf, the man being accused of scheming with Steen, has now defended himself from the AG's filing.

This story has been updated with additional statements and information.

In the court battle between Attorney General Dave Yost and former STRS board member Wade Steen and current board chair Rudy Fichtenbaum, the AG provided extensive text messages between Steen and the founder of the investment firm at the center of an alleged corruption case.

"The extent to which Steen communicated, coordinated, and acted almost as an agent of QED (rather than a fiduciary to the STRS Board) is shocking," the filing states.

In May, Yost filed a lawsuit to remove Steen and Fichtenbaum, stating they are participating in a contract steering "scheme" that could directly benefit them. Yost started the investigation after documents prepared by STRS employees alleged that Steen and Fichtenbaum have been doing the bidding of investment firm QED.

Steen and Fichtenbaum have repeatedly brought up how quick the turnaround time was between Yost receiving the memo and filing the civil suit. The documents were received by government officials in early May. Yost said he was investigating on May 9, and by May 14, a lawsuit had been filed in Franklin County Court of Common Pleas.

Steen had asked the court for a partial summary judgment because he is no longer on the STRS board, so he thinks the asking for his removal is "moot."

This week, the state asked the judge not to issue judgment because the AG asked for the "permanent" removal of Steen and Fichtenbaum, meaning they won't be allowed to make a "comeback," the docs state.

"The salient question is not whether Steen is currently on the Board, but whether he should ever be allowed to join the Board again," the filing says.

Steen argues that the AG's "request for an accounting and disgorgement of unlawful benefits allegedly received by Steen from QED is not supported by the evidence," which the state denies.

The circumstantial evidence and exhibits provided by the AG team "must be considered" by a jury, the state argues.

"The self-serving narration of facts set forth in Steen's motion is unsupported by record the evidence," the state said. "Steen alleges that the Complaint was spurred by some vendetta... That narrative is both false and irrelevant to the motion."

Recap

QED was started by former Deputy Treasurer Seth Metcalf and Jonathan (JD) Tremmel. Metcalf worked under Josh Mandel in multiple capacities, including as deputy treasurer and general counsel. In 2020, they set their eyes on STRS, according to a 14-page whistleblower

memo.

The documents claim that they — despite having no clients and no track record — tried to convince STRS members to partner with them.

They couldn't impress the board members, mainly because of their lack of experience and also because QED was not registered as a broker-dealer or investment adviser. The men also didn't own the technology to "facilitate the strategy," the documents say.

Other names referenced frequently in the whistleblower memo were former board members Bob Stein and Yoel Mayerfeld. Both were supportive of QED at first. Stein abruptly resigned, after texts showed that he was somewhat backtracking on support for the investment firm.

The STRS memo claims QED and ORTA, THE Ohio Retirement for Teachers Association, including leaders Robin Rayfield and Dean Dennis, have worked together, specifically when it comes to elections.

Steen and Fichtenbaum had allegedly been bidding continuously, pitching QED's direct documents to board members and proclaiming the company's talking points to other staff.

The AG states that the pair should be removed because they broke their fiduciary duties of care, loyalty and trust when "colluding" with QED.

[Click here to learn more about the lawsuit.](#)

In late August, Yost filed several subpoenas against QED and others allegedly involved in this scheme. The same month, QED spoke out to us for the first time, and so did the AG.

"Ohio law does not allow Steen to now dodge liability for breaches of fiduciary duty as a public trustee simply by leaving the Board," the AG team's states in the new filing.

Texts

Texts between Steen and Metcalf and Tremmel show that the pair consistently told the board member questions to ask, ideas of what to say and pushed him to follow their plan.

There are hundreds of text messages.

In a message from Metcalf to Steen in August of 2022, Metcalf seemingly gives the board member talking points.

1. Just doing my job as trustee - not getting paid. Bad stuff going on. Would be easy to rubber stamp, but I refuse to be part of the problem.

2. Problems at STRS are real for active and retired teachers and are not going away. Teachers are pissed (and have been for a long time) that staff are getting rich while teachers get the short end of the stock.

3. Cash burn of \$4B a year means STRS' assets are shrink quickly during this recession, high risk of entering a "death spiral." Stock market boom over that last decade only allowed STRS to tread water. Going to be very clear in next couple of years that STRS will be bankrupt in 15-20 years. Only options are further benefit reductions, higher contributions, a state bailout or earning dramatically more money.

4. STRS is tone deaf and arrogant. Won't change.

5. Teachers are driving change. You should talk with them.

That is one example of the dozens of pieces of advice Metcalf gave. Although some texts are out of order date-wise, there is a pattern.

In what appears to be an effort to get Steen to send a letter to an individual, Metcalf worked on editing for him.

"Not yet, I need your edits that you mentioned and did not want to send in advance of talking with him so as not to give him any advantage," Steen said.

Metcalf also talked about vote counts in order to sway other board members to follow his and Steen's agenda, the texts show.

"You and Hunt should call Dale together. We NEED him," Metcalf wrote in Dec. 2020.

After sending Steen more "themes" and topics to cover during meetings and private pitches, the board member asked for additional help.

"Can you resend me your 3 points on why we need an active engaged Investment Comm," Steen asked Metcalf. "You gave me a copy but I've misplace[d] it."

Private conversations were also discussed, the texts show.

"Stein really wants this, I think he is just keeping his powder dry," Metcalf said in Oct. 2020, although, through the texts, it is unclear what he is addressing. "He wants a 'big' solution to be able to charge fees."

"I won a few battles in Exec meeting that we can discuss later. I think we can win this but I need to nuisance it," Steen said.

"Can't wait to hear about exec committee. You're not done at all if it fails. It is only the beginning - you're just staring to figure out this big problem," Metcalf continued. "Just like in the legislature, have a vote to put people on the record."

"Be patient my friend," Steen replied.

"I think you've got the votes! Make the motion! Announce that you have a solution! Please call when you're free. I'm here," Metcalf texted Steen.

"I'll call in a few minutes," Steen responded.

This was during the time that Steen, according to texts, was attempting to have the board adopt COLA, or cost of living adjustment, solution — possibly QED or their subsidiaries.

Then, texts show a group chat between Steen, Metcalf and Tremmel. The pair constantly text Steen during board meetings with advice, including numerous messages of "Vote!" and "Force the vote" when it comes to policy.

"Thanks for the support today!" Steen said.

"Wade - you are a champion! We moved the ball down the field today and have time to recoup and refresh during the holiday!" Metcalf texted the group.

Throughout all the texts, the pair argue for transparency and accountability of the STRS staff, arguing that they are skewing the benchmarks for bonuses for staff.

"Wade: Please ask each person to summarize four things: sharpe, return, capacity and edge during the next twelve months. We need \$1.5 billion today. How fast can we get to that?" Metcalf asked in Nov. 2020.

"Give him the dagger," Tremmel said about another board member seemingly disagreeing with Steen and QED.

In another message, Metcalf asked to overhear a conversation between Steen and a board member.

"Wade - we do you plan on calling Stein? We'd love to be a fly on the wall," he said in Nov. 2020.

Metcalf requested focus.

"Wade: need to keep eye on the prize," he texted in Nov. 2020.

One of the exhibits shows a text in which Steen criticized Stein, once again, for not going with his plan.

"I think Stein is trying to work through staff to get your concept or the concept of using our Balance Sheet implemented by working through staff. But working through staff will kill it," Steen emailed Metcalf in Feb. 2021. "It seems he is not willing to use the Board's authority to push it is my gut feel. This is on the QT."

In April of 2021, Stein resigns abruptly, much to the confusion of the group chat.

"Why did he leave?" Tremmel asked.

"I have no idea," Steen responded.

I reached out to Steen, Metcalf and Tremmel for comment.

"Wade, this is the benefit of persistent, thoughtful work. We are starting to see green shoots of the seeds we've sown. Great work. You were masterful," Metcalf said in Sept. 2020.

The court case will continue as the board tries to function.

RELATED: Ohio lawmakers may remove teachers' pension board voting powers as chaos continues

"Today will go down in history," Tremmel texted in Feb. 2021.

QED response

Metcalf sent me a lengthy statement, answering most of the questions I had, including the alleged appearance of impropriety. He, however, didn't touch explicitly on the fact that he was giving exact directions on what to say and how to say it.

"It's important that Ohio teachers, taxpayers and officials don't miss the most important revelation from this week's court filings — the Attorney General's office was unable to find a single piece of evidence supporting claims by STRS staff of improper dealings between QED and members of the STRS board. As we've said all along, no board member ever received nor was promised anything from QED. Period," Metcalf said.

He said that the opponents of reform will continue to slander, because that's the "best" they can do.

"QED's highly-qualified team worked closely with Steen to expose STRS' mediocre investment performance because we know STRS could earn more money for teachers. STRS is misleading stakeholders and paying improper bonuses by overstating its investment performance... Our index-based solution threatened the jobs of STRS internal investment staff, who have misrepresented QED and our solution," Metcalf continued.

STRS officials have continued to state that QED is incorrect.

The Ohio Retirement Study Council posted a report in 2022 that compared STRS with other statewide public pension systems from 1999-2022. During this time period, the average annual STRS return was 6.85%, while the Ohio Public Employee Retirement System (OPERS) was 6.14%, the School Employees Retirement System of Ohio (SERS) was 6.52%, Ohio Police & Fire Pension Fund (OP&F) was 6.76% and Highway Patrol Retirement Systems (HPRS) was 5.88%.

STRS staff members have pointed out this data on numerous occasions when addressing that the fund isn't failing like critics say it is.

"STRS Ohio's investment consultant, Callan, shared that STRS Ohio's total fund return outperformed its benchmarks and ranked in the top 10% of public funds tracked by Callan for the three-, five- and 10-year periods ending June 30, 2023," STRS spokesperson Dan Minnich told me last year.

Metcalf continued to defend Steen.

"Steen fulfilled his fiduciary duty (and created enemies) by investigating the suspicious fact that STRS has consistently used a higher unaudited investment return for paying staff bonuses and a lower audited return for paying teacher benefits," Metcalf said.

The benchmarks for STRS bonuses has been a controversial topic and a point of contention for Steen and other reformers.

"We helped Steen extract information on STRS' investment costs and expenses; encouraged him to request that the Attorney General appoint transparency counsel; and recommended that he demand an independent audit of investment performance before staff bonuses were paid, which STRS staff rejected," Metcalf added.

I asked why he kept using the term "we" in conversation with Steen.

"'We' refers to the loose coalition of teachers, teacher organizations, QED and STRS board members trying to understand how STRS has failed to pay promised benefits to teachers while claiming superior investment performance," he responded. "There is nothing improper about a second set of eyes to shed light on bureaucracy. STRS staff and consultants were paid millions, we've been paid nothing."

To ask questions or provide comments about STRS, please email Morgan.Trau@wews.com with the subject line "STRS COMMENT." Or, fill out the form below.

Sources are welcome and encouraged.

I have covered all different angles of this story, including ones focusing on the educators and their lack of COLA, how lawmakers are responding and investigations into archived meetings. Most stories are linked to the previous, but chronological order can be found by going to this page, scrolling down and clicking to the fourth page back to find the first piece.

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Movado Restating Some Financial Results After Misconduct Probe

Movado Group is restating some financial statements after a misconduct probe found some employees had overstated sales.

- Became aware of allegations of misconduct within the Dubai branch In late January 2025 related to sales in the Middle East, India & Asia Pacific region.
- An investigation, which is now substantially complete, determined that the former managing director of the Dubai Branch, as well as certain employees under his direction, took actions that resulted in an overstatement and premature recognition of sales, as well as discounts owed to customers.
- Misconduct included the use of a third-party warehouse unknown to the Company's management to facilitate the premature recognition of sales, and the falsification of documents to circumvent internal controls
- The Company has terminated the now former managing director of the Dubai Branch
- Affected periods include fiscal years 2022, 2023 and 2024, while interim periods in fiscal year 2024, 2025 are also affected
- Any previously issue reports, press releases, earnings releases and investor presentations describing Movado's financial information during these period can no longer per relied on
- The investigation concluded no other regions or employees, including management, were involved or had knowledge of the misconduct
- Has begun and will continue to implement changes to improve its internal control over financial reporting
- Implementing changes to the organizational structure in the affected region to mitigate the risk of inappropriate influence being applied to circumvent existing controls
- Maintains quarterly cash Div of 35 cent/share, estimate 35 cents/share
- Preliminary Results
- Preliminary 4Q operating income \$9.2 million, negatively impacted by \$4.3 million as a result of provisions associated with cost savings initiatives as well as professional fees related to the Dubai Branch investigation
- Preliminary 4Q net sales \$181.5 million
- Fiscal 2026 Outlook
- See net sales \$653.4 million

- Sees operating income \$20.0 million
- Sees gross margin of 54%

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

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Stablecoin, ETFs, Mining: Trump Family Is Going All-In on Crypto

President Donald Trump and his family have taken a interest in just about every corner of the crypto industry.

There are nonfungible tokens and digital collectibles; a decentralized finance project; a proposed stablecoin; an effort at Bitcoin mining; and a pair of memecoins, one for the president and one for First Lady Melania Trump.

Taken together, the various projects are approaching \$1 billion in paper gains even after accounting for the latest round of trade war-induced market gyrations, according to Bloomberg calculations based on publicly available data.

Donald Trump is already the richest person to have ever become US president, and his non-crypto holdings include significant investments in real estate. After his first election in 2016, Trump's lawyers created a trust to handle his business affairs. That was managed by his two eldest sons and by **Allen Weisselberg**, the longtime chief financial officer of Trump's real estate company.

Eric Trump has emphasized that "there are no conflicts" related to the family's crypto investments.

"I don't work with the White House," Eric Trump said during a Bloomberg TV interview in April. "We've believed in crypto for a long time."

The president's own public conversion to crypto is still relatively new. Trump called Bitcoin a "scam" as recently as 2021, telling Fox Business at the time that he didn't like the token "because it's another currency competing against the dollar" and that it should be regulated "very, very high."

Trump's relationship with the digital asset industry has evolved significantly since then. As a candidate, he courted and benefited from significant contributions to his reelection campaign from crypto executives and advocates.

In his second term, Trump has signed executive orders in support of his promise to make the US the crypto capital of the planet, installed David Sacks and Bo Hines to represent the interests of the industry, and continued to tout his memecoin with posts on Truth Social.

"Trump and his family seem eager to establish a broad foothold in the sector prior to further regulatory actions that are likely to boost cryptoasset valuations," said **Eswar Prasad**, professor of trade policy at Cornell University.

Here's how the Trump crypto portfolio has evolved.

Nonfungible Tokens: Dec. 2022

Trump became a crypto convert after falling in love with his own digital collectibles, known as nonfungible tokens.

Read More: Trump Became Crypto Believer After Falling in Love With NFTs

Bill Zanker, a friend of Trump's and the founder of adult-education company The Learning Annex, initially pitched him the idea. Since then, the Trump Trading Cards NFTs, which show him in a variety of poses and outfits (sometimes dressed as a superhero), have been spread out over four collections.



Trump digital cards
collecttrumpcards.com

The president last year hosted dinners for fans who purchased his NFTs, which, according to financial disclosures, have brought in millions of dollars.

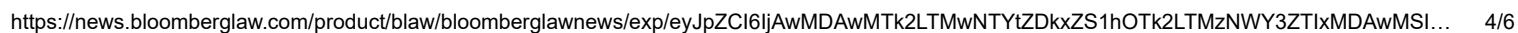
Decentralized Finance: Sept. 2024

The Trump family announced its crypto project World Liberty Financial ahead of the US election. Since its inception, the project has been buying up millions of dollars worth of other cryptocurrencies, including Ether and Tron, though has yet to offer promised DeFi services like lending crypto without any intermediaries.

A company affiliated with Trump receives 75% of net revenue as a fee, including the proceeds of token sales, according to offering documents. The Trump family owns 60% of the equity share of the World Liberty through their company DT Marks DeFi LLC.

The company has raised \$550 million in token sales after completing a second round last month.

How the president, his family and friends are part of World Liberty Financial





Zach Witkoff, one of World Liberty's co-founders, is the son of Steve Witkoff, who helped connect the president's family to other World Liberty Financial's participants. Since the platform's token sale in October, observers have raised questions about its potential conflicts of interest for the Trump family, given the administration's sway over regulations.

Trump's sons, Donald Jr., Eric, and Barron, are all listed as "Web3 Advisors" to World Liberty Financial. The family actively promotes the project through social media and public appearances.

Memecoins: Jan. 2025

The day before Trump's inauguration, he and his wife, **Melania**, launched their own memecoins, a highly speculative corner of crypto in which the asset doesn't have much intrinsic value. After an initial surge, which likely generated more than \$11.4 million in fees for entities linked to the president in January alone, prices have tanked.

Read More: Melania Memecoin Is Down 90% From Peak as Novelty Value Wanes

The foray was met with mixed reaction from the crypto industry, as many believed it hurt the push to appear more legitimate. Two Trump-linked entities — CIC Digital and Fight Fight Fight LLC — own 80% of the supply, a holding that will be unlocked over three years.

ETFs: Feb. 2025

Trump Media & Technology Group Corp. said in early February that it had applied to trademark brands for investment products with themes that track Trump's priorities, including a "Truth.Fi Bitcoin Plus ETF."

It has said it would work with Crypto.com to launch the ETF. The month before Trump's election win, the SEC filed a notice that it intended to sue Crypto.com for operating an unregistered securities exchange. It closed its probe in March, according to the company.

Stablecoin: March 25

World Liberty Financial announced plans to launch its own dollar-tracking stablecoin called USD1, which will be initially minted on the Ethereum and Binance Smart Chain blockchains. The token will be backed one-to-one by short-term US Treasuries, dollar deposits and other cash equivalents, according to World Liberty.

The move came just ahead of landmark stablecoin legislation that advanced through the House Financial Services Committee, with crypto companies pitching stablecoins as a way to make global financial transactions cheaper and faster.

Read More: House Stablecoin Bill Advances With Support of Trump, Democrats

Bitcoin Mining: March 31

The Trump family said it plans to launch a Bitcoin mining-focused venture with Hut 8 Corp. Bitcoin miners were early supporters of Trump's reelection campaign. In June 2024, then-candidate Trump hosted several mining executives at Mar-a-Lago, telling them he'd be an advocate for them in the White House.

The Bitcoin mining sector in the US has morphed into a multibillion dollar industry.

Read More: Trump Family to Launch US Bitcoin Mining Venture With Hut 8

"Investing in crypto is no longer as simple as holding Bitcoin," said **Campbell Harvey**, a professor of finance at Duke University. "There are many different crypto segments. Trump has a presence in lending, a future stablecoin, other cryptoassets, and now a mining operation."

--With assistance from **Annie Massa**, **Kyle Kim (News)**, **Muyao Shen** and **Dave Liedtka**.

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Litigation

April 14, 2025, 10:02AM PDT

Meta Faces Potential Breakup With Start of Antitrust Trial (2)

- **FTC claims that company has monopolized social media market**
- **Meta says agency previously blessed Instagram, WhatsApp deals**

The US Federal Trade Commission is finally having its day in court against Meta Platforms Inc., arguing that the company must be broken up for illegally monopolizing the social media market after buying Instagram and WhatsApp more than a decade ago.

The FTC's opening salvo began Monday in Washington before Chief Judge James Boasberg in a case that's been years in the making. Agency attorneys kicked off their arguments by invoking a long US tradition of seeking to ensure a competitive marketplace, one that the FTC's lead trial lawyer, Daniel Matheson, accused Meta of violating.

"For more than 100 years, American public policy has insisted firms must compete if they want to succeed," Matheson said in his opening statement. "The reason we are here is that Meta broke the deal."

If the FTC prevails, a spinoff of Instagram and WhatsApp would undo years of integration between the apps, disrupt two of the most popular digital consumer products in the world and potentially erase hundreds of billions of dollars in Meta's market value. It would also raise serious questions about how the government evaluates and approves deals.

The trial is expected to last about two months and feature testimony as soon as this week from Chief Executive Officer Mark Zuckerberg and former executive Sheryl Sandberg. The company argued Monday that it faces fierce competition from several other services, especially as social media becomes more about entertainment than friends and family, and that it has provided demonstrable benefit to its users.

FTC Chair **Andrew Ferguson** was in the courtroom for the trial's opening. Earlier Monday, while cautioning against over regulation, he told Fox Business "the antitrust laws can help make sure that no private sector company gets so powerful that it affects our lives in ways that are really bad for all Americans."

A final decision will hinge on how social media is defined, and whether Meta dominates that market. The FTC will focus on how people communicate with friends and family – what it calls the "personal social networking services" market, which it claims is composed primarily of messages and media shared between close contacts.

'Killer Acquisitions'

The FTC argues that Meta's purchases of Instagram and WhatsApp are "killer acquisitions" that prevented those companies from competing. To support its case that Meta is a monopoly, the FTC will argue that the quality of its apps has declined, most noticeably with increased ads and weakened privacy protections.

Read More: [Meta Adds Former Trump Adviser, Stripe CEO to Board of Directors](#)

In 2010 “Meta was faced with a sea change in competitive conditions,” Matheson said, referring to the growing mobile market. “They decided that competition was too hard and it would be easier to buy out their rivals than to compete with them.”

Meta bought WhatsApp in part to fend off an offer from Alphabet Inc.’s Google which was also considering buying the company, according to Matheson. And Meta also considered buying Snap Inc. for \$6 billion in 2013, though the Snapchat owner turned the offer down. The number was not previously known, as reports at the time pegged the discussions as for half that much.

Snap representatives didn’t immediately respond to a request for comment Monday.

In his opening argument, Matheson said the FTC will highlight “smoking gun” emails from Meta execs including Zuckerberg, particularly one from 2012 where he described the Instagram deal as a way to “neutralize a competitor.”

After Meta bought Instagram it “fundamentally manipulated the experience” offered by the service, Matheson said, allowing it to avoid cannibalizing its own more profitable Facebook product. While that is a “rational business decision,” Matheson said it “offends the policy” of the antitrust laws.

Muliple Competitors

Meta has pushed back aggressively against the FTC’s claims, arguing that it competes intensely with a variety of platforms, including ByteDance Ltd.’s TikTok, Snap’s Snapchat, Google’s YouTube, Apple Inc.’s iMessage and Elon Musk’s X. The FTC’s case is “at war with the facts and at war with the law,” said Meta lawyer Mark Hansen in his opening remarks, noting that of all Meta’s competitors, Matheson mentioned TikTok only once in his opening statement.

The agency says that only Snapchat competes with Meta, and that a number of other past competitors, including MySpace, are now defunct.

Hansen said that consumers’ use of the apps has changed dramatically over time, shifting to more passive engagement such as video, with Instagram’s Reels, YouTube’s Shorts and TikTok. While the FTC is focused on people’s use of the services to communicate with friends and family, Hansen said that has dropped precipitously, with less than 20% of Meta customers using the services for those functions in 2025.

To make his point, Hansen pointed to the January 2025 TikTok “ban,” noting that both Facebook and Instagram saw spikes in usage while TikTok was down. Facebook saw 20% “more usage” during that time, while Instagram usage increased 17%, Hansen said.

Hansen also said the companies Meta competes with acknowledge Meta as a competitor, too. “The FTC’s entire case turns on convincing the court that Meta doesn’t compete with TikTok,” Hansen said.

He added that the agency has done nothing to prove that Meta has raised prices, lessened options for consumers or decreased the quality of its services. It has offered no “benchmarks” of what competitive quality and prices would be, Hansen said. “In the absence of benchmarks, allegations of raised prices and decreased quality prove nothing.”

Hansen also argued Meta has driven “hundreds of billions, maybe more than a trillion dollars in undeniable consumer welfare benefits,” stemming from the two deals. Meta argues that since buying the two apps the number of users has skyrocketed as it added features and improved the infrastructure, ultimately increasing competition.

“Acquisitions to improve and grow an acquired firm have never been found unlawful,” he said. “And they should not be found unlawful here.”

Meta has several key executives present this morning in the courtroom, including head of policy Joel Kaplan, general counsel Jennifer Newstead and Chief Marketing Officer **Alex Schultz**.

Read More: [Tech Risks Pile Up as ‘Treacherous’ Antitrust Looms Over Stocks](#)

Meta also argues that the FTC had a chance to challenge the deals – for Instagram in 2012 and WhatsApp in 2014 – and permitted them to proceed.

The FTC opened an investigation into Meta in 2019 during the first Trump administration and sued the company in December 2020. Former FTC Chair **Lina Khan** under the Biden administration advanced the case, which is now in the hands of Ferguson, who was named by President Donald Trump to head the agency in January.

The case will test the government’s ability to police competition in the fast-moving tech sector, which has evolved significantly. Since 2019, Musk purchased Twitter, TikTok became one of the most dominant social media apps in the world, and Meta launched rival products to compete with both of them.

(Updates with Meta’s opening argument starting in the fourth paragraph)

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Irish privacy watchdog investigates Elon Musk's X's use of personal data to train Grok AI chatbot

 [courthousenews.com/irish-privacy-watchdog-investigates-elon-musks-xs-use-of-personal-data-to-train-grok-ai-chatbot](https://www.courthousenews.com/irish-privacy-watchdog-investigates-elon-musks-xs-use-of-personal-data-to-train-grok-ai-chatbot)

Workers install lighting on an "X" sign atop the company headquarters, formerly known as Twitter, in downtown San Francisco, Friday, July 28, 2023. (AP Photo/Noah Berger, File)

LONDON (AP) — Ireland's data privacy watchdog said Friday it's investigating Elon Musk's social media platform X over its use of personal data to train his artificial intelligence chatbot Grok.

The Data Protection Commission said it has opened an inquiry into “the processing of personal data comprised in publicly-accessible posts” that European users posted on X.

“The purpose of this inquiry is to determine whether this personal data was lawfully processed in order to train the Grok LLMs” under the bloc’s data privacy law, the commission said in a statement posted online.

An LLM, or a large language model, is a vast pool of text including articles, blog posts, essays and other material scraped from online sources that is used to teach the algorithms underpinning generative AI systems.

Under the 27-nation EU's stringent data privacy law, known as the General Data Protection Regulation, or GDPR, the Irish watchdog acts as the lead regulator for X because its European headquarters is based in Dublin.

The watchdog has the power to impose penalties of up to 20 million euros or 4% of a company's total annual revenue for severe violations.

X did not respond to an email request for comment.

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Tariff-Driven Economic Uncertainty Guts Accountants' Confidence

Economic uncertainty stemming from US trade policy and government spending cuts is taking a toll on accountants' confidence, new survey results show.

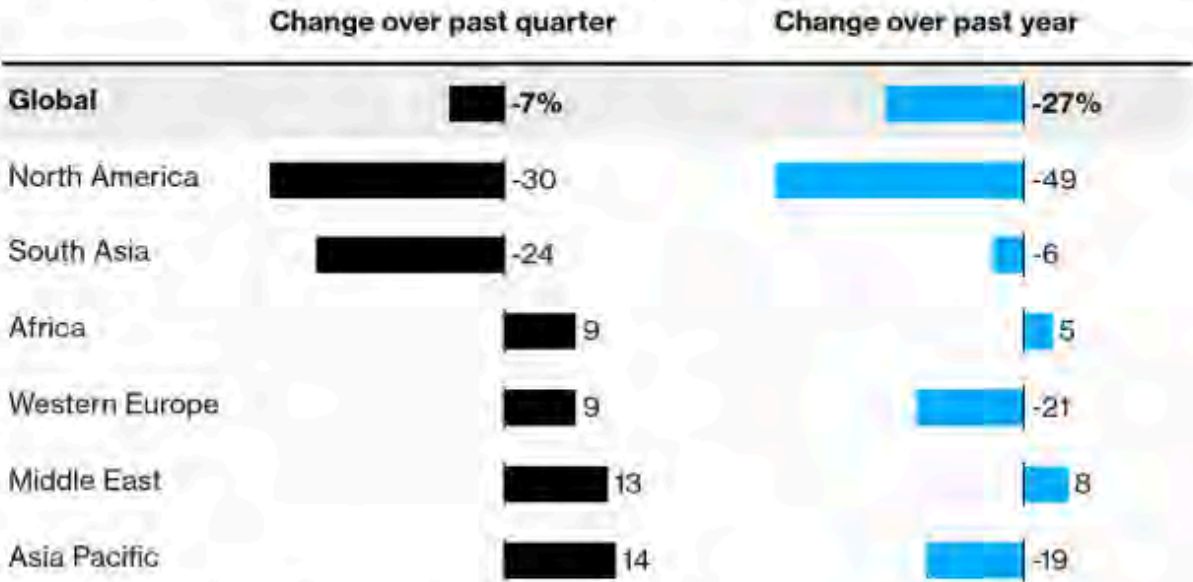
Accountants globally are at their least confident since the summer of 2020 amid the Covid-19 pandemic, especially in North America, according to a survey released Thursday by the Association of Chartered Certified Accountants and Institute of Management Accountants. Accountants in Europe and Asia are less gloomy, their survey showed.

The professional associations questioned 516 of their members in February and March as part of a quarterly survey on global economic conditions. Accountants were asked about their confidence in the economic prospects facing their organization now compared to three months ago.

"New U.S. policies on trade and government spending, and the uncertainty surrounding them, appear to have had a large negative impact on confidence, while declines in the global markets and signs of slowing in the U.S. economy were likely factors too," Alain Mulder, senior director of global special projects at IMA, said in a statement.

Confidence Among Accountants Slips

Accountants were asked about their confidence in the economic prospects facing their organization now compared to three months ago



Source: Q1 2025 Global Economic Conditions Survey by the Association of Chartered Certified Accountants and Institute of Management Accountants
Note: surveying groups cautioned that results for the Middle East, South Asia, and Africa are based on small sample sizes in Q1 2025

Bloomberg Tax

Overall, confidence among accountants surveyed was at its lowest level since June 2020, during the global coronavirus pandemic. Companies cited the economy and geopolitical instability as the biggest risks, although financial firms were more worried by cybersecurity.

A big fall in US confidence over the previous quarter dragged the wider North America region down to its lowest-ever confidence level, with the US itself at its second-lowest level for a decade. Respondents reported gloom over the prospects for employment and capital spending.

Despite the threats from US tariffs on imports, confidence did grow in the Asia Pacific region compared to the previous quarter, with signs of improvement in China's economy feeding a recovery after a sharp drop in the last six months of 2024. It was a similar story in Western Europe, where much higher confidence in the UK boosted results after a massive fall in the last three months of the previous year.

Chief Financial Officers were also notably cheerier than accountants working in other fields, with confidence up sharply in the first quarter of 2025, if still below the long-term norm. That partly reflected a rise in the number of new sales orders that companies received.

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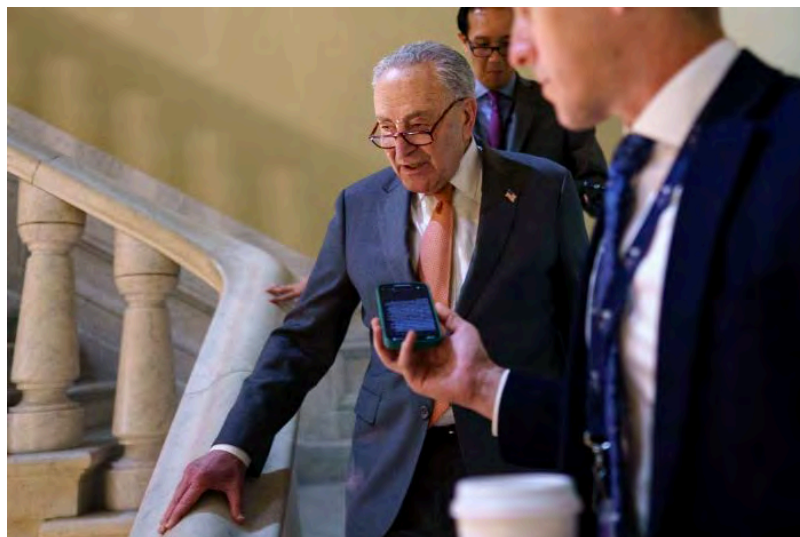
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Democrats Seek Trading Probes After Trump's Tariff U-Turn

Republicans say speculation about Trump allies using nonpublic information is unfounded

By [Jasmine Li](#) [Follow](#), [Lindsay Wise](#) [Follow](#) and [Katy Stech Ferek](#) [Follow](#)

Updated April 11, 2025 2:35 pm ET



Senate Minority Leader Chuck Schumer (D, N.Y.) questioned whether President Trump used social-media posts to tip off that he planned to pause some tariffs. PHOTO: WILL OLIVER/SHUTTERSTOCK

WASHINGTON—Democrats are pressing for more information on whether any people close to the Trump administration made stock trades ahead of the president's announcement that he was pausing some tariffs, a move that sent stocks soaring after several days of sharp declines.

Party lawmakers want investigations into whether White House officials, Trump family members or congressional Republicans profited by using nonpublic information to make trades before Trump's tariff policy change. Republicans have

called the speculation unfounded and an effort by Democrats to distract from President Trump's trade agenda.

Democrats say their concerns center on Trump's comments and actions Wednesday, even as they have produced no evidence of illicit trading. That morning, shortly after the market opened, Trump posted on X: "BE COOL! Everything is going to work out well. The USA will be bigger and better than ever before!" A few minutes later, he wrote: "THIS IS A GREAT TIME TO BUY!!! DJT"

Hours later, he announced a pause in some tariffs, igniting the Wall Street rally. Democrats argued the abrupt shift created a potential opportunity for anyone who got advance word to profit handsomely.

"There's a real question as to whether there was a plan a day or two [earlier] to pull back the tariffs and make sure people close to the White House and members of Congress potentially were in on advance information," said Rep. Darren Soto (D., Fla.).

Still, Democrats' options are limited. They are in the minority in both the Senate and House, meaning they don't control committees and can't hold hearings or issue subpoenas without Republican help. They also face an uphill battle in pressuring federal agencies to open trading probes.

Senate Minority Leader Chuck Schumer (D., N.Y.) questioned whether Trump's morning social-media posts could have been intended to "signal to his friends and family that he was going to pause the tariffs so they should buy low, knowing the market would boom." Schumer added: "We may never know. But we need to find out—and it must be investigated."

On Friday, Schumer joined other Senate Democrats in writing a letter calling for the Securities and Exchange Commission to probe trading by insiders and whether they had "prior knowledge of the tariff pause." The SEC declined to comment.

Republicans dismissed allegations of any wrongdoing as a political ploy.

"Oh for Pete's sake!" exclaimed Sen. Kevin Cramer (R., N.D.). "It's a symptom of Trump Derangement Syndrome. How do you call it insider trading when he announced it to the whole world? That ruins the whole thing."

Trump has regularly talked up the market, warning against becoming a "panican" and urging Americans to trust his market instincts. After the market surged Wednesday,

he bragged about the rebound.

Trump, in a meeting in the Oval Office, pointed to billionaire Charles Schwab, who founded the eponymous brokerage firm, and said: "This is Charles Schwab...it's not just a company, it's actually an individual! And he made 2.5 billion today." A spokeswoman for the financial executive didn't immediately comment.

In response to calls for investigations, a White House spokesman said Democrats were "playing partisan games...."

Democrats on the House Financial Services Committee urged the SEC to look into a surge in trading activity in bullish call options just before Trump's tariff announcement, suggesting that an administration official might have tipped off friends or associates about the news.

Some analysts have cast doubt on the theory that the options trades were motivated by inside knowledge. The trades took place shortly after a successful auction for 10-year Treasury notes, which eased the market's concerns about a selloff of U.S. government bonds and could have also served as an impetus for investors to turn bullish.

Democratic Sens. Adam Schiff of California and Ruben Gallego of Arizona called for the U.S. Office of Government Ethics to investigate whether Trump or White House officials who were aware of Trump's plan to delay tariffs engaged in insider trading.

"The sequence of events raises grave legal and ethics concerns," Schiff and Gallego said in a letter addressed to Jamieson Greer, the office's acting director, and White House chief of staff Susie Wiles. The U.S. Office of Government Ethics declined to comment.

A group of House Democrats, including Reps. Alexandria Ocasio-Cortez of New York and Joe Neguse of Colorado, called for the immediate release of House members' financial disclosures for trades between April 2 and April 9, quicker than the usual 45-day deadline for filing disclosures on stock trading. Congress passed a law in 2012 prohibiting members of Congress and their staff from using nonpublic information to trade stocks.

Two Democrats, Reps. Greg Casar of Texas and Robert Garcia of California, zeroed in on trades by Rep. Marjorie Taylor Greene (R., Ga.). Greene bought shares of 19 companies in the two days following Trump's initial "Liberation Day" announcement, according to recent financial disclosures. In response, Greene said a financial adviser

controls her investments and all of her investments “are reported with full transparency.”

Lawmakers on both sides of the aisle have proposed bills to further restrict stock trading by members of Congress, which could now gain more momentum.

“It’s moments like these that undermine trust,” said Rep. Ro Khanna (D., Calif.), who has proposed that lawmakers be able to hold stocks only in a blind trust.

Write to Jasmine Li at jasmine.li@wsj.com, Lindsay Wise at lindsay.wise@wsj.com and Katy Stech Ferek at katy.stech@wsj.com

Videos

Trump Discriminating Against Blue States Sets Up Historic Crisis

Judge Nancy Gertner, David L. Faigman, and Erwin Chemerinsky warn Donald Trump targeting his enemies in blue states could lead to conflicts between the federal government and states not seen since the Civil War.

President Donald Trump's funding cutoff is discriminating among the states, punishing blue states and rewarding red states—plainly violating the Constitution and risking political disaster.

On April 1, the Trump administration announced the closure of five of 10 regional offices of the Department of Health and Human Services, in Boston, Chicago, New York City, San Francisco, and Seattle—all cities in states that voted for Kamala Harris in November 2024.

An April 8 executive order targeted blue states—New York, Vermont, and California—for “state overreach” with respect to “illegal” climate change mitigation policies in the energy sector. It announced that such legislation will be identified and eliminated.

A month earlier, Trump announced 10 universities faced a loss of federal funds because they didn't adequately deal with antisemitism on their campuses—all in states that voted for Harris. Although the Department of Education has since expanded the list to 60 universities across both blue and red states, it remains to be seen whether this administration will proceed with the equal allocation of pain.

Although many of the Trump administration's funding cuts haven't discriminated among the states, political pressure from Republicans make it likely that will change. Alabama Sen. Katie Britt (R), for instance, said she agreed with reducing federal spending, but that reductions should spare “groundbreaking research at high-achieving institutions like those in Alabama.” Trump's retributive impulses could lead him to hear Alabama's cries, but not those of the blue states.

When blue states are singled out for Trump's retribution, what can they do about it? The US Supreme Court has been clear that the Constitution requires the federal government treat all states the same.

In *Shelby County v. Holder*, in 2013, the Supreme Court declared unconstitutional a crucial provision of the Voting Rights Act of 1965 that requires states with a history of racial discrimination in voting to obtain preapproval from the attorney general before changing their election systems.

Chief Justice John Roberts, writing for the court, emphasized the principle of equal state sovereignty, that Congress can't treat some states differently from others. "Not only do States retain sovereignty under the Constitution, there is also a 'fundamental principle of equal sovereignty' among the States," Roberts wrote.

The preclearance requirement of the Voting Rights Act was unconstitutional, the court held, because "despite the tradition of equal sovereignty, the Act applies to only nine States (and several additional counties)."

Shelby County allows courts to declare unconstitutional any Trump administration actions that discriminate among the states in allocating federal dollars because of electoral results. But what if the courts fail to stop the discrimination or, worse, what if the Trump administration defies judicial orders?

Using federal dollars to extort concessions and punish perceived adversaries would prompt an unprecedented constitutional crisis. But a disproportionate share of federal dollars come from blue states, potentially giving them leverage too.

Both Massachusetts and California pay more into the federal treasury than they receive from it. States punished by Trump could retaliate by denying the federal government their tax dollars.

Federal taxes are largely collected by employers. In Massachusetts and California, the state is a major employer and could refuse to send tax dollars to the federal government. They also could mandate their local municipalities to follow suit.

A blue state boycott of federal taxes would be unlawful, just as are many of Trump's shakedowns. And such a conflict would create an enormous crisis for the country—an open battle between the federal government and the states. The fight between the federal government and individual states could fuel the first serious talk of secession since the Civil War.

Talk of secession began long before the Civil War. In 1832, South Carolina passed an ordinance to nullify certain acts of Congress, stating that if the federal government failed to respect this ordinance, the state would be "absolved from all further obligation to maintain or preserve their political connection with the people of the other States, and will forthwith proceed to organize a separate government."

President Andrew Jackson's response was, "Disunion by armed force is treason." Abraham Lincoln went further: "Plainly, the central idea of secession, is the essence of anarchy."

Federal government discrimination toward disfavored states will make citizens wonder whether the benefits of remaining in the union outweigh the costs. There is already an effort for a ballot measure in California asking voters to endorse the idea of secession.

The prospect of a serious secession movement, however unlikely it is to succeed, is frightening. And the fact that voters in one of the most powerful states in the Union are broaching the discussion should force everyone to sit up and consider the risks at hand.

The Constitution is a compact between the people of these United States and our government. It imparts the responsibility on the national government to allocate resources fairly between the states.

A systematic move to punish blue states because they are “disloyal,” or for other capricious reasons, would breach that compact and would put us on a path of grievous harm to this great country and all within it.

Lincoln said, “the central idea of secession is the essence of anarchy.”
He also famously said that “A house divided against itself cannot stand.”

Presidential discrimination among the states is exactly the opposite of what the US needs.

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

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Nancy Gertner is a retired United States District Court Judge, and senior lecturer at Harvard Law School.

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Write for Us: Author Guidelines

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NAPCO Directors Clear Offering Fault Claims In Investor Suit

By **Sydney Price**

Law360 (April 11, 2025, 9:07 PM EDT) -- Directors at building security systems company NAPCO Security Technologies on Friday escaped some claims from a shareholder class action over alleged COVID-19-era financial reporting errors, but the company and its underwriters are still on the hook for all the claims against them.

According to the investors' suit, NAPCO announced in August 2023 that it would restate its financials for the first three quarters of that fiscal year due to material weaknesses in its internal controls. During that period, NAPCO overstated its net income by as much as 115%, the suit states. In response to NAPCO's corrective disclosures, its shares fell nearly 45% in a single trading day, the suit alleges.

The suit claims NAPCO, seven directors and two underwriters for a secondary public offering — Needham & Co. LLC and William Blair & Co. LLC — made false or misleading statements about NAPCO's inventory levels, cost of goods sold and profitability, including several about NAPCO's response to the global supply chain shortage caused by the COVID-19 pandemic.

U.S. District Judge Brian M. Cogan said Friday that although the suit has adequately shown NAPCO acted with scienter, it does not allege the named directors were statutory sellers of the secondary public offering. A person is considered a statutory seller if they either pass the title of the security to the purchaser, or solicit the purchase for financial interests, the order states.

In the secondary public offering, the title was passed to the underwriters before being passed to the ultimate purchasers, Judge Cogan determined.

"Further, the additional plaintiffs failed to allege that the individual defendants solicited sales because purely the allegation that 'the individual defendants signed the prospectus,' without more allegations regarding the individual defendants' participation in preparing for those the prospectus supplements, is insufficient for the purchase-solicitation prong," the order states.

According to the suit, NAPCO purchased as many components as possible, regardless of price, to ensure it could continue manufacturing its products as supply chain issues plagued the industry, which partially resulted in a significantly increased inventory value. But, by late 2022, the supply shortage began to dissipate, and the price of component parts decreased. Around the same time, NAPCO announced a secondary public offering, which closed in February 2023.

Friday's order also determined that the plaintiffs have sufficiently established loss causation for their Exchange Act claims.

"The press release clearly revealed the falsity of the financial statements by suggesting the overstatement of gross profit," Judge Cogan said.

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

The investors are represented by Samuel H. Rudman, David A. Rosenfeld, Erin W. Boardman and Avital O. Malina of Robbins Geller Rudman & Dowd LLP, Michael I. Fistel Jr. and Ralph M. Stone of Johnson Fistel LLP and Thomas C. Michaud of Vanoverbeke Michaud & Timmony PC.

The defendants are represented by Jonathan K. Youngwood and Janet A. Gochman of Simpson Thacher & Bartlett LLP and John R. Loftus and John J. Clarke Jr. of DLA Piper LLP.

The case is Zornberg v. NAPCO Security Technologies Inc. et al., case number 1:23-cv-06465, in the U.S. District Court for the Eastern District of New York.

--Editing by Drashti Mehta.

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Envestnet Sued For Docs On \$4.5B Bain Capital Deal In Del.

By **Jeff Montgomery**

Law360 (April 11, 2025, 3:13 PM EDT) -- A former trust investor in wealth and data management giant Envestnet Inc. sued in Delaware's Court of Chancery on Thursday for access to books and records on the company's \$4.5 billion take-private deal with Bain Capital last year, citing concerns over both price and potential conflicts.

Although the complaint on behalf of the Paul Berger Revocable Trust remained under seal on Friday, supporting documents pointed to multiple indications of interest from parties offering more than the \$63.15-per-share final deal price. Also of concern, according to Block & Leviton, counsel to the trust, was a months-long, unsuccessful effort to secure what they considered a full response to document demands.

Among other justifications for the demand, according to the suit, "[t]he merger price appears unfair" and near the bottom of a discounted cash flow-based price range of \$62.75 to \$78.50 per share provided by financial adviser Morgan Stanley, "and nearly \$7.50 less than the midpoint of \$70.63."

"Multiple analysts expressed disappointment with the price" received by the private, multi-asset alternative investment company, the complaint said.

Two firms, the Envestnet said, appeared to have consistently bid higher than Bain due to expected synergies from the detail but "were forced to operate on an accelerated timeline in diligence and financing, as Bain and its advisors began conducting due diligence on the company as early as 2022."

Bain itself initially offered \$67.50 per share on May 20, 2024, then dropped the price to \$62.75 a month later.

Black Rock, holding 15% of Envestnet, and Fidelity, holding 2%, are meanwhile receiving unique benefits under a rollover agreement with terms undisclosed in the merger agreement, the complaint said.

Envestnet reported in September 2024 that 99.3% of voting stockholders approved the deal.

The complaint cited observations by Jefferies Financial Group Inc. ahead of the vote that "there may be pushback from some shareholders regarding the sale price, especially those who have been patiently waiting for a turnaround."

Berwyn, Pennsylvania-based Envestnet describes itself as a provider of wealth management software and products that cater to financial advisers and institutions. The company said it oversaw nearly 20 million accounts and served more than 109,000 financial advisers and 800 asset managers at the time of the deal.

Envestnet did not immediately respond to a request for comment.

Scrutiny is also warranted, the complaint said, regarding financial adviser Morgan Stanley's potentially conflicted interests.

The deal proxy observed that Morgan Stanley had received \$30 million to \$50 million in fees from Bain over the preceding two years and was engaged with Bain on another matter.

Envestnet entered into a nondisclosure agreement with Bain in January 2022 during an earlier consideration of strategic options for the business, with the complaint saying the two explored a potential transaction until April 2022.

In September 2024, the company objected to an initial direct request for access to the records, submitted by Block & Levittown, counsel for Paul Berger Revocable Trust, asserting among other points that the request failed to comply with books-and-records demand requirements under Section 220 of Delaware's General Corporation Law.

The Paul Berger Revocable Trust is represented by Kimberly A. Evans, Lindsay K. Faccenda and Daniel M. Baker of Block & Leviton LLP.

The case is Paul Berger as Trustee for the Paul Berger Revocable Trust v. Envestnet, Inc., case number 2025-0387, in the Court of Chancery of the State of Delaware.

--Editing by Philip Shea.

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Dentsply Brass Face Investor Suit Over Alleged Dental Injuries

By **Sydney Price**

Law360 (April 11, 2025, 8:11 PM EDT) -- Executives and directors of dental supply manufacturing company Dentsply Sirona Inc. have been hit with a derivative suit alleging they concealed that a company subsidiary was approving unsuitable patients for dental treatments to inflate sales figures.

According to the suit filed by shareholder William Andreotti on Wednesday, Dentsply confirmed in November that issues with plastic aligners manufactured by its subsidiary Byte LLC would require a \$95 million goodwill impairment, causing shares to fall more than 28%. The suit alleges Dentsply knew Byte aligners had been seriously injuring patients since at least May 2021 and that backlogged injury reports filed with the U.S. Food and Drug Administration over the course of 2024 revealed the company's failures.

In addition to nominal defendant Dentsply, the suit's individual defendants include Dentsply CEO Simon D. Campion and several current and former directors.

The suit claims Byte did not have a method of reporting injuries to the FDA despite being required to do so within 30 days of learning of an incident. The complaint also alleges that Byte's sales staff and supervising dentists were encouraged to onboard patients medically unsuitable for Byte treatment to artificially inflate conversion rates.

The truth began to emerge, the suit alleges, on Oct. 24, 2024, when Dentsply announced it would suspend the sale and marketing of Byte aligner system and impression kits while it conducted a review of "certain regulatory requirements related to these products" in connection with ongoing discussions with the FDA, according to the suit.

The same day, Dentsply said it expected to recognize a \$450 to \$550 million goodwill impairment, the complaint states.

In response to these disclosures, Dentsply common stock declined by \$1.10 per share, or 4.5%, to close at \$23.32 per share on Oct. 25, 2024, the suit states.

The next month, on Nov. 7, 2024, Dentsply announced during its third-quarter earnings results that it had downwardly revised its financial outlook for the year, due to, among other things, "the voluntary suspension of sales, marketing and shipments of Byte aligners and impression Kits," according to the complaint. It also announced the \$95 million goodwill impairment.

The price of Dentsply common stock then declined \$6.72 per share, or over 28%, to close at \$17.26 per share on Nov. 7, 2024, according to the complaint.

Additionally, the complaint alleges the individual defendants caused Dentsply to overpay by approximately \$237.3 million to repurchase shares sold at artificially inflated prices during the relevant period.

The individual defendants are accused of breaches of fiduciary duty, 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 Andreotti and a representative of Dentsply did not immediately respond to requests for

comment on Friday.

Andreotti is represented by Daniel Tepper, Gregory Nespole, Correy A. Suk and Sidharth Kakkar of Levi & Korsinsky LLP and Timothy Brown, Saadia Hashmi and Elizabeth Donohoe of The Brown Law Firm PC.

Counsel information for Dentsply and the individual defendants was not immediately available on Friday.

The case is Andreotti v. Campion et al., case number 1:25-cv-02931, in the U.S. District Court for the Southern District of New York.

--Editing by Emily Kokoll.

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GM Execs Want Out Of Cruise Securities Fraud Suit

By Carolyn Muyskens

Law360 (April 11, 2025, 6:31 PM EDT) -- General Motors executives told a Michigan federal judge that they don't belong in a securities fraud class action targeting GM's self-driving vehicle unit Cruise LLC after the lawsuit's scope was narrowed to focus on Cruise leaders' statements.

General Motors Co. CEO and Chair Mary Barra, Chief Financial Officer Paul Jacobson and former executive vice president of global product development Douglas Parks said Thursday that they did not make any of the remaining alleged misstatements about Cruise vehicles that were identified in the investors' complaint, so there is no reason to keep them in the suit.

"In its order, the court dismissed claims against the GM defendants based on four of the five categories of alleged misstatements. The only category that the court appears to have sustained is the commercialization statements — those statements in which plaintiffs allege that 'defendants explicitly claimed that Cruise's AV technology had reached the point where Cruise could already operate a revenue generating fully driverless robotaxi business without any additional R&D,'" GM said in the **motion**.

Those statements came from former Cruise CEOs Kyle Vogt and Dan Ammann, GM said.

GM executives aren't liable for statements they didn't personally make, so the claims fail as a matter of law, the automaker told the court.

In a March 28 opinion, U.S. District Judge Shalina D. Kumar **dismissed** some investors' claims that GM and Cruise misrepresented how advanced its autonomous vehicle technology was, but she permitted investors to press forward with a more limited set of claims related to statements about the AVs' technical capabilities and the product being ready for market.

The judge said Cruise's top brass — including Vogt and former Chief Operating Officer Wayne West — will have to face investors' claims that they misrepresented the level of autonomy that Cruise vehicles actually had.

GM and Cruise executives were also stuck with investors' claims that they falsely touted the AVs as market-ready.

Judge Kumar said in her opinion that she wouldn't dismiss the commercialization statements because GM and Cruise failed to challenge them in their opening briefs, raising the issue in reply briefing.

GM said otherwise in a footnote to its Thursday filing: "Though not essential to the court's decision here, we note that the GM defendants made precisely this argument and did not waive it. In particular, the GM defendants' motion to dismiss argued that 'plaintiffs' claims should be dismissed in their entirety,' including because 'plaintiffs do not plead particularized facts demonstrating that the GM defendants made statements that were false or otherwise actionable.'"

The investors, led by the Hollywood Police Officers' Retirement System and the Plymouth County Retirement Association, sued after a Cruise driverless vehicle in San Francisco ran over and dragged a pedestrian for 20 feet, an incident that drew scrutiny from state and federal regulators and the U.S. Department of Justice.

Cruise agreed **to pay \$500,000** in criminal fines to the DOJ, a **\$1.5 million civil penalty** to the U.S. Department of Transportation's National Highway Traffic Safety Administration and a \$112,500

penalty to California for omissions in the initial disclosures it made to authorities about the incident.

Investors said they suffered losses when GM's stock price fell following the news of the incident in October 2023.

Counsel or representatives for the parties could not be immediately reached for comment Friday.

The investors are represented by Carol C. Villegas, Jake Bissell-Linsk, Guillaume Buell, Matthew J. Grier and Adam Federer of Labaton Keller Sucharow LLP, Matthew Henzi and Cynthia Billings-Dunn of AsherKelly PLLC, and Robert D. Klausner and Stuart Kaufman of Klausner Kaufman Jensen & Levinson PA.

Cruise is represented by Reid Schar, Stephen L. Ascher and Jacob P. Wentzel of Jenner & Block LLP.

GM is represented by Daniel J. Kramer, Andrew J. Ehrlich, Richard C. Tarlowe and Kristina A. Bunting of Paul Weiss Rifkind Wharton & Garrison LLP and Stephanie A. Douglas and Roger P. Meyers of Bush Seyferth PLLC.

The case is In re: General Motors Company Securities Litigation, case number 4:23-cv-13132, in the U.S. District Court for the Eastern District of Michigan.

--Additional reporting by Linda Chiem. Editing by Haylee Pearl.

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Palo Alto Networks Beats Suit Over Competition 'Headwinds'

By **Katryna Perera**

Law360 (April 11, 2025, 9:24 PM EDT) -- Cybersecurity company Palo Alto Networks has beaten, for now, a shareholder class action over allegedly concealed "headwinds," with a California federal judge saying Friday that the investors have failed to plead any actionable misstatements or knowledge of wrongdoing by Palo Alto's top brass.

Palo Alto investor Martin Schlaegel filed suit last year, claiming the company was facing "serious headwinds" of increased competition for its cybersecurity products combined with general slowing demand. To combat this, the defendants began promoting a "platformization" strategy in which Palo Alto "would attempt to persuade customers to buy all their internet security products from Palo Alto in one package in the hopes that Palo Alto would gain larger market share and combat slowing sales," according to the complaint.

However, Schlaegel says the defendants knew that for the strategy to work, they would need to offer their suite of products for free for some time to get customers on board, which would have a negative short-term impact on the company.

Schlaegel alleges that throughout the class period, the defendants misled investors about the success of the platformization strategy, that customer demand for Palo Alto products was slowing due to increased competition and that new artificial intelligence offerings were not facilitating greater platformization and consolidation, among other things.

According to U.S. District Judge Charles R. Breyer's Friday **order**, the investors challenged three categories of statements in their complaint. The first category includes statements about platformization, product demand, and billings that range from general comments about the strength and popularity of Palo Alto's products to statements about past and future sales and billing strategies, the order states.

Judge Breyer found Friday that many of the challenged statements in the first category are non-actionable puffery or statements of corporate optimism.

"For instance, Plaintiffs challenge PANW's statement that '[w]e continue to see strong interest across our next-generation security portfolio, and we're making progress on our platformization journey.' Courts regularly find that similar statements are non-actionable," the order states.

The judge also rejected the investors' argument that some of the challenged statements were material to shareholders, saying that the complaint does not allege with particularity how any of the statements "significantly altered the 'total mix' of information made available" to investors. The judge added that the investors failed to plead the falsity of any of the statements.

"Nowhere do plaintiffs allege particularized facts that would show that general demand was declining, that demand for platform products was declining, or that demand for platform products was low relative to demand for other products," the order states. "Nowhere do plaintiffs provide data about actual sales of the platform products, actual [artificial intelligence] product sales, the size of PANW's market share, or how market share changed."

Judge Breyer also tossed the second category of revenue and billing guidance statements, saying they are forward-looking.

The third category, made up of risk disclosure statements, was also tossed because the investors failed to plead with "sufficient particularity" that the statements were misleading and failed to substantiate their allegations with specific factual allegations, the judge said.

"For instance, [the plaintiffs] make only vague, unsupported allegations that 'many' products lacked necessary federal certifications and that the Department of Defense would not buy 'certain' products," the order states. "Plaintiffs do not specify which products had or needed which certifications, whether the lack of such certifications had a material effect on sales to government entities, or how the Department of Defense's inability to buy 'certain' products affected overall sales."

Judge Breyer also rejected the investors' theory of scienter, saying there is "no support" for the suit's claim that the individual defendants "artificially inflated" Palo Alto's guidance to maintain its then-current valuation.

"Plaintiffs have not alleged any facts, let alone with particularity, from which the court could infer that defendants acted intentionally or with deliberate recklessness when setting PANW's guidance," the order states. "Rather, the court can rationally infer that PANW's valuation was simply accurate."

The investors also failed to adequately plead that Palo Alto's CEO Nikesh Arora's stock sales were "'dramatically out of line with prior trading practices' and thus indicative of deliberate recklessness," the judge said.

Additionally, the suit does not adequately plead that Arora or the company's Chief Financial Officer Dipak Golechha, through their roles, should have known about any alleged weaknesses or failures with Palo Alto's platformization, the order states.

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

The investors are represented by Jacob A. Walker, Jeffrey C. Block and Sarah E. Delaney of Block & Leviton LLP.

Palo Alto and the individual defendants are represented by Jordan Eth, Anna Erickson White, David J. Wiener and Hanna M. Lauritzen of Morrison & Foerster LLP.

The case is *In re Palo Alto Networks Inc. Securities Litigation*, case number 3:24-cv-01156, in the U.S. District Court for the Northern District of California.

--Editing by Vaqas Asghar.



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Chancery Tosses Exabeam Stockholder's Appraisal Suit

By **Jeff Montgomery**

Law360 (April 11, 2025, 8:38 PM EDT) -- A former stockholder of cybersecurity venture Exabeam Inc. saw his suit for Court of Chancery share appraisal shot down on Friday, after a vice chancellor concluded that the suit was launched as an unsupported workaround to secure documents unavailable to him on the company's merger with LogRhythm Inc.

Vice Chancellor Morgan T. Zurn found in a 36-page **decision** that Asaf Barkan lacked standing to seek the company's books and records that are now a focus in a separate stockholder class suit alleging breaches of fiduciary duty and other counts. Instead, the court found, he filed a Section 262 petition for appraisal "solely as a substitution" for Section 220 document inspection, "when Section 262 offers no such thing."

Barkan's complaint acknowledged in a footnote that the sale and closing moved so quickly that it stymied an informal books and records bid and attempt to join a document suit filed by the same counsel on behalf of a different Exabeam stockholder in July.

As a result, Barkan pivoted to a suit seeking documents by way of an appraisal of his 343,661 shares of Exabeam and in support of a presuit investigation of breach of fiduciary duty claims in lieu of a regular books-and-records action, while a separate "plenary" class suit was launched in September.

"Barkan has no standing to complete a presuit inspection. He has no claim to press that is not already represented in the plenary action," the vice chancellor wrote, noting that allowing him to inspect company documents via a share appraisal, governed by a different section of the law, would contradict both legislative and judicial developments.

"Doing so here where Barkan never served an inspection demand would eviscerate" the books and records law's "statutory standing and jurisdictional requirements," the vice chancellor found.

Section 220 of the Delaware General Corporation Law, the decision noted, serves as the exclusive route for stockholder pursuit of investigatory documents prior to suing. Appraisal is available under Section 262 as "a narrow remedy in limited circumstances. Nothing in Section 262's unambiguous language offers a failsafe for stockholders unable to satisfy Section 220."

"Nothing in Section 220's plain text or well-developed jurisprudence leaves room for circumventing" form and manner requirements for demands, Vice Chancellor Zurn wrote. Failure to follow the requirements "is statutorily fatal to Barkan's standing to seek presuit Inspection."

Appraisal actions under Section 262 allow the Court of Chancery to determine per-share values for stockholders who dissent from a transaction. But the court has discouraged attempts to include nonvaluation issues, with cases limited to determining the fair value of dissenter shares.

California cybersecurity company Exabeam was reported as having a \$2.4 billion valuation at the time of a \$200 million investment round led by the Owl Rock division of Blue Owl Capital in 2021, according to the company. The new investors joined Acrew Capital, Lightspeed Venture Partners and Norwest Venture Partners.

LogRhythm was founded in 2003, with Thoma Bravo emerging as its majority investor in 2018.

In the case of Exabeam, five of seven members of the company's board appear to have ties to Thoma Bravo, Barkan said in his complaint, which noted "common stockholders were not afforded a vote on the merger, and instead, it was rammed through via written consent by company insiders."

Exabeam stockholders filed a multi-count suit challenging the deal on Sept. 19. Barkan filed his complaint on Aug. 16, and sought intervention in the later class complaint in December.

Counsel for Barkan and Exabeam did not immediately respond to requests for comment.

Asaf Barkan is represented by Kimberly A. Evans, Lindsay K. Faccenda, Daniel M. Baker and Jason Leviton of Block & Leviton LLP.

Exabeam Inc. is represented by Ryan D. Stottmann and Kirk C. Andersen of Morris Nichols Arsht & Tunnell LLP and Mark McKane and Alistair Blacklock of Kirkland & Ellis LLP.

The case is Asaf Barkan v. Exabeam Inc., case number 2024-0855, in the Court of Chancery of the State of Delaware.

In the class case, trustees of the TANEJA 2004 Family Trust are represented by Christopher P. Quinn and Michael J. Palestina of Kahn Swick & Foti.

Exabeam Inc. is represented by Ryan D. Stottmann and Kirk C. Andersen of Morris Nichols Arsht & Tunnell LLP and Mark McKane and Alistair Blacklock of Kirkland & Ellis LLP.

The individual and fund defendants are represented by Andrew D. Cordo, Andrew D. Berni, Ignacio E. Salceda and Rebecca Epstein of Wilson Sonsini Goodrich & Rosati PC.

The case is Domingo Mihovilovic et al v. Exabeam Inc. et al. case number 2024-0976, in the Court of Chancery of the State of Delaware.

--Editing by Linda Voorhis.



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Hagens Berman Sanctioned Over Disappearing Client

By **Ryan Boysen**

Law360 (April 11, 2025, 4:12 PM EDT) -- Hagens Berman Sobol Shapiro LLP is facing monetary sanctions in a proposed class action against Apple and Amazon, after a Washington federal judge said the firm misled her about a problem client who disappeared and wasted the court's time in the process.

In a brief order filed Thursday, U.S. District Judge Kymberly K. Evanson said that, after reviewing emails and other communications between Hagens Berman and former lead plaintiff Steven Floyd, it appears the firm lied about its communications with Floyd and needlessly prolonged a situation that took more than a year of back-and-forth briefing to sort out.

"The court is now aware that Floyd informed his counsel that he wanted to cease participating in this action to avoid discovery obligations ... and Floyd's counsel failed to candidly and/or accurately describe their client's intentions to defendants or the court," Judge Evanson wrote.

In a nutshell, the Hagens Berman attorneys told the court and the defendants, Apple Inc. and Amazon.com Inc., that they were having a hard time getting hold of Floyd after he ghosted them in early 2024, shortly after receiving discovery requests.

The firm repeatedly said it had no reason to believe Floyd wished to withdraw from the case entirely.

But after privately reviewing those communications herself, Judge Evanson said Floyd had in fact stated his desire to leave the case altogether, a short-lived period of reengagement with his attorneys notwithstanding.

"Whether Floyd's counsel actually believed that Floyd would come around again and comply is unknown. Perhaps they did," Judge Evanson said. "But in any event, regardless of their subjective beliefs, counsel's characterizations of Floyd's situation over the past fourteen months have not reflected his reality."

Judge Evanson said Apple and Amazon are "entitled to request an award of attorney's fees and expenses," to be paid by Hagens Berman, for costs incurred in filing a motion to compel and a motion for discovery sanctions that had sought to shed light on the Floyd situation.

Apple and Amazon had repeatedly **accused Hagens Berman** of misrepresenting Floyd's intentions to keep the case on track.

If it had been revealed that Floyd wished to withdraw, it could have required the case to be dismissed and refiled with a new lead plaintiff.

Instead, taking the Hagens Berman attorneys at their word, Judge Evanson granted a motion to **add new plaintiffs** in May, finding it did not "constitute a back-door attempt to begin the action anew," as she put it in Thursday's ruling.

Judge Evanson also said she'd be open to dismissing Floyd's claims after reviewing the communications with his attorneys. It's unclear what effect that would have on the case at this point, given the addition of new lead plaintiffs.

The lawsuit, **filed in 2022**, challenges a 2018 deal under which Amazon only allows Apple-approved third-party vendors to sell iPhones and iPads on its online marketplace.

The plaintiffs claim the agreement restricts competition and artificially inflates prices. Apple and Amazon say it protects consumers from counterfeit electronics vendors.

Thursday's ruling is the latest twist in the case of Floyd, who **went dark** right after he was asked to provide information about whether he bought Apple devices directly from the phone carrier Verizon Communications Inc., according to court documents.

The defendants claim that information could prove key in determining whether he was ever an adequate class representative.

Hagens Berman moved to withdraw from representing Floyd on Oct. 4. Hours later, Apple and Amazon asked for **discovery sanctions** against him.

In response, Hagens Berman said it **wouldn't oppose** efforts to sanction Floyd and **produced a log** of privileged communications with him before he stopped responding.

Apple and Amazon said the privileged log shows a "flurry of communications" with Floyd in August that might mean he had tried to withdraw from the case entirely.

Last month Judge Evanson **ruled against Apple and Amazon's request** that she cut through attorney-client privilege and force Hagens Berman to turn those communications over, but said she would review the communications herself.

"In sum, Floyd's counsel's conduct in handling this discovery dispute has needlessly prolonged this litigation and required considerable judicial resources, as well as time and effort on the part of defendants, and the dispute remains unresolved even now," Judge Evanson said in Thursday's ruling.

None of the parties responded Friday to requests for comment.

The customers are represented by Steve W. Berman, Theodore J Wojcik, Barbara A. Mahoney, Ben Harrington and Benjamin J. Siegel of Hagens Berman Sobol Shapiro LLP.

Amazon is represented by John Goldmark and MaryAnn Almeida of Davis Wright Tremaine LLP, Benjamin M. Mundel of Sidley Austin LLP, Jon Dugan of Redgrave LLP and William C. Lavery of Clifford Chance LLP.

Apple is represented by Mark S. Parris and Eric S. Hochstadt of Orrick Herrington & Sutcliffe LLP, Mark A. Perry, Brian G. Liegel and Morgan MacBride of Weil Gotshal & Manges LLP and Jeremy Roller of Arete Law Group PLLC.

The case is Floyd et al. v. Amazon.com Inc. et al., number 2:22-cv-01599, in the U.S. District Court for the Western District of Washington.

--Editing by Brian Baresch.



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Camp Lejeune Plaintiffs Challenge Gov't Expert Site Visit

By **Tom Lotshaw**

Law360 (April 11, 2025, 4:15 PM EDT) -- Veterans and family members suing the federal government over injuries from toxic drinking water at Camp Lejeune have urged a North Carolina federal judge to exclude information from an expert's February visit to the base, arguing it was made after a court deadline.

According to the plaintiffs' **motion** from Thursday, geochemist Remy Hennet, tapped by the government to evaluate and respond to their expert reports on water contamination, had already visited the U.S. Marine Corps base twice, with his latest visit happening two months after his report was submitted and a month after plaintiffs submitted rebuttals.

"The [plaintiffs' leadership group] contends that [the U.S. Department of Justice] has violated this court's pretrial scheduling orders," the plaintiffs said, arguing that the court had called for the disclosure of Hennet's opinions along with the bases for them in December.

"Plaintiffs ask this court to enter an order excluding all of the fruits of Dr. Hennet's out-of-time visit," they added.

According to the motion, Hennet raised the matter of "volatilization" in the December 2024 report, a process whereby contaminants could move from the water to the air during treatment or the use of tankers dubbed "water buffaloes" to distribute water. He made the February visit to respond to the plaintiffs' rebuttal expert, they said.

The plaintiffs said Hennet met with treatment plant employees during the visit, reviewed plant monitor data, measured water treatment devices known as spiractors, and oversaw the filling of a water buffalo. They pushed back against a DOJ assertion that he had visited the base to confirm opinions, not offer new ones, arguing that the department could have met and conferred first or sought court approval for the visit.

According to the plaintiffs, Hennet did not previously offer opinions or calculations regarding volatilization through a water buffalo manhole, measure the height that water fell from some spiractors, or note the venting and water level fluctuations of reservoirs and towers or the air bubbling of water as it flowed through recarbonation basins, filters or reservoir entries.

"All of the above is documented in Dr. Hennet's notes from his out-of-time site visit, but none of it appears in his December 2024 report or reliance materials," the plaintiffs said.

They told the court they sought to resolve the dispute with the DOJ, offering to waive their objections if their rebuttal expert were allowed to tour the base again and given the same access as Hennet. The DOJ rejected the idea, the plaintiffs said, and instead sought to depose other witnesses with expert knowledge, but not knowledge of the issues related to Hennet's visit.

"In essence, the DOJ demanded more late discovery in order for [plaintiffs' leadership group] to be put on equal footing regarding Dr. Hennet's new facts, data, experiments, observations and opinions from the February 2025 site visit," they said.

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

In a joint status report filed in late March, the plaintiffs and the government noted that 2,770 Camp Lejeune Justice Act complaints were filed in the district court between Feb. 11, 2023, and March 31, 2025, with about 408,000 administrative claims on file with the U.S. Navy. The legislation, passed in 2022, lifted barriers for veterans and families to pursue damages from the government over water contamination at the base.

Earlier that month, attorneys designated as settlement masters told the court that plaintiffs will likely see a **global deal** to resolve claims by the end of the year.

The veterans and families are represented by J. Edward Bell III of the Bell Legal Group PLLC, Zina Bash of Keller Postman LLC, Elizabeth J. Cabraser of Lieff Cabraser Heimann & Bernstein LLP, W. Michael Dowling of the Dowling Firm PLLC, Robin L. Greenwald of Weitz & Luxenberg PC, James A. Roberts III of Lewis & Roberts PLLC and Mona Lisa Wallace of Wallace & Graham PA, among others.

The government is represented by Brett A. Shumate, J. Patrick Glynn, Bridget Bailey Lipscomb, Adam Bain, Haroon Anwar, LaCresha A. Johnson, Daniel C. Eagles and Nathan J. Bu of the DOJ's Civil Division.

The case is In re: Camp Lejeune Water Litigation, case number 7:23-cv-00897, in the U.S. District Court for the Eastern District of North Carolina.

--Editing by Adam LoBelia.

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The SEC Must Protect Its Best Tool For Discovering Fraud

By **Hugh Beck** (April 11, 2025, 1:49 PM EDT)

Editor's note: Law360 welcomes opinionated commentary and debate in our Expert Analysis section. To submit op-eds or rebuttals, or to speak to an editor about submissions, please email expertanalysis@law360.com.

Paul S. Atkins, **confirmed** on April 9 as the new chair of the U.S. Securities and Exchange Commission, has promised to make regulatory clarity for cryptocurrencies his top priority. That is a laudable goal, but Atkins should first attend to another more consequential matter: He is assuming leadership of a commission on the verge of squandering its best opportunity in a generation to make the U.S. stock market fairer and freer from fraud and abuse.



Hugh Beck

The current volatility of stock prices should remind all policymakers that our public stock market is intertwined with the health of our national economy in ways cryptocurrency is not. The effectiveness of the public securities markets depends on investors' confidence that company insiders and market professionals cannot abuse the privilege of their positions with impunity, and that hackers and criminal gangs cannot conduct fraudulent trading schemes without punishment.

Before resigning last week, I led the SEC's efforts to uncover market abuse using the consolidated audit trail, a system that collects trillions of detailed trading records and basic information about stockbrokers' customers. Based on our discoveries, the SEC charged a financial services professional and his associate for **conducting** a \$47 million front-running scheme,[1] a day trader for market manipulation,[2] and a Federal Reserve banking supervisor for **insider trading**.[3]

These cases publicly confirmed the CAT's promise to facilitate the detection of fraud and abuse better than ever before. But in February, the SEC **issued** an order eliminating the CAT's collection of most retail customer information,[4] which in turn triggered a proposal[5] from the CAT's governing body to eliminate all customer information.

If the SEC under Atkins' leadership approves this proposal without arranging other means of customer information reporting, brokers will dismantle the infrastructure they built for that purpose, and the SEC's once-in-a-generation opportunity to invigorate market abuse deterrence will be lost.

Media reports describe the CAT as a response to the inexplicable precipitous drop and immediate recovery of stock prices on May 6, 2010, that became known as the flash crash,[6] but this portrayal of CAT's origins is oversimplified. We began discovering fraudulent schemes[7] that evaded traditional market surveillance in 2005. By 2009, when the SEC **brought charges** against an insider trading ring we discovered involving securities professionals at UBS Investment Bank, Blackstone Advisory Services, and a Jefferies Group hedge fund,[8] the importance of modernizing trade reporting was obvious.

The database we used to detect this and other illegal schemes was populated using the electronic blue sheet system,[9] created in 1989 to enable brokers to submit small amounts of trading data in response to narrow regulatory requests. Consequently, the database covered only a tiny, skewed fraction of total market activity, leaving us blind to abuse in the many market segments it did not cover.

We also knew that customer information was the blue sheet data's distinguishing feature that facilitated our discovery of abusive schemes that traditional market surveillance missed. While traditional surveillance ran on marketwide data without customer information, our blue sheet patchwork included the customer's name, address and sometimes employer.

The key lesson of our experience is that the more sophisticated an illicit scheme, the less likely a detection routine is to discover it without incorporating customer criteria at all stages of analysis. The CAT proposal[10] that the SEC **issued** 20 days after the flash crash recognized this by calling for the new system to combine universal customer information with comprehensive trading records.

During the long and winding journey to a fully operational CAT that followed, our detection of abuse using blue sheet data accelerated with surprising results. Discoveries of additional types of illicit schemes, including cherry-picking; [11] front-running;[12] and **a trading ring** spanning Ukraine, Russia and the U.S. based on information stolen from the SEC's own EDGAR system[13] all confirmed that realizing CAT's full potential to deter market abuse would

depend on incorporating customer criteria in detection analytics.

To that end, the SEC, under the first Trump administration in 2020, proposed programmatic access to the CAT's customer information system[14] that was to begin gathering limited customer data[15] during the final phase of the CAT's rollout in 2023. SEC Commissioner Hester Peirce alone argued[16] then that the CAT's collection of information identifying investors, however limited, would be an unwarranted invasion of their privacy.

Few observers outside the SEC endorsed this critique until it became clear that large firms with successful order flow internalization[17] business models would bear a substantial portion of the CAT's costs. Since then, lawsuits attacking the system's cost allocation approach and customer information collection,[18] anti-CAT lobbying, and public denouncements piggybacking on Peirce's arguments have been fierce.[19]

Whether genuine or not, the position of these critics is out of sync with the core logic of the U.S. securities regulation that has prevailed since our national response to the 1929 stock market crash. The committee Congress appointed to investigate the causes of the 1929 crash[20] found that secrecy enabled market abuse. When Congress, embracing sunlight as the best disinfectant,[21] established mandatory business disclosures and stockbroker recordkeeping and reporting as twin pillars of the new regulatory structure, it clearly distinguished from that point forward public securities markets in the U.S. from private investment arrangements.

Under this interpretation, businesses and investors both accept the curtailment of their interests in confidentiality as a condition to public market participation. Every participating business gives up its right to complete secrecy regarding its plans and results, agreeing instead to publicly disclose information of significant concern to investors. And every participating investor discloses personal information to their brokers with the understanding that they will report trading records to regulators as needed to strengthen the public market.

Participants in today's complex securities markets surely deserve — and the U.S. economy surely needs — the best protection against fraud and abuse this long-standing arrangement can provide. But the SEC issued its February order eliminating the CAT's collection of most retail customer information without a meaningful discussion of its consequences.[22]

The public notice-and-comment process triggered by the follow-up proposal from the CAT's governing body gives Atkins an opportunity to correct that error. He can ensure this process preserves the CAT's potential to invigorate market abuse deterrence by reaffirming the SEC's endorsement of programmatic access to customer information and settling the information's final scope.

The CAT currently stores customers' full names, their complete addresses and their years of birth because this information supports the discovery of illicit schemes without posing a risk of identity theft if compromised. But retaining only a customer's name, state, city and street name, for example, would not seriously impair market abuse detection if the SEC determines that dropping the street number and birth year would further reduce data compromise risks. Adding customer employer information, on the other hand, would enhance abuse detection.

The effect of these or other CAT customer information additions or subtractions would be a matter of degree. Only the elimination of all identifying information, or failure to establish programmatic access to it, would be a difference in kind that history would mark as the loss of the best opportunity in a generation to strengthen market abuse deterrence at a time of severe market stress. Atkins must make sure that does not happen.

Hugh Beck served as the SEC's enterprise data strategist until resigning in April. He previously served as senior adviser for regulatory reporting to acting SEC Chair Allison Herren Lee and as counsel to the SEC Market Abuse Unit's Analysis and Detection Center.

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[1] <https://www.sec.gov/newsroom/press-releases/2022-228>.

[2] <https://www.sec.gov/enforcement-litigation/administrative-proceedings/33-11340-s>.

[3] <https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26172>.

[4] <https://www.sec.gov/newsroom/press-releases/2025-38>.

[5] <https://www.federalregister.gov/documents/2025/03/19/2025-04516/joint-industry-plan-notice-of-filing-of-amendment-to-the-national-market-system-plan-governing-the#:~:text=Specifically%2C%20CAT%20LLC%20proposes%20to,account%20numbers%20to%20the%20CAT%2C>.

[6] https://en.wikipedia.org/wiki/2010_flash_crash.

- [7] <https://www.sec.gov/news/press/2005-155.htm>.
- [8] <https://www.sec.gov/news/press/2009/2009-18.htm>.
- [9] <https://www.finra.org/filing-reporting/electronic-blue-sheets-ebs>.
- [10] <https://www.sec.gov/news/press/2010/2010-86.htm>.
- [11] See, e.g., <https://www.sec.gov/newsroom/press-releases/2017-32>, SEC v. Strategic Capital Management, LLC and Michael J. Breton, No. 1:17-cv-10125; <https://www.sec.gov/newsroom/press-releases/2018-189>, SEC v. Michael A. Bressman, No. 1:18-cv-11925; <https://www.sec.gov/newsroom/press-releases/2021-105>, SEC v. Ramiro Jose Sugranes, UCB Financial Advisers, Inc. and UCB Financial Services Limited, 1:21-cv-22152-MGC.
- [12] See, e.g., <https://www.sec.gov/newsroom/press-releases/2021-118>, SEC v. Sean Wygovsky, No. 1:21-cv-05730; <https://www.sec.gov/newsroom/press-releases/2021-186>, SEC v. Sergei Polevikov, No. 1:21-cv-07925.
- [13] The SEC disclosed the EDGAR hacking case in two separate statements: The first disclosure appeared toward the end of a long statement on cybersecurity at <https://www.sec.gov/newsroom/speeches-statements/statement-clayton-2017-09-20> ("In August 2017, the Commission learned that an incident previously detected in 2016 may have provided the basis for illicit gain through trading. Specifically, a software vulnerability in the test filing component of our EDGAR system, which was patched promptly after discovery, was exploited and resulted in access to nonpublic information."). The second statement was a press release announcing the charges: <https://www.sec.gov/newsroom/press-releases/2019-1>, SEC v. Oleksander Ieremenko, Spirit Trade, Ltd., Sungjin Cho, David Kwon, Igor Sabodakha, Victoria Vorochev, Ivan Olefir, Capiyield Systems, Ltd., and Andrey Sarafanov, No. 2:19-cv-00505.
- [14] <https://www.sec.gov/newsroom/press-releases/2020-189>.
- [15] <https://www.sec.gov/newsroom/speeches-statements/statement-clayton-cat-covid-19-nal-cybersecurity-2020-03-16>.
- [16] <https://www.sec.gov/newsroom/speeches-statements/peirce-statement-response-release-34-88890-051520>.
- [17] <https://www.tradersmagazine.com/departments/brokerage/internalization-of-order-flow-on-the-rise/>.
- [18] <https://www.americansecurities.org/post/asa-and-citadel-securities-file-stay-to-stop-tax-on-american-investors>. See American Securities Association v. SEC, No.23-13396, and **Davidson v. Gensler** , No. 6:24-cv-00197.
- [19] See, e.g., <https://www.kennedy.senate.gov/public/2023/11/sec-s-consolidated-audit-trail-is-a-disaster-waiting-to-happen>, <https://www.wsj.com/opinion/the-securities-and-exchange-commission-is-watching-you-surveillance-4e782f82>, <https://www.nationalreview.com/news/sec-finalizing-a-big-brother-database-to-track-americans-stock-trades-in-real-time/>, <https://www.forbes.com/sites/steveforbes/2024/10/29/the-sec-acts-like-it-is-working-for-chinese-dictator-xi-jinping/>.
- [20] <https://www.senate.gov/about/powers-procedures/investigations/pecora.htm>.
- [21] <https://louisville.edu/law/library/special-collections/the-louis-d.-brandeis-collection/other-peoples-money-chapter-v>.
- [22] <https://www.sec.gov/newsroom/speeches-statements/crenshaw-statement-consolidated-audit-trail-021025>.



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Martial Arts Org., CEO Agree To Pay SEC More Than \$1M

By **Rae Ann Varona**

Law360 (April 11, 2025, 10:36 PM EDT) -- Xtreme Fighting Championships Inc. and its CEO have agreed to pay the U.S. Securities and Exchange Commission more than \$1 million to resolve allegations that the executive and the martial arts organization raked in millions of dollars through illegal stock sales, according to proposed final judgments.

The SEC, with Xtreme Fighting and its CEO Steve Smith's consent, asked a Florida federal court Thursday to enter final judgments against the mixed martial arts organization and its top executive that would close the case that alleged fraud and unregistered securities offerings in violation of federal securities law.

"Defendants have consented to the entry of the final judgments," the SEC stated in a motion. "Entry of these final judgments will resolve this action."

The SEC **sued** Xtreme Fighting and Smith last December, accusing them of carrying out a scheme, beginning in January 2020, to illegally sell large amounts of Xtreme Fighting stock to the investing public.

The commission asserted that the stock sales were illegal as Smith and Xtreme Fighting's former in-house counsel Christopher K. Davies, who the agency said died in 2022, controlled the stock. According to the SEC, Smith and Davies sold the stock in transactions that weren't registered with the SEC or exempt from registration.

Smith and Davies, who was also Smith's close friend, "hid their control of the stock to avoid legal limits on sales by insiders," the SEC stated.

According to the regulator, Davies was licensed as an attorney in Illinois until he was suspended in 2015. The commission noted it had filed a civil action **accusing Davies of securities fraud** in New York federal court in 2018.

Davies was also indicted in a criminal action in New York federal court for related conduct and **pled guilty** in May 2019 to one count of conspiracy to commit securities fraud, it said.

According to the SEC, Davies thus wasn't able to "legally prepare commission filings such as Xtreme Fighting's annual reports on Form 10-K."

He, nevertheless, acted as counsel under the pseudonym Jim Barnes. The SEC added that Smith knew this.

Xtreme Fighting's auditing firm at the time had also confronted Smith about the alleged conduct, including Davies' use of the pseudonym, the SEC asserted.

"Smith, however, persisted with the 'Barnes' ruse after Davies died in September 2022," the SEC said.

The regulator claimed that the scheme ultimately generated more than \$5 million in illegal proceeds, of which Xtreme Fighting received at least \$436,000.

U.S. District Judge Rodolfo A. Ruiz II put the case on hold in late January to give the SEC, Smith and Xtreme Fighting a chance to discuss a possible settlement.

In a joint status report filed in late March, the parties informed the court that they had reached a written settlement that would resolve the SEC's claims.

Under the proposed final judgment orders filed Thursday, Xtreme Fighting is jointly and severally liable with Smith for disgorgement of \$436,000, representing net profits gained as a result of the conduct at issue, together with prejudgment interest of \$97,509.

The proposed final judgment for Xtreme Fighting states that the organization is also individually liable for a civil penalty of \$436,000.

Smith is also individually liable for a civil penalty of \$236,451, according to his proposed final judgment.

Counsel for Xtreme Fighting and Smith did not immediately respond to a request for comment Friday evening, nor did the SEC.

Xtreme Fighting and Smith are represented by Richard E. Brodsky of The Brodsky Law Firm.

The SEC is represented in-house by Michael C. Moran, Kathleen B. Shields and William J. Durkin.

The case is Securities and Exchange Commission v. Steve Smith et al., case number 1:24-cv-24802, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by Bonnie Eslinger. Editing by Kristen Becker.