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Securities Law News
April 14, 2025, 1:02 PM PDT

BigBear.ai Sued by Investor Over Convertible Note Accounting Dip

- **COURT**: E.D. Va.
- **TRACK DOCKET:** No. 1:25-cv-00623 **(Bloomberg Law subscription)**

BigBear.ai Holdings Inc. concealed accounting flaws which eventually forced it to restate figures dating back to its 2021 special purpose acquisition company merger and related transactions, a proposed class action said.

The artificial intelligence company's stock dropped twice last month after it revealed it improperly accounted for convertible notes due to mature in December 2026, an investor told the US District Court for the Eastern District of Virginia.

After it completed series of business combinations in 2021, BigBear issued $200 million of those unsecured convertible notes, a form of company borrowing from investors which can be turned into equity down the line, said the April 11 complaint. The notes bear interest at a 6.0% yearly rate, payable semi-annually, and not including any payments settled with stock issuance, according to plaintiff Sean Priewe's complaint. They're convertible into 17,391,304 shares at an initial price of $11.50, Priewe said.

Often classified as long-term debt, convertible notes must be accounted for in quarterly and annual reports as liabilities until they mature, when they either become equity or are repaid as principle and interest, the complaint said. In certain circumstances, a company must split and separately account for a feature within a contract—like the conversion option for BigBear's convertible notes—with minimal exceptions, the complaint said.

BigBear said in a March 18 Securities and Exchange Commission filing that certain financial statements since 2021 needed to be restated due to the 2026 convertible note accounting and it would be delayed in filing its 2024 annual report, Priewe said. Share prices slid almost 15% that day.

After market hours March 25, BigBear filed its annual report which said that it incorrectly determined its convertible notes were exempt from the bifurcated accounting rule, Priewe said. Thus, consolidated financial statements were revised to reflect their issuance at fair value as of 2021, and remeasurement to fair value at each reporting date, the investor said. Restatement adjustments included “accumulated deficit, derivative liabilities, deferred tax liabilities, net loss, interest expense, and amortization of debt issuance discount,” the complaint said. And BigBear shared that it identified internal control issues in its financial reporting, per Priewe.

The next day, the stock price fell more than 9.1% to close at $3.19 a share.

The proposed class would include those who got BigBear stock from March 31, 2022—when the company filed an annual SEC report that said its accounting was sound—through March 25, 2025.

Cohen Milstein Sellers & Toll PLLC and Pomerantz LLP represent Priewe, who seeks damages for alleged securities law violations by BigBear and five current and former executives.

BigBear didn’t immediately respond to an email seeking comment.

The case is Priewe v. BigBear.ai Holdings, Inc. , E.D. Va., No. 1:25-cv-00623, complaint filed 4/11/25 .

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Securities Law News

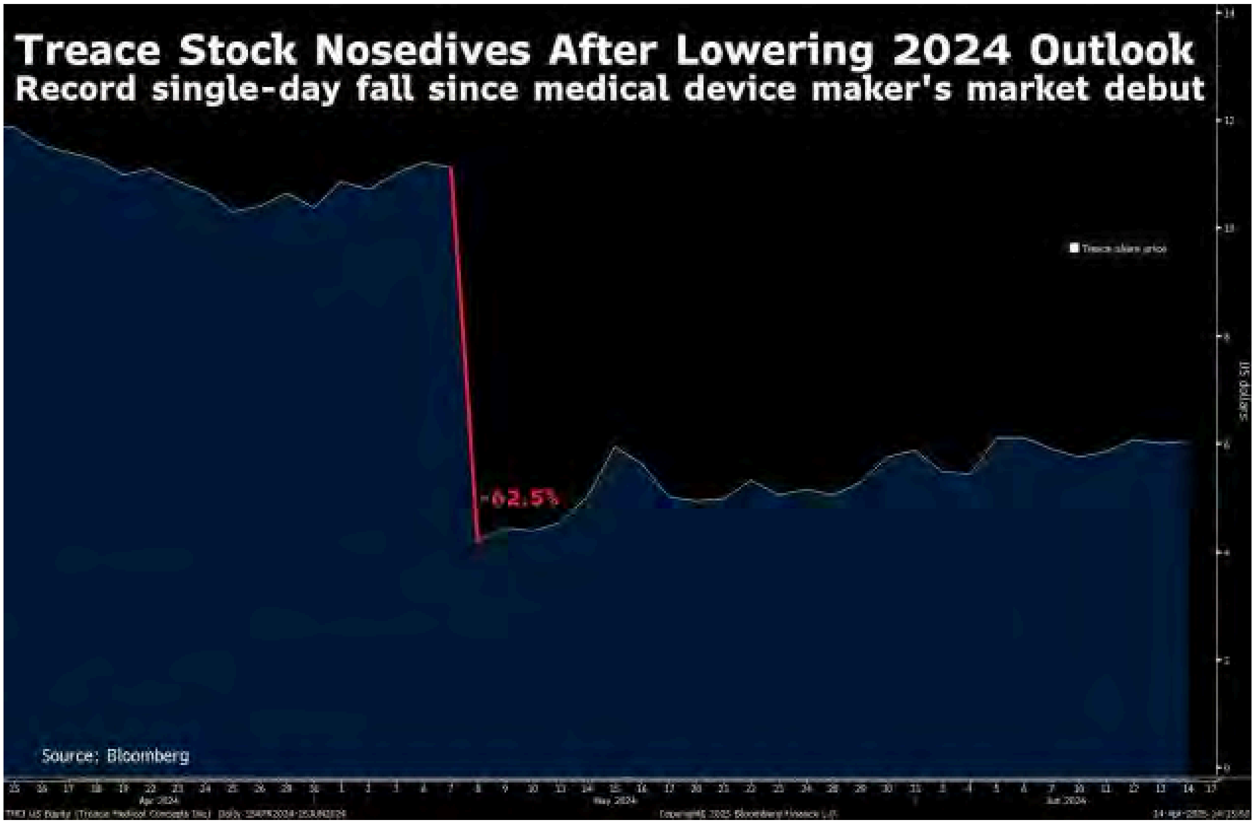
April 14, 2025, 11:21 AM PDT

Treace Sued Over Bunion-Fix Competition Before 63% Stock Selloff

- **COURT**: M.D. Fla.
- **TRACK DOCKET**: No. 3:25-cv-00390 **(Bloomberg Law subscription)**

Treace Medical Concepts Inc. hid bunion-correcting knockoffs were impacting its financial outlook, spurring a record stock drop after the surgical device maker lowered its 2024 revenue guidance, a proposed class action said.

Share prices plummeted almost 63% on May 8, 2024—the day after Treace said surgical competition impacted demand and use of its primary product, the Lapiplasty 3D Bunion Correction System, an investor told the US District Court for the Middle District of Florida. It was the stock's biggest drop since its 2021 market debut, according to data compiled by Bloomberg.



The medical technology company said it expected full-year revenue to be $201 million to $211 million, revising its previous guidance of $220 million to $225 million, and announced plans for more bunion solutions in a first fiscal quarter of 2024 press release on May 7. During an earnings call that day, CEO and founder John T. Treace described “incremental headwinds” to the company’s Lapiplasty growth, including knockoffs and surgeons adopting other minimally-invasive operations, per the April 11 complaint.

As a result, the company had to speed up plans to offer new solutions that are alternatives to surgeries that cut and realign foot bones, said plaintiff Christopher McCluney.

The proposed class would include those who invested from May 8, 2023—when McCluney said Treace raised its 2023 revenue guidance and downplayed competition concerns—through May 7, 2024.

Scott & Scott Attorneys at Law LLP, the Schall Law Firm, and Criden & Love PA represent McCluney, who seeks damages against the company, its CEO, and CFO Mark L. Hair for alleged securities law violations.

Hair and the company’s investor relations team didn’t immediately respond to an email seeking comment.

The case is McCluney v. Treace Med. Concepts, Inc. , M.D. Fla., No. 3:25-cv-00390, complaint filed 4/11/25 .

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Litigation
April 15, 2025, 8:29 AM PDT

AES Corp. Beats Legal Challenge to Advance-Notice Board Bylaws

- **Wave of lawsuits targets takeover defenses in activism context**
- **Court review improper absent looming proxy fight, judge says**

AES Corp. sidestepped a court challenge to its advance-notice board nomination bylaws, defeating claims they were written to scare off potential activist investors.

A Delaware judge dismissed a lawsuit targeting bylaws that allegedly require shareholders proposing director slates to disclose confidential investment information, including performance-related fee arrangements pegged to the power utility's stock. It's premature even to consider the case without a live controversy tied to an actual or imminent proxy contest, the judge said Monday.

"The proverbial eggs are perhaps broken, but hardly scrambled," Vice Chancellor Nathan A. Cook wrote in a brief decision. "Equity need not leap to the stove before anyone even considers a meal."

The ruling is the latest to confront an issue percolating in Delaware's Chancery Court as corporate leaders respond to the universal proxy and other recent regulatory changes by trying to repurpose existing anti-takeover tools as activism defenses. The elite business court has seen a wave of litigation over a new generation of poison pills and "weaponized" nomination bylaws onerous enough "to choke a horse."

The shareholder suits generally involve claims that sitting directors are brandishing the bylaws to dig for dirt or manipulating deadlines to keep activists off the ballot on a pretext. The June 2024 court complaint against AES fit that mold, saying its advance-notice bylaws were designed to deter board bids by making painful financial disclosures part of the nominating process.

The state's top court weighed in last year with a novel ruling declaring nomination bylaws unenforceable—even when they're legal on their face—if they were directly aimed at cutting down an activist investor.

'Hypothetical'

Monday's ruling hinged on that context, or lack thereof. Only an actual or potential proxy fight on the horizon justifies court review in the first place absent a claim that an advance-notice bylaw is illegal on its face under all circumstances, according to the 20-page opinion.

"That makes sense, because the remedy" is "to declare the bylaw unenforceable in some respect, and having a ripe dispute allows this court to specify against whom the bylaw cannot be enforced," Cook said. "Plaintiff's challenge to the advance-notice bylaws is a hypothetical one."

He shot down an analogy to poison pills like a measure the Delaware Supreme Court rejected in a 2021 ruling involving the energy giant Williams Cos. Poison pills can trigger "immediate and devastating" results, including "catastrophic changes to the company's capital structure," while activists contending with advance-notice bylaws can negotiate or sue, "as routinely occurs," the judge said.

The argument "ignores critical nuances and instead flattens an otherwise complex analysis of the corporate machinery," Cook wrote.

AES and its board are represented by Richards, Layton & Finger PA and Jones Day. The investor leading the lawsuit, Martin Siegel, is represented by Bernstein Litowitz Berger & Grossmann LLP, Olshan Frome Wolosky, and Greenwich Legal Associates LLC.

The case is Siegel v. Morse , Del. Ch., No. 2024-0628, 4/14/25 .

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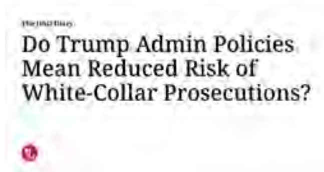
Do Trump Admin Policies Mean Reduced Risk of White-Collar Prosecutions?

dandodiary.com/2025/04/articles/director-and-officer-liability/do-trump-admin-policies-mean-reduced-risk-of-white-collar-prosecutions

Kevin LaCroix April 14, 2025



Posted in Director and Officer Liability

Those trying to gauge what Trump 2.0 means for directors' and officers' liability will want to read the *Wall Street Journal's* April 13, 2025, article entitled "Trump Administration Retreats from White-Collar Criminal Enforcement" (here). The article contains statements of large law firm partners expressing their anxiety that the administration's approach to white-collar crime prosecution will mean "significant slowdown" in law firm revenue from criminal defense work. But what may be bad news for law firms could be good news for corporate executives, because the Trump administration's approach may mean corporate executives could face a reduced risk of criminal prosecution, at least for certain kinds of criminal allegations.

According to the *Journal* article, the Trump administration is "retreating from some types of white-collar law enforcement, including cases involving foreign bribery, public corruption, money laundering, and crypto markets." The administration, the article says, is "effectively redefining what business conduct constitutes a crime."

As detailed in the article, the changes in approach to white-collar crime is coming about in several ways.

First, it is coming about because of explicit policy decisions of the President, the Attorney General, and their staffs. For example, on February 10, 2025, the White House issued an executive order "pausing" the enforcement of Foreign Corrupt Practices Act cases, saying that bribery prosecutions hurt the ability of American companies to compete overseas. Attorney General Pam Bondi has separately re-prioritized DOJ prosecutorial efforts, ordering the agency to focus white-collar crime attention on drug cartels and international crime organizations, particularly with respect to money-laundering, illegal immigration, and sanctions evasion.

With these shifting priorities, and consistent with the administration's domestic and foreign policy objectives, DOJ prosecutors have been, according to the *Journal*, "open to arguments that a defendant has been targeted for political reasons, or that some prosecutions undermine economic competitiveness and national security interests." And, the Journal adds, "political connections within Trump's world seem to matter."

The *Journal* article identifies several examples to illustrate these points, including the move by the Trump administration's move to drop compliance monitors at Glencore, which pled guilty in 2022 to charges of overseas bribery and market manipulation; the decision by the Trump administration to drop charges against New York City Mayor Eric Adams; and the grants of clemency or pardons to several individuals, including Nikola founder Trevor Milton.

In addition to these changes attributable to the administration's re-prioritization, some prosecutorial changes simply reflect agency personnel moves. The acting head of the DOJ's criminal division was pushed out. The head of the criminal division's fraud section had been told that he will be replaced. Key officials in the Manhattan U.S. attorney's office (source of many financial crime prosecutions) have left or have been replaced. Key personnel have also left the SEC.

As the article details, the administration's priorities shift has aided white-collar defense counsel to obtain relief for clients on existing matters. But there are problems ahead for these defense lawyers. As the *Journal* puts it, "while the shifting approach to enforcement stands to help white-collar defense lawyers on the current cases, some are getting worried that future work will dry up if the administration fully retreats from foreign-bribery investigations and complex Wall Street probes."

The article goes on to quote a retired big law partner as saying that "The bar is very concerned that there is going to be a cutback in these kinds of investigations," adding that "Firms that have a huge litigation practice and devote a lot of resources to internal investigations are going to be impacted." Another attorney is quoted as saying "Every major white-collar group is concerned that there will be a significant slowdown."

Discussion

The possibility of a business slowdown for white-collar criminal defense attorneys is bad news for them, but it is good news for corporate directors and officers and their insurers. The reduced likelihood of corporate investigations and criminal prosecutions represents a change in the potential scope of corporate and executive liability. The likely magnitude of the potential change is hard to measure, but there is no doubt that a reduction in the number of white-collar investigations and prosecutions is — in terms of potential corporate and executive liability — a welcome development.

If there are indeed fewer white-collar investigations and prosecutions, it could also mean fewer follow-on corporate and securities lawsuits, as well. Over the last several years, it has been a recurring phenomenon that companies facing criminal charges often are hit with tagalong civil lawsuits, filed against companies and their senior executives, alleging that the failure to prevent the underlying misconduct or the failure to make full disclosures about the underlying activity violated duties to investors and others. A reduction in the number of corporate investigations and prosecutions could also mean a reduction in the number of these kinds of follow-on lawsuits

The reduced potential liability exposure as a result of the administration's approach to white-collar crime is one among several ways that the advent of Trump 2.0 may be translate into reduced potential liability exposures for companies and their executives.

One particular way that current Trump administration's actions and policies could prove to be beneficial from a potential corporate liability perspective is with respect to Trump's powers of judicial appointment.

There hasn't been a lot of press so far about Trump's judicial appointments in the current administration. That is likely because so many other topics (tariffs, immigration crackdown, federal agency workforce reductions, concerns rating to the war in Ukraine and the war in Gaza, etc.) have flooded the zone. We undoubtedly will hear more in the months ahead about Trump's judicial appointments, particularly if circumstances arise that give him the opportunity for one or more additional Supreme Court nominations. Over the long haul, Trump's judicial appointments could have a significant and long-lasting impact.

It is worth noting that during his first administration, Trump appointed 234 federal judges, including three U.S. Supreme Court justices and 54 circuit court judges. As of the date of his second inauguration, then-sitting Trump appointees represented about 26.2% of all authorized federal judge slots, including one-third of the sitting U.S. Supreme Court justices. In the current administration, Trump will have the opportunity to further shape the federal judiciary, with the possibility that by the end of his upcoming term, about half of the sitting federal judges could be Trump appointees.

In his first administration, Trump tended to appoint judges who were young and conservative. If, as seems likely, he follows this same judicial appointment approach in his second term, his judicial appointments potentially could shape federal jurisprudence for the next generation.

There are many potential implications of a federal judiciary largely composed of Trump appointees, including for example with respect to, say, civil rights, environmental law, or consumer protection issues; from the perspective of potential D&O liability, a Trump-appointed judiciary potentially could be beneficial for companies and their executives, as

Trump-appointed judges so far have tended to be business-friendly and conservative. Trump's judicial appointments during his second term may represent another way that his administration may have a beneficial impact on the potential liability exposures of corporations, executives, and their insurers.

Securities Law News
April 14, 2025, 2:18 PM PDT

Phantom Crypto Platform Sued Over Wiener Doge Memecoin Theft

- **COURT:** S.D.N.Y.
- **TRACK DOCKET:** No. 1:25-cv-03060 **(Bloomberg Law subscription)**

Phantom Technologies Inc. touts the security of its platform but exposes users to malware and crytocurrency "wallet" theft, according to a suit filed Monday by a memecoin developer and other alleged victims.

A malicious actor stole and liquidated more than $500,000 worth of Wiener Doge digital assets in developer Thomas Liam Murphy's Phantom wallets on Jan. 20, according to Murphy and 13 of his friends and relatives. They filed the suit in the US District Court for the Southern District of New York.

Murphy's friends and family members had purchased Wiener Doge cryptocurrency, according to the complaint. The collapse of the token's value following the liquidation of Murphy's majority stake left them with losses, according to the complaint.

"Phantom did not merely fail to anticipate cyberattacks—it knew exactly how users were being compromised and made a calculated decision to remain silent," the plaintiffs say.

Phantom partnered with Seychelles-based Aux Cayes Fintech Co., which does business as OKX, to expand its trading capabilities, they say. The cybercriminal used "Phantom and OKX's smart contract and automatic liquidity routing protocol" to quickly sell the Wiener Doge coins, they say.

Phantom strongly denies any allegations of wrongdoing, it said in an emailed statement. "The claims in this lawsuit are entirely without merit," it said.

"Phantom is a self-custody wallet where users have full control over their funds," it said. "While Phantom cannot intervene when users interact with malicious links or fraudulent actors on their personal devices, we regularly collaborate with law enforcement or forensic teams when we're made aware of criminal activity that affects our users. Phantom also provides extensive in-app education on how users can protect their accounts and a library of resources containing best practices for online safety."

OKX, which is also named as a defendant in the suit, didn't immediately respond to an email to a support address requesting comment.

Murphy and the other plaintiffs bring claims for commodities law violations, negligence per se, gross negligence, deceptive trade practices and false advertising, and aiding and abetting "criminal conversion and money laundering through its commercial integration with OKX."

The suit seeks actual, consequential, punitive, and exemplary damages; property and reputational damages; and restitution and disgorgement.

Murphy, who says he graduated from law school in 2020, represents himself and the other plaintiffs. Morrison Cohen LLP will be representing Phantom, according to an attorney with the firm who sent Phantom's statement.

The case is Murphy v. Phantom Techs., Inc. , S.D.N.Y., No. 1:25-cv-03060, complaint 4/14/25 .

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Litigation

April 15, 2025, 8:43 AM PDT

Boston Nonprofit Free From Low-Yield Retirement Investment Suit

Former employees of a nonprofit serving low-income Boston residents agreed to drop their proposed class action saying their retirement plan is overly invested in a conservative fund earning paltry returns.

The parties agreed to have the three-month-old lawsuit dismissed with prejudice and with both sides paying their own attorneys' fees, according to a joint stipulation filed Monday in the US District Court for the District of Massachusetts. The one-sentence stipulation didn't include details about how the dispute was resolved.

- The lawsuit alleged that the investment earnings of the retirement plan covering employees of Action for Boston Community Development Inc. are "among the lowest in the country" because more than 55% of the plan's assets are held in an inappropriate capital preservation fund that drove more than $10 million in lost earnings
- Action for Boston disputed the allegations as a "lawyer-driven lawsuit based on an inaccurate assessment of Plan returns drawn from online filings"
- The case is assigned to Judge William G. Young, who hasn't ruled on the merits of the dispute

Ropes & Gray LLP represents Action for Boston. Engstrom Lee LLC and Block & Leviton LLP represent the workers.

The case is Hildonen v. Action for Bos. Cmt. Develop., Inc. , D. Mass., No. 1:25-cv-10120, stipulation 4/14/25 .

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Class Action

April 15, 2025, 8:20 AM PDT

Hess Corp. Workers Seek Class of 3,000 Over 401(k) Plan Funds

Hess Corp. employees challenging the T. Rowe Price target date funds in their 401(k) plan asked a federal judge to certify their lawsuit as a 3,000-person class action.

The workers' proposed class would cover all the plan's participants and beneficiaries since February 2018, with plan fiduciaries and their families excluded. Their class certification motion, filed Monday in the US District Court for the Northern District of Texas, comes three weeks after Judge James Wesley Hendrix allowed portions of the case to advance.

- Hendrix green-lighted claims based on the plan's target date funds from non-party T. Rowe Price, saying the workers presented sufficiently similar alternative investments that could have been a better choice
- But Hendrix dismissed challenges to other plan investments after finding they weren't supported by comparisons to meaningfully similar funds that performed better or charged less
- Dozens of recent 401(k) plan lawsuits have centered on target date funds, which which are designed to gradually shift investment strategies as investors approach retirement

Hess is represented by Groom Law Group and Munsch Hardt Kopf & Harr PC. The workers are represented by Figari & Davenport LLP and Foulston Siefkin LLP.

The case is Wagner v. Hess Corp. , N.D. Tex., No. 6:24-cv-00004, motion 4/14/25 .

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Class Action

April 15, 2025, 9:56 AM PDT

Dodge Buyers Appealed Prematurely in Muscle Cars Defect Lawsuit

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- **Fraud claims acted as alternative theories to warranty counts**
- **Dismissing fraud claims didn't make court's judgment final**

Consumers alleging FCA US LLC sold certain Dodge muscle cars with defective rear differentials failed to convince a federal appeals court to review the dismissal of their fraud claims at this time, according to a Tuesday opinion.

A divided US Court of Appeals for the Third Circuit said the lower court's judgment in the propsed class action wasn't final so the appeals court lacked jurisdiction.

The lower court dismissed fraud claims but allowed some warranty claims to proceed. The district court certified the dismissal as a final judgment under Rule 54(b) of the Federal Rules of Civil Procedure. The rule allows district courts to certify an order that deals with some, but not all, claims as final so that parties can appeal the ruling.

But because not all of the warranty counts were included in the certified judgment, it isn't really final, Judge Thomas M. Hardiman said.

Additionally, the judgment didn't finally resolve all claims for fraud because the lower court didn't enter final judgment for one plaintiff's fraud counts, Hardiman said.

Drawing on circuit precedent in *Sussex Drug Products v. Kanasco Ltd*., Hardiman said the warranty and fraud counts "constitute a single 'claim' for purposes of Rule 54(b)."

The fraud counts are alternative theories of recovery to the warranty ones and rely on the same facts, so the judgment resolving the fraud counts didn't finally resolve a claim, he said.

"We remain mindful of Rule 54(b)'s purpose, but that purpose cannot override the jursidictional requirement of finality," Hardiman said.

He noted that even if the judgment had been final, the case would need to be remanded because the district court didn't adequately explain why there was no just reason for delay. The district court referenced "judicial administrative interests" and "miscellaneous factors" but didn't provide "any analysis" for the appeals court to scrutinize, Hardiman said.

Judge Arianna J. Freeman joined the opinion.

Judge Peter J. Phipps dissented and said treating the fraud counts and warranty counts as the same claim is "counterintuitive."

He said that different pleading standards apply to fraud claims so considering them as the same claim "opens the door to confusion."

The plaintiffs are represented by Capstone Law APC and Berger Montague.

FCA is represented by Klein Thomas Lee & Fresard.

The case is Diaz v. FCA US LLC , 3d Cir., No. 24-01197, 4/15/25 .

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Law firm Susman Godfrey asks judge to block Trump executive order

reuters.com/world/us/law-firm-susman-godfrey-asks-judge-block-trump-executive-order-2025-04-15

Mike Scarcella April 15, 2025

U.S. President Donald Trump attends a cabinet meeting at the White House in Washington, D.C., U.S., April 10, 2025. REUTERS/Nathan Howard/File Photo Purchase Licensing Rights , opens new tab

April 14 (Reuters) - A judge in Washington is set to hear arguments on Tuesday afternoon in the latest legal clash over President Donald Trump's punitive executive orders against major law firms.

Law firm Susman Godfrey has asked U.S. District Judge Loren AliKhan to temporarily block Trump's directive while it pursues a lawsuit alleging that the order violates its rights to free speech and due process under the U.S. Constitution.

Susman claimed the order illegally retaliates against the firm over its work on defamation cases for Dominion Voting Systems challenging false claims that the 2020 election was stolen from Trump.

Trump's orders against Susman and four other firms suspended their lawyers' access to government buildings and officials and sought to cancel federal contracts if the firms performed any work on them.

The White House has accused the firms of "weaponizing" the legal system, citing their connections to Trump's legal and political adversaries and their work on cases he opposes related to voting rights and other issues.
The orders also cited the firms' employment policies focused on diversity that Trump deemed discriminatory.

Nine firms, including Paul Weiss, Skadden Arps and Simpson Thacher, have cut deals with the White House to avoid business-threatening orders against them.
Those firms and others pledged hundreds of millions of dollars in free legal work to causes Trump supports and committed to only hire based on merit as part of the accords.

Judges have already blocked key provisions of Trump's orders against Perkins Coie, WilmerHale and Jenner & Block, finding their lawsuits against the administration would likely succeed.
Susman Godfrey, represented by former Obama-era U.S. Solicitor General Donald Verrilli, said in its lawsuit that the order against it "immediately, irreparably harms Susman Godfrey and the firm’s partners, employees, and clients. And it gravely threatens the independence of

the bar and the rule of law."

Reporting by Mike Scarcella; Editing by David Bario and Chizu Nomiyama

Securities Law News

April 14, 2025, 3:55 PM PDT; Updated: April 15, 2025, 6:32 AM PDT

Susman Godfrey Moves to Halt Trump Order Against Firm (1)

Litigation firm Susman Godfrey on Monday requested a temporary restraining order to halt President Donald Trump's executive order against the firm.

Susman wants a hearing Tuesday to prevent the order's enforcement, the firm said in a filing in the US District Court for the District of Columbia. "Emergency relief is necessary," the firm wrote. Judge Loren AliKhan scheduled a hearing on the request at 2 p.m. Tuesday.

Trump's April 9 order restricts lawyers' access to government buildings and directs agencies to terminate federal contracts with Susman clients, citing concerns about the firm including its diversity programs for law students. Susman hosts a two-week diversity fellowship for first-year law students and also offers $3,500 scholarships to first- and second-year law students of color.

"Susman Godfrey is seeking immediate relief from the administration's unconstitutional executive order," the firm said in a statement. "The order threatens the rights of our clients, including their right to legal counsel, while causing irreparable harm to Susman Godfrey."

Nine top law firms, including Paul Weiss, Kirkland & Ellis, Willkie Farr and Latham & Watkins, have reached agreements with Trump to provide at least $940 million worth of pro bono services collectively to avoid executive orders and EEOC probes.

Three other firms are fighting Trump's orders in court: Perkins Coie, WilmerHale, and Jenner & Block. Judges so far in all three other cases have temporarily halted the orders in part from taking effect.

The case is Susman Godfrey v. Executive Office of the President, D.D.C., 1:25-cv-01107, 4/14/2025.

(Updates second paragraph with hearing scheduled.)

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US universities sue Energy Department over research cuts

reuters.com/legal/us-universities-sue-energy-department-over-research-cuts-2025-04-14

Dietrich Knauth April 14, 2025

A graduating student records the academic procession during the Commencement ceremony at the Massachusetts Institute of Technology (MIT) in Cambridge, Massachusetts, U.S., May 27, 2022. REUTERS/Brian Snyder/File Photo Purchase Licensing Rights, opens new tab

NEW YORK, April 14 (Reuters) - A group of U.S. universities sued the Department of Energy in Massachusetts federal court on Monday over steep cuts to federal research funding in areas like advanced nuclear technology, cybersecurity, novel radioactive drugs, and upgrades to rural electrical grids.

The universities – which include Massachusetts Institute of Technology, Princeton University, California Institute of Technology, and the University of Illinois – asked a federal judge in Boston to immediately block Republican President Donald Trump's administration from moving forward with a policy change meant to reduce government spending in support of “indirect” research costs, which are not readily attributable to specific projects.

Indirect costs are often used to fund facilities, equipment and research staff that provide value across multiple research projects, rather than being tied to a single project, according to the lawsuit. Arbitrary cuts to indirect research costs will force universities to lay off staff, shutter expensive facilities, and devastate the careers of young scientists, the universities alleged.

“If DOE’s policy is allowed to stand, it will devastate scientific research at America’s universities and badly undermine our nation’s enviable status as a global leader in scientific research and innovation,” the universities wrote in their complaint.

The DOE did not immediately respond to a request for comment on the lawsuit.

The DOE announced Friday that it would cut more than $400 million in annual spending by setting an across-the-board 15% reimbursement rate for indirect costs of research. DOE said that the policy would bring “greater transparency and efficiency” to federal government spending.

Many of the universities involved in the lawsuit have negotiated far higher “indirect” rates than the 15% proposed by DOE policy.

The University of Michigan had an indirect cost rate of 56% in 2024 for its research into nuclear technology, advanced battery technologies, and next-generation engine and fuel technologies, and it would lose $31.1 million in funding if the DOE policy goes forward, according to the lawsuit.

The National Institutes of Health has announced a similar cut to indirect research costs, and was also sued. A federal judge has issued an order blocking the Trump administration from proceeding with those cuts, while the lawsuit over them proceeds.
Reporting by Dietrich Knauth, Editing by Alexia Garamfalvi and Nia Williams

TOMORROW: Senator Husted's Corruption Scandal Featured in HBO Documentary

ohiodems.org/tomorrow-senator-husteds-corruption-scandal-featured-in-hbo-documentary

Katie Seewer April 14, 2025

Skip to main content

News

Columbus, Ohio- Tomorrow, HBO will air a documentary on Senator Husted's corruption scandal where he led the push to pass bailouts for billionaires while raising energy bills for Ohioans. Husted *still* refuses to answer questions about his involvement even after reporting has revealed his close involvement with the scandal.

Husted *claimed* he had no role in the legislative process surrounding HB6, but texts from FirstEnergy executives revealed that he was deeply involved in passing the legislation. FirstEnergy made secret donations to his campaign- which of course he refuses to answer questions about.

"Tomorrow, the rest of the country will once again see that under Husted and his fellow Republicans, Ohio is known as the capitol of corruption," "Ohioans deserve a senator who is focused on advocating for our state- not running away from the corruption scandal he created."

MORE on Husted's history with Ohio's largest-ever corruption scandal can be found at StateOfficalTwo.com or below.

Ohio Capitol Journal: New texts allegedly show Ohio Lt. Gov. Jon Husted leading FirstEnergy's push for House Bill 6

> Ohio Lt. Gov. Jon Husted allegedly led the charge with now-indicted FirstEnergy executives to pass legislation that was the result of the largest corruption scheme in state history, according to newly released text messages.

> Both DeWine and Husted have continuously denied any involvement, and law enforcement has not accused either of wrongdoing.
>
> But a public records request reveals Husted's ties to former FirstEnergy CEO Chuck Jones and VP Michael Dowling — the ones who helped fund his campaign.
>
> Once in office, records show that it was Husted, not DeWine, who allegedly helped lead the charge for the bailout bill.

Cleveland.com: FirstEnergy made secret $1 million payment for 'Husted campaign' in 2017, documents show

> FirstEnergy Corp., at the onset of what would become one of the biggest public corruption schemes in state history, gave a $1 million "dark money" contribution to a nonprofit backing Lt. Gov. Jon Husted, new records show.

Ohio Capitol Journal: Ohio Lt. Gov. Husted denies knowledge of corruption scheme in wake of FirstEnergy texts

> Ohio Lieutenant Governor Jon Husted adamantly denied prior knowledge of the largest bribery scheme in state history after we discovered text messages from FirstEnergy executives alleging he led the push for House Bill 6.
>
> He also seemed aggravated by follow-up questions asking how he was ignorant of the plot.

Cleveland.com: Lt. Gov. Husted's says he has no memory of name-drops detailed in FirstEnergy bribery scandals

> Lt. Gov. Jon Husted offered few answers about records connecting him to two related bribery scandals in state politics, stating he doesn't remember a series of events or conversations depicted in messages revealed in indictments and at trial for those involved.

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Securities Law
April 15, 2025, 8:44 AM PDT
Trump Ally Greene Bought Tesla, Amazon, Blackstone Before Rally

Representative Marjorie Taylor Greene sold US Treasuries and bought stakes in Amazon.com Inc., Blackstone Inc. and Tesla Inc. the day before President Donald Trump put a 90-day pause on retaliatory tariffs and prompted a market rally.

Greene, the Georgia Republican who's a close ally of Trump, revealed the transactions in a financial disclosure last week.

Representative Marjorie Taylor Greene speaks to President Donald Trump following a joint session of Congress on March 4.
Photographer: Al Drago/Bloomberg

The trades were part of a shift in Greene's investments executed over two days, April 8 and 9. On the morning of the 9th, Trump posted on social media that it was a "great time to buy." About four hours later, he announced he was suspending tariffs, propelling the S&P 500 index to a 9.5% gain, its biggest rally since 2008.

Greene's office did not immediately respond to a request for comment.

Congressional Democrats have urged investigations into whether people connected to Trump profited from the timing of the tariff announcements.

In a letter to the Securities and Exchange Commission, Senator Elizabeth Warren of Massachusetts said she did not know which officials may have had advance knowledge, but called it "unconscionable" that insiders may have profited from the market volatility.

The disclosure reports only require members to list values of transactions in broad ranges, and do not contain specific times of execution or cost basis, so it's unclear precisely how many of Greene's trades happened before Trump broke the news of the tariff pause.

But at least $11,011 to $165,000 in purchases came on April 8. As of 11:20 a.m. Tuesday in New York, shares of Blackstone, JPMorgan Chase & Co. and Tesla traded higher than at any point on that day.

Over the two days, her stock purchases totaled $21,021 to $315,000. She sold $50,001 to $100,000 of US Treasuries on April 8.

Among the other names in Greene's purchases were chipmakers Nvidia Corporation, Advanced Micro Devices Inc. and Qualcomm Inc., along with apparel companies Lululemon Athletica Inc. and Nike Inc.

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Securities Law
April 15, 2025, 9:57 AM PDT

Trump Family Backs Christian Radio Penny Stock, Spurs 210% Rally

President Donald Trump's eldest son and daughter-in-law took a stake in right-wing Christian radio network Salem Media Group Inc., spurring a sharp rally in the stock and involving the family in a market associated with opaque, buyer-beware companies.

Donald Trump Jr. and **Lara Trump** announced Monday that they invested in Salem, a conservative talk-radio network known for circulating a 2020 election fraud conspiracy film. Shares of the company were up 152% to $1.16 as of 12:50 p.m. in New York, after jumping as much as 210%.

The move followed a pattern that has become familiar since Trump's election victory. The president's family members announce they have a stake or advisory role in a small, thinly traded company trading like a so-called penny stock. Shares of the company skyrocket after the news is announced — often before dropping back down.

Donald Trump Jr. and Lara Trump
Photographer: Eva Marie Uzcategui/Bloomberg

This was the case for Unusual Machines Inc., a drone company that Trump Jr. joined as an adviser in November; for PSQ Holdings Inc., operator of a marketplace for conservative-values businesses, where Trump Jr. became a director in December; and for Dominari Holdings Inc., a tiny financial firm where Trump Jr. and his brother Eric both took stakes in February.

In the most-recent deal, Salem said it acquired a 30% stake in Trump Jr.'s mobile news aggregation app MxM News, while he agreed to promote the company. Lara Trump, who is married to Eric and was a former co-chair of the Republican National Committee, agreed to continue to host her show "The Right View" on the platform.

The company did not provide details on the monetary value of their stakes. Salem did not immediately comment beyond a press release announcing the arrangement, and representatives for the Trumps did not respond to requests for comment.

The deal also adds to the Trump family's personal involvement in right-wing media networks.

Trump Jr. hosts a show on conservative streaming platform Rumble Inc. called "Triggered With Don Jr.," where he featured Secretary of State Marco Rubio and praised his father for "bringing back common sense." This year Fox News struck a deal for a weekend primetime slot for "My View With Lara Trump," where she recently championed her father-in-law's tariff policies as they roiled markets, saying "nations are lining up to negotiate," and interviewed Commerce Secretary Howard Lutnick, who said the president is "totally in the driver's seat."

Salem agreed last year to stop distributing a book and film, *2,000 Mules*, which it co-produced with conservative provocateur and filmmaker **Dinesh D'Souza**. The film was based on a discredited theory about the 2020 election results being stolen. Salem apologized to a Georgia voter it falsely portrayed as committing election fraud.

Salem is different from some of the other companies linked to the Trump family, in that it trades on over-the-counter markets, which lack the centralization, trading volume and transparency of firms listed on the New York Stock Exchange or Nasdaq. Salem delisted from Nasdaq last year, saying it would save costs.

Penny stocks are typically defined as those that trade for less than $5 per share. Salem's shares traded at an average of 38 cents for the past year, according to data compiled by Bloomberg.

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Steven Crabill

Statements about cybersecurity: A duty of accuracy or a license for puffery?

reuters.com/legal/legalindustry/statements-about-cybersecurity-duty-accuracy-or-license-puffery-2025-04-14

John Bandler April 14, 2025

A man holds a laptop computer as cyber code is projected on him in this illustration picture taken on May 13, 2017. REUTERS/Kacper Pempel/Illustration/File Photo Purchase Licensing Rights, opens new tab

April 14, 2025 - Organizations need to make statements about their cybersecurity and information systems, articulated by different people to different audiences.

There are tensions because some parts of an organization sell and reassure, others work to keep information systems secure. Sometimes a single individual is called upon to do both, such as a chief information security officer (CISO).

To sell, the organization lets clients, customers, and investors know things are running great, their products and services are excellent, security is airtight. These rosy statements help make the deal happen.

To secure and operate, the organization needs facts not puffery, and few organizations are perfect.

In sum, there is a legal duty of accuracy with diligence required, plus an ethical and practical imperative.

Why we tell others about cybersecurity

Organizations make statements about their information systems for a variety of reasons:

Internal communication to assess and convey facts about current practices and risks, and desired changes and goals.

External communication for three main reasons:

•for marketing, to get others to buy the company's product or service (or continue doing so).

•for investors, to get them to buy or hold ownership in the company.

•for contracts, to provide information to a client or to obtain or maintain cyber insurance.

What we tell others — a practical and legal refresher

Principles from legal compliance, efficiency, and ethics favor accuracy in communication. Accurate communications can be trusted and acted upon. Deception is generally improper and also creates inefficiencies. Organizations need to be able to learn and assess facts, and this includes identifying deficiencies honestly to eventually correct them.

Some are motivated away from accuracy because it is easier for some to say what is convenient in the moment and avoid painful truths. Admitting deficiencies or mistakes can hamper an immediate sale or investment and provide ammunition to opponents.

The law has evolved to favor accuracy with three methods.

First, the hearsay exception for a statement by an opposing party means that a litigant gets to pick and use any statement made by the other side which might help their own case. These statements are evidence and can be worthy of mention in the complaint or opening statement. The other side is reduced to claiming the statements were "cherry picked" and "taken out of context."

Second, law and the process of litigation disfavors deception (in theory). Much of our legal process is about fact finding, and many of our laws and processes prohibit deceit.

Third, prior inconsistent statements are admissible for certain purposes, including to prove deception. When a person says opposite things at different times, that can be used to prove one of those statements was false.

Cyber insurance and other contracts

Contracts today may require questionnaires and statements about cybersecurity, information security, and privacy. These representations are relevant at contract formation and throughout the contract duration. Cyber insurance is one type of contract.

Some of the questions can be challenging, perhaps poorly worded, ambiguous, technical, or designed for a different sized organization.

The response always matters, and it should be accurate and clear. If a dispute ever arises it will be read in the least favorable light, under the harsh fault-finding gaze of an opposing attorney.

A simple question might be:

"Does the organization use two-factor authentication on email systems?"

An accurate response is required (of course).

Other questions may present more challenges. While it might be convenient to check the "Yes" box, reality might be different, and a careful, accurate sentence might be helpful.

Statements, investor protection, and the SolarWinds case

The Securities and Exchange Commission (SEC) lawsuit against SolarWinds is a cautionary tale suggesting diligence for all statements about cybersecurity, no matter the audience.

The SEC alleges that false statements about cybersecurity protections are actionable under securities laws as deceptive to investors. The complaint was filed in October 2023, and I wrote about it soon after. ("SolarWinds and the SEC lawsuit, opens new tab" Reuters Legal News, Nov. 21, 2023).
Since filing, the SEC filed an amended complaint in February 2024, SolarWinds made a motion to dismiss, and the Court ruled on this in July 2024.

The complaint is just an allegation, and the Court's decision rules only on the sufficiency of the complaint, not the merits of the case.

The decision allows claims to proceed based upon certain allegedly false statements made by SolarWinds in a cybersecurity statement they posted on their website before the data breach. This public statement of excellent cybersecurity included detailed specifics which were contradicted by internal statements. Some of the cybersecurity deficiencies arguably allowed the massive data breach which included access to SolarWinds systems and then to thousands of their customers.

The Court dismissed certain SEC claims that were based on SolarWinds statements of good cybersecurity made in press releases, blogs, and podcasts, deciding they were "non-actionable corporate puffery" and too general for a reasonable investor to rely on them.

The Court also dismissed claims based on alleged false statements made by SolarWinds after discovering suspicious activity, including how they characterized the event within their incident response activities, and external communications in the immediate period after the discovery.

Reading legal tea leaves based upon a single case is rarely wise, especially with pending litigation, and doubly so with a new administration with different regulatory priorities. Nevertheless, some practical and legal takeaways remain clear. It is problematic to be deceptive and to make inconsistent statements.

Here is how the Court summarized one sequence of events from Nov. 5, 2020 (in its decision of July 18, 2024, with citations to the SEC's amended complaint omitted).

"In [a] group instant message, a [SolarWinds] employee raised whether to alert PAN [Palo Alto Networks] that there had been a prior attack... [SolarWinds] Infosec Employee F responded: 'I[' d] prefer nobody says on the call that we have seen something like this in the past.' Infosec Employee F then separately messaged [SolarWinds] Manager E, who agreed that SolarWinds should not disclose to PAN the previous ... attack. Later that day, on a phone call between SolarWinds and PAN, employees at PAN asked if SolarWinds had ever seen Orion [security software] act in this manner before. [SolarWinds] Infosec Employee F responded that they had not previously seen similar activity from the Orion platform. In contemporaneous instant messages sent during the call, Infosec Employee F messaged his colleague: 'Well I just lied.'"

Some may focus on the act of confessing to this dishonesty in a group chat. A deceitful person may take the wrong lesson — "Do not admit deception in writing." Some may question the organization's culture if employees felt free to discuss this duplicity with each other.

The main lesson for compliance and ethics should be clear: Be truthful in the first place, eliminating any need to discuss deception.

Given the dismissal of certain counts, it remains to be seen whether this sequence of post-breach statements will be admissible, but the lesson holds fast.

Benefits of clear and accurate writing and speaking

For good organizations working to do the right thing, there are benefits when employees, managers, and executives communicate clearly and accurately.

Accurate facts are essential for good decision making, which helps to accomplish the mission, serve clients and customers, and stay in compliance with legal obligations. Accuracy and honesty about cybersecurity allows the organization to assess where it really is, so it can plan and navigate the course to where it wants to be. This adapted saying holds true today:

"When we first start to deceive, what a tangled web we weave."

A deception may be convenient at the moment but creates complications soon enough. If organizations start to create a gap between;

•Rosy statements for clients, investors, and regulators, and

•Practical realities and facts needed to discuss and do the work of the organization,

then troubles brew. The greater the gap, the greater the risks of noncompliance, inefficiency, and future accusations of deception.

The lesson to learn is that facts and accuracy are good for the organization and for compliance.

Some will choose to learn the wrong lessons, such as "don't write anything down and limit what you say because it could be used against you." This approach cannot lead to efficiency and good management and starts down a slippery slope that is difficult to recover from.

Every organization needs to improve its cybersecurity, none can afford to rest on their laurels, and claim everything is perfect. Improvement happens only with honest discussion about the current state, to include deficiencies. That discussion will need to include the written word, because of the complexities of cybersecurity.

Sometimes we speak and write, sometimes we listen and read.

When we listen and read, we should temper our expectations to account for honesty. If we hear that everything is perfect, it might be too good to be true. If we hear about some deficiencies, we may want to have some forgiveness for certain defects if it means we are obtaining accurate and honest information.

- Suggested Topics:
- Litigation
- Attorney Analysis
- Data Privacy
- Corporate Counsel

John Bandler is a lawyer, consultant, author, and adjunct professor at Elisabeth Haub School of Law at Pace University. He helps protect organizations from cybercrime, improve cybersecurity, and better protect and manage information systems. His latest book is "Cyberlaw: Law for Digital Spaces and Information Systems" (2025). His firm, based in New York, is Bandler Law Firm PLLC, and he can be reached at JohnBandler@JohnBandler.com.

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Chinese Fintech Says Investors' IPO Suit Still Misses The Mark

By **Sydney Price**

Law360 (April 14, 2025, 8:33 PM EDT) -- Chinese fintech 9F Inc. pushed back on the third version of a complaint filed by its investors, saying the shareholders still fail to address their lack of standing for its claims that 9F violated securities laws by not disclosing an "illegal arrangement" it allegedly had with an insurance firm.

In the **motion** filed Friday, 9F said the suit's Securities Act claims "fail on standing alone" since they were filed after the repose period. 9F also said it made "extensive" disclosures regarding its arrangement with its insurance partner, PICC Property and Casualty Co. Ltd., or PICC.

In their suit, the investors claim the contrary, **arguing** that 9F did not tell shareholders that most of the accounts receivable listed by the company as uncollectible were funds that PICC owed.

U.S. District Judge Michael E. Farbiarz in December **dismissed the plaintiffs' claim** alleging a misleading registration statement, saying they offered no other factual information to support it.

9F said Friday that the latest complaint offers nothing new regarding its scienter and loss causation allegations and that those claims should also be tossed.

"Then and now, plaintiffs cannot allege that PICC, the [People's Republic of China], or anyone else has ever even claimed, let alone established, that 9F's agreement with PICC was illegal," 9F said Friday.

"They have shown again and again that they cannot state a claim," the motion continued. "Enough is enough. This action should be dismissed in its entirety with prejudice."

9F, headquartered in Beijing, offers various financial products and services, including loan products, online wealth management and payment facilitation. 9F partnered with PICC to sell loan performance guarantee insurance policies, according to the complaint.

The investors say that 9F used the partnership as a "conduit to circumvent Chinese regulatory bans" and that the "borrowing cost for borrowers on 9F's platform frequently exceeded the 36% APR ceiling."

9F's lack of disclosures about its partnership with PICC violated, among other things, generally accepted accounting principles, the investors argue.

The investors also said the arrangement between 9F and PICC subjected the company to heightened risks since Chinese courts "are authorized to exercise discretion to deem a contract to be unenforceable because it is illegal," which is grounds for a securities fraud claim, the investors said.

But 9F said Friday that the investors are barred from bringing this claim and that tolling does not allow them to assert the claim after the repose period.

"The contrary position that plaintiffs urge would allow any plaintiff to bring every claim under the sun without regard to standing and then backfill additional named plaintiffs for those claims at any point thereafter, rendering statutes of repose a nullity," 9F said. "That is not the law, and for good reason."

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

The investors are represented by James E. Cecchi, Donald A. Ecklund and Kevin Cooper of Carella Byrne Cecchi Olstein Brody & Agnello PC, Robert V. Prongay, Ex Kano S. Sams II, Charles H. Linehan and Pavithra Rajesh of Glancy Prongay & Murray LLP and Howard G. Smith of the Law Offices of Howard G. Smith.

9F is represented by Scott D. Musoff, Robert A. Fumerton, Michael C. Griffin, Isaiah Strong, Steve Kwok and Beatriz (Bea) Paterno of Skadden Arps Slate Meagher & Flom LLP.

The case is Holland v. 9F Inc. et al., case number 2:21-cv-00948, in the U.S. District Court for the District of New Jersey.

--Editing by Rich Mills.

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Coinbase Wants 3rd Circ. To Look At Share Traceability Ruling

By **Katryna Perera**

Law360 (April 14, 2025, 9:57 PM EDT) -- Coinbase has asked a New Jersey federal judge to let the Third Circuit immediately review the court's decision to allow an investor class action to proceed, saying it runs contrary to Fifth and Ninth circuit rulings concerning the traceability of share purchases, particularly in companies like Coinbase that went public via a so-called direct listing.

Coinbase filed a **motion** to certify an order for interlocutory review on Friday, asking that the appeals court review U.S. District Judge Brian R. Martinotti's **September order**, which held that the investors' class action against the cryptocurrency exchange could proceed based on a "statistical inference" that the plaintiffs "likely" purchased registered shares of Coinbase.

The crypto exchange claimed that the judge's approach wrongly sidestepped the Securities Act of 1933 requirement that plaintiffs must be able to directly trace their shares to a direct listing or offering. The judge's order also presented two questions that are unsettled in the Third Circuit, which now warrant review, the motion said.

The questions are, one, whether the "traceability requirement" of Section 11 of the Securities Act requires, as it states, that a plaintiff must plead that they actually purchased or held registered shares by tracing their shares back to the offering and, two, whether the same traceability requirement applies to Section 12(a)(2) of the Securities Act.

In his "statistical inference" ruling, Judge Martinotti said the traceability requirement can be satisfied simply by alleging that a large percentage of the available shares were registered when the plaintiffs made their purchases.

However, Coinbase argued Friday that Judge Martinotti's order is contradictory to rulings in the Fifth and Ninth circuits and, therefore, the Third Circuit should take the issue up for immediate review to determine this "threshold legal issue."

According to the motion, the Ninth Circuit **recently held** in Pirani v. Slack Technologies Inc., that the plaintiff's claims were barred because he could not allege traceability and that his "statistical theory" was "legally flawed" because even "a very high probability of purchasing at least some registered shares" failed to establish traceability.

The plaintiff in the Ninth Circuit case had also purchased his shares via a direct listing, in which shareholders of a company directly sell their shares on a public market, foregoing a traditional initial public offering process.

The Ninth Circuit panel further stated that a plaintiff must either "prove that they purchased their shares directly in the [challenged] offering itself" or "that their shares, although purchased in the aftermarket, can be traced back to the [challenged] offering."

The Fifth Circuit, in Krim v. pcOrder.com, also rejected a statistical reliance, saying that such a theory "'would impermissibly expand the statute's standing requirement' because every purchaser could rely on the same statistics to bring their claims, regardless of whether they actually purchased shares registered pursuant to the relevant offering materials."

Coinbase also argued Friday that all three criteria for interlocutory review are "easily" satisfied in the action. First, there is a controlling question of law at issue. Second, there are "substantial grounds for a difference of opinion" with Judge Martinotti's order, according to the motion.

"The order acknowledged … that the Fifth Circuit has expressly rejected this exact statistical inference theory of traceability. In February 2025, after this court issued the order, the Ninth Circuit joined the Fifth Circuit in rejecting the statistical inference theory of traceability," the motion said. "The Ninth Circuit's recent decision rejecting the order's key legal premises underscores that immediate review is warranted."

"Moreover, several district courts have likewise rejected the statistical inference theory of traceability — including in the direct listing context," the motion said.

Lastly, an immediate appeal may advance the ultimate resolution of the action, according to the motion.

"An appeal would eliminate three of the five claims and remove several defendants from this case. As courts within the Third Circuit have repeatedly recognized, appeals with similar potential to narrow a case's scope readily satisfy this criterion for interlocutory review," the motion said.

However, Coinbase also noted in its motion that the court can do away with the need for an appeal by reconsidering the order and aligning its decision with that of other courts.

"Now that multiple, carefully reasoned decisions from federal courts of appeals have squarely rejected plaintiffs' statistical inference theory of traceability, this court should do the same," the motion said. "As those courts correctly held, that theory is baseless because it merely establishes a possibility that the plaintiff purchased registered shares, not that a plaintiff actually purchased registered shares, as required by the Securities Act's text."

Friday's motion came after Judge Martinotti **declined last week to review his ruling**. The order allowed a putative class of Coinbase common stock buyers to bring most of their allegations that the crypto exchange misrepresented or concealed parts of its business to the detriment of certain stockholders. These included certain risks of how assets might be treated in the event of a bankruptcy and the possibility that the U.S. Securities and Exchange Commission would bring an enforcement action against it over its cryptocurrency business.

U.S. Magistrate Judge Leda Dunn Wettre consolidated two actions in December 2022 to form the resulting securities class action and tapped Swedish public pension fund Sjunde AP-Fonden as lead plaintiff. The institutional investor allegedly sustained the largest financial loss at $10 million.

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

The putative class is represented by James E. Cecchi and Donald A. Ecklund of Carella Byrne Cecchi Brody & Agnello PC and Matthew L. Mustokoff, Stacey M. Kaplan, Joshua A. Materese, Margaret E. Mazzeo, Austin W. Manning and Dylan J. Isenberg of Kessler Topaz Meltzer & Check LLP.

Coinbase and the individual defendants are represented by Kevin M. McDonough, Samir Deger-Sen, Andrew B. Clubok, Susan E. Engel and Morgan E. Whitworth of Latham & Watkins LLP.

The case is Patel v. Coinbase Global Inc. et al., case number 2:22-cv-04915, in the U.S. District Court for the District of New Jersey.

--Additional reporting by Sydney Price. Editing by Rich Mills.

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9th Circ. Revives Suit Over Calif. Refinery's Pollution

By **Tom Lotshaw**

Law360 (April 14, 2025, 7:43 PM EDT) -- A Ninth Circuit panel revived part of a class action that neighbors of a Torrance, California, refinery brought against Exxon Mobil Corp. and Torrance Refining Co. over its pollution, holding that a lower court misconstrued the scope of a trespass claim.

The three-judge panel on Monday said a district court judge wrongly dismissed the trespass claim that lead plaintiff Jose Navarro lodged against the companies based on a view that it only concerned possible soil vapor intrusion into structures, and not also soil and groundwater contamination.

"The district court's dismissal on the pleadings of Navarro's individual trespass claim was based on an overly narrow interpretation of Navarro's trespass allegations and is therefore reversed," the panel said in an unpublished **opinion**. "Under California law, soil and groundwater contamination such as Navarro alleges here can support a claim for trespass."

Neighbors of the Torrance fuel refinery filed the suit in 2017.

While the district court certified a ground subclass for trespass claims and an air subclass for nuisance claims, it later decertified both subclasses and dismissed Navarro's trespass claim and nuisance claims after he became lead plaintiff when another neighbor moved away from the refinery, which Exxon Mobil Corp. operated until 2016, court records show.

The Ninth Circuit panel said the district court's error in regard to Navarro's trespass claim impacted its decision to decertify the ground subclass. It vacated that decision and ordered the court to reconsider the matter in light of the broader trespass theory that includes soil and groundwater contamination in addition to soil vapor intrusion.

The panel declined to revive a nuisance claim Navarro lodged against the companies over air pollution, however.

The district court had granted summary judgment to the companies on that claim, according to the panel, which held that Navarro had not adequately explained to the lower court how health risks from the refinery's air pollution — at levels that triggered public notice requirements but not mandatory regulatory actions — amounted to substantial harm.

"Because Navarro's individual nuisance claims fail, he 'cannot represent others who may have' such claims, and his 'bid to serve as a class representative must fail," the panel said.

Oral arguments for the case were heard in March.

Matt Matern of Matern Law Group PC, one of the attorneys representing Navarro, said he was pleased with the ruling.

"We look forward to continuing the fight on behalf of Mr. Navarro and this community," Matern told Law360 on Monday.

Representatives for Exxon Mobil Corp. and Torrance Refining Co. did not immediately respond to requests for comment on Monday.

U.S. Circuit Judges Michelle T. Friedland and Daniel A. Bress, joined by Sixth Circuit Judge Danny J. Boggs, sitting by designation, sat on the panel for the Ninth Circuit.

Navarro and other plaintiffs are represented by Matthew J. Matern, Joshua D. Boxer, Debra J. Tauger and Kiran Prasad of Matern Law Group PC.

Exxon Mobil Corp. is represented by Dawn Sestito and Lauren Kaplan of O'Melveny & Myers LLP.

Torrance Refining Co. LLC is represented by Anne M. Voigts, Mark E. Elliott and Stephanie Amaru of Pillsbury Winthrop Shaw Pittman LLP.

The case is Jose Navarro et al. v. Exxon Mobil Corp. et al., case number 23-3274, in the U.S. Court of Appeals for the Ninth Circuit.

--Editing by Dave Trumbore.

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Juul Seeks Ax of Noncompliant Plaintiffs In E-Cig Suits

By **Emily Field**

Law360 (April 14, 2025, 8:08 PM EDT) -- Juul on Monday asked a California federal judge to toss claims brought by plaintiffs who failed to comply with court orders, about two years after Juul reached a $255 million global settlement in the litigation.

Juul said that as of last month, it had identified 31 personal injury plaintiffs who did not follow the settlement process but whose claims had not been dismissed. Additionally, there are 90 other plaintiffs who have settled their cases, but those are still active, Juul said. While the orders didn't mandate that all personal injury plaintiffs participate in the settlement program, it did require them to fill out forms and fact sheets.

"JLI has conferred with plaintiff's leadership regarding this motion and, while plaintiff's leadership does not per se object to JLI's filing of this motion, plaintiff's leadership has represented that it defers to individual counsel for the plaintiffs identified in Exhibits A, B, and C to raise any specific objections," the e-cigarette company said.

The other court order involves plaintiffs who bring claims against Juul and who have not chosen to participate in the settlement program. That order laid out discovery and litigation procedures, according to the **motion**.

In **May 2023,** Altria, a major investor in Juul, said it had struck a $235 million deal to settle claims that it helped fuel a youth vaping crisis created by Juul, one day after San Francisco's public schools rested their case in a multidistrict litigation bellwether trial.

The settlement ended claims against Altria alleging that the e-cigarette giant helped Juul market its products to minors while raking in billions in profit. Opening arguments in the closely watched trial started on April 24, 2023. The deal ended personal injury, consumer class action and government entity cases brought against Altria.

A year **prior**, Juul settled with the bulk of the plaintiffs in multidistrict litigation, leaving Altria — which acquired a 35% stake in the company five years ago — the sole defendant. In January of that year, U.S. District Judge William H. Orrick gave preliminary approval to that $255 million deal.

The plaintiffs in the MDL — adolescents, school districts, municipalities and Native American tribes — alleged that the tobacco giant helped Juul market its products to a young audience, concealing health risks and contributing to widespread nicotine addiction. In addition to infractions of the Racketeer Influenced and Corrupt Organizations Act, Altria was accused of negligence and violations of public nuisance laws.

The U.S. Food and Drug Administration briefly ordered the devices off the market in June 2022, capping a two-year review process of its tobacco and menthol-flavored vaping products, but said weeks later that it would stay the order pending additional scientific review.

The MDL plaintiffs claim Juul's products were designed to give users higher doses of nicotine than regular cigarettes, and the litigation includes a bellwether suit from the Cheyenne and Arapaho Tribes, which sued Juul, Altria and company officials in July 2021.

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

The plaintiffs are represented by Morgan & Morgan, Stark & Stark and Nachawati Law Group, among others.

Juul is represented by Timothy S. Danninger of Gunster Yoakley & Stewart PA, among others.

The case is Colgate et al. v. Juul Labs Inc. et al., case number 3:18-cv-02499, in the U.S. District Court for the Northern District of California.

--Additional reporting by Bonnie Eslinger and Dorothy Atkins. Editing by Linda Voorhis.

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E-Discovery Quarterly: The Perils Of Digital Data Protocols

By **Tom Paskowitz, Colleen Kenney and Matt Jackson** (April 15, 2025, 10:43 AM EDT)

This article is part of a quarterly column analyzing the most notable e-discovery developments from the previous three months. This installment takes a closer look at recent disputes over stipulated protocols governing how parties in litigation preserve, collect and produce electronically stored information.

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"An ESI Protocol agreement is supposed to make the discovery process more efficient and expedient, but that certainly has not been the situation in this case."[1]

This gem from the U.S. District Court for the Southern District of Florida's March 19 decision in 777 Partners LLC v. Leadenhall Capital Partners LLP reflects the somewhat contradictory nature of stipulated protocols governing the treatment of electronically stored information in litigation.

Principle 3 of the Sedona Principles for addressing electronic document production advises that, "[a]s soon as practicable, parties should confer and seek to reach agreement regarding the preservation and production of electronically stored information."[2]

Comment 3.c to the principles expands on this concept, noting that early discussion among the parties regarding the format in which their data is stored, data delivery specifications and the options for the forms of production "can result in an agreed upon protocol governing the production of ESI and avoid downstream misunderstandings or disputes."[3]

This guidance is consistent with the Federal Rules of Civil Procedure, which require that the parties discuss the form of ESI productions in connection with the Rule 26(f) conference, and include the parties' views and proposals on ESI in a discovery plan or in the form of an ESI protocol.[4]

Many courts also have guidelines and templates that parties are required or encouraged to use to talk about how ESI will be preserved, collected and produced.[5]

This article surveys a number of recent federal court decisions that are seemingly at odds with the foregoing principles and expectations because they address disputes involving ESI protocols.

Do we even need an ESI protocol?

Parties to litigation do not always agree that a protocol governing the production of ESI is necessary.

Such a dispute was the subject of a Jan. 8 decision from the Southern District of Florida in Zarfati v. Artsana USA Inc.[6] The parties in Zarfati disputed whether a protocol governing the production of ESI was necessary or proportional to the needs of the case.[7]

When the defendant refused to enter into an ESI protocol, the plaintiffs filed a motion requesting the court to order the protocol, over the defendant's objection.[8]

The defendant raised several objections to the entry of an ESI protocol, including that the one-sided protocol the plaintiffs proposed would "require[] the Parties to 'waste time negotiating search terms, which custodians should be searched, and [from] which data sources'" the defendant should collect.

The plaintiffs' proposed protocol also would require that emails be collected "when material responsive to these requests can be gathered through a directed ask or collection."[9]

Quoting the Sedona Principles, the defendant argued that it was "best situated [as the producing party] to evaluate the procedures, methodologies, and technologies appropriate for preserving and producing" its own ESI.[10]

The court overruled each of the defendant's objections to the plaintiffs' proposed ESI protocol, finding that it was "inclined to implement a thorough ESI protocol that facilitates the full and efficient disclosure of discoverable ESI" in light of the complex nature of the litigation seeking over $5 million in damages.[11]

The court found no problem with entering a one-sided ESI protocol directed to the defendant's ESI, because the defendant had not identified "any information about any discovery requests propounded on Plaintiffs that involve the production of extensive ESI or otherwise substantiate the notion that Plaintiffs' ESI will be at issue."[12]

The court stressed that "the discovery process, particularly when ESI is involved, is intended to be collaborative," and that the local rules and the ESI checklist for the Southern District of Florida "encourage parties to collaborate with one another at the earliest stages of the case to think about and discuss the impact of ESI on the potential discovery," and "informally discuss" the sources and collection of ESI.

But in this case, the defendant had not shared how it intended to "preserve, search for, and collect the responsive ESI in the case."[13]

On the substance, the court rejected the defendant's argument that it "has carte blanche to decide the manner in which it searches for and gathers discoverable ESI," finding that "a producing party's right to set its own protocol for producing ESI is not unconstrained, as the protocol it follows must be reasonable."[14]

While acknowledging that "[a] producing party is 'best situated to evaluate the procedures, methodologies, and technologies appropriate for preserving and producing their own electronically stored information,'" the court noted that the defendant had "not address[ed] how it would conduct a reasonable inquiry when searching its materials."[15]

Ultimately, the court found that "a robust ESI protocol appears appropriate" and would "aid the parties in identifying discoverable ESI."[16]

Again relying on the Sedona Principles, the court further concluded that "a comprehensive ESI protocol will help 'each party fulfill[] its discovery obligations without direction from the court or opposing counsel' by setting forth procedures that dispel ambiguities that might otherwise give rise to discovery disputes between the Parties requiring the Court's intervention."[17]

More recently, on March 19, the U.S. District Court for the Northern District of California resolved a similar dispute regarding the scope of a proposed ESI protocol.

In Andersen v. Stability AI Ltd.,[18] the defendants' proposed ESI search protocol consisted of one paragraph that did not address disclosures or discussions regarding the scope of preservation, disclosure of search methodology, or search-term hit reports.[19]

Regarding search methodologies, the court recognized that "the responding party is generally best situated to evaluate procedures and methodologies appropriate for producing their own ESI," but noted that "[t]he mere disclosure of [information regarding search methodologies] does not run afoul of" this principle.[20]

Accordingly, the court entered an ESI protocol that required the parties to disclose "the search terms, keywords, date limitations, and custodians, and [to] specify what custodial and non-custodial sources that the search methodology will or was run against."[21]

The court also ordered as part of the protocol that the parties would hold "an early meet and confer conference" to discuss "the retrieval parameters identified ... [and] to engage in meaningful cooperation that reduces the costs and risk associated with ESI production."[22]

The court reached a similar conclusion with respect to search-term hit count reporting, adopting the plaintiff's proposed language requiring that search term hit reports be provided as part of the meet-and-confer process regarding search terms.[23]

The court reasoned that "[t]he effectiveness of meet and confers depends on the parties' candor, and this is especially true when the parties are addressing potential search terms."[24]

What am I getting myself into?

Recent court opinions demonstrate the importance of understanding the implications of the provisions in one's ESI protocol before agreeing to specific terms.

For instance, in Gagne Technical Services Inc. v. Presutti,[25] the parties agreed to the terms of an ESI protocol governing the searching of the defendants' ESI. Among other things, the protocol called for the use of a third-party vendor to conduct the search, and required the defendants to identify the devices, accounts and network locations to be searched.[26]

Consistent with this protocol, the parties agreed on an outside vendor, and identified the devices, accounts and networks to be searched. However, the defendants later changed their mind and sought to perform the required searches themselves, arguing that the use of a vendor would be too costly and could result in the disclosure of information that would violate the defendants' contractual confidentiality obligations.

On March 11, the U.S. District Court for the Western District of Pennsylvania rejected both concerns. With respect to the defendants' argument that an external vendor would be too costly, the court noted that "[w]hen Defendants entered into the ESI Protocol, they agreed that it would be conducted by an outside vendor," and the "[d]efendants were made aware of the cost estimates before selecting the vendor."[27]

The court found that, having agreed to use an external vendor, the "[d]efendants cannot now object to the costs."[28]

The court similarly overruled the defendants' separate objection that they needed to conduct the searches internally to avoid violating contractual confidentiality obligations.[29] The court pointed out that the defendants "acknowledged in the protocol [that] they understood that the ESI search could yield confidential documents."[30]

The court therefore reasoned that the defendants would have "considered their business practices, including the existence of contracts with third parties, as well as their methods of storing ESI, before agreeing to the protocol."[31]

In an earlier case, Orlando Health Inc. v. HKS Architects Inc.,[32] the defendant had negotiated and agreed on an ESI protocol that included provisions regarding the production of custodial emails, but ultimately never signed it. When the plaintiff brought a motion to compel, the defendant relied on the lack of an ESI protocol to oppose the motion.

On Dec. 23, 2024, the U.S. District Court for the Middle District of Florida rejected this argument, finding it "unpersuasive and bordering on disingenuous."[33]

After describing the lengthy negotiations surrounding the ESI protocol; the defendant's agreement to the protocol, notwithstanding the lack of a signature; and the defendant's failure to raise the lack of a protocol at any prior time, the court concluded that the defendant "chose to pursue a litigation strategy of changing its mind with respect to an ESI Protocol and unilaterally limiting production."[34]

Based on these facts, the court granted the plaintiff's motion to compel additional productions and for sanctions.[35]

Did I really agree to that?

Recent decisions also reflect the importance of an ESI protocol once it is entered, and the perils of any failure to comply.

For example, in the 777 Partners LLC case, the Southern District of Florida was faced with a situation where the plaintiffs had not disclosed any of their search terms, in violation of the parties' stipulated ESI protocol.[36]

The court found the plaintiffs' failure "highly improper," because "[w]hen a party agrees to do something in an ESI Protocol, as Plaintiffs did here, the Court expects them to live up to their agreement."[37]

As a result, the court granted the defendants an extension of the discovery deadline, as well as attorney fees and costs.[38]

On March 13, the Northern District of California addressed a similar dispute and denied a motion to compel in Zurich American Insurance Co. v. Chevron U.S.A. Inc.,[39] overruling the plaintiffs' objections when the defendant withheld nonresponsive attachments to responsive emails because the parties' ESI protocol permitted withholding.[40]

In 4WEB Inc. v. NuVasive Inc. before the U.S. District Court for the Southern District of California, the plaintiffs had moved to compel the defendant to review and produce responsive, non-email ESI from individual custodians in response to the plaintiffs' document requests.[41]

The parties' ESI order provided that "[g]eneral ESI production requests under Federal Rules of Civil Procedure 34 and 45 ... shall not include e-mail or other forms of electronic correspondence," and required the parties to propound specific email production requests that followed certain procedures for those requests.[42] The order also limited "'e-mail production requests to a total of five custodians per producing party for all such requests' and 'to a total of five search terms per custodian per party.'"[43]

The defendant argued that this stipulation "appl[ied] to all custodian ESI."[44] The plaintiffs countered that the ESI order addressed only email ESI, and did not modify the defendant's obligations under Rule 34 to produce non-email ESI from its custodians.[45]

The court ruled on March 17 that the parties' ESI order applied only to email ESI and not to other forms of ESI, because its scope was limited to "'e-mail production requests' seeking production of 'e-mail and other forms of electronic correspondence.'"[46]

What lessons can we learn from these decisions?

The decisions discussed above demonstrate that while ESI protocols can serve the intended purpose of making "the discovery process more efficient and expedient," in the words of the 777 Partners decision, a failure to engage early in the process of negotiating a protocol on an informed basis can lead to significant inefficiencies in the form of discovery disputes and motion practice. Several key lessons emerge from these cases.

Engage regarding ESI early.

Counsel should engage on ESI at the outset of any scheduling or discovery discussion, both internally with the client and externally with the opposing party. A complete understanding of court-required provisions or protocols should be a starting point.

It is also important to address any limitations or issues so as to minimize discovery disputes later in the process. And if disputes regarding the need for, or content of, a protocol are unavoidable, submitting those disputes to the court as early as possible will avoid unnecessary delay later in the process.

Know your protocol.

When negotiating an ESI protocol, it's important to understand how each provision will work with your specific ESI and systems.

Understanding this will help you avoid situations like the one that befell the defendant in Gagne Technical Services, who may not have considered the cost of implementing the ESI protocol before signing it, or the defendant in 4WEB, which may have failed to understand the scope of the agreement it reached.

Follow the protocol.

Although it should be obvious, it is critical to understand and comply with all provisions in your ESI protocol. The decisions above — and many that preceded them — reflect that courts expect strict adherence to the provisions of an ESI protocol, and the failure to treat your ESI consistent with your agreement, like the plaintiffs in 777 Partners, will lead inevitably to disputes.

Conversely, following your ESI protocol will be defensible even where it differentiates from normal practice, like the defendant Zurich American with its nonresponsive attachments.

And if you discover an issue with your ESI protocol, it is better to address that issue directly, either through compromise with your opposing party or a motion to amend the ESI protocol.

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[1] 777 Partners LLC v. Leadenhall Capital Partners LLP , No. 24-cv-81143, 2025 WL 865603, *3 (S.D. Fla. Mar. 19, 2025).

[2] The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production, 19 SEDONA CONF. J. 1 (2019).

[3] Id. at Cmt. 3.c, 79.

[4] See Rule 26(f)(3)(C).

[5] For just one example, see the Northern District of California's Guidelines for the Discovery of Electronically Stored Information and ESI checklist for use during the Rule 26(f) meet and confer process, both available at https://www.cand.uscourts.gov/forms/e-discovery-esi-guidelines/.

[6] No. 24-cv-21372, 2025 WL 50373 (S.D. Fla. Jan. 8, 2025).

[7] Id. at *1.

[8] Id.

[9] Id. at *3.

[10] Id. at *2.

[11] Id.

[12] Id.

[13] Id. at *3.

[14] Id. at *2.

[15] Id.

[16] Id. at *4.

[17] Id.

[18] Andersen v. Stability AI Ltd. , No. 23-cv-00201-WHO (LJC), 2025 WL 870358 (N.D. Cal. Mar. 19, 2024), 2025 U.S. Dist. LEXIS 50848.

[19] Id. at *2-6.

[20] Id. at *3.

[21] Id.

[22] Id.

[23] Id. at *5.

[24] Id.

[25] Gagne Technical Services Inc. v. Presutti , No. 2:24-cv-71, 2025 WL 776125 (W.D. Pa. Mar. 11, 2025).

[26] Id. at *1.

[27] Id. at *4.

[28] Id. The court in Morse Electric, Inc. v. Stearns, Conrad and Schmidt, Consulting Engineers, Inc. , No. 22-91-JWB, 2025 WL 548461, *2 (E.D. Okla. Feb. 10, 2025) relied on similar reasoning in finding that the plaintiff could not avoid the cost associated with complying with an ESI order because the plaintiff "was provided with an opportunity to either agree with Defendant on how to produce ESI or to file its own plan" but "failed to do so" and "did not object when Defendant requested that the court adopt its proposed plan."

[29] Id.

[30] Id.

[31] Id.

[32] Orlando Health Inc. v. HKS Architects Inc. , No. 24-cv-693-JA-LHP, 2024 WL 5202797 (M.D. Fla. Dec. 23, 2024).

[33] Id. at *6.

[34] Id.

[35] Id.

[36] Id. at *2.

[37] Id. at *3. In a separate opinion, the court lamented that "[a]n ESI Protocol Order is supposed to streamline the production of" ESI, but "[i]ronically, in this case, the ESI Protocol Order has had the opposite effect—it has not resulted in any significant cooperation and has simply given the parties and their counsel one more thing to fight about during the discovery process." 777 Partners LLC v. Leadenhall Capital Partners LLP, No. 24-cv-81143, 2025 WL 942414, *4 n.2 (S.D. Fla. Mar. 28, 2025).

[38] 2025 WL 865603 at *4.

[39] Zurich American Insurance Company v. Chevron U.S.A. Inc., No. 24-cv-02733-JSC, 2025 WL 808467, *2-3 (N.D. Cal. Mar. 13, 2025).

[40] See also iGolf, Inc. v. Bushnell Holdings, Inc., No. 23-cv-01595-L-BJC, 2024 WL 5479811 (S.D. Cal. Nov. 26, 2024) (ordering the plaintiff to correct its document production to conform with provisions in the parties' ESI protocol requiring provision of color copies of documents and properly grouping families of documents together).

[41] 4WEB Inc. v. NuVasive Inc., No. 24-cv-01021-JLS-MMP, 2025 WL 834507, *4 (S.D. Cal. Mar. 17, 2025).

[42] Id.

[43] Id.

[44] Id.

[45] Id.

[46] Id. at *5. The court also found that the limited scope of the ESI order was not contrary to its stated purpose to "streamline ESI discovery" because "the Court sees the ESI order as working in conjunction with the Federal Rules to facilitate and streamline discovery." Id.

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SEC Won't Revisit WhatsApp Settlements With 16 Firms

By **Craig Clough**

Law360 (April 14, 2025, 11:47 PM EDT) -- A divided U.S. Securities and Exchange Commission refused Monday to redo settlements it inked with 16 financial firms over their failure to keep records of so-called off-channel communications, finding the "settlor's remorse" the firms are suffering because others received better terms is not reason enough to modify their deals.

Between December 2021 and October 2024, the SEC's off-channel communications enforcement action resulted in settlements with more than 100 firms and resulted in roughly $2 billion in penalties for employees using unapproved communications channels such as WhatsApp.

The 16 firms seeking modifications to their deal argued it would be "inequitable" to require them to comply with the details in their settlements when other firms that reached their deals later on received less stringent terms, but the majority of the commission rejected the argument.

"In short, the decision to settle early carries both an inherent risk and potential benefit: Though the settling party must act with relatively less information than those that settle later, it avoids the time and expense of further negotiation and litigation. Settlor's remorse — and a desire to revisit that risk calculus — does not justify upsetting a final, agreed-upon settled order," the SEC said.

The firms seeking modifications all reached their deals prior to January, when the SEC finalized settlements with other firms, such as nine investment advisers and three broker-dealers that agreed to pay a total of **$63 million** to settle allegations they failed to reasonably supervise employees to ensure they were not communicating business off-the-books, and, in the process, violating the firms' recordkeeping obligations before the commission.

The 16 firms want to remove several requirements from their settlements that the others that settled in January are not required to do even though they were accused of the same behavior, according to the order. The firms argue that the requirements include they submit to heightened Financial Industry Regulatory Authority supervision for six years and submit continuing membership applications.

"We are also unpersuaded by respondents' claims that they are, in effect, being penalized for settling earlier than other respondents," the majority said. "We do not understand this argument to have a different legal basis than those already discussed; the respondents negotiated and made a choice to accept the terms of their orders, accepting the risk that comparable cases later could reach different outcomes. Respondents also provide no evidence that the commission sought what the respondents claim to be more severe terms because they settled earlier than other similar parties."

The firms pointed to several instances where the SEC had modified settlements previously, but the majority of the commission said Monday those cases are "inapposite or inapplicable," with one being altered because of the "particular circumstances" present. In none of the others did the SEC "suggest that it was modifying a settlement to 'equalize' its terms with other, subsequently reached settlements," according to the order.

In a dissenting opinion, Commissioner Hester M. Peirce said the commission should take the "unusual but warranted step" of modifying the settlements, in part because she saw little difference between the allegations against the 16 firms and the others.

"Why must the broker-dealer firms that settled before January 2025 submit continuing membership applications to FINRA and be subject to costly heightened supervision plans while the broker-dealer firms that settled in January 2025 are not? Pierce said. "And why is heightened supervision, which also imposes costs on FINRA, even necessary for the broker-dealer firms at all? The commission waived its own set of disqualifications arising from the violation. Moreover, none of the other firms — the standalone investment advisers, the municipal advisors, and the [nationally recognized statistical rating organizations] — are subject to this requirement."

The SEC and attorneys for the firms did not immediately respond to requests for comment.

William Blair & Company, L.L.C., William Blair Investment Management, Invesco Distributors, Inc. and Invesco Advisers, Inc. are represented by Ropes & Gray LLP.

Robert W. Baird & Co. Inc., Key Investment Services LLC and KeyBanc Capital Markets Inc., Oppenheimer & Co. Inc., Hilltop Securities Inc., Piper Sandler & Co., Osaic Services Inc., Osaic Wealth Inc., Apex Clearing Corp., Truist Securities Inc., Truist Advisory Services Inc., Raymond James & Associates Inc., Ameriprise Financial Services LLC, LPL Financial LLC, Regions Securities LLC and Stifel Nicolaus & Co. Inc. are represented by Sidley Austin LLP.

RBC Capital Markets LLC is represented by Sidley Austin LLP and Milbank LLP.

The cases are William Blair & Co. LLC and William Blair Investment Management, case number 3-21764, Robert W. Baird & Co. Inc., case number 3-21768, Key Investment Services LLC and KeyBanc Capital Markets Inc., case number 3-21849, Oppenheimer & Co. Inc., case number 3-21852, Hilltop Securities Inc., case number 3-21993, Piper Sandler & Co., case number 3-21994, Osaic Services Inc. and Osaic Wealth Inc., case number 3-21997, Apex Clearing Corp., case number 3-21998, Truist Securities Inc., Truist Investment Services Inc., and Truist Advisory Services Inc., case No. 3-22000, Raymond James & Associates Inc., case number 3-22002, RBC Capital Markets LLC, case number 3-22003, Ameriprise Financial Services LLC, case number 3-22004, LPL Financial LLC, case number No. 3-22006, Regions Securities LLC, case number 3-22163, Invesco Distributors Inc. and Invesco Advisers Inc., case number 3-22165, and Stifel Nicolaus & Co. Inc., case number No. 3-22168, all before the U.S. Securities and Exchange Commission.

--Additional reporting by Jessica Corso. Editing by Kristen Becker.