

Fluence Energy hid product bugs, shoddy work from investors, suit says

2025 SECDBRF 1471 • By Nicole Banas

WESTLAW Securities Enforcement & Litigation Daily Briefing • April 17, 2025

(April 17, 2025) - Fluence Energy Inc. is facing a shareholder lawsuit alleging it concealed defects and installation problems with its energy storage systems.

Kramer v. Fluence Energy Inc. et al., No. 25-cv-634, *complaint filed* (E.D. Va. Apr. 15, 2025).

The proposed class action, filed April 15 in the U.S. District Court for the Eastern District of Virginia, says Fluence's share price fell more than 52% in February after it slashed revenue guidance by \$600 million.

The defendants in the suit are Fluence and four current and former executives, along with controlling shareholder AES Corp. and subsidiary AES Grid Stability LLC.

Persistent product flaws?

The complaint, filed by Fluence shareholder Igor Kramer, says energy company AES and a subsidiary of German technology giant Siemens AG formed Fluence as a joint venture in 2018. The company received "outsized revenue support" from AES, which received energy storage equipment and services from Fluence, according to the suit.

Fluence began experiencing issues with the installation and commissioning of certain products before its initial public offering in October 2021, the complaint says.

Fluence CEO Manuel Pérez Dubuc told investors in February 2022 that the company had taken corrective actions to address cost overruns and customer complaints, the suit says.

AES forced a "corporate reset" in August 2022 that included replacing Pérez with former AES executive Julian Nebreda, according to the suit.

But the product issues persisted in 2023, as Fluence customers repeatedly notified the company of defects, installation errors and failures to honor warranty obligations, the complaint says.

AES took advantage of the company's inflated share price to "dump" more than \$156 million in Fluence shares in a secondary stock offering in December 2023, the suit says.

'Laundry list' of failures

The undisclosed issues started to emerge that month when industry publication Energy Storage News reported a litany of problems at one of Fluence's major projects in California, Kramer alleges.

Activist investor Blue Orca Capital reported in February 2024 that Fluence was facing a lawsuit by a Siemens affiliate alleging a "laundry list" of engineering and design failures at a project, the complaint says.

The report also said that AES planned to sell its stake in Fluence and withdraw its sizeable revenue contributions, according to the suit.

Fluence denied the allegations in both reports, but its share price fell from more than \$27 before the Energy Storage News article to less than \$15 after the Blue Orca report on Feb. 22, 2024, the complaint says.

The share price continued to fall in response to financial disclosures in late 2024 and early 2025, Kramer alleges. Shares fell more than 52% over three days to close at \$6.18 on Feb. 13 after Fluence lowered its 2025 revenue guidance by approximately \$600 million to a range of \$3.1 billion to \$3.7 billion, the complaint says.

Pérez and Nebreda are also defendants in the suit, along with former Chief Financial Officers Dennis Fehr and Manavendra Sial.

The Fluence defendants made false and misleading statements to investors concealing product issues, poor work quality and related risks, in violation of Section 10(b) of the Securities Exchange Act of 1934, [15 U.S.C.A. § 78j\(b\)](#), the complaint says.

All defendants, including AES, are liable as control persons of Fluence under Section 20(a) of the Exchange Act, [15 U.S.C.A. § 78t\(a\)](#), the suit says.

Kramer requests class certification, unspecified compensatory damages plus interest and costs.

Samuel H. Rudman of [Robbins Geller Rudman & Dowd LLP](#) and Gregory E. Del Gaizo of [Robbins LLP](#) represent Kramer.

By Nicole Banas

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April 17, 2025

Alex Gerbi of Quinn Emanuel, Sapna Malik of Leigh Day and Kajal Ervin of JSS Barristers are among this year's honorees.

We are honored to introduce The 2025 Lawdragon 500 Global Plaintiff Lawyers.

This is our second annual guide to the global gladiators bringing a newfound and empowered voice to claimants throughout the world.

It's a wonderful world, but one filled with trouble and strife. One need look no further than the CV's of three of these outstanding lawyers to appreciate the range of claims that these talented and determined lawyers work tirelessly to prove on behalf of those who've suffered everything from war to sex trafficking, wildfires to car defects.

Alex Gerbi, co-managing partner of Quinn Emanuel's London office, has played a key role representing Ukraine in international legal disputes with Russia. No firm has defined global litigation quite like Quinn Emanuel, whose legal force excels in all manner of transnational disputes, asset recovery and international arbitration. The attorneys recognized alongside Gerbi here use those skills on behalf of claimants in multi-jurisdictional disputes involving billions of dollars and often much more.

Sapna Malik joined Leigh Day as a trainee and ascended to become co-head of the international department. She has represented Malawian women winning compensation for gender-based violence and sexual harassment from an agricultural employer. She played a key role in litigation related to the wars in Iraq, Afghanistan and Sept. 11, representing detainees who were tortured and violated. She also represented a potential group of BMW owners whose diesel vehicles were outfitted to defeat emissions tests.

Kajal Ervin is managing partner of JSS Barristers in Calgary, Alberta. She was co-lead counsel to a class of youth sexually assaulted, abused and exploited by a senior member of the Young Canadians, a performance group associated with the Calgary Stampede. She also represents Poundmaker Cree Nation in claims the Government of Canada negligently claimed to fully manage and exploit oil and other assets on First Nation Lands. And, she represents more than 40 plaintiffs who suffered the loss of farmlands and homes from a devastating fire in Southern Alberta.

We selected the 500 lawyers honored here through our proprietary process honed over more than 30 years, weighing robust submissions, peer critique and journalistic research. We focused principally on work in the areas of antitrust and competition, investor and

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Class Action

April 18, 2025, 8:50 AM PDT

Ibotta Sued Over Kroger Contract, Share Price Decline Since IPO

- **COURT:** D. Colo.
- **TRACK DOCKET:** No. [1:25-cv-01213](#) (Bloomberg Law subscription)

Ibotta Inc. failed to warn investors that a major client could walk away at any time in the cash back app's 2024 initial public offering paperwork, a proposed class action said.

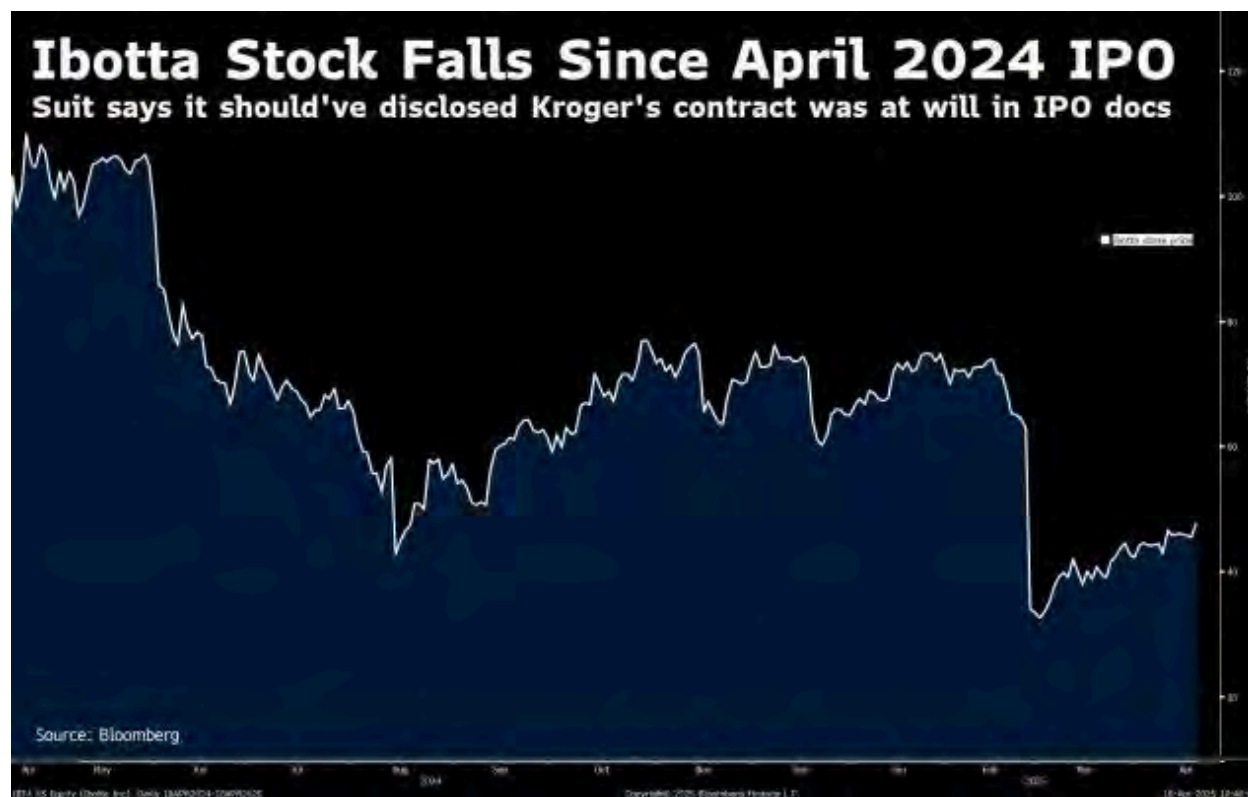
The company should've disclosed the risks connected to The Kroger Co.'s contract in those federal filings, an investor told the US District Court for the District of Colorado. Instead, Ibotta mainly provided "boilerplate warnings" about the importance of maintaining client relationships, said the complaint filed on Thursday.

"Despite providing a detailed explanation of the terms of Ibotta's contract with Walmart, there was not a single warning of the at-will nature of Kroger's contract," said plaintiff Matt Fortune's complaint.

Under federal securities regulations that govern newly-issued securities, Ibotta was supposed to disclose any known trends, events, or uncertainties that were, or would likely, impact the company in paperwork for the April 18, 2024, IPO, the complaint said. Fortune alleged Ibotta's federal filings were negligently prepared and misleading for not stating the "very real risk" of Kroger walking away.

After markets closed Aug. 13, Ibotta filed a Securities and Exchange Commission report for the second fiscal quarter of 2024 without "any mention of Kroger as Ibotta's client," Fortune said.

Ibotta's stock price has plummeted since its \$88-a-share IPO, hurting investors, Fortune said. Share prices closed at \$47.69 on Thursday, according to data compiled by Bloomberg.



Ibotta collected almost \$207 million from its IPO, according to the complaint. Ibotta sold 2.5 million shares, with selling stockholders offering another 4 million shares, the complaint said.

The proposed class would include those who got Ibotta shares issued in its IPO traceable to the documents.

The Rosen Law Firm PA represents Fortune, who seeks damages among other relief. Fortune's suing Ibotta, current and former executives and board members, and its IPO underwriters for alleged Securities Act of 1933 violations.

Ibotta said it can't comment on pending litigation in response to an email seeking comment.

The case is Fortune v. Ibotta, Inc. , D. Colo., No. 1:25-cv-01213, complaint filed 4/17/25 .

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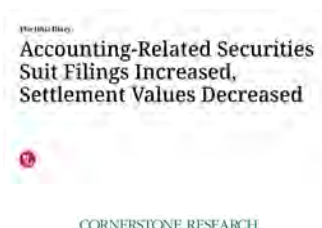
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Accounting-Related Securities Suit Filings Increased, Settlement Values Decreased

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Kevin LaCroix

April 17, 2025



The number of securities class action lawsuit filings involving accounting allegations increased slightly in 2024 compared to 2023, but the 2024 accounting-related filings remained below the long-term annual average number of such filings, according to the latest annual report from Cornerstone Research. The number of accounting-related settlements in 2024 remained steady compared to 2023, while the median, average, and total settlement values all decreased compared both to 2023 and long-term values.

The Cornerstone Research Report, which is entitled “Accounting Class Action Filings and Settlements: 2024 Review and Analysis,” can be found [here](#). Cornerstone Research’s April 16, 2025, press release about the report can be found [here](#).

According to the report, there were 57 securities class action lawsuit filings in 2024 that containing allegations related to GAAP violations or violations of other reporting standards, auditing violations, or weaknesses in internal controls over financial reporting, compared to 56 accounting-related filings in 2023, representing the third year in a row in the increase in the number of accounting-related suits. The accounting-related securities suit filings represented 26% of the 217 total securities class action lawsuit filings in 2024.

While the 57 accounting-related filings in 2024 represented a slight increase in the number of such filings compared to 2023, the 2024 accounting-related filings remained below the 2008-2023 average annual number of accounting case filings of 62. The 2024 accounting case filings as a percentage of all annual securities suit filings was at the lowest level since 2021, and the second lowest level in the last 10 years.

Accounting-related securities suits tend to be filed more quickly than non-accounting cases, a pattern that held again in 2024. The median number of days between the end of the class period and the lawsuit filings date (“the lag time”) for the filing of accounting cases during 2024 was 37 days, compared to 51 days for non-accounting cases. While the median 2024 filing lag time of 37 days for accounting cases was lower than the 2023 median filing lag time

for accounting cases of 43, the 2024 lag time of 37 days was the second-longest in a decade, and also was approximately double the 2015-2023 median lag time for accounting cases (18 days).

The median pre-disclosure market capitalization of issuer defendants in accounting-related securities suit filings in 2024 was \$445.6 million, well below the inflation-adjusted 2023 median pre-disclosure market capitalization of \$740.5 million, representing a decrease of 40%. The 2024 median pre-disclosure market capitalization in accounting cases was the lowest in the last ten years.

According to the report, the disclosure dollar loss (DDL) for accounting-related case filings also decreased in 2024. DDL is the dollar value change in the defendant firm's market capitalization between the trading day immediately preceding the end of the class period and the trading day immediately following the end of the class period. At \$45.6 billion, the DDL index for 2024 accounting cases was well below the inflation-adjusted 2023 DDL index for accounting cases of \$79.1 million, as well as below the 2015-2023 accounting case average annual DDL index of \$54.8 billion. The 2024 DDL index for accounting cases as a share of the total DDL index was at the second lowest in the last ten years.

Cases involving revenue recognition related allegations represented 23% of all accounting-related securities suit filings in 2024, compared to 27% in 2023, and the lowest level in the last five years. 33% of 2024 accounting-related securities suit filings involved asset valuations and/or impairments allegations; 2024 was the first year since Cornerstone Research began tracking that allegations related to asset valuations and/or impairments surpassed revenue recognition as the most common accounting-related allegation.

The report notes a couple of interesting items about accounting-related securities suit filings. First, accounting cases filed in 2024 were over 2.5 times more likely to refer to a short-seller report than non-accounting cases, "the largest disparity between accounting and non-accounting cases since tracking began." Second, since 2015, 32 companies had a least two separate complaints involving different sets of accounting-related allegations filed against them, suggesting that some companies allegedly are repeat offenders when it comes to alleged accounting violations.

In 2024, four plaintiff law firms — The Rosen Law Firm, Pomerantz, Glancy Prongay & Murray, and Levi & Korsinsky, filed 74% of all of the 2024 accounting-related securities suits. These same four firms also represented plaintiffs in just over half (51%) of accounting case settlements in 2024.

The report contains a great deal of information about dismissal rates at the one-year and three-year marks, much of this information relating to cases filed in recent years, many of which have not yet finally been resolved. I found it more interesting to look at the data

relating to the years 2015 to 2020 – that is, years that likely have mostly or fully resolved.

These data show that for accounting cases filed during that period, between 48% and 55% of all cases filed during each year being dismissed, with the dismissal rate generally trending upward during that period (from 48% in 2015 to 55% in 2020). For the period 2015 through 2023 (a period for which 16% of cases filed remain ongoing), 44% of the accounting cases were dismissed, 39% dismissed, and 1% were remanded. The report also notes that accounting cases filed from 2015 through 2023 were 26% more likely to settle than non-accounting cases.

There were 35 accounting-related securities suit settlements in 2024, representing a total settlement value of nearly \$1.1 billion, representing a decline from the total 2023 accounting case settlement value of \$1.645 billion and well below the 2008-2023 annual average total accounting case settlement value of \$2.845 billion.

The median 2024 accounting case settlement was \$12.0 million, below the inflation-adjusted median 2023 accounting case settlement of \$15.4 but more or less consistent with the annual inflation adjusted accounting case settlement for the period 2008-2023 of \$12.2 million.

The 2024 average accounting case settlement of \$30.1 million was below the inflation-adjusted average 2023 accounting case settlement of \$47.0 million, as well as below the inflation-adjusted 2008-2023 annual average accounting case settlement of \$63.2 million.

The average time to settlement for accounting cases in 2024 (3.4 years) was close to the historical average of 3.5 years. The length of time between filing and settlement for the cases settled in 2024 correlated with the settlement size, consistent with prior year patterns. Small settlements (that is, settlements below \$10 million) and mid-range settlements (settlements between \$10 million and \$50 million) took place on average between 2.9 years and 3.4 years of filing, while the 2024 accounting-related settlements of greater than \$50 million took an average of 6.2 years to settle.

Number of Accounting-Related Securities Class Action Filings and Settlements Remained Steady in 2024 as Size of Settlements Shrunk

 [cornerstone.com/insights/press-releases/number-of-accounting-related-securities-class-action-filings-and-settlements-remained-steady-in-2024-as-size-of-settlements-shrunk](https://www.cornerstone.com/insights/press-releases/number-of-accounting-related-securities-class-action-filings-and-settlements-remained-steady-in-2024-as-size-of-settlements-shrunk)

- Press Release
- 16 April 2025

Size of issuer defendants in filings and settlements declined sharply.

The number of accounting-related securities class action filings and settlements remained steady in 2024, with the number of filings increasing slightly and for the third consecutive year, according to a new report from Cornerstone Research. The report, *Accounting Class Action Filings and Settlements—2024 Review and Analysis*, also found that while the number of settlements remained the same as 2023, the total value of those settlements declined by 36% from the prior year.

Accounting Case Filings

The number of accounting-related securities class action filings rose to 57, up slightly from 56 filings in 2023, but remained below the 2015–2023 historical average of 61. As a percentage of total securities class action filings, accounting case filings (26%) were at their second-lowest level in the last 10 years.

While the number of accounting cases remained steady in 2024, they were filed against smaller issuer defendants. The median pre-disclosure market capitalization of issuer defendants fell to \$445.6 million, the lowest in the past 10 years. In addition, the DDL Index (the dollar-value change in the defendant firm's market capitalization) of accounting cases declined 42% to \$45.6 billion and was 17% lower than the 2015–2023 historical average of \$54.8 billion.

For many years, revenue recognition had been the most common GAAP violation alleged in accounting-related securities class action filings. In 2024, allegations related to asset valuations and/or impairments were the most common.

During 2024, certain filing trends reversed. “For many years, revenue recognition had been the most common GAAP violation alleged in accounting-related securities class action filings,” said Frank Mascari, a report coauthor and vice president at Cornerstone Research.

“That changed in 2024 when, for the first time since tracking began, allegations related to asset valuations and/or impairments were the most common.”

Additional Filing Trends

- For the fourth consecutive year, the median pre-disclosure market capitalization of issuer defendants declined.
- Accounting cases filed in 2024 involving restatements declined by more than 30% from 2023, returning to historical levels.
- Since 2015, 32 issuers had at least two separate complaints that included accounting allegations filed against them.

Accounting Case Settlements

Although the number (35) of accounting-related securities class action settlements remained consistent with 2023, the total value associated with these settlements dropped substantially, from \$1.6 billion in 2023 to \$1.1 billion in 2024, the second-lowest level in the past 10 years. This was due, in part, to the fact that there was only a single mega settlement (i.e., greater than \$100 million) in 2024 as compared to the historical average of four mega settlements per year.

During 2024, accounting case settlements involved smaller issuer defendants. The median pre-disclosure market capitalization of issuer defendants decreased by 39% in 2024 to \$745.5 million. This decline is consistent with lower median and average settlement amounts, as issuer defendant size is a proxy for the resources available to fund the settlement. Specifically, the average settlement amount fell from \$47 million to \$30.1 million, while the median settlement amount dropped from \$15.4 million to \$12 million.

The single most important factor in explaining individual settlement amounts is ‘plaintiff-style damages,’ a proxy for the amount of potential investor losses that plaintiffs may claim in a securities class action.

Following a spike in 2023, the average time from filing to settlement for accounting cases fell by over seven months, returning to a level consistent with the average over the prior nine years.

“The single most important factor in explaining individual settlement amounts is ‘plaintiff-style damages,’ a proxy for the amount of potential investor losses that plaintiffs may claim in a securities class action,” said Elaine Harwood, a report coauthor and senior vice president at Cornerstone Research. “The sharp decline in the size of accounting case settlements in 2024 can be explained, in large part, by the nearly 50% decline in the median plaintiff-style damages for accounting case settlements compared to 2023.”

Additional Settlement Trends

- Accounting case settlements with both alleged GAAP violations and allegations of internal control weaknesses fell to the lowest level in the past 10 years. The value of accounting case settlements for cases involving allegations of internal control weaknesses also fell to just 27% of the total of all accounting case settlements.
- Although the number of accounting case settlements involving restatements increased, the median settlement amount was 85% lower than in cases not involving a restatement.
- The median settlement amount as a percentage of plaintiff-style damages for accounting case settlements in 2024 was in-line with the 2015–2023 average for cases involving restatements and/or GAAP violations; however, cases involving a write-down were 42% lower than the average.

Previous reports have presented “simplified tiered damages” as a measure of potential investor losses. This year marks the introduction of “plaintiff-style damages,” a measure of potential investor losses that accounts for additional case-specific data while still using a consistent approach across a large volume of cases. The latest investments in big data analytics and capabilities from Cornerstone Research’s Data Science Center enabled this new approach.

Walmart fights investor suit over opioid violations in Third Circuit

 [courthousenews.com/walmart-fights-investor-suit-over-opioid-violations-in-third-circuit](https://www.courthousenews.com/walmart-fights-investor-suit-over-opioid-violations-in-third-circuit)

A Walmart logo forms part of a sign outside the company's store in Walpole, Massachusetts. (Steven Senne/AP)

PHILADELPHIA (CN) — Facing a lawsuit that claims Walmart executives hid a federal probe into unlawful opioid distribution from company investors, the retail giant pushed the Third Circuit to rule against disgruntled shareholders Thursday.

“There’s no securities fraud here,” attorney Roman Martinez of Latham & Watkins told the court on behalf of Walmart.

The core of the dispute centers on the claim that Walmart did not adequately disclose to shareholders that it knowingly filled prescriptions issued by “pill-mill” prescribers.

The Walmart lawyer told the appeals court Thursday his client “vigorously disputes” that it violated the Controlled Substances Act.

“But even if it had, that wouldn’t be a securities law problem,” Martinez told the three-judge panel.

Rosen Legal lawyer Sara Fuks disagreed on behalf of lead plaintiffs, Kim Kengle and Roseanne Lacy, that between March 2017 and December 2020, Walmart did have a securities violation because it made materially false and misleading statements in filings with the Securities and Exchange Commission.

“Walmart did not disclose the investigations,” Fuks said.

She emphasized that Walmart had been told in March 2018 that it would be criminally indicted for violating the Controlled Substances Act in connection with dispensing prescription opioids. Two days after receiving this notice, it failed to disclose this to investors in its 2017 annual report with the SEC, according to Fuks.

Pressing back on the lawyer’s argument, U.S. Circuit Judge Marjorie Rendell, a Bill Clinton appointee, sought to clarify that the 2018 notice of investigations was just regarding one doctor’s prescriptions.

Chief U.S. Circuit Judge Michael Chagares also questioned whether disclosure at such an early stage of an investigation would be warranted.

“This is a heavily regulated area, controlled substances, and there's a lot of different inquiries going on with the law, particularly with a company the size of a Walmart,” the George W. Bush appointee considered.

Regardless, Fuks held that if Walmart executives were told in 2018 of such criminal investigations, they should have told shareholders.

The retailer’s lawyer argued that this was a matter of discretion.

“Plaintiffs are really trying to hold Walmart liable here for an accounting judgment: the accounting judgment not to disclose the DOJ investigation sooner, but that judgment was reasonable under the relevant accounting rules,” Martinez said.

Chagares countered the attorney’s point.

“But I suppose your friend on the other side might say, 'Well, your internal documents say there was a severe risk of liability here,'" he said.

Two years after the initial tip, Walmart was sued by the Department of Justice in a 2020 lawsuit out of Delaware federal court that claimed the retail giant unlawfully dispensed controlled substances at its more than 5,000 pharmacies — committing hundreds of thousands of violations of the Controlled Substances Act.

In 2022, Walmart settled the accusations that it failed to properly investigate the suspicious prescriptions for controlled substances for \$3.1 billion. Last October, it also reached a \$123 million settlement in a shareholder lawsuit related to the opioid crisis, with the payment coming from insurance carriers.

Delaware federal court initially granted Walmart’s motion to dismiss the shareholders’ complaint in April 2024.

U.S. Circuit Judge Anthony Scirica, a Ronald Reagan appointee, rounded out the panel Thursday.

Categories / Appeals, Government, Health, National, Securities

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April 17, 2025, 7:36 AM PDT; Updated: April 17, 2025, 8:52 AM PDT

Walmart, Investors Quizzed in Appeal Over US Opioid Probes (1)

- Investors seeking to reinstate misrepresentation suit
- Argument focuses on standard for disclosure in filing

Walmart Inc. investors' appeal in a securities case about potential opioid-related liabilities prompted tough questions for both sides at oral argument Thursday at the Third Circuit.

"We're testing your complaint," Judge Marjorie O. Rendell told an attorney for the investors at the US Court of Appeals for the Third Circuit.

But Rendell and Chief Judge Michael A. Chagares sought answers from Walmart beyond its theory that an accounting standard neatly wrapped the case up in its favor.

The investors are seeking to revive their misrepresentation suit, which the US District Court for the District of Delaware dismissed in April 2024 on grounds that they failed to adequately allege misleading statements by the retail giant.

The investors alleged that Walmart learned that it was under criminal investigation in December 2016, and that it could be imminently indicted in May 2018.

The Justice Department told the company in August 2018 that prosecutors wouldn't indict it after all, but that the department was investigating it for civil violations, according to the complaint. In March 2020, a news article about the criminal and civil investigations allegedly caused a nearly 5% stock drop.

In December 2020, the Department of Justice announced a lawsuit accusing Walmart of violating the Controlled Substances Act by filling thousands of invalid prescriptions and failing to report suspicious orders of opioids and other drugs. Shares fell about 2% when the DOJ filed the civil suit, the investors said.

"This is not really a securities case," Walmart's attorney, Roman Martinez, told the Third Circuit panel. There are other lawsuits about Walmart's CSA compliance, but this one doesn't fit, said Martinez, of Latham & Watkins LLP. Walmart disputes it violated the CSA, but that's not a securities issue, he said.

Sara Fuks, who represents the investors, shot back that it's "a securities case that the defendant is trying to shoehorn into an accounting case." Fuks is with the Rosen Law Firm PA.

Much of the argument focused on how likely liability needed to be for Walmart to disclose it in an SEC filing submitted two days after it learned of the criminal probe. Walmart's filing allegedly stated it had disclosed instances "where a liability is reasonably possible and may be material." But Walmart said an accounting standard applied, one that called for disclosure of a "probable" loss.

Judge Anthony J. Scirica also served on the panel.

The case is *In re Walmart Inc. Sec. Litig.*, 3d Cir., No. 24-01818, oral argument 4/17/25 .

(Updates story with additional reporting and context beginning in third paragraph.)

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CoreCivic Lacked Justification to Prevent Unsealing of Documents

- There wasn't any explanation as to why the seals were granted
- Lower court must determine if documents meet requirements

A district court improperly declined to unseal two-dozen transcripts in a securities lawsuit against a private prison operator, a federal appeals court ruled Thursday.

The lower court failed to follow precedential thresholds when it allowed Corrections Corp. of America's to seal dozens of deposition transcripts, Judge Raymond M. Kethledge said in an opinion. The US Court of Appeals for the Sixth Circuit vacated the district court's denial of a local newspaper's motion to unseal the documents and remanded the suit to determine if they meet the requirements for a seal.

"Here, in sealing these transcripts, the district court made no findings whatever," Kethledge said. "That 'is itself grounds to vacate' the court's seal."

This shareholder suit was launched after the stock price for the company, now known as CoreCivic, plummeted in 2018 after the US Department of Justice detailed its poor prison conditions, Kethledge wrote. A class action settlement was reached in 2021 that ended the litigation, but The Nashville Banner intervened and asked for many sealed documents in the case to be disclosed.

CoreCivic conceded that nearly 190 documents could be unsealed but asked to keep another 80 docket entries under seal, the opinion said. The district court granted the motion to unseal all but those 80 entries, prompting The Banner to challenge the legitimacy of 24 of the sealed documents to the Sixth Circuit.

Circuit precedent requires the "most compelling reasons" to justify non-disclosure of judicial records, the opinion said. And a district court must explain why the interests in support of sealing documents are compelling, why the interests supporting access are less so, and why the seal itself is no broader than necessary.

"None of these rules were honored" by the district court, Kethledge said.

There also weren't any attempts by the lower court to narrowly tailor the seals, Kethledge wrote. A party also can't sufficiently justify a desire to seal material by merely asserting its interest in confidentiality.

The sealed documents shield from public view "all kinds of information" about how CoreCivic ran its prisons, the opinion said. But the company's "bald assertion" that disclosure would harm its "competitive position" isn't sufficient to justify a seal.

The desired documents are also subject to a presumption of access since they play a role in the adjudicative process, Kethledge wrote. He also rejected CoreCivic's contention that The Banner lacked standing to intervene since the lawsuit had already been resolved.

"That some docket entries are sealed when the court enters judgment, therefore, does not mean they must remain so forever," Kethledge said.

Judges David W. McKeague and Chad A. Readler joined the opinion.

Public Citizen Litigation Group and Horwitz Law PLLC represent The Banner. Riley & Jaconson PLC represents CoreCivic.

The case is *Grae v. CCA*, 6th Cir., No. 24-05839, 4/17/25.

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'States Must Fill Enforcement Vacuum': Oregon Attorney General Sues Coinbase

 [law.com/nationallawjournal/2025/04/18/states-must-fill-enforcement-vacuum-oregon-attorney-general-sues-coinbase](https://www.law.com/nationallawjournal/2025/04/18/states-must-fill-enforcement-vacuum-oregon-attorney-general-sues-coinbase/)

Michael A. Mora

April 18, 2025

The Oregon Department of Justice sued Coinbase on Friday in state court, asserting that the cryptocurrency exchange encouraged and facilitated the sale of unregistered securities and “reaped millions of dollars in fees as Oregonians have faced huge losses, often devastating, from risky investments.”

“States must fill [the] enforcement vacuum being left by federal regulators who are abandoning these cases under [the] Trump administration,” Oregon Attorney General Dan Rayfield said in a statement. “After building trust with Oregon consumers, Coinbase sold high-risk investments without them being properly vetted to protect consumers. Oregonians lost money, and we believe Coinbase should be held accountable and take steps to protect consumers.”

Paul Grewal, the Coinbase chief legal officer, said on social media that the attorney general was “resurrecting the dead” by bringing a copycat case of the brand of regulation-by-enforcement typically brought against crypto companies by former U.S. Securities and Exchange Commission Chair Gary Gensler.

“This is exactly the opposite of what Americans should be focused on right now,” Grewal said. “We’ve never been closer to bipartisan legislation for digital assets and this backward lawsuit does nothing to protect consumers or solidify American leadership. We remain confident that we are right on the facts and the law, and we are prepared to fight this misguided lawsuit.”

Coinbase approves the cryptocurrencies listed on its platform, connects buyers and sellers, handles their trades, manages their funds and assets and promotes and encourages Oregonians to purchase these digital assets.

However, the Oregon Justice Department argued that “these unregistered securities are vulnerable to pump-and-dump schemes and fraud,” to the detriment of investors. For instance, the Oregon Justice Department pointed to a cryptocurrency called the Internet Computer Protocol, or ICP, which the SEC previously identified as an unregistered security.

“[ICP] plummeted in price from \$700 to \$72 within one month after it was launched for public trading on Coinbase,” the Oregon Justice Department wrote. “Today, the coin trades around \$7 per share, a price drop of almost 99% that wiped out billions of dollars of investors’ money.”

Now, Rayfield has asserted the states must push ahead as the SEC steps back from enforcement, pointing to the federal agency's reassignment of a top litigator to its information technology office.

The SEC has dropped investigations into major crypto platforms and shuttered its Crypto Enforcement Unit as the Trump administration has refocused its efforts on establishing a comprehensive regulatory framework.

Coinbase, in a blog post on Friday, said Rayfield refuses to face the reality that "the vast majority of digital assets are not securities" and noted that the SEC "rightly disavowed (with prejudice) when it dismissed its case against Coinbase."

Coinbase added: "Let there be no doubt: Oregon's lawsuit, like the SEC's, is meritless, and Coinbase will do whatever is required to beat it."

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Trending

Litigation Surge - Texas | Patent

Patent litigation spiked in Texas on Thursday. At least 25 lawsuits were filed, more than half of which were brought by Rabicoff Law on behalf of HyperQuery LLC. According to the complaints, search bars that enable customers to download applications from businesses' websites onto their laptops and desktop computers infringe HyperQuery's patent. The suits primarily target software marketplace companies like BigCommerce, HTC and Xero Ltd. While patent litigation is fairly routine in the Lone Star State, yesterday's volume sticks out at roughly four times the typical daily average.

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Justices clarify pleading rules for retirement-plan litigation

[Sb scotusblog.com/2025/04/justices-clarify-pleading-rules-for-retirement-plan-litigation](https://www.scotusblog.com/2025/04/justices-clarify-pleading-rules-for-retirement-plan-litigation/)

April 17, 2025



OPINION ANALYSIS



By Ronald Mann
at 6:15 pm



Justice Sonia Sotomayor wrote for a unanimous court on Thursday. (Katie Barlow)

Cunningham v. Cornell University will not go into the history books as one of the most important 30 decisions of the 2024-25 term. The case involves a technical problem about pleading standards under the Employee Retirement Income Security Act, and the court's resolution of the problem was, in a word, technical.

ERISA establishes a series of detailed rules to deal with retirement plans, much of which tracks traditional rules of trust law. Among those rules, not surprisingly, is a rule that prevents any transaction between the plan and an insider of the plan. To be specific, the rule (in Section 1106) says that, “[e]xcept as provided in Section 1108,” the fiduciary of the plan “shall not cause the plan to [transact with a] party in interest.” Section 1108, in turn, has an exemption that permits “reasonable arrangements with a party in interest ... if no more than reasonable compensation is paid therefor.”

The problem is that the definition of “party in interest” is quite broad, including among other things all entities “providing services to [the] plan.” To read Section 1106 with that definition in mind, you would conclude that it violates Section 1106 to transact with any entity that is providing services to the plan. In this case, for example, beneficiaries sued Cornell to complain about transactions with Fidelity and the Teachers Insurance Annuity Association.

The question the courts are grappling with is whether the beneficiaries can state a complaint merely by alleging that Cornell has violated Section 1106 itself – by transacting with somebody from whom it is buying services – or whether they also must allege that the transaction is not protected by Section 1108, perhaps because compensation for those services is unreasonably high.

Justice Sonia Sotomayor's opinion picks the first approach. She explains that the relevant part of Section 1106 includes three elements: (1) causing the plan to engage in a transaction; (2) that "constitutes ... furnishing of ... services"; (3) "between the plan and a party in interest." She observes that the exemptions for reasonably priced transactions are "set forth in a different part of the statute" and so "do not impose additional pleading requirements to set out a ... claim." She says that the proper method of proceeding is for the plaintiff to point to the transaction with the service provider, and for the service provider in turn to point out any particular exemption that might protect it.

Sotomayor relies on a "well settled general rule of statutory construction that the burden of proving ... exemption ... to the prohibitions of a statute generally rests on one who claims its benefits." For her, the exceptions in Section 1108 are "written in the orthodox format of an affirmative defense," and so "must be pleaded and proved by the defendant who seeks to benefit from them." She relies heavily on "[s]tructural considerations," noting that Section 1108 has more than 20 separate exceptions from the standard rules in Section 1106. It would make no sense to require a plaintiff, in every case, to disprove each of those exceptions, as "fairness usually requires that the adversary give notice of the particular exception upon which it relies and therefore that it bear the burden of pleading" the particular exception.

The most important part of the opinion is the last few pages, where Sotomayor grapples with the reality that the court has validated a rule that will allow a plaintiff to survive a motion to dismiss merely by alleging that a plan fiduciary has purchased something from an entity from whom it purchases things. She acknowledges that concerns about such a low threshold are "serious," but she suggests three tools courts should use to mitigate them. First, district courts under Rule 7 could require the plaintiff to file a reply including "specific, nonconclusory factual allegations" to rebut any exemption that the defendant might interpose. Second, courts would be free to dismiss a suit that failed to identify any injury from the transaction – and there would be no injury if the transactions were reasonably priced. Third, "in cases where an exemption obviously applies, ... Rule 11 may permit a district court to impose sanctions" on the plaintiff and its counsel.

The justices needed to resolve this case because lower courts had offered differing solutions to the conundrum, and pleading standards for ERISA should be the same nationwide. I doubt it will have broad significance in the future, but it will offer a useful roadmap for trial courts

having to deal with these cases on the ground. I suspect that is the reason the case was assigned to Sotomayor, a former trial judge.

Posted in Featured, Merits Cases

Cases: *Cunningham v. Cornell University*

Recommended Citation: Ronald Mann, *Justices clarify pleading rules for retirement-plan litigation*, SCOTUSblog (Apr. 17, 2025, 6:15 PM),

<https://www.scotusblog.com/2025/04/justices-clarify-pleading-rules-for-retirement-plan-litigation/>

Scholars Say Justices Should Dump Case That Could Curb Class Actions

 [law.com/nationallawjournal/2025/04/17/scholars-say-justices-should-dump-case-that-could-curb-class-actions](https://www.law.com/nationallawjournal/2025/04/17/scholars-say-justices-should-dump-case-that-could-curb-class-actions)

Jimmy Hoover

April 17, 2025

Credit: Boris Zerwann/Adobe Stock

Business groups want the justices to put a stop to overly broad class actions that include people without injuries. But a group of scholars have identified a procedural flaw that could derail a ruling in the case currently set to be heard this month.

United States Supreme Court

The U.S. Supreme Court is set to consider a case that business groups are hoping will stem the tide of class actions they say are swamping corporate defendants in recent years. But a group of scholars have identified a messy procedural flaw in the case that could derail any ruling by the justices.

The high court is set to hear arguments April 29 in *Laboratory Corporation of America Holdings v. Davis*. The medical diagnostic testing company is fighting a certified class action from blind individuals who say Labcorp's service kiosks were not accessible to them, in violation of the Americans with Disabilities Act and a parallel California law.

The justices agreed to take up Labcorp's appeal back in January and framed the legal question as follows: "Whether a federal court may certify a class action pursuant to Federal Rule of Civil Procedure 23(b)(3) when some members of the proposed class lack any Article III injury."

Labcorp argues that a federal court has certified a nationwide class of any blind person who visited one of the company's service centers where kiosks were available. While damages are not available to private litigants suing under the ADA, California's Unruh Act allows for \$4,000 per violation. That could put the company on the hook for "nearly half a billion dollars of liability per year," Labcorp says.

In briefing to the court, Labcorp and supporters from the business community have argued that federal courts—and, in particular, the U.S. Court of Appeals for the Ninth Circuit—have been permissive in certifying classes of plaintiffs who have not actually suffered any injury in fact. This, they claim, has allowed plaintiffs' lawyers to effectively "extort" settlements from innocent companies.

"[I]f a plaintiff can inflate the size of a class with uninjured persons, it can drive up potential liability, and thus manufacture leverage with which to extort a settlement," Labcorp wrote in its high court appeal. "The result is that weak claims win, and tens-of-millions of dollars (if not

more) are extracted from companies who have done nothing wrong—but nonetheless cannot tolerate a massive litigation risk.”

The U.S. Chamber of Commerce wrote in an amicus brief that the strategy was tantamount to “blackmail.” The chamber was joined by the biopharmaceutical and other industries.

But the plaintiffs and a group of federal court scholars say the Supreme Court should never have taken the case in the first place and are urging the justices to dismiss *Labcorp v. Davis* as “improvidently granted” without issuing a ruling on the merits.

“There is only one way for the Court to avoid issuing an advisory opinion in this case: dismiss the writ of certiorari as improvidently granted or for lack of jurisdiction,” wrote a group of law professors who specialize in issues of federal jurisdiction, including Berkeley Law Dean Erwin Chemerinsky, Marin Levy of Duke University School of Law, and Cardozo Law School professor Alexander Reinert

Inherent in the case is a “tangle of jurisdictional, prudential, and factual issues that leave no viable path to the question presented,” the scholars wrote.

The Supreme Court has already dismissed two other class action cases this term as improvidently granted involving securities fraud claims against Facebook and Nvidia.

The scholars and plaintiffs have identified what they consider to be two fundamental flaws in the Labcorp case.

The first is that the question before the justices—whether a court can certify a class that includes uninjured plaintiffs—does not apply to the facts of the case because the Ninth Circuit affirmed that the class included only injured plaintiffs.

“There is nothing to reverse,” the plaintiffs wrote. “Neither the district court nor the Ninth Circuit had any occasion to decide the question presented at all because neither found that there were any uninjured members to begin with.”

That is because Labcorp, the scholars wrote, appealed the wrong class definition.

Labcorp only filed its appeal over the district court’s original May 2022 definition of the covered class, which includes all legally blind individuals who were “denied full and equal enjoyment” of Labcorp’s services.

After Labcorp objected to that definition as an improper “fail-safe” class, the district court later amended the class definition to cover those “who, due to their disability, were unable to use the Labcorp Express” kiosks.

Ironically, Labcorp had originally objected to the May class definition as a “fail-safe class” that “jettison[ed] all ‘uninjured’ plaintiffs.” Labcorp argued that fail-safe classes are unfair because they tie membership in the class to the outcome of the merits of the litigation.

Now, Labcorp is largely making the opposite argument about the subsequent August definition; that it impermissibly includes uninjured plaintiffs in violation of Article III standing requirements, the scholars wrote.

The plaintiffs and scholars say the company failed to appeal that definition and instead only filed a notice of appeal from the original May class definition that has since been supplanted by the district court as a result of Labcorp’s own litigation decisions.

“Labcorp makes no argument that the May class definition fails Rule 23, much less that it presents the question this Court granted certiorari to resolve,” the scholars wrote. “To the contrary, Labcorp argued below that the May class definition does not implicate the question presented because it includes only individuals who were injured. In Labcorp’s own view, then, answering the question presented here would be a purely advisory exercise.”

Added the scholars: “Because of these fundamental, unavoidable, and intractable problems, the Court should dismiss the writ as improvidently granted or for lack of jurisdiction.” The brief was filed by Joseph Marc Sellers of Cohen Milstein Sellers & Toll.

Labcorp has yet to file its reply brief in the case. An attorney for the company, Noel Francisco of Jones Day, declined to comment.

The plaintiffs are represented by Deepak Gupta of Gupta Wessler.

Laboratory Corporation of America Holdings v. Davis is docketed at the high court as 24-304.

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Latest

Trending

Litigation

April 18, 2025, 9:39 AM PDT

Future Claims Rep for J&J Loses Bid to Revive Bankruptcy Plan

- **Bankruptcy is best option for future claimants, rep argued**
- **Judge says dismissal had no 'mistake, inadvertence, surprise'**

A judge rejected a call to reconsider his dismissal of a Johnson & Johnson unit's bankruptcy that aimed to settle for \$9 billion thousands of lawsuits alleging the company's talc products caused cancer.

In denying the request from future claims representative Randi Ellis, Houston bankruptcy Judge Christopher Lopez on Thursday said his decision to throw out the bankruptcy and settlement was the result of extensive arguments and evidence over the course of a two-week trial.

Ellis said earlier this week that tossing the bankruptcy of J&J subsidiary Red River Talc LLC will hinder potential recovery for claimants who years from now could develop diseases related to asbestos in talc products.

"No party was deprived an opportunity to present evidence or make arguments to the Court. There are no errors of law. There is no mistake, inadvertence, surprise, or excusable neglect," Lopez said. "There is no manifest injustice or extraordinary circumstances warranting reconsideration or relief from the Order."

A committee of talc claimants had separately asked Lopez to clarify his order solely to address administrative matters like retention applications. Lopez on Thursday rejected that request too.

Lopez on March 31 tossed Red River's bankruptcy after finding that cancer victims' vote on the talc litigation settlement was flawed. The ruling meant J&J couldn't use the bankruptcy system to fight roughly 60,000 claims brought by women who say the company's hallmark baby powder contained harmful asbestos that caused ovarian cancer and other gynecological diseases.

J&J itself didn't seek reconsideration of Lopez's March ruling.

The company, which has long maintained that its products are safe, has said it will return to the tort system to litigate "meritless" talc claims.

Ellis had told the US Bankruptcy Court for the Southern District of Texas that private settlements for current claimants may not help those who could develop medical issues years from now. Hurdles in the tort system for future claimants, such as proving causation, would also grow over time and affect potential recoveries, she said.

Ellis is represented by Bracewell LLP. Red River Talc is represented by Jones Day and Porter Hedges LLP. The talc claimants committee is represented by Brown Rudnick LLP, Paul Hastings LLP and Stutzman Bromberg Esserman & Plifka PC.

The case is Red River Talc LLC and Official Committee of Talc Claimants , Bankr. S.D. Tex., No. 24-90505, order 4/17/25 .

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Judges refuses 'do-over' in J&J's failed \$9B talc settlement



legalnewsline.com/stories/670932286-judges-refuses-do-over-in-j-j-s-failed-9b-talc-settlement

John O'Brien

April 18, 2025

Asbestos

Lopez | <https://winterbankruptcy.byu.edu/>

HOUSTON (Legal Newsline) - The Houston bankruptcy judge who denied Johnson & Johnson's \$9 billion plan to settle tens of thousands of ovarian cancer claims has now rejected calls from those affected to reconsider.

Judge Christopher Lopez on April 17 rejected four requests for him to reopen the case and order further settlement talks. J&J wanted to use a spinoff company to absorb liability stemming from allegations its Baby Powder used asbestos-containing talc - claims the company has denied.

Lopez denied the plan over concerns with a voting process that resulted in more than 80% of claimants giving their approval. The Official Committee of Talc Claimants was among those on April 14 who filed motions for reconsideration.

"The Court conducted a two-week trial and considered over 1,800 exhibits," Lopez wrote. "No party was deprived an opportunity to present evidence or make arguments to the Court.

"There are no errors of law. There is no mistake, inadvertence, surprise or excusable neglect. There is no manifest injustice or extraordinary circumstances warranting reconsideration or relief from the Order."

J&J wasn't among those requesting reconsideration. The company has announced it will not appeal Lopez's ruling and instead plans to fight claims in civil courts.

Claimants would have been paid quicker and estimates had them receiving twice as much in the J&J bankruptcy than they would have in civil lawsuits. Some gynecological cancer claims have been deemed worthless, but those individuals would have recovered something from the proposed bankruptcy trust.

Erik Haas, worldwide vice president of litigation at J&J, said on March 31 when Lopez rejected the plan that his "decision highlights the broken tort system in the United States."

In its motion for reconsideration, the Official Committee of Talc Claimants wanted the case to stay open for anticipated petitions for fees. Claimants Heather Velasquez and Rhonda McKey said further mediation between J&J and plaintiff lawyers was "the only way this Court

can deliver justice" to alleged victims.

After Lopez detailed what he saw as problems with the voting process, Velasquez and McKey said he should order a "do-over."

"The parties now before this Court can simultaneously begin to walk inside the tort system while still chewing gum here in the bankruptcy system," Mikal Watts of Watts Guerra wrote.

Proponents of the plan said they had the support of more than 75% of claimants and last year, after bumping the fund up \$1.1 billion, had the backing of most plaintiff firms.

Lopez said he could not certify the votes of claimants based on how the case played out.

"First, the pre-petition vote cannot be certified," he wrote. "Plaintiffs' firms voted tens of thousands of claims without either hearing directly from their clients or having the requisite authority to do so.

"They did not do it in bad faith. One firm was put in a bad spot due to solicitation issues that were not its fault. Others improperly relied on general language in engagement letters in hopes of getting this plan over the 75% threshold."

Having a vote count before the bankruptcy petition was filed, plus an "unreasonably" short voting time for many of the claimants, "was all done to get to 75% at any cost," Lopez wrote.

In response, Johnson & Johnson put out a press release announcing its "return to tort system to defeat meritless talc claims." The company says it is 16-1 in ovarian cancer cases in the last 11 years.

The firm Beasley Allen was most critical of the voting process. It sued a former business partner, the Smith Law Firm, for flip-flopping after J&J offered more money and motioned several times to have votes from other firms discounted because of how they were collected.

It even asked for a new vote. The Smith firm was motivated to accept the plan to repay \$240 million a litigation funder provided, Beasley Allen said.

When OnderLaw tried to add a master ballot of its clients' votes earlier this year, Beasley Allen, through its the Coalition of Counsel for Justice for Talc Claimants, objected.

"The firm's apparent change of heart, however well-intentioned it may be, cannot suffice to permit a late ballot - particularly when it comes, without any timing justification, on the literal eve of a two-week trial," the Coalition wrote.

"The motion makes no mention of ever having contacted these claimants about how to cast their votes. It does not state whether they were made aware that OnderLaw... was attempting to have their votes cast after the deadline."

Beasley Allen was one of the few holdouts among plaintiffs firms. It is co-lead counsel in a federal multidistrict litigation in New Jersey, where it will be entitled to a share of a possible common fees fund.

J&J's extra offer included \$650 million for lawyers in the Houston bankruptcy.

Around 50,000 cases will now be decided in the New Jersey MDL, where J&J has motioned to exclude plaintiff experts and disqualify lead counsel.

ORGANIZATIONS IN THIS STORY

U.S. Bankruptcy Court for the Southern District of Texas

Class Action

April 17, 2025, 10:46 AM PDT

CVS Defeats Objector Appeal of \$9.7 Million Wage Case Settlement

CVS Pharmacy Inc. and California workers who say it stiffed them on pay more than a decade ago can move forward with a \$9.75 million settlement after a federal appeals court nixed an objector's challenge Thursday.

The district judge properly evaluated the deal's fairness, reasonableness, and adequacy and "specifically addressed" the objector's concerns, so the lower court didn't abuse its discretion when it approved class definitions and signed off on the settlement, the US Court of Appeals for the Ninth Circuit said in an unpublished opinion.

- The workers, who first sued in 2016 and reached a settlement covering more than 20,000 people across two cases in 2020, allege CVS ran afoul of California wage laws such as overtime pay requirements
- The lower court didn't abuse its discretion when it examined the deal—which includes more than \$2.5 million in attorneys' fees—and determined it wasn't collusive, the unsigned Ninth Circuit opinion said
- The district judge "reasonably concluded that the classes were defined so that no person was a member of both classes and any class member who worked in the affected regions during the class period would be counted," the opinion added

Judges Morgan Christen, Patrick J. Bumatay, and Roopali H. Desai made up the panel.

Clark Law Group; Boyamian Law; Alexander Morrison & Fehr LLP; and Glendale, Calif.-based Thomas W. Falvey represent the worker class. Greenberg Traurig LLP represents CVS. Rob Hennig and Dat Tommy Phan, both of Los Angeles, represent the objector.

The case is Chalian v. CVS Pharm. Inc. , 9th Cir., No. 21-55904, unpublished 4/17/25 .

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California Supreme Court takes up key PAGA arbitration dispute

DJ [dailyjournal.com/articles/384940](https://www.dailyjournal.com/articles/384940)

Labor/Employment,

California Supreme Court,

California Courts of Appeal

Apr. 18, 2025

Justices have agreed to review a closely watched appellate ruling involving efforts by workers to avoid arbitration in PAGA lawsuits by omitting individual claims. The case could resolve a growing split among state courts over the viability of these so-called "headless" PAGA actions.



In an unusual decision, the state Supreme Court on its own motion granted review of an appellate decision over an increasingly widespread practice by plaintiff's attorneys in Private Attorneys General Act cases to avoid arbitration.

The justices on Wednesday denied a request by two attorneys to depublish a 2nd District Court of Appeal ruling that a woman's PAGA complaint against a Target Corp. subsidiary included an individual claim - even though her lawyers said it didn't - and ordered the case to arbitration while staying claims on behalf of her co-workers.

Legal experts said the result will be the latest PAGA showdown at the state Supreme Court to resolve a dispute between appellate courts over whether plaintiffs can file "headless" PAGA claims in which they file no individual claim against their employer so they can pursue representative claims for other workers.

"It's going to be the next big PAGA case before the state Supreme Court," said Lauren K. Teukolsky of plaintiffs' firm Teukolsky Law in a phone interview Thursday.

State appellate courts are divided about whether plaintiffs can file PAGA complaints without individual claims and avoid arbitration. Two different 2nd District panels reached opposite conclusions last year, and a 4th District Court of Appeal panel ruled in February that Jose A. Parra Rodriguez could not be forced into arbitration in his PAGA case against Packers Sanitation Services Ltd. LLC.

The cases involve disputes between workers alleging wage-and-hour violations of misclassification as independent contractors and their employers.

Plaintiffs' lawyers have won a series of victories, including at the state Supreme Court, which ruled in 2023 that plaintiffs whose individual claims are referred to arbitration can still pursue PAGA lawsuits on behalf of their co-workers. *Adolph v. Uber Technologies Inc.*, 2023 DJDAR 7311 (Cal. S. Ct., filed May 20, 2022).

But those plaintiffs' lawyers, hoping to build on that success, have pushed "headless" PAGA claims to avoid arbitration, viewed as favorable to management, altogether.

Even though plaintiff Christina Leeper and her attorneys with Lieff Cabraser Heimann & Bernstein LLP did not appeal their appellate loss, the state Supreme Court order declared her to be the petitioner in the upcoming arguments, which have not been scheduled. *Leeper v. Shipt*, S289305 (Cal. S. Ct., filed Feb. 18, 2025).

The court wrote: "The issues to be briefed and argued are limited to the following: 1.) Does every Private Attorneys General Act (Lab. Code, § 2698 et seq.) (PAGA) action necessarily include both individual and non-individual PAGA claims, regardless of whether the complaint specifically alleges individual claims? 2.) Can a plaintiff choose to bring only a non-individual PAGA action?"

Nonetheless, Wednesday's decision to deny the depublication request of the decision - *Leeper v. Shipt*, 2024 DJDAR 11978 (2nd District Court of Appeal, filed July 10, 2024 -- was a win for the defense bar, as it allows employers to cite it in other cases before a state Supreme Court decision, Teukolsky said.

"Pending review, the opinion of the Court of Appeal ... may be cited, not only for its persuasive value, but also for the limited purpose of establishing the existence of a conflict in authority that would in turn allow trial courts to exercise discretion under *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 456, to choose between sides of any such conflict," the justices wrote in their order.

Auto Equity Sales, a 1962 state Supreme Court decision, allows superior court judges to choose between conflicting state appellate court rulings when they conflict.

How labor killed a bill to let California wildfire victims sue Big Oil for climate change

[kpbs.org/news/politics/2025/04/17/how-labor-killed-a-bill-to-let-california-wildfire-victims-sue-big-oil-for-climate-change](https://www.kpbs.org/news/politics/2025/04/17/how-labor-killed-a-bill-to-let-california-wildfire-victims-sue-big-oil-for-climate-change)

April 17, 2025



Ted Soqui

/

CalMatters

A home burns during the Palisades Fire near Pacific Coast Highway in Los Angeles, on Jan. 7, 2025.

This story was originally published by CalMatters. Sign up for their newsletters.

Oil companies had their hackles up this year after Sen. Scott Wiener introduced a controversial bill that would allow victims of wildfires and other climate disasters to sue them for causing climate change.

Facing potentially billions of dollars in losses, Big Oil had a lot to lose.

Become a KPBS sponsor

But oil companies took a back seat last week when it came time to persuade environmentally friendly lawmakers to kill the legislation.

Instead, Big Oil's most influential allies in California's Democratic-controlled Legislature – the unions that represent oil industry workers – led the opposition. They successfully persuaded a committee made up of pro-labor Democrats to kill the measure, which had support from nearly every California environmental organization.

Despite California's reputation for taking the lead on climate change, the death of Senate Bill 222 is the latest example of how environmentalists' most aggressive policies regularly fizzle out when Big Labor works on behalf of Big Oil.

"That's how the oil companies breach the machine in Sacramento," said Jamie Court, president of Consumer Watchdog, one of the groups that supported the legislation.

A spokesperson for the Western States Petroleum Association, which typically represents oil company interests in Sacramento, declined to comment on why the State Building and Construction Trades Council of California took the lead in killing the legislation.

Become a KPBS sponsor

Chris Hannan, the trades council's president, said union members feared SB 222 would have a "chilling effect on our economy, setting gas prices through the roof, with absolutely no environmental benefits."

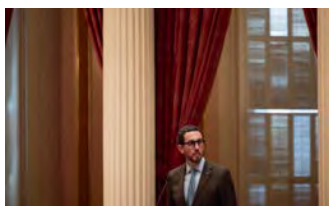
"This bill's terrible, terrible policy," he said. "And it puts our jobs in jeopardy and puts our state in jeopardy."

Big money turns out to oppose climate bill

At last week's Senate Judiciary Committee hearing, Wiener, a Democrat from San Francisco, argued his proposal was urgent after January's massive wildfires tore through Los Angeles County, destroying thousands of homes and exacerbating the state's housing and insurance crises.

"We're not supposed to have destructive wildfires in the middle of winter," he told the committee. "And yet that is the new normal in California. And right now, who is paying for these climate disasters? Who's paying for them? We're paying for them."

Wiener's measure would have allowed victims to sue oil companies for damages, but they would have to prove in court that climate change was specifically to blame for their losses, which is not easy. While scientists have documented the connection between climate change and fossil fuels, the evidence is less definitive linking fossil fuels to specific extreme weather events such as floods, droughts or wildfires.



Miguel Gutierrez Jr.

/

CalMatters

State Sen. Scott Wiener on the Senate floor at the state Capitol in Sacramento on April 29, 2024.

Two witnesses Wiener brought to testify in support of SB 222 had lost their homes to wildfires. They argued that it's time for the fossil fuel companies to pay their fair share.

"Disasters like this are going to keep happening, but you can make the financial burden less awful for all of us," Moira Morel, whose home burned in the Eaton Fire, told the committee.

After they spoke, representatives of more than 20 environmental and consumer attorney groups walked up the microphone urging the committee to pass the measure.

The California Federation of Teachers, which has given at least \$2.5 million to legislators since 2015, was the only major political donor supporting it, according to the Digital Democracy database.

But that paled in comparison to what its opponents have spent on politics: at least \$22.7 million to members of the Legislature since 2015, according to Digital Democracy.

They included major business groups such as the California Chamber of Commerce and the Civil Justice Association of California, whose board of directors includes representatives from major corporations including Amazon, Pfizer, Apple and Meta, which didn't directly take positions on the bill. Those two advocacy groups alone have given nearly \$2 million to legislators since 2015.

Michael McDonough, a lawyer who spoke on behalf of the business groups, told the committee the bill was likely unconstitutional and "retroactively punishes the legal production of fuel for this state, which has been critical for California's growth since its founding, and which this Legislature has supported for nearly 150 years."

Organizations representing fossil fuel companies that opposed the bill but gave no testimony during last week's hearing also have donated at least \$1.7 million to legislators since 2015.

Democrats find union argument persuasive

But the Legislature's biggest donors that opposed SB 222 are the trade unions. The State Building and Construction Trades Council, the California State Association Of Electrical Workers and the California State Pipe Trades Council and their affiliate unions have given at least \$12 million since 2015, according to Digital Democracy.

"SB 222 unfairly targets one industry, while ignoring the broader systematic factors that contribute to climate change," the trade unions' lobbyist, Keith Dunn, told the committee.

Dozens of rank-and-file union members – pipefitters, boiler makers, painters, iron workers and others – took the mic after Dunn to urge lawmakers to spike SB 222. Many of them looked fresh off the jobsite, wearing safety glasses and T-shirts emblazoned with their union logos. It was a striking contrast in the Capitol, where business wear tends to be the standard attire.

The measure needed seven votes to advance out of the Senate Judiciary Committee; it failed with just five votes in favor and eight recorded votes opposed. Yet only one Democrat on the committee actually voted "no." The rest didn't vote at all, which counts the same as a no vote. As CalMatters has reported, the widespread practice of dodging tough votes allows legislators to avoid accountability.

There are few groups more influential in state politics than unions in California, despite only representing one-sixth of the state's workforce.

As CalMatters reported, labor groups regularly get their way on bills at higher rates than other prolific lobbying groups, due in part to their massive political donations. Around a quarter of the members of the current Legislature are current or former union members.

One of them is Sen. María Elena Durazo, a Democrat from Los Angeles and a member of the committee who didn't vote on the measure. The long-time former labor activist told the committee that companies that cause climate change should be held accountable, but not at the expense of workers.

"I don't want to let anyone off the hook, but I don't want to let working people be on the hook for everything that happens," Durazo told the committee.

Her office didn't respond to an interview request to ask why, if she opposed the measure, she didn't cast a firm "no" vote. The four other Democrats on the committee who also didn't vote for SB 222 – Aisha Wahab, Angelique Ashby, Tom Umberg and Jesse Arreguín – declined CalMatters requests to explain in an interview why they didn't vote.

Sen. Anna Caballero, who represents Merced, was the one Democrat who voted "no." Like Durazo, she found the union members' arguments persuasive. She said the costs of the measure would be too high. She urged the Legislature to focus on promoting climate-friendly technologies such as "hydrogen, carbon capture, biogas, biomass."

"Those are the kinds of jobs that will create a livable wage and also give us the opportunity to meet our climate goals," Caballero told the committee. "And I think we're all interested in the same goal ... but we're not going to get that through this litigation."

Sen. Henry Stern, a Democrat who lost his home in the 2018 Woolsey Fire, addressed the union workers directly before he voted to support the legislation.

He said the bill was about making multinational corporations accountable. He said the oil companies had been threatening "their workers that they're going to fire them" if the Legislature passed SB 222.

"This is targeting those shareholders and those boardroom folks who are making the big decisions back at some corporate headquarters out in Houston or somewhere else, but not you," he told the committee.

Wiener said in an interview that he wasn't surprised the trades unions "are fighting to keep those jobs."

“But it continues to surprise me that the California Legislature doesn’t pass the oil accountability bills, with only a few exceptions,” he said. “I hope that the Legislature will start taking a much more proactive stance to hold the oil companies accountable for the huge harm that they have done and are doing to California and to the planet.”

This article was originally published by CalMatters.

Key witness details extortion threats in State Bar trial over LADWP scandal

DJ [dailyjournal.com/articles/384929-key-witness-details-extortion-threats-in-state-bar-trial-over-ladwp-scandal](https://www.dailyjournal.com/articles/384929-key-witness-details-extortion-threats-in-state-bar-trial-over-ladwp-scandal)

State Bar & Bar Associations

Apr. 18, 2025

Disgraced former attorney Paul Paradis testified Thursday in State Bar Court that top officials, including former Chief Deputy City Attorney James Clark, pressured him to quietly pay off a legal assistant threatening to expose a scheme tied to the LADWP billing scandal. The disciplinary trial could lead to Clark's disbarment.



A tale of blackmail and extortion unfolded Thursday in State Bar Court as key witness Paul O. Paradis continued testifying in disciplinary proceedings against former Chief Deputy City Attorney James Clark tied to the Los Angeles Department of Water and Power billing scandal.

Paradis, a disbarred and criminally convicted former New York attorney, described attempts to placate Julissa Salgueiro, a former legal assistant to attorney Paul Kiesel. She allegedly threatened to expose a collusive scheme meant to secure a favorable lawsuit settlement for the city.

"She had repeatedly told me [...] that if she was not paid, she was going to produce all the documents that she had shown me and more which she claimed she had to the FBI and file a criminal referral against Mr. Kiesel and his firm, as well as going to the press and identifying Mr. Kiesel's activities," Paradis said.

The scandal stemmed from the disastrous 2013 launch of a new system that led to wildly inaccurate bills for thousands of customers, spawning multiple class action lawsuits against the city and the utility. The State Bar claimed that Clark oversaw a plan called a "reverse auction" to settle ratepayer class actions on terms favorable to the city and its utility by directing outside counsel to find friendly plaintiff representation in a key lawsuit, *Jones v. City of Los Angeles*, and lying under oath about their involvement.

The State Bar is seeking to impose disciplinary measures against Clark, which could include disbarment, suspension, inactive enrollment, monetary penalties and the payment of costs. In the Matter of James Patrick Clark, SBC-24-O-30722 (State Bar Court, filed Sept. 12, 2024).

Paradis testified that Salgueiro's threats began after her July 2017 dismissal from Kiesel's firm, which had been tapped as outside counsel for the city. She demanded approximately \$1 million--a figure Paradis described as part of an "extortion scheme" and a "nightmare."

"She continued to complain that Mr. Kiesel disrespected people and used them inappropriately. She said she would make an example of him if she didn't get paid," Paradis said of a September 2017 meeting with Salgueiro.

Though Kiesel initially refused to pay, Paradis testified that Clark and Thomas H. Peters, the former head of civil litigation in the city attorney's office, pressured him to make the problem go away, repeatedly warning that then-City Attorney Mike Feuer wanted the matter resolved quietly.

Kiesel resisted the pressure. Paradis described a tense meeting among Kiesel, Peters, and himself where Peters "was furious" and told Kiesel bluntly, "you need to make this go away and pay her."

Kiesel protested, telling Peters, "This woman is trying to extort me," but Peters insisted, "I don't care. None of this can become public. Mike knows, Clark knows and I know. This needs to go away."

At a later meeting, Peters reiterated his demand. "He again said Clark and Feuer were aware, both were furious, and if this wasn't handled, Kiesel would be fired as special counsel and I would likely be fired too," Paradis recalled.

Ultimately, Kiesel relented, negotiating Salgueiro's demand down to \$800,000 and convincing Paradis to pay half, Paradis testified.

Paradis served 12 months of a 33-month federal prison sentence for his role before his release due to illness. Peters was disbarred in 2024 and sentenced to nine months of home detention. Feuer and Kiesel have not been charged.

Testimony is set to continue Tuesday, with Judge Yvette D. Roland urging the State Bar's Office of Chief Trial Counsel to finish its direct examination of Paradis.

#384929

NewsRoom

4/17/25 Akron Beacon J. (Ohio) (No Page)
2025 WLNR 9242025

Akron Beacon Journal (Ohio)
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April 17, 2025

Are feds going to say FirstEnergy execs bribed more Ohio public officials? What we know
FirstEnergy's former CEO says in court filings that prosecutors might
try to allege that he bribed more public officials. The details are sealed.

Laura A. Bischoff, Columbus Dispatch

Attorneys defending for former FirstEnergy CEO want prosecutors to disclose if their client is
being accused of bribing more, not yet named, Ohio politicians.

New filings in the case against Chuck Jones signal that prosecutors may allege that bribes were
paid to more public officials — beyond former Ohio House speaker Larry Householder and former
utility regulator Sam Randazzo.

Jones and former FirstEnergy senior vice president Michael Dowling have pleaded not guilty to
racketeering charges filed in January.

They're accused of bribing state officials, including Householder and Randazzo, to pass a \$1 billion
bailout for the company's nuclear plants and to eliminate regulatory hurdles.

The public corruption scandal is the subject of a new two-hour documentary by filmmaker Alex
Gibney that is now streaming on Max.

News: 'Families and businesses are already struggling': Opponents criticize FirstEnergy rate hike

Jones and his attorneys are trying to force federal prosecutors to give them more details on who
he allegedly bribed. In a legal filing made April 11, Jones' legal team says a recent letter from
prosecutors suggest the government may allege that Jones conspired to bribe other public officials.

The filing blacks out the names of other public officials.

U.S. District Court Judge Timothy Black allowed Jones' team to file an unredacted document with him and post the blacked-out version to the court's online docket system.

The racketeering case against Jones and Dowling is complex and not subject to speedy trial requirements.

Prosecutors allege that Jones and Dowling participated in bribery, money laundering and obstruction to increase the company stock price and enrich themselves. FirstEnergy fired the two men in October 2020.

The Akron-based company previously pleaded guilty to bribing former Householder and Randazzo – two public officials in powerful positions to help the company. The company paid a \$230 million fine and agreed to cooperate with federal investigators.

Householder is serving 20 years in federal prison and former Ohio GOP chairman Matt Borges is serving five years. In 2023, the two were convicted of racketeering conspiracy after a seven-week trial in Judge Black's courtroom.

Randazzo and lobbyist Neil Clark each died by suicide.

Two others, lobbyist Juan Cespedes and political consultant Jeff Longstreth, pleaded guilty in the case and testified for the prosecution against Householder and Borges.

State government reporter Laura Bischoff can be reached at lbischoff@gannett.com or [@lbischoff](#) on X.

This article originally appeared on The Columbus Dispatch: Are feds going to say FirstEnergy execs bribed more Ohio public officials? What we know

---- Index References ----

Company: FIRSTENERGY CORP.

News Subject: (Crime (1CR87); Criminal Law (1CR79); Financial Fraud (1FI18); Fraud (1FR30); Judicial Cases & Rulings (1JU36); Legal (1LE33); Racketeer Influenced & Corrupt Organizations (RICO) (1RI18); Social Issues (1SO05))

Region: (Americas (1AM92); North America (1NO39); Ohio (1OH35); U.S. Midwest Region (1MI19); USA (1US73))

Language: EN

Other Indexing: (U.S. District Court; FirstEnergy)

Keywords: (FirstEnergy, Crime, Corruption, Bribery, Larry Householder, Ohio, Crime & Justice, Politics, Government, Courts & Judiciary, Legal, Crime, Scandal and Misconduct)

Word Count: 415

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NewsRoom

[Securities Law](#)

April 18, 2025, 9:37 AM PDT

Warren Says Wall Street 'Cops are Gone' After Trump Overhaul (1)

Senator Elizabeth Warren said that President Donald Trump's moves to dramatically cut federal regulatory agencies would leave consumers and markets vulnerable to fraud and corruption, magnifying vulnerabilities to a financial system already beset by uncertainty in the face of the White House's tariffs.

"Trump at every turn is trying to put deregulators in place across the whole financial services space, and that is really dangerous," Warren, a Massachusetts Democrat who helped create the Consumer Financial Protection Bureau, said in an interview with Bloomberg News.

Warren spoke as the Trump administration moved to implement mass layoffs at the CFPB on Thursday. A legal filing by the union representing the consumer bureau's staff estimated that some 1,500 of the CFPB's 1,700 staff could be fired.



Senator Elizabeth Warren

Photographer: Tierney L. Cross/Bloomberg

A federal judge in Washington DC [said Friday](#) that the CFPB may not proceed with agencywide job cuts while the court weighs whether the terminations would violate an earlier injunction blocking the agency from shutting down.

At the Securities and Exchange Commission, about [500 employees](#) have taken deferred resignation and buyout offers as part of the president's efforts to downsize the federal workforce. The SEC has already dropped a number of high-profile enforcement cases related to cryptocurrency and deferred or eliminated rules implemented during the Biden Administration.

"Now the cops are gone," Warren said.

Trump and senior officials have argued his efforts to reduce the size and scope of the federal government are eliminating wasteful spending that contributes to the nation's deficits and removing regulations that slow economic growth.

The CFPB, in particular, has long been a target of Republicans who have accused the agency of overstepping its authority and imposing burdensome regulations.

Read More: [White House Seeks to Bring Financial Regulators Under Its Sway](#)

Trump's administration, in an effort led by billionaire adviser Elon Musk's Department of Government Efficiency and Office of Management and Budget chief Russ Vought, have begun to dramatically dismantle the agency, suspending its work overseeing financial companies and shuttering its Washington DC headquarters. The DOGE team's actions at agencies across the government have sparked a wave of lawsuits, including over efforts to dismiss CFPB's staff and access its computer systems.

Read more: [Elon Musk Wants to Shut the CFPB. What's at Stake: QuickTake](#)

Warren, for her part, cast the moves as part of a series of rash presidential actions – along with Trump's sweeping tariff announcement and subsequent partial reversal, threats to remove the tax-exempt status of universities and nonprofit groups seen as political enemies, and public criticism of Federal Reserve Chairman Jerome Powell – that are seeding uncertainty across the economy.

Trump on Thursday said Powell has been a "terrible" leader of the Federal Reserve, arguing the central bank was "too slow" to cut rates that the president said would reduce inflation and offset the economic impact of his tariffs.

"I don't think he's doing the job," Trump said. "He's too late – always too late. A little slow. And I'm not happy with him. I let him know it."

On Friday, National Economic Council Director Kevin Hassett told reporters [Trump is studying](#) whether firing Powell is an option.

Read More: [Trump Raises Powell Firing as Ire Toward Fed Chair Explodes](#)

The cumulative "cost of chaos," Warren said, had left businesses in turmoil and contributed to "flashing red" warning signals that economic calamity could be nearing. The uncertainty, she argued, was also contributing to turbulence in the bond market that suggested the US could be losing its status as the premier safe harbor in tumultuous times.

"We're already paying a huge price for every hour that goes by that he gets out there and rattles his sabers about firing the chairman of the Fed," Warren said. "Whatever the next thing he picks up is another cost and another blow and pushing the economy closer into recession that we just may not be able to reel back."

The University of Michigan's consumer confidence released last week showed a 30% drop since December, while inflation expectations have surged to the highest level since 1981.

"At the grassroots level, the weather is changing fast," Warren said. "It's farmers in Iowa and factory workers in Pennsylvania and researchers in California who are all saying, I may have voted for Donald Trump or not. But this has to stop."

(updates with court blocking layoffs at CFPB in fourth paragraph.)

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Securities Law

April 17, 2025, 1:30 AM PDT

AI Explosion Complicates Reporting and Regulation for Companies

Brown Rudnick attorneys Matthew Richardson and Joel Todd say companies have to adopt AI technology to stay competitive, but must be careful to let regulators know how they're using it.

As artificial intelligence transforms the way businesses operate—from process automation and personalized customer experiences to predictive analytics and fraud detection—corporate boards and regulators are scrambling to provide proper oversight and regulation to avoid danger.

Public companies should pay close attention to their public disclosures regarding their use of AI and the financial and operational results attributable to its use.

Companies that have their stock traded on a national securities exchange, such as the NYSE or Nasdaq, or are otherwise subject to the Securities Exchange Act of 1934 must provide ongoing public disclosures on Form 10-K (annual report), Form 10-Q (quarterly report), and Form 8-K (current report), among other required filings.

These reports update investors and potential investors on the financial results and operations of a business; assess and convey the risks associated with an investment in a company; and make statements about corporate goals, future possibilities and plans, and assessments of strategy.

Public companies must provide updated corporate information on a defined schedule set by regulation, so it's important for companies that are subject to these regulations to represent current corporate information accurately and explicitly address the items or conditions that may change such information.

AI is in vogue with investors, and the Securities and Exchange Commission has stated it will be watching how companies disclose their relationship with AI to the public.

Business Disclosures

Direct integration and application of AI in business operations should be disclosed where required, and where helpful to supplement other disclosures, in corporate reports filed with the SEC. Disclosure of indirect AI exposure, such as a third-party service provider's increased efficiency attributable to AI as a passed-through benefit realized by the company, also may be helpful.

Unlike cybersecurity incidents, which have their own Form 8-K disclosure item, AI disclosure may be placed in different sections of corporate reports. Context and accuracy are important when discussing AI's benefits to a company in public disclosures. Context can help the company avoid claims that the disclosure was misleading, while accuracy can help the company avoid claims that the disclosure was false.

Risk Factor Disclosures

Due to AI's broad scope and the ways it can affect a company's business and financial performance, all public reporting companies should review AI's potential effects.

Risk factors provide investors with important insights into the company's operations and can help identify areas where performance may be negatively affected by internal and external forces. Risk factors also provide an opportunity for the company to protect itself from liability by fully disclosing known risks.

Drafting sufficient risk factors related to AI may be particularly challenging, given the rate of change in the space combined with general opacity of its features and flaws. A good risk factor should strike the balance between being broad enough to cover unforeseen circumstances as AI changes but specific enough to inform the reader of known issues.

AI Drafted Disclosures

While there is some risk involved, a company can contemplate using AI to write about itself in corporate reports.

Consider using data analytics technology to compare the disclosures of peer companies. Benchmarking against peer companies is a common practice for quarterly and annual reporting of risk factors and for reporting executive compensation data in proxy statements. Data analytics tools may also allow companies to learn from their peers' mistakes by analyzing and comparing SEC enforcement actions and comment letters.

During the drafting process, companies can use large language models, such as ChatGPT or Microsoft Copilot, to draft disclosures. These applications shouldn't be relied on exclusively, as they are prone to mistakes. And their use won't protect a company from liability arising from incorrect or incomplete disclosure.

Exclusive or overly reliant use of such an application also might be viewed as a sign of insufficient disclosure controls. However, large language models can assist by creating an efficient first draft then to be reviewed by adequately trained personnel.

Data analytics technology also may be used to evaluate the internal controls of the company, including its disclosure controls.

Investors, securities litigation plaintiffs, and regulators are already using this technology. The SEC is using data analytics to identify non-compliance with disclosure requirements.

According to a recent survey, 73% of respondent investors indicated that companies should increase their investments to deploy AI at scale. Companies may be at a disadvantage if they wait much longer to use available AI technology for themselves.

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

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Write for Us: Author Guidelines

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Google holds illegal monopolies in ad tech, US judge finds

 [reuters.com/technology/us-judge-finds-google-holds-illegal-online-ad-tech-monopolies-2025-04-17](https://www.reuters.com/technology/us-judge-finds-google-holds-illegal-online-ad-tech-monopolies-2025-04-17)

Jody Godoy

April 18, 2025

The verdict says Google is guilty of maintaining monopolies over ad servers for publishers, and the ad exchanges that sit between buyers and sellers.

Judge rules Google operates illegal monopoly in ad tech

- Ruling lets US argue Google must sell publisher ad tools
- Google says it will appeal
- Decision days before Google faces another monopoly trial over search
- DOJ failed to prove one of its claims, judge says

April 17 (Reuters) - Alphabet's (GOOGL.O) , opens new tab Google illegally dominates two markets for online advertising technology, a judge ruled on Thursday, dealing another blow to the tech giant and paving the way for U.S. antitrust prosecutors to seek a breakup of its ad products.

U.S. District Judge Leonie Brinkema in Alexandria, Virginia, found Google liable for "willfully acquiring and maintaining monopoly power" in markets for publisher ad servers and the market for ad exchanges which sit between buyers and sellers.

The decision , opens new tab clears the way for another hearing to determine what Google must do to restore competition in those markets, such as sell off parts of its business at another trial that has yet to be scheduled. It is the second court ruling that Google holds an illegal monopoly, following a similar judgment in a case over online search.

Publisher ad servers are platforms used by websites to store and manage their digital ad inventory. Along with ad exchanges, the technology lets news publishers and other online content providers make money by selling ads. Those funds are the "lifeblood" of the internet, Brinkema wrote.

"In addition to depriving rivals of the ability to compete, this exclusionary conduct substantially harmed Google's publisher customers, the competitive process, and, ultimately, consumers of information on the open web," Brinkema wrote.

However, antitrust enforcers failed to prove a separate claim that the company had a monopoly in advertiser ad networks, she wrote.

U.S. Attorney General Pamela Bondi called the ruling "a landmark victory in the ongoing fight to stop Google from monopolizing the digital public square."

"This Department of Justice will continue taking bold legal action to protect the American people from encroachments on free speech and free markets by tech companies," she said.

Lee-Anne Mulholland, vice president of regulatory affairs, said Google will appeal the ruling.

"We won half of this case and we will appeal the other half," she said, adding that the company disagrees with the decision on its publisher tools. "Publishers have many options and they choose Google because our ad tech tools are simple, affordable and effective."

Google's shares dropped 1.4% after Thursday's ruling. Experts previously told Reuters the financial hit from a loss in the case would be minimal for the tech giant best known for its search engine.

The DOJ has said that Google should have to sell off at least its Google Ad Manager, which includes the company's publisher ad server and ad exchange.

Item 1 of 2 The logo for Google LLC is seen at the Google Store Chelsea in Manhattan, New York City, U.S., November 17, 2021. REUTERS/Andrew Kelly/File Photo

[1/2]The logo for Google LLC is seen at the Google Store Chelsea in Manhattan, New York City, U.S., November 17, 2021. REUTERS/Andrew Kelly/File Photo Purchase Licensing Rights , opens new tab

Google has previously explored selling its ad exchange to appease European antitrust regulators, Reuters reported in September.

U.S. Senator Amy Klobuchar, a Democrat from Minnesota who previously led the antitrust subcommittee, called the ruling "a big win for consumers, small businesses, and content creators that will open digital markets to more innovation and lower prices."

INFLECTION POINT

Michael Ashley Schulman, chief investment officer at Running Point Capital, called the ruling a "major inflection point" for Google and the tech sector, underscoring U.S. courts' willingness to entertain "aggressive structural remedies" in antitrust cases.

"This could increase regulatory risk premiums across major tech stocks, especially those like Amazon and Meta that operate similarly integrated ecosystems," he said.

Meta Platforms (META.O) , opens new tab is on trial in a separate antitrust case brought by the U.S. Federal Trade Commission accusing the owner of Facebook, WhatsApp and Instagram of holding an illegal monopoly in personal social networks. The FTC has accused Amazon.com (AMZN.O) , opens new tab of unlawfully dominating online retail markets.

The DOJ has also sued Apple (AAPL.O) [↗](#), opens new tab, claiming it holds a smartphone monopoly.

Those cases have been pursued during both Republican and Democratic administrations, including U.S. President Donald Trump's first and second term, showing the enduring bipartisan appeal of antitrust enforcement.

Google now faces the possibility of two U.S. courts ordering it to sell assets or change its business practices. A judge in Washington will hold a trial next week on the DOJ's request to make Google sell its Chrome browser and take other measures to end its dominance in online search.

At a three-week trial last year on Google's ad business, the DOJ and a coalition of states argued Google used classic monopoly-building tactics. Those tactics involved eliminating competitors through acquisitions, locking customers in to using its products, and controlling how transactions occurred in the online ad market, prosecutors said at trial.

Google argued the case focused on the past, when the company was still working on making its tools able to connect to competitors' products, and ignored competition from technology companies including Amazon and Comcast (CMCSA.O) [↗](#), opens new tab as digital ad spending shifted to apps and streaming video.

In her ruling on Thursday, Brinkema rejected claims about the acquisitions. But she said Google unlawfully tied publishers' use of its exchange product to use of its ad server, and enacted anticompetitive policies that were "not in its publisher customers' best interests."

(This story has been refiled to change to 'Thursday' from 'Friday' in paragraph 11)

Reporting by Jody Godoy in New York and Zaheer Kachwala in Bengaluru; Editing by Chizu Nomiya, Richard Chang and Marguerita Choy

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

- Suggested Topics:
- Boards, Policy & Regulation
- Regulatory Oversight

Jody Godoy reports on tech policy and antitrust enforcement, including how regulators are responding to the rise of AI. Reach her at jody.godoy@thomsonreuters.com

Meta Platforms

'We had to buy them': old emails haunt Mark Zuckerberg in high-stakes trial

Meta founder's antitrust defence rests on showing that TikTok is rapidly expanding in his main market

Stefania Palma in Washington and **Hannah Murphy** in San Francisco

Published 4 HOURS AGO



A critical part of Mark Zuckerberg's defence in the most serious antitrust challenge in Meta's history this week had little to do with the technology giant and much to do with TikTok.

In testimony across three days, the billionaire tech founder repeatedly told a US federal court in Washington that the video platform owned by Chinese parent ByteDance had grown to become a tremendous competitor.

The plaudits of his rival had a goal: quashing US Federal Trade Commission allegations that [Meta](#) retained an illegal monopoly, charges that, if proven, could potentially have more far-reaching consequences for Zuckerberg's business than any commercial threat it faces.

Lose the case, and Meta could be forced to break up its \$1.5tn group and spin off its Instagram and WhatsApp apps — an outcome [Zuckerberg](#) has previously vowed to “go to the mat and fight”. Win, and it will have scored a decisive victory over a regulator that has long had Big Tech in its sights, more recently suing retail giant Amazon.

The trial comes after Zuckerberg failed to negotiate away the proceedings in the first place. According to a person familiar with the matter, the FTC had demanded \$30bn as a potential settlement; Meta lowballed at \$450mn then raised its proposal to \$1bn after the regulator had set a floor of \$18bn. The parties then decided to move to court.



Boxes of documents are brought out of the court on Wednesday © Alex Wong/Getty Images

At the heart of the FTC suit is an allegation that Meta employed a “systematic strategy” to eliminate competitors, including by acquiring rivals Instagram and WhatsApp in 2012 and 2014 for \$1bn and \$19bn respectively.

FTC lawyers this week presented evidence of Zuckerberg seeing these nascent applications as a threat, including a host of uncomfortable emails. Zuckerberg in 2012 agreed to suggestions that the Instagram deal might help “neutralise a competitor” and also said he wanted Meta to “use M&A to build a competitive moat around us on mobile and ads”.

But such tactics would only potentially be deemed illegal if the FTC can first prove that Meta retains a monopoly, an argument some antitrust experts say will be harder to stack up. It is a point Zuckerberg and former Meta chief operating officer Sheryl Sandberg have focused on in their testimonies, stressing TikTok's explosive growth to serve more than 1bn users globally.

"What they said and thought in the past is not a great look but it does not have much probative value — if any — for whether Meta maintains a monopoly now," said Paul Swanson, head of the antitrust and competition practice at Holland & Hart.

"Zuckerberg and Sandberg did a good job explaining why that is a current reality — [that] TikTok and Meta do have attrition from each other and are substitutes for each other in most users' minds."

In antitrust challenges, the FTC must also prove there has been consumer harm, which typically would be a monopolist driving up prices. With Meta offering its services for free, the agency is instead arguing that consumers suffered a degraded user experience due to the platform's dominance — feeds filled with adverts and poor privacy protections.

The key challenge for the FTC will be convincing James Boasberg, the presiding judge, that Meta has dominated — in part via acquisitions — a "personal social-networking" market focused on friends-and-family connections, which does not include TikTok or Google's YouTube.

Former Meta chief operating officer Sheryl Sandberg testified at the trial this week © John Lamparski/Getty Images

A person close to the earlier settlement negotiations, which were first reported by the Wall Street Journal, said that Meta's lowball offer showed how weak it considered the FTC's case to be. The FTC declined to comment.

"We haven't been shy about explaining why it doesn't make sense for the FTC to bring a case to trial that requires it to prove something every 17-year-old in America knows is absurd — that Instagram doesn't compete with TikTok. We are prepared to win at trial," Meta spokesperson Dani Lever said in a statement.

But some experts argue that Boasberg, who has uttered few words all week, may be receptive to the FTC's arguments.

"The court is clearly open to the possibility that there is a personal social networking market," said Kenneth Dintzer, partner in the antitrust and competition group at Crowell & Moring. He referenced a 2024 filing in which Boasberg said the FTC had "met its burden to show that other applications are not reasonable substitutes" for friends-and-family sharing.

Zuckerberg rejected this notion in court, pointing to the group rushing to develop Reels — short-form videos — in response to TikTok's meteoric rise. TikTok's offering had "probably [been] the highest competitive threat against Instagram and Facebook in the last few years", Zuckerberg said.

The Meta boss also argued WhatsApp and Instagram had been acquired to accelerate their growth, pointing to the dramatic jump in users following the deals.

The FTC countered with a 2013 email, in which Zuckerberg argued ahead of the WhatsApp deal that “the biggest competitive vector for us is for some company to build out a messaging app for communicating with small groups of people, and then transform that into a broader social network”.

After offering to teach Sandberg the board game The Settlers of Catan, Zuckerberg said in a 2012 email: “[Facebook] Messenger isn’t beating WhatsApp, Instagram was growing so much faster than us that we had to buy them for \$1 billion . . . That’s not exactly killing it.”

“The confounding part of Mark’s testimony is that he’s trying to contradict statements today that he made a decade ago as these acquisitions were being contemplated in real time,” said Lee Hepner, senior legal counsel for the anti-monopoly non-profit American Economic Liberties Project.

Perhaps the most striking evidence came in the form of a Zuckerberg email in 2018, where he [considered spinning off Instagram](#) — citing exactly the kind of threat from antitrust enforcement he faces today.

As “calls to break up the big tech companies grow”, he wrote, “there is a non-trivial chance that we will be forced to spin out Instagram and perhaps WhatsApp in the next five to 10 years”.

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Tesla speeds up odometers to avoid warranty repairs, US lawsuit claims

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Jonathan Stempel

April 17, 2025

Tesla vehicles are shown near one of the company's retail stores in San Diego, California, U.S., October 20, 2023. REUTERS/Mike Blake/File Photo Purchase Licensing Rights , opens new tab

April 17 (Reuters) - Tesla (TSLA.O) , opens new tab faces a proposed class action claiming it speeds up odometers on its electric vehicles so they fall out of warranty faster, saving Elon Musk's company from having to pay for repairs.

The plaintiff Nyree Hinton alleged that Tesla odometer readings reflect energy consumption, driver behavior and "predictive algorithms" rather than actual mileage driven.

He said the odometer on the 2020 Model Y he bought in December 2022 with 36,772 miles on the clock ran at least 15% fast, based on his other vehicles and driving history, and for a while said he drove 72 miles a day when at most he drove 20.

Hinton, a Los Angeles resident, said this caused his 50,000-mile basic warranty to expire well ahead of schedule, leaving him with a \$10,000 suspension repair bill that he thought Tesla should cover.

"By tying warranty limits and lease mileage caps to inflated 'odometer' readings, Tesla increases repair revenue, reduces warranty obligations, and compels consumers to purchase extended warranties prematurely," the complaint said.

Tesla and its lawyer did not immediately respond on Thursday to requests for comment, but have denied all material allegations in the lawsuit. The Austin, Texas-based company does not have a media relations office.

Hinton is seeking compensatory and punitive damages for Tesla drivers in California, potentially encompassing more than 1 million vehicles, court papers show.

Tesla moved his lawsuit this month to Los Angeles federal court from a state court in that city.

The automaker has also faced litigation accusing it of inflating vehicle driving ranges. In March 2024, a federal judge in Oakland, California said drivers in that case must pursue their claims in individual arbitrations, not a class action.

The case is Hinton v Tesla Inc et al, U.S. District Court, Central District of California, No. 25-02877.

Reporting by Jonathan Stempel in New York Editing by Marguerita Choy

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

The Five Answers Tesla Investors Need During Earnings

IBD [investors.com/news/tesla-earnings-five-questions-that-need-answers-for-investors](https://www.investors.com/news/tesla-earnings-five-questions-that-need-answers-for-investors)

April 18, 2025

Tesla (TSLA) reports first-quarter earnings and revenue late on Tuesday, but with many analysts and investors already expecting poor results, attention will likely be more focused on the outlook for the long-awaited more affordable EV model, impacts from President Donald Trump's tariffs, an update on the planned June 2025 rollout of robotaxis in Austin and when Chief Executive Elon Musk will move away from his role in the Trump White House.

By the numbers, analysts expect quarterly profit to decline 4.4% to 43 cents per share with sales of \$21.45 billion, running nearly flat compared to a year ago, according to FactSet. The most recent analyst notes have first-quarter EPS ranging from 30-to-51 cents, with a sharp consensus pointing to a small sales decline. Tesla Q1 consensus earnings projections have come down more than 40% since the end of 2024.

Tesla Stock Is Struggling. Will Earnings Be A Speed Bump Or A Positive Catalyst?
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Piper Sandler analysts wrote this past week that Tesla's Q1 financials "will likely underwhelm" and that its gross margin is "probably trending near multiyear lows."

With this sentiment heading into earnings, analysts and investors will be looking for commentary on Tesla's future plans. Here are the top questions heading into Tuesday's earnings release and conference call.

Robotaxi June Rollout Still On?

Musk said on the Q4 call that Tesla will begin paid robotaxi rides in Austin, Texas, this June. However, he's said for years that Tesla would achieve self-driving "this year" or "next year."

For many investors and analysts, the robotaxi and true autonomous driving are the major catalysts for Tesla stock.

The latest version of full self-driving, or FSD, does appear to show a modest boost increase in miles per critical disengagement. But the unofficial FSD Community Tracker, endorsed by Musk several times, signals it's a long way from robotaxi status.

At the late 2024 Tesla robotaxi event, Musk showed off the two-seat Cybercab, with no steering wheel.

Musk expects the Cybercab price tag will be below \$30,000, with production starting "before 2027." However, Cybercab obviously needs true self driving to be sold.

Meanwhile, Reuters, citing one source with direct knowledge of the situation, reported this week that Tesla suspended plans to ship parts from China for the Cybercab and Semi electric trucks after President Donald Trump raised tariffs on Chinese goods to 145%.

The EV giant was set to pay the costs when Trump imposed the 34% tariff on China-made goods but could not do so when the tariffs were increased, according to Reuters. Now, the disruption could muddle the production timeline for the Cybercab.

The Cybercab is supposed to use the "unboxed" manufacturing system, a modular approach that aims to cut costs. But it's unclear if Tesla has figured out how to make this revolutionary process work.

Investors will be looking to commentary on whether the robotaxi, or Cybercab, timeline for June is still on track.

Tesla Rises On Robotaxi Hopes Despite Earnings Miss. Elon Musk Sees 'Epic' 2026.

Read more on Tesla's third-quarter results, second-quarter earnings or on the company's first-quarter report.

Affordable EV Coming. What Will It Be?

Another potential catalyst for Tesla stock is the long-hinted at new "affordable" model. Tesla has a stagnant vehicle lineup and an affordable new vehicle could bring in more customers.

The Cybertruck, Tesla's first new passenger EV in the past five years, appears to be a bust. Deliveries seemed slow yet again in Q1, even with the Cybertruck becoming eligible for the \$7,500 tax credit.

Overall sales of the Model S, X and Cybertruck were just 12,881 in Q1.

The company announced on March 20 the recall of 46,096 Cybertruck vehicles to fix an exterior panel that could detach while driving, according to the U.S. National Highway Traffic Safety Administration. Tesla sold 38,965 Cybertrucks in 2024, according to Cox Automotive estimates.

The EV giant in 2024 ditched its long-touted plans for a "next-generation" EV. Tesla now plans "affordable vehicles," using existing production lines.

Recent reports suggest that the first "affordable" EV will be a stripped-down Model Y, perhaps slightly smaller. Tesla stock bulls have hoped for at least a new form factor, such as a hatchback. The reports suggested the cheaper Model Y could come in late 2025 or

perhaps 2026.

Meanwhile, Tesla began deliveries of a refreshed Model Y in China on Feb. 26, with the U.S. and Europe following in early March.

The new Model Y has a clearly different front and back, with a light bar similar to that of the Cybertruck, as well as many other EVs. Tesla has started selling a cheaper Model Y variant, which doesn't include FSD. But wait times remain low.

Vehicle Delivery Outlook?

Musk on the Q4 earnings call appeared to signal 2025 could be a middling year for the EV giant, with only slight vehicle sales growth, even as he continues to sound bullish on the possibility for incredible things to come in 2026, 2027 and 2028. That was a step down from the Q3 2024 earnings call, when he forecast 20%-30% delivery growth this year.

Tesla in early April announced worse-than-expected Q1 vehicle deliveries as Musk's political persona and work with the Trump administration seem to have damaged the brand.

Tesla Vs. BYD: Tesla Earnings Due With Focus On This. Fast-Charging Rival Also On Tap.

The company delivered 336,681 EVs in Q1, down 13% vs. a year earlier and the lowest since Q2 2022. They fell 32.1% vs. Q4's record 495,570 EVs. The bright spot is Tesla China, where sales appeared to edge higher vs. a year earlier, but those tend to be lower margin. U.S. and European sales have tumbled on Musk's brand woes.

Tesla also deployed 10.4 gigawatt-hours of energy storage products in Q1, down slightly vs. Q4's record 11 GWh but up 156% vs. a year earlier.

A recent YouGov and Yahoo News survey of 1,677 U.S. adults between March 20 and March 24 showed that 67% of respondents would not consider buying or leasing a Tesla vehicle. Thirty-seven percent of those polled said Elon Musk was the "whole/part of the reason why."

Consensus currently has 2025 vehicle deliveries increasing 3% to 1.84 million vehicles, but several recent analyst notes predict around 1.7 million units sold, which would represent a decrease from the 1.79 million in 2024.

Tesla Trump Tariffs Impact

Trump's trade policy has been front and center in recent weeks. While Tesla, due to its supply chains, is thought to be among the least impacted by the Trump tariffs, the company will not be completely unscathed.

Investors will be looking to see if the EV giant gives any details around Trump tariffs impact and plans to mitigate effects on its business, specifically when it comes to its batteries.

Tesla traditionally has not mass-produced its own batteries. For lithium-ion batteries, its joint venture partner Japan's Panasonic makes the cells and Tesla packages them. Tesla also buys lithium-ion batteries from South Korea's LG.

The company's battery storage business is also exposed to China, buying lithium iron phosphate (LFP) batteries from China's CATL as well as some LFP batteries from **BYD** (BYDDF).

Trump currently has a 145% tariff on China-made products coming into the U.S.

When Will Musk Step Away From Trump White House

Musk's high-profile role in the Trump administration heading up the Department of Government Efficiency, or DOGE — along with his political comments regarding the U.S., U.K., Germany and Ukraine — appear to be further eroding Tesla's brand in the U.S. and Europe, especially with groups most likely to buy an EV.

Musk reportedly will leave the Trump administration soon but it's unclear exactly when that will be. An update on the Tesla chief's plans and how much time he's committing to Tesla could come up on the earnings call.

Wedbush Securities analyst Dan Ives, a longtime Tesla bull, recently cut his Tesla stock target price by around 40%, writing that Trump's tariffs and an Elon Musk "brand crisis" have created a "perfect storm" for the EV giant.

Ives estimates that Tesla has lost or destroyed at least 10% of its future customer base and "this could be conservative." In Europe, the figure could be 20% or more "all self-inflicted by Musk."

There have also been ongoing demonstrations at Tesla dealerships and stories of Tesla vehicles being vandalized.

Tesla Stock Action

TSLA fell 4.6% to 240.83 in the past week during stock market action. The stock is down 51% from its 488.54 peak on Dec. 18. However, shares have held above its March lows. Still, Tesla stock remains down 40% so far in 2025 and is one of the worst performers in the S&P 500.

Concerns about Tesla's growth and robotaxis as well as fears about Musk's focus and impact on Tesla's brand image have taken a toll on TSLA stock.

Trump's Auto Tariffs Are Here. What Is Next For The U.S. Auto Industry?

Since Trump announced the 25% auto tariffs, the 32 stocks in the IBD Auto Manufacturers industry group collectively dropped around 16%. The group has declined 39% in 2025. That puts the industry at 101 out of the 197 sectors tracked by IBD, with No. 1 the strongest and 197 the weakest sector.

Tesla stock has a 21-day average true range of 8.97%. The ATR metric is available on IBD's MarketSurge charting tool. It gauges the characteristic breadth of a stock's behavior. Stocks that tend to make large jumps or dives in daily action, the kind that can trigger sell rules and shake investors out of a stock, have a high ATR. Stocks that tend to make more incremental moves have lower ATRs.

In the current market, IBD suggests stocks with ATRs of 3% or below.

Tesla stock has a 69 Composite Rating out of a best-possible 99. Shares also have a 62 Relative Strength Rating and an 84 EPS Rating.

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Take Five: Lasting damage

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Reuters

April 17, 2025



A general view of Tesla's Gigafactory Berlin-Brandenburg, the electric car manufacture, in Gruenheide, Germany July 18, 2023. REUTERS/Annegret Hilse/File Photo Purchase Licensing Rights , opens new tab

LONDON, April 17 (Reuters) - As financial markets try to move past tariff fears, attention turns to what China will do to buffer its economy and how corporate America and business activity globally is holding up.

The International Monetary Fund and World Bank Spring meetings take place in Washington meanwhile against a backdrop of increased concern about U.S. isolationism.

Here's the low-down on the week ahead in world markets from Rae Wee in Singapore, Lewis Krauskopf in New York and Dhara Ranasinghe, Yoruk Bahceli and Karin Strohecker in London.

1/ HUNKERING DOWN

China sets its benchmark lending rates on Monday at a time when investors are bracing for more monetary easing from Beijing to help offset the headwinds from hefty U.S. tariffs on the world's second-largest economy.

Some analysts expect a reduction in one-year and five-year loan prime rates, which would mark the People's Bank of China's first cut since October last year.

The chart shows China's 5-year and 1-year loan prime rates.

2/ NOT SO MAGNIFICENT?

A slew of quarterly earnings in the coming week led by Tesla (TSLA.O) [opens new tab](#) and Alphabet (GOOGL.O) [opens new tab](#) could shed greater light on how U.S. companies are wrestling with a shifting trade landscape.

Elon Musk's electric vehicle maker and Google parent Alphabet are the first of the "Magnificent Seven" companies to report quarterly results, with the megacap growth stocks under pressure.

AI-related spending will be another focus, while Tesla, whose shares have been hit particularly hard in 2025, is also in the spotlight because of Musk's close ties to U.S. President Donald Trump.

Investors will look for any insight from executives into the fallout from tariffs, with reports slated from major companies including 3M (MMM.N) [opens new tab](#), Boeing (BA.N) [opens new tab](#), IBM (IBM.N) [opens new tab](#), Merck (MRK.N) [opens new tab](#), Intel (INTC.O) [opens new tab](#), and Procter & Gamble (PG.N) [opens new tab](#).

United Airlines (UAL.O) [opens new tab](#) on Tuesday warned of downside risks to its financial outlook if the U.S. economy slips into a recession -- one sign of the challenges facing companies.

Is Elon Musk's EV party over?

Tesla has emerged as the worst performer among the Mag 7 stocks.

Year-to-date change in Mag 7 stocks



Note: Data through Apr. 15, 2025

Source: LSEG Datastream

Kripa Jayaram • April 16, 2025 | REUTERS

The chart shows year-to-date change in stock prices of Mag 7 companies.

3/ PRICE RISK

Wednesday's April flash PMIs should also give markets a sense of the first hit from Trump's tariff chaos.

Trump has postponed reciprocal tariffs, but a widespread 10% levy on imports remains. U.S. companies' input prices were already feeling the heat before the latest measures, Canada's services PMI had hit a five year low.

Expect things to get worse.

The key number to watch is the U.S. manufacturing PMI input prices index, what S&P Global, which compiles the data, dubs the first port of call for the inflationary impact of tariffs.

It had already risen sharply to signal the fastest rate of input price rises for U.S. companies in almost two years in March.

Tesla settles Black employee's lawsuit alleging pervasive harassment

 [reuters.com/business/autos-transportation/tesla-settles-black-employees-lawsuit-alleging-pervasive-harassment-2025-04-17](https://www.reuters.com/business/autos-transportation/tesla-settles-black-employees-lawsuit-alleging-pervasive-harassment-2025-04-17)

Jonathan Stempel

April 17, 2025

Tesla Inc. vehicle facility is pictured in Costa Mesa, California, U.S., November 1, 2023.

REUTERS/Mike Blake/File Photo Purchase Licensing Rights , opens new tab

April 17 (Reuters) - Tesla (TSLA.O) , opens new tab has settled a racial discrimination lawsuit by a Black female employee who claimed a manager at its Fremont, California, plant sometimes greeted workers by saying "welcome to the plantation" or "welcome to the slave house."

Raina Pierce, who installed latches on car doors, and the automaker led by billionaire Elon Musk agreed to a settlement proposed by a mediator, according to a joint filing on Thursday in San Francisco federal court.

Terms were not disclosed, and both sides are finalizing a settlement agreement, the filing said.

Lawyers for Pierce and Tesla did not immediately respond to requests for comment. Musk is not a defendant.

Pierce said she was subjected to pervasive harassment, including a common racial slur she said was scrawled throughout the plant including in bathrooms, and a gender-based insult.

She also said she was yelled at or disciplined for conduct for which non-Black workers were excused.

Pierce's complaint quotes a Tesla employee who temporarily joined her production line and said, "Ma'am, you need to go to HR because these leads are saying things about you that are not right."

Tesla has faced other accusations of racial discrimination and harassment at the Fremont plant.

One plaintiff, elevator operator Owen Diaz, settled in March 2024 for undisclosed terms after a \$3.2 million jury verdict. Another jury had awarded Diaz \$137 million in 2021, but the case was retried after he rejected a lower sum the judge proposed.

The case is Pierce v Tesla Inc et al, U.S. District Court, Northern District of California, No. 22-03177.

Reporting by Jonathan Stempel in New York; Editing by Richard Chang

BREAKING Trump is replacing the acting IRS commissioner he appointed three days ago. Michael Faulkender will be the fifth person to lead the agency this year.



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MARKETS & FINANCE | STOCKS

Trump Media Asks SEC to Probe Alleged Suspicious Trading Activity

The company behind Truth Social says the allegedly suspicious trading activity is tied to a U.K.-based hedge fund named Qube Research & Technologies

By [Sabela Ojea](#) [Follow](#)

April 17, 2025 10:31 am ET



Trump Media shares have fallen around 40% year to date. PHOTO: SHANNON STAPLETON/REUTERS

President Trump's media company asked financial regulators to investigate alleged suspicious trading activity in its stock.

[Trump Media & Technology Group](#) DJT **11.65%** ▲, the company behind Truth Social, on Thursday said the allegedly suspicious trading activity is tied to a U.K.-based hedge fund named Qube Research & Technologies.

Qube wasn't immediately available for comment.

Trump Media said that on April 10 Qube disclosed in Germany a nearly six-million share short position in Trump Media and that Nasdaq, NYSE Texas, or any other source has not been able to confirm when the trades disclosed by Qube were conducted or if they were ever conducted.

“We urge you to immediately investigate this suspicious trading and report your findings back to TMTG and any relevant civil and criminal authorities,” Trump Media & Technology Group said.

Trump Media shares rose 4% to \$20.53 in morning trading. The stock has fallen around 40% year to date.

Write to Sabela Ojea at sabela.ojea@wsj.com

Appeared in the April 18, 2025, print edition as 'Trump Media Asks SEC to Probe Trading Activity in Its Stock'.

Videos



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3rd Circ. Questions Walmart's Duty To Disclose Opioid Probe

By **P.J. D'Annunzio**

Law360 (April 17, 2025, 4:47 PM EDT) -- The Third Circuit on Thursday questioned the extent to which Walmart knew of the government's interest in prosecuting it for opioid sales, as it considered a bid by investors to revive class claims alleging the retail chain failed to disclose it was under investigation.

The investors are seeking to have their case against Walmart reinstated after it was dismissed last year by a Delaware federal judge, who ruled that the investigation, which never produced criminal charges, was not a liability that **needed to be disclosed to investors**. Sara Fuks, an attorney for the investors, told the panel that "plaintiffs have sufficiently alleged that defendants were made aware of material liabilities" necessitating disclosure.

Almost immediately, U.S. Circuit Judge Marjorie Rendell demanded more information, asking her what Walmart actually knew.

"Is there anything specific? Was a draft indictment given to Walmart?" Judge Rendell said.

Fuks argued that Walmart knew that an indictment was in the works and was on notice of the government's interests in it because of a parallel civil investigation.

U.S. Circuit Judge Michael Chagares asked if investors had to be informed every time the government made an inquiry into a company.

"There's a lot of different inquiries going on with the law, particularly with a company the size of Walmart," he said. "At what point does a disclosure need to be made? Does any time a government entity comes forward, you have to come forward? That seems like a high hill."

Fuks said that Walmart knew its business practices didn't comply with the Controlled Substances Act.

Roman Martinez, representing Walmart, told the panel the law asks a company to consider how likely enforcement is before making a disclosure.

"That unambiguously sets forth a probability requirement," he said.

Judge Chagares asked whether internal Walmart documents that Fuks had pointed to, speaking of "severe risk" posed by the investigations, would prompt disclosure.

"You would need to consider not just the underlying facts of the complaint, but also the probability that the claim is going to be asserted in the first place," Martinez said.

The investors sued in 2021, claiming that Walmart violated the CSA despite the ongoing opioid epidemic and failed to tell investors through the U.S. Securities and Exchange Commission filings about the investigations in the Eastern District of Texas.

Walmart argued that it did not hide the investigations from the investors, but told them the company was unclear about specifics. A Delaware federal judge sided with Walmart and dismissed the investors' suit just over a year ago.

U.S. Circuit Judges Michael Chagares, Marjorie Rendell and Anthony Scirica sat on the panel for the Third Circuit.

The investors are represented by Sara Fuks of the Rosen Law Firm.

Walmart is represented by Roman Martinez of Latham & Watkins LLP.

The case is In re: Walmart Inc. Securities Litigation et al., case number 24-1818, in the U.S. Court of Appeals for the Third Circuit.

--Additional reporting by Katryna Perera. Editing by Adam LoBelia.

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6th Circ. Revives Fight For Docs In Prison Co. Investors' Suit

By Carolyn Muyskens

Law360 (April 17, 2025, 7:13 PM EDT) -- The Sixth Circuit ordered a do-over of a judge's decision to shield court records in a securities lawsuit against private prison operator CoreCivic on Thursday, saying it isn't enough to invoke unspecified "confidentiality" interests.

The federal appeals panel **said** a lower court must reconsider a newspaper's request to unseal certain deposition transcripts, instructing the court to determine on remand whether any parts of the transcripts meet the requirements for a seal.

Under the appellate court's "long settled" rules, court records can only be hidden from public view for certain compelling reasons and the seal should be no broader than necessary, the panel said. In agreeing to seal a document, judges must identify the compelling reasons and explain why they outweigh the presumption of public access to the courts.

"None of these rules were honored here," said U.S. Circuit Judge Raymond M. Kethledge, who authored the panel's opinion.

The Tennessee district court judge who sealed the 24 deposition transcripts at issue "made no findings whatever" to justify keeping the transcripts hidden, "nor was there any attempt to make the seals narrowly tailored," the panel said.

"The federal courts do their business in public — which means the public is presumptively entitled to review every document that a party files with the court for purposes of influencing a judicial decision," Judge Kethledge wrote.

The sealed transcripts were filed in a class action brought by CoreCivic shareholders who claimed they were misled about the quality, efficiency and regulatory compliance of the prisons the company operated. CoreCivic **settled with the shareholder class** for \$56 million in 2021.

Two years after the settlement, the Nashville Banner intervened in the litigation and requested to unseal "everything on the court's docket." Hundreds of documents had been designated confidential and filed under seal over the course of the litigation, according to the opinion.

In response to the newspaper's motion, CoreCivic agreed that 190 documents could be unsealed, but fought to keep an additional 80 documents hidden, according to the opinion.

U.S. District Judge Aleta A. Trauger ruled that those documents could remain sealed, and the Nashville Banner appealed the ruling as to 24 deposition transcripts.

The appellate panel said the judge didn't appear to have explained her reasoning for agreeing to seal any of the documents that were filed under seal pursuant to a February 2018 protective order that allowed any party to designate discovery materials they produced as confidential.

"The district court repeatedly sealed off documents that the parties themselves (or just one of them) had deemed 'confidential' — thereby shielding from public view all kinds of information about how the defendant corporation ran its prisons," the panel said.

The panel said the judge needed to do more than rely on a party's "platitudes" about confidential

business information and identify a specific "compelling reason" that meets the Sixth Circuit's standards for sealing documents.

Trade secrets, information covered by privilege and information that must be kept private by statute — such as the name of a minor victim of sexual assault — are examples of the types of information that could justifiably be hidden from public view, the panel noted.

The judge was given 60 days to issue a new decision determining whether the records could stay sealed.

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

U.S. Circuit Judges David W. McKeague, Raymond M. Kethledge and Chad A. Readler sat on the panel for the Sixth Circuit.

The Nashville Banner is represented by Wendy Liu and Adina H. Rosenbaum of Public Citizen Litigation Group and Daniel A. Horwitz of Horwitz Law PLLC.

CoreCivic is represented by Milton S. McGee III, Steven A. Riley and Joshua S. Bolian of Riley & Jacobson PLC.

The case is Grae v. Corrections Corporation of America, case number 24-5839, in the U.S. Court of Appeals for the Sixth Circuit.

--Additional reporting by Dave Simpson. Editing by Kelly Duncan.

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Zenas BioPharma Faces Investor Suit Over Post-IPO Plunge

By **Sydney Price**

Law360 (April 17, 2025, 4:08 PM EDT) -- Autoimmune disease therapeutics company Zenas BioPharma Inc. was hit with a proposed shareholder class action alleging that its registration statement for its September 2024 initial public offering overstated the amount of time that the company could fund its operations using existing cash and expected net proceeds from the offering.

According to the suit filed by Nopphol Buathongsri on Thursday, Zenas announced on Nov. 14, 2024 — approximately two months after its IPO — that it would only be able to fund its operations for the next year with its existing cash, and not two years as it had previously represented it would.

The suit states that Zenas' registration statement discloses the two-year estimate "may prove to be wrong, and we could exhaust our available capital resources sooner than we expect."

But the complaint alleges the estimate was still misleading because it failed to disclose "adverse facts" pertaining to the Zenas' business, operational and financial results.

"Defendants' failure to disclose the already occurring significant problems underlying its base business, as well as the likely material effects it would have on the Company's [American Depositary Shares] price, rendered the Registration Statement's many references to known risks that 'if' occurring 'may' or 'could' adversely affect the Company as false and misleading," the suit states.

As of the close of trading on April 15, 2025, the closing price of Zenas BioPharma stock was \$8.72, nearly 49% below the IPO price of \$17, according to the suit.

The suit's other defendants include Zenas CEO Leon O. Moulder Jr., several of its directors and several of its IPO underwriters, including Morgan Stanley & Co. LLC, Citigroup Global Markets Inc., Jefferies LLC and Guggenheim Securities LLC.

The suit accuses the defendants of violating the Securities Act. Buathongsri seeks to represent a class of those who purchased or otherwise acquired Zenas securities traceable to the IPO registration statement and prospectus.

Counsel for Buathongsri and a representative of Zenas did not immediately respond to requests for comment on Thursday.

Buathongsri is represented by Joshua Baker, Phillip Kim and Laurence M. Rosen of The Rosen Law Firm PA.

Counsel information for Zenas was not immediately available on Thursday.

The case is Buathongsri v. Zenas BioPharma Inc. et al., case number 1:25-cv-10988, in the U.S. District Court for the District of Massachusetts.

--Editing by Vaqas Asghar.



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Ibotta Misrepresented Kroger Deal, Shareholder Suit Alleges

By **Sydney Price**

Law360 (April 17, 2025, 8:13 PM EDT) -- Digital consumer discount company Ibotta Inc. was hit with a proposed shareholder class action claiming its registration statement for its April 2024 initial public offering omitted information regarding the nature of its relationship with grocery retailer The Kroger Co., prompting stocks to plummet when investors learned the relationship had ended.

According to the suit filed by shareholder Matt Fortune, Ibotta's second quarter 2024 financial filing with the U.S. Securities and Exchange Commission in August 2024 omitted all information related to Ibotta's relationship with Kroger. The suit says the grocery chain's contract with Ibotta was "at-will," and Ibotta failed to warn its investors that a large client could cancel its contract with the company without warning.

The suit states that Ibotta allows packaged goods brands to deliver their promotions to consumers digitally through its network called the "Ibotta Performance Network" and gets paid when a client's promotion results in a sale.

The suit contends that in the registration statement Ibotta filed ahead of its IPO, it provided only "boilerplate warnings" concerning the importance of maintaining ongoing relationships with clients.

"Under applicable SEC rules and regulations, the registration statement was required to disclose known trends, events or uncertainties that were having, and were reasonably likely to have, an impact on the company's continuing operations," the suit states.

In the "risk factors" section of the registration statement, Ibotta mentioned that its "business, financial condition, results of operations and prospects will be adversely affected if we do not renew, maintain, and expand our relationships with existing publishers and add new publishers to the [Ibotta Performance Network]," the suit states

According to Fortune, Ibotta's share price has "plummeted" since the IPO, when the company Ibotta sold 2.5 million shares at \$88.00 per share. Ibotta's shares traded around \$47.69 each when the market closed April 17.

In addition to Ibotta, the suit's other defendants include Ibotta founder and CEO Bryan Leach, Chief Financial Officer Sunit Patel, several directors and several underwriters, including Goldman Sachs & Co. LLC, Citigroup Global Markets Inc. and Wells Fargo Securities LLC.

The suit accuses the defendants of violating the Securities Act. Fortune seeks to represent a class of those who purchased or otherwise acquired Ibotta securities traceable to the IPO registration statement and prospectus.

Counsel for Fortune and a representative of Ibotta did not immediately respond to requests for comment Thursday.

Fortune is represented by Phillip Kim of The Rosen Law Firm PA.

Counsel information for Ibotta and the other defendants was not immediately available Thursday.

The case is Fortune v. Ibotta Inc. et al., case number 1:25-cv-01213, in the U.S. District Court for the

District of Colorado.

--Editing by Kristen Becker.

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Judge Warns Rocket Cos. Investor: Seek Cert. At 'Own Peril'

By **Katryna Perera**

Law360 (April 17, 2025, 11:24 PM EDT) -- A Michigan federal judge on Thursday said a pension fund trying to take over as lead plaintiff in a suit against mortgage business Rocket Companies Inc. does not need the court's permission to file a renewed class certification motion, but it "does so at its own peril."

U.S. District Judge Thomas L. Ludington issued an **order** saying that the Federal Rules of Civil Procedure "permits a plaintiff to take multiple bites at the class-certification apple ... but you can't bite an apple in the same place twice," and the bites must be taken by a designated lead plaintiff, which is missing in the current action.

The Construction Laborers Pension Trust for Southern California, referred to as SoCal in the case, is a plaintiff in the suit, and it asked the court **for another chance** at class certification in October after the initial bid was denied in light of a recent U.S. Supreme Court **decision** in **Goldman Sachs Group v. Arkansas Teacher Retirement System**.

In September, Judge Ludington **denied class status** to shareholders, who allege Rocket hid a sharp drop-off in its mortgage business for months until it reported an expected \$18.5 billion decrease in closed loan volume in May 2021.

In its most recent bid, SoCal said the new proposed motion for class certification would include a much smaller class, focus only on insider trading claims and cure issues the court previously found.

But on Thursday, Judge Ludington pointed out that while SoCal didn't have to seek permission to file a renewed class certification motion, the newly proposed class is "essentially the subclass this court already declined to certify, albeit with a slightly more ascertainable definition."

The judge said the proposed class suffers at least one of the same fatal flaws as the previously rejected subclass — the inadequacy of SoCal as a lead plaintiff.

According to the order, SoCal was previously deemed an inadequate lead plaintiff because it "knew nothing" about the insider trading claims it was asserting nor the underlying facts of the suit, and it confused the suit's fraudulent misrepresentation claims with the insider trading claims.

The fraudulent misrepresentation claims were voluntarily tossed by the suit's former lead plaintiff, Carl Shupe, and according to the order, SoCal's counsel now argues that by abandoning those claims, SoCal is no longer confused.

"This makes no sense," Judge Ludington said. "Abandoning irrelevant claims does not magically cure SoCal's confusion about relevant ones. In this way, the facts have not changed materially since this court denied class certification in September 2024: SoCal still does not have sufficient knowledge about insider trading — both generally and as alleged in this specific case — to represent a class advancing such claims."

Therefore, SoCal files a renewed motion for class certification at its own risk, the judge said, and while granting leave is unnecessary, there is a need for renewed lead plaintiff proceedings.

Because Shupe dismissed his fraudulent misrepresentation claims and is no longer a party to the

proceedings, there is no lead plaintiff in the case, the order states, and the Private Securities Litigation Reform Act provides "little guidance" on what to do in such a situation.

"Indeed, '[t]he PSLRA is entirely silent on the proper procedure for substituting a new lead plaintiff when the previously [appointed] one withdraws' or, as here, voluntarily dismisses their claims," the order states.

According to the judge, it is "extremely rare," but "nearly all federal courts faced with similar circumstances have reopened lead plaintiff proceedings."

A footnote in the order notes that some federal courts have declined to reopen lead plaintiff proceedings and have instead appointed the next most adequate plaintiff from the group of original movants. But Judge Ludington explained that the court cannot do so in the current action because SoCal wants to certify a narrowed class asserting claims that were not present in the suit when Shupe was appointed lead plaintiff.

According to the order, Shupe only added the insider trading claims after he filed an amended complaint — not when he was named lead plaintiff.

"These claims were not alleged at the time Shupe was appointed lead plaintiff, and were not included in the notice published to potentially interested plaintiffs," the order states. "So this court does know the 'next most adequate plaintiff' to pursue the insider trading claims — precisely because it has never considered whether SoCal — or any other party — is the most adequate plaintiff to pursue these claims for the purposes of the PSLRA."

Judge Ludington acknowledged that reopening the lead plaintiff process is not ideal, but necessary if SoCal wants to file a renewed class certification motion.

"Because Shupe has since dismissed his claims, and because there has never been nationally published notice concerning the insider trading claims, if SoCal wishes to file a renewed motion for class certification on these specific claims, it — or some other person or entity — must be appointed lead plaintiff under the PSLRA," the order states.

Therefore, the judge directed SoCal to publish a notice advising class members of the proposed narrowed insider-trading class, along with other information about the case and the deadline to file a motion to serve as lead plaintiff.

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

SoCal is represented by Carol C. Villegas, Christine M. Fox, Jake Bissell-Linsk and David Saldamando of Labaton Keller Sucharow LLP, Shannon Hopkins of Levi & Korsinsky LLP and James Allen of Schenk & Bruetsch PLC.

Rocket Companies and the other defendants are represented by Jeffrey B. Morganroth of Morganroth & Morganroth PLLC and Sharon L. Nelles, Jeffrey T. Scott, Julia A. Malkina and Jacob E. Cohen of Sullivan & Cromwell LLP.

The case is Shupe et al. v. Rocket Companies Inc. et al., case number 1:21-cv-11528, in the U.S. District Court for the Eastern District of Michigan.

--Editing by Michael Watanabe.



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Musk Blames Twitter Investors For 'Languish' In Case

By Sarah Jarvis

Law360 (April 17, 2025, 10:22 PM EDT) -- Elon Musk on Thursday pushed back against a trial schedule proposed by a class of former Twitter investors in litigation accusing the right-wing billionaire of intentionally tanking the social media platform's stock price, saying the investors have caused the case to "languish."

In a **status report**, Musk, in a letter signed by his attorney Alex Spiro of Quinn Emanuel Urquhart & Sullivan LLP, accused the investors in the platform, now called X, of incorrectly suggesting the case has languished because the billionaire did not appear for a scheduled deposition earlier this month.

"The case has 'languished' due to plaintiffs' own conduct," Musk said, referring to a Wednesday **statement** filed by the investors that, among other things, said the case "should not languish due to delays in Musk's appearance at deposition."

In their statement, the investors proposed a trial date of Oct. 27. Thursday's status report called their proposed trial schedule "unreasonable and unrealistic" and, instead, proposed the court wait to set a trial date until after it resolves summary judgment bids and matters involving expert witness testimony.

"If the court is inclined to set a trial date now, defendant proposes that trial be set far enough out to allow the court to resolve summary judgment and Daubert motions and for the parties to incorporate those decisions into their pre-trial filings," Musk said. "Defendant proposes March 23, 2026."

Musk said the investors provided short notice for the subpoenas they sought in the case — including for "some of the busiest and highest profile lawyers, bankers, and journalists in the country" — before the court extended discovery at their request. And Musk's deposition "is not the only deposition plaintiffs have yet to take," according to the status report.

"Due to plaintiffs' own inaction and delay, they have significant discovery and discovery-related litigation ahead of them that is likely to cause further delays in the case schedule," Musk said.

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

The shareholders **have accused** Musk of attempting to drive down Twitter's stock price to back out of a promise to buy the social media company or to renegotiate a lower price. Musk first tried to back out of the promised \$44 billion purchase but later **agreed to close the deal** after the company sued him in Delaware.

Earlier this month, Spiro **moved to quash** a subpoena he received from the investors aiming to question him about conversations he had with Musk about a series of statements Musk made in the lead-up to his purchase of Twitter. Spiro called the request "outrageous" and said it threatens to undermine his attorney-client relationship.

Musk **agreed to sit** for a deposition in the case last month after the Ninth Circuit **rejected his immediate appeal** of a decision to certify the class in the case.

However, Musk did not appear for his scheduled April 3 deposition. While the reason he didn't appear was redacted in a declaration from Spiro earlier this month, this week's filings indicate Musk's counsel said he was ill.

Musk's attorneys offered to reimburse the class and to reschedule the deposition "for the earliest mutually agreeable date," according to court documents.

Musk is represented by Alex Spiro, Jesse Bernstein, Jonathan Feder, Michael T. Lifrak, Joseph C. Sarles, Stephen A. Broome, Nathan Archibald, M. Alex Bergjans, Stephanie Kelemen and Emily Couture of Quinn Emanuel Urquhart & Sullivan LLP.

The shareholders are represented by Joseph W. Cotchett, Mark C. Molumphy, Tyson C. Redenbarger, Gia Jung and Caroline Yuen of Cotchett Pitre & McCarthy LLP, and Francis Bottini Jr., Albert Y. Chang and Aaron P. Arnzen of Bottini & Bottini Inc.

The case is Giuseppe Pampena et al. v. Elon Musk, case number 3:22-cv-05937, in the U.S. District Court for the Northern District of California.

--Additional reporting by Jessica Corso. Editing by Drashti Mehta.

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SolarWinds Sued For Docs On \$4.4B Take-Private Deal

By **Jeff Montgomery**

Law360 (April 17, 2025, 7:48 PM EDT) -- Citing company controller clout and alleged minority stockholder sidelining, a SolarWinds Corp. stock-owning trust has sued in Delaware's Court of Chancery for documents related to the company's \$4.4 billion, \$18.50-per-share take-public deal from Turn/River Capital LP.

The complaint, filed on behalf of stockholder Vladimir Gusinsky Rev. Trust, cites an intent to scrutinize the conduct of the company's directors, controlling stockholders Silver Lake Group LLC and Thoma Bravo LLC, and senior management in the run-up to **the deal**.

SolarWinds develops network management and information technology business software. The price per-share paid to stockholders amounted to a roughly 23% premium over the price at closing on Feb. 7, with the stock rising about 22% on the day of the closing to \$18.31.

"At bottom, considering the suspect price and the process leading up to the transaction, shareholders have legitimate concerns that SolarWinds' fiduciaries prioritized their own interests over those of the minority shareholders," Christopher J. Orrico of Bernstein Litowitz Berger & Grossmann LLP, counsel to the trust, said in the document demand letter.

Silver Lake and Thoma Bravo held about 65% of the company's shares ahead of the deal.

"Wall Street analyst Wedbush Securities provided a pre-transaction announcement valuation for the company above the transaction price at \$20.00 per share," the complaint said, adding that "the company's lack of significant outreach in 2024 to parties outside of Turn/River limited competitive bids."

The trust directly requested records on the sale on April 9, according to the suit, but has not received any documents.

SolarWinds had been exploring sale options since mid-2023, with an initial market check terminated in November of that year. A Silver Lake managing member on SolarWinds' board reported about seven months later, in late June 2024, that it was interested in acquiring part of the company.

By February, after Thoma Bravo reported it had no interest in buying the company, Turn/River offered \$18.25 per share predicated on approval by written consent and a "no shop" provision. The buyer made a final, \$18.50 offer on Feb. 7.

"Silver Lake and Thoma Bravo are receiving immediate liquidity for their long-term investment in the company without having to make multiple sales of stock, while minority stockholders are cashed out at a discount," at a price that "appears to undervalue the company," the document demand said.

Silver Lake, Thoma Bravo and Turn/River capital did not immediately respond to requests for comment on Thursday.

The suit cited an intent to examine potential breaches of fiduciary duty and related misconduct by members of SolarWinds' board of directors as well as Silver Lake, Thoma Bravo and the company's senior management.

Attorneys for the trust also pointed to a need to examine the independence of SolarWinds' board members regarding the deal, the value of SolarWinds' stock and "whether to bring a lawsuit or take

other appropriate action."

Vladimir Gusinsky Revocable Trust is represented by Daniel E. Meyer, Jeroen van Kwawegen, Christopher J. Orrico and Shiva Mohan of Bernstein Litowitz Berger & Grossmann LLP.

The case is Vladimir Gusinsky Revocable Trust v. SolarWinds Corporation, case number 2025-0409, in the Court of Chancery of the State of Delaware.

--Editing by Emily Kokoll.

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Assessing Market Manipulation Claims In Energy Markets

By **Maximilian Bredendiek, Greg Leonard and Manuel Vasconcelos** (April 17, 2025, 5:00 PM EDT)

Market manipulation claims are often prompted by specific observations, such as sudden price changes or price patterns that deviate from historical trends. In addition, regulators sometimes point to trading behavior that differs from prior patterns as a cause of the observed prices.[1]

For example, in a June 2024 \$55 million **settlement** between the commodity firm Trafigura and the U.S. Commodity Futures Trading Commission, the CFTC alleged, among other things, that Trafigura purchased fuel oil during specific time periods in amounts that were "much larger than it had ever previously purchased," that Trafigura's behavior "departed from its past conduct," and that its purchases "created artificially high" index prices "that were not reflective of ordinary forces of supply and demand" and which "benefitted Trafigura's futures and swaps positions that settled by reference to that" index." [2]

Generally, these types of claims often include the assumption that the observed deviations from historical trends and patterns were caused, at least to a substantial degree, by the alleged manipulation and not by other factors.

However, a particularly careful review of this assumption is called for in the context of trading in energy commodities — e.g., oil, gas or electricity. This is because the unique features of energy markets make them conducive to sudden price changes, breakdowns in existing pricing linkages and substantial changes in trading patterns, all of which regulators and civil plaintiffs may attribute to market manipulation.

As discussed in this article, a careful consideration of how unique market features may influence these observed patterns can be of critical importance when evaluating claims related to market manipulation and trading conduct in energy markets. The considerations discussed in this article are particularly important given recent macroeconomic developments and the possibly heightened level of regulatory attention being paid to trading conduct in these markets over the next few years.

First, changes in macroeconomic factors affecting energy commodities such as natural gas and electricity will likely have an impact on well-established historical price relationships.[3] For example, increased exports and a growing importance of U.S. natural gas for global energy supplies come together with an increase in trading by non-U.S. market participants, indicating a shift toward increasingly interconnected energy markets.[4]

Furthermore, the impact of AI is expected to lead to a substantial increase in demand for electricity to power data centers.[5] At the same time, the increased use of renewable energy can lead to changes in the price relationships between different energy commodities and products, as well as to electricity prices becoming more volatile in general.[6]

Second, while the recent reorganization of CFTC's enforcement functions and the creation of the



Maximilian Bredendiek



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Complex Fraud Task Force in February are expected to lead to a reduction in reporting and recordkeeping investigations, they will likely lead to a renewed interest in pursuing inquiries into complex trading patterns.

As CFTC acting Chairman Caroline D. Pham noted in a Feb. 4 press release announcing the creation of the task force, "[t]hese much-needed changes will maximize the CFTC's resources to bring more actions to pursue fraudsters and other bad actors, and not punish good citizens." The CFTC furthermore stated that "[t]he new structure will better leverage staff expertise to more efficiently utilize the CFTC's resources to prevent fraud, manipulation, and abuse and ensure market integrity."^[7]

Taken together, these recent developments show that responding to market manipulation inquiries necessitates an informed understanding of how unique market features may influence these observed patterns of energy commodities, which is more critical now than ever.

Factors Important to Consider When Analyzing Trading in Energy Commodities

Inelasticity of Demand and Supply

The supply of energy commodities in different geographic locations can often be inelastic, i.e., it does not quickly adjust to new price levels. This is particularly evident in the short term, as it takes time to drill a new well or build a new power plant.

If supply cannot easily respond to price incentives, a sudden increase in demand may lead to significant price increases. Demand for most energy commodities is usually considered inelastic as well, as it takes large changes in prices to affect consumers' actions.^[8]

As a result, relatively small changes to supply or demand can have a large and sudden impact on commodity prices. For example, after one of the largest U.S. plants producing liquefied natural gas shut down following an explosion in 2022, local natural gas prices fell due to the reduced ability to export gas while international gas prices increased due to the reduced LNG supply.^[9]

While large and sudden price changes can lead to market manipulation investigations, it is important to consider the extent to which prices may have been affected by changes in supply or demand fundamentals, and the extent to which the impact of those changes is driven by price inelasticity. This assessment is particularly important in today's volatile climate, particularly as the U.S. becomes a more important supplier of gas and oil in international markets, and supply from other sources can rapidly change due to geopolitical tensions — e.g., the impact of the Russia-Ukraine war on crude oil prices or the March 24 **introduction** of U.S. tariffs on imports from countries that buy oil or gas from Venezuela.^[10]

Local Nature of Prices and Physical Limits to Arbitrage

The impact of supply-demand imbalances on commodity prices can be exacerbated by the fact that prices in many energy commodities reflect local factors. While prices in different geographical locations may move closer due to arbitrage — i.e., traders will buy in one location, transport the commodity to another location, and sell it there to profit from any price differential until both prices converge and the profit opportunity disappears — there are usually physical limits to this arbitrage and thus to its ability to bring local prices closer to each other.

For example, in the case of natural gas, price relationships between two areas generally depend on the existence and capacity of transportation infrastructure — e.g., pipelines or LNG carriers — and the cost of such transportation. If geographical areas are not physically connected, or if the transportation capacity is constrained, price relationships may be less robust.

As an illustration of the impact of physical constraints, natural gas prices in the West Texas Waha hub have been negative several times — i.e., sellers pay for someone to take the natural gas — due to, among other factors, increased supply from oil explorations in the Permian region and the limited pipeline capacity to transport natural gas into other locations.^[11] When these physical constraints changed as a new pipeline opened in October 2024, the prices at the Waha hub surged.^[12]

The local nature of prices for energy commodities and physical limits to arbitrage can make it hard to design a counterfactual price scenario when analyzing market manipulation claims. Sudden price changes and price divergences between geographical areas can occur for many reasons and may not necessarily indicate market manipulation.

Furthermore, arbitrage relationships, and thus links between prices in different locations, can change over time. For example, with the recent and ongoing increase in LNG export capacity in the U.S., it is possible that U.S. gas prices become less "local" and are more affected by prices in importing regions such as Western Europe and Asia.

The current trend toward increasingly interconnected energy markets also means that local demand and supply shocks could have knock-on effects on global prices.[13] Such changes can be important to understand as regulators often point to preexisting relationships between different prices — and a deviation from those relationships — as suggesting market manipulation.

Seasonality and Impact of Weather and Other Events

Prices can also depend on the time of the year, usually because demand is seasonal while supply is more stable. For example, demand for natural gas increases during the winter months due to an increase in heating, which is reflected both in prices — which typically rise during the winter months — and in storage levels, which are highest between the end of October and mid-November, and lowest at the end of winter.[14] These seasonal price patterns may differ across locations, which introduces seasonal variation in price differentials as well, i.e., the spreads between prices in different locations.

In addition to those well-established and expected seasonal price variations, weather events can lead to price spikes due to the inelasticity of demand and supply.

For example, during Winter Storm Uri in February 2021, natural gas prices in certain U.S. locations showed extreme spikes. The price at the OGT hub in Oklahoma reached an average of \$1,193/MMBtu on Feb. 17, while the spot price was around \$3/MMBtu during the first week of February.[15]

As another example, Winter Storm Elliott in December 2022 led to substantial power outages and spikes in electricity prices in the eastern U.S. The Federal Energy Regulatory Commission opened investigations into potential market manipulation by market participants in relation to both weather events.[16]

Thus, the impact of seasonality and weather events on prices and price differentials is an important factor to consider when analyzing market manipulation claims, and understanding it may require careful and rigorous analyses beyond merely comparing to historical prices.

Moreover, extreme weather events can exacerbate energy market volatility. In 2024, intense heat waves contributed to record global power demand, primarily due to increased cooling needs.[17]

More generally, while prices of different energy commodities and products may be linked, those correlations can change over time. For example, natural gas can be used in gas-fired power plants to create electricity. Higher natural gas prices may thus lead to higher electricity prices.

However, this relationship may weaken or otherwise change as more renewable power becomes available over the next few years, increasing electricity supply, or as the relative cost of alternative inputs to create electricity — e.g., coal used by coal-powered plants — decreases. Thus, when analyzing market manipulation claims in a specific commodity, it can be important to consider prices for other related products and how the relation to those may have been affected by changes in the market.

Specific Features Relevant in the Context of Trading Energy Commodities

In addition to price changes or price patterns that deviate from historical trends or from existing expectations, regulators and civil plaintiffs sometimes point to specific trading conduct as indicative of market manipulation. It is therefore important to be aware of at least some features that are relevant to understanding trading in many energy commodities: the prevalence of price indices —

and, closely related, a product's liquidity — and the fragmented nature of trading.

As with the other factors discussed in this article, trading patterns and liquidity in energy products have been affected by broader macroeconomic and geopolitical developments. For example, trading in U.S. natural gas futures by Asian market participants increased dramatically over the past year, as the increase in LNG export capacity makes U.S. gas prices more relevant for international buyers. [18]

Price Indices and Liquidity

Market participants frequently rely on price indices. For example, in 2023, 86% of natural gas transactions reported to FERC via Form 552 submissions were index-priced, suggesting that market participants place trust in those indices.[19]

Price indices for energy commodities are often based on trades that happen during a specific time window for a given instrument or geographical location, and can be beneficial by allowing for increased standardization and more price transparency, especially for commodities for which trading is dispersed and infrequent or happens in small quantities.[20] However, regulators may be concerned that indices introduce incentives for market manipulation, particularly if the index is referenced in derivative markets that are larger than the underlying physical trading that is used to set the index price.

While price manipulation can be a potential concern, it is also important to understand why market participants may trade during the time windows when index prices are set. For instance, it can be a particularly liquid time of the day, and trading closer to the level at which the index is set may be beneficial from a risk-management perspective.

In general, trading in some energy commodities is characterized by limited liquidity, which can be concentrated over short trading windows. Traders may therefore strategically decide when to trade, especially if they intend to buy or sell a large position. Due to low liquidity in general, their trades may constitute a large share of the available volume.

Fragmented Trading

Energy products, both physical commodities as well as financial derivatives, may be traded on a centralized exchange, such as the Intercontinental Exchange. However, the same products may also be traded via brokers, and counterparties can trade with each other directly.[21] A trader may strategically decide, based on risk or relationship considerations, where and with whom to trade.

Therefore, when analyzing market manipulation claims, it can be helpful to account for factors other than price when assessing a trader's decisions. Furthermore, it may be challenging to identify the total trading interest and volume for certain commodities due to the lack of centralization and transparency.

Conclusion

The factors highlighted above emphasize the necessity of adopting a holistic view when evaluating allegations of market manipulation in today's energy markets. Recent changes at the CFTC may foreshadow heightened scrutiny of trading practices, particularly amid ongoing substantial economic and geopolitical changes affecting energy commodities.

Observations that regulators or civil plaintiffs often interpret as indicative of manipulation, such as sudden price spikes, disrupted relationships among energy prices or certain trading behaviors, need to be assessed in the context of these unique and contemporaneous market factors. For those responding to market manipulation inquiries, an in-depth understanding of these issues, assisted by a careful analysis of the data, is more critical now than ever.

Maximilian Bredendiek is a senior manager, Greg Leonard is a senior vice president, and Manuel Vasconcelos is a vice president at Cornerstone Research.

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[1] Regulators may further consider the holdings of market participants or other private information when analyzing indications of manipulative intent.

[2] In the Matter of: Trafigura Trading LLC, Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions, CFTC Docket No. 24-08, June 17, 2024.

[3] See, e.g., "U.S. LNG exports soar in December, lifting full-year growth by 4.5%," Reuters, January 2, 2025, <https://www.reuters.com/business/energy/us-lng-exports-soar-december-lifting-full-year-growth-by-45-2025-01-02/>; "The United States exported a record volume of natural gas in 2023," U.S. Energy Information Administration, April 15, 2024, <https://www.eia.gov/todayinenergy/detail.php?id=61823>; "DOE Releases New Report Evaluating Increase in Electricity Demand from Data Centers," U.S. Department of Energy, December 20, 2024, <https://www.energy.gov/articles/doe-releases-new-report-evaluating-increase-electricity-demand-data-centers>; "Solar and storage accounted for 84% of new US power added in 2024, report says," Reuters, March 11, 2025, <https://www.reuters.com/business/energy/solar-accounted-84-new-us-power-added-2024-report-says-2025-03-11/>.

[4] See, e.g., "Traders in Asia Are Piling Into the US Natural Gas Market," Bloomberg, March 26, 2025, <https://www.bloomberg.com/news/articles/2025-03-26/traders-in-asia-are-piling-into-the-us-natural-gas-market>; "The globalization of natural gas gains momentum," ICE, March 2025, <https://www.ice.com/insights/energy/the-globalization-of-natural-gas-gains-momentum>.

[5] See, e.g., "AI Boom Reshapes Power Landscape as Data Centers Drive Historic Demand Growth," Power Magazine, March 3, 2025, <https://www.powermag.com/ai-boom-reshapes-power-landscape-as-data-centers-drive-historic-demand-growth/>.

[6] See, e.g., "New solar plants expected to support most U.S. electric generation growth," U.S. Energy Information Association, January 24, 2025, <https://www.eia.gov/todayinenergy/detail.php?id=64364>; "Why Power Prices Can Go Negative and What It Means," Bloomberg, February 17, 2025, <https://www.bloomberg.com/news/articles/2025-02-17/why-power-prices-go-negative-wind-solar-and-energy-demand>.

[7] "CFTC Division of Enforcement to Refocus on Fraud and Helping Victims, Stop Regulation by Enforcement," CFTC Press Release Number 9044-25, February 4, 2025, <https://www.cftc.gov/PressRoom/PressReleases/9044-25>.

[8] Academic literature confirms the low elasticity of demand and supply for energy commodities. For example, Kilian (2022) finds that the one-month oil supply elasticity is low, which implies that oil demand shocks are the dominant driver of the price of oil in the U.S. and globally. See Lutz Kilian, "Understanding the Estimation of Oil Demand and Oil Supply Elasticities," Energy Economics 107 (2022).

[9] See, e.g., "Freeport LNG Plant Blast Adds to Strain on Global Supplies," Reuters, June 9, 2022, <https://www.reuters.com/business/energy/explosion-hits-freeport-lng-plant-us-natgas-prices-plunge-2022-06-08/>. The degree to which demand and supply can adjust depends on a variety of factors. For example, storage facilities for crude oil or natural gas can be filled when production exceeds consumption and can then be drawn down when demand increases or supply falls (e.g., during cold winter months).

[10] See, e.g., "Oil prices mixed as Russia-Ukraine truce offsets Venezuela supply worries," Reuters, March 25, 2025, <https://www.reuters.com/business/energy/oil-prices-little-changed-investors-weigh-impact-trump-tariffs-2025-03-25/>.

[11] "Negative Permian Gas Prices Set Record Stretch as Matterhorn Startup Looms," S&P Global Commodity Insights, August 21, 2024, <https://www.spglobal.com/commodityinsights/en/market->

insights/latest-news/natural-gas/082124-negative-permian-gas-prices-set-record-stretch-as-matterhorn-startup-looms; There are other historical instances in which energy commodity prices became negative, including prices for electricity and oil. See e.g., Joachim Seel et al., "Plentiful Electricity Turns Wholesale Prices Negative," *Advances in Applied Energy* 4, November 2021, p. 100073; "Crude Oil Futures Prices Turn Negative," Congressional Research Service, IN11354, April 22, 2020, <https://www.congress.gov/crs-product/IN11354>.

[12] "Matterhorn Pipeline Ramps Up Natural Gas Flow, Lifts Waha Prices," *Pipeline & Gas Journal*, October 7, 2024, <https://pgjonline.com/news/2024/october/matterhorn-pipeline-ramps-up-natural-gas-flow-lifts-waha-prices>.

[13] "The globalization of natural gas gains momentum," ICE, March 2025, <https://www.ice.com/insights/energy/the-globalization-of-natural-gas-gains-momentum>.

[14] "Introduction to Natural Gas Seasonality," CME Group, <https://www.cmegroup.com/education/courses/introduction-to-natural-gas/introduction-to-natural-gas-seasonality.html>.

[15] "Cold weather brings near record-high natural gas spot prices," U.S. Energy Information Association, March 5, 2021, <https://www.eia.gov/todayinenergy/detail.php?id=47016>.

[16] 2023 Report on Enforcement, Office of Enforcement, FERC, Docket No. AD07-13-017, November 16, 2023, pp. 42, 79.

[17] Global Energy Review 2025, International Energy Agency, March 2025.

[18] "Traders in Asia Are Piling Into the US Natural Gas Market," Bloomberg, March 26, 2025, <https://www.bloomberg.com/news/articles/2025-03-26/traders-in-asia-are-piling-into-the-us-natural-gas-market>.

[19] See "Characteristics of U.S. Natural Gas Transactions – Insights from FERC Form 552 Submissions (2024)," Cornerstone Research. <https://www.cornerstone.com/wp-content/uploads/2024/12/Characteristics-of-US-Natural-Gas-Transactions-July-2024.pdf>.

[20] For example, S&P Global Commodity Insights' Platts (Platts) publishes daily index prices for North American natural gas markets, which are calculated as the volume-weighted average price of all fixed-price and basis (i.e., gas that is priced in relation to the final settlement price of the Henry Hub Natural Gas futures contract for the same delivery month) trades that either have been reported to Platts or that happened on the ICE exchange for locations with robust trading activity. In less liquid or highly volatile markets, or if there have been no reported trades, Platts may publish a price assessment, taking into account other market information (e.g., historical daily prices, relationships between different local markets, and physical bids and offers). See "Methodology and Specifications Guide – US and Canada Natural Gas," S&P Global Commodity Insights Platts, November 2024.

[21] Note that this is also a factor in some financial markets, such as the market for corporate bonds, where bonds can be listed on exchanges but are mostly traded directly between market participants (over-the-counter).



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Apple Slams Claim Amber Alert On AirPods Hurt Boy's Hearing

By **Bonnie Eslinger**

Law360 (April 17, 2025, 11:08 PM EDT) -- Apple urged a California federal judge Thursday to toss claims that a set of AirPods Pro earbuds was defective, causing an Amber alert to damage a 12-year-old boy's hearing, saying there's no evidence the notification could have caused the injury and the family's expert didn't rule out COVID-19 as the cause.

A lawyer for the tech giant argued for summary judgment, telling the court that the case presents a straightforward scientific question about the decibel levels of sound a person can be exposed to without suffering hearing loss and that can be resolved by the court without going to trial.

"You cannot, in the face of that overwhelming, unanimous scientific opinion, reach a contrary opinion to that," said the lawyer for Apple, Stephen Copenhaver of ArentFox Schiff LLP.

U.S. District Judge Jacqueline Scott Corley said at the start of the San Francisco hearing that doctors agree that the most common cause of sudden hearing loss in adolescents is a virus, noting that even the causation expert for the boy's family acknowledged that.

A lawyer for the family, Jeremy Newell of Paranjpe Mahadass Ruemke LLP, said that's one potential cause.

Judge Corley pointed out that the causation expert, ear surgeon Yoav Hahn, had ruled out a virus because in May 2020, the boy had not tested positive for the coronavirus or had any symptoms.

"So what literature or science, because he's not an infectious disease doctor, was he relying on for his opinion that if you don't have any of those symptoms, you can't have COVID?" the judge asked.

Newell said the ear surgeon did a differential diagnosis, ruling out what could be causing the hearing loss based on the patient's medical history. Apple had not produced evidence of symptoms related to the coronavirus, the lawyer added.

The judge said that sometimes there weren't signs of the virus.

"When we were all testing regularly, we would have no symptoms," she said. "We would test and then couldn't do whatever it was we were going to do."

Newell said the boy didn't have hearing loss before the May 2020 incident.

"The minor was exposed to an Amber Alert and immediately had symptoms of hearing loss," the family's lawyer said. "This isn't a situation where he went to the doctor and reported it six months later."

Hahn's opinion is based only on that timeline, the judge said.

"It's not based on anything else, because there are zero studies that have ever shown a level of 113 [decibels] for less than 10 seconds can cause hearing loss" the judge said.

Two days later, the boy's pediatrician confirmed the hearing loss, as did an otolaryngologist and neurotologist days later, Newell told the court.

Copenhaver told the court that the family hasn't even show that the product is capable of causing the claimed injuries. Determining general causation is essential, he said.

"You cannot, as a matter of law, as a matter of science, come to a reliable scientific or a specific causation opinion, absent a predicate general causation opinion," Copenhaver argued. "And that's where plaintiffs' claims fail."

The scientific data and research on the cause of induced hearing loss shows that an exposure of at least 140 decibels is required to cause any degree of acute hearing loss, the Apple lawyer told the court.

Newell argued that Apple didn't properly evaluate the effect an Amber Alert signal would have on users of the AirPods Pro, including evaluating the sound pressure of the notification.

"Apple never tested what happens when there's an Amber Alert, what is the decibel level reached," the lawyer for the family said, later adding, "Apple's entire, entire case is, 'Oh, this was impossible.'"

The lawyer for the family pointed to the Ninth Circuit's 2003 decision in [Clausen v. M/V New Carrisa](#) , which he said found that a differential diagnosis only needs to consider those causes capable of causing a patient's symptoms.

Apple can fix the defect in its AirPods by employing an "output limiter" that would reduce the amplification of the Amber Alert played through the earbuds, Newell told the court

Judge Corley did not rule at the end of Thursday's hearing, but took the matter under submission.

In its summary judgment motion, Apple told the court that the AirPods Pro do not produce sound levels sufficient to cause acute noise-induced hearing loss.

In its written response, the family said the case has questions of material facts and disputes between experts that should be left for the jury decide.

The family's lawsuit, filed in May 2022, claims their son was using his AirPods to watch a movie on Netflix on his iPhone in 2020 at a low volume when an Amber Alert sounded off. The notification damaged his cochlea, which caused tinnitus, nausea and ultimately permanent hearing loss in his right ear that requires him to wear a hearing aid from now on, according to the suit.

The AirPods are defective because they do not automatically lower the volume to safe levels when a loud and unexpected alert goes off, the family says.

In October of that year, Judge Corley **tossed the suit's claims** of fraud and negligence, The claims of gross negligence lodged by parents Carlos Gordoia and Ariani Reyes failed because they relied on comments on the company's website, which do not assert that the alleged defect caused the same noise blast that "tore apart" their son's ear.

The judge allowed the parents the opportunity to file an amended complaint. The operative complaint, filed in March 2024, lists Reyes as the sole plaintiff, noting that Gordoia passed away in October 2023 with a will naming Reyes as executrix of his estate. The child is identified in the litigation by his initials, B.G.

The family is represented by Grigory Rchtouni of Callahan & Blaine APLC and Tej Paranjpe and Jeremy Newell of Paranjpe Mahadass Ruemke LLP.

Apple is represented by Thomas M. Crispi, Sara T. Schneider and Stephen Copenhaver of ArentFox Schiff LLP.

The case is Gordoia et al. v. Apple Inc. et al., case number 3:22-cv-02900, in the U.S. District Court for the Northern District of California.

--Additional reporting by Mike Curley and Jonathan Capriel. Editing by Kelly Duncan.



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Bard Plant's Emission Controls Weren't Up To Snuff, Jury Told

By **Cara Salvatore**

Law360 (April 17, 2025, 10:24 PM EDT) -- A Georgia state jury heard Thursday that a C.R. Bard medical equipment sterilization plant carelessly emitted ethylene oxide by going years without pollution controls, and later failing to diligently use and maintain the controls it did eventually install.

Environmental engineer Ron Sahu took the stand as an expert witness in the trial by non-Hodgkin lymphoma survivor Gary Walker, which began Tuesday, and told the jury the Covington, Georgia, sterilization plant's emissions handling was not what it should have been. Sahu set the stage by saying the standard of care for factories was clear by at least 1951, when an air pollution abatement manual put out by the Manufacturing Chemists Association instructed members: "The company must live right and act in good faith."

Sahu said Bard's Covington plant did not live up to this standard.

"When they had permits — and they didn't have permits throughout the whole time of interest — when they had permits, I've concluded that they were not in compliance, that they violated their requirements in the permits and the regulations that applied at times," Sahu said.

But he added, "Responsible care goes beyond permits ... I have a driver's license that lets me drive, but that doesn't automatically make me a safe driver."

Sahu then told the Gwinnett County State Court jury that while less than 1 pound of ethylene oxide per cycle is needed to sterilize multiple pallets of medical equipment in a large chamber, over 100 pounds are used per cycle to dramatically speed things up. All that gas has to go somewhere when the up-to-10-hour sterilizing cycle is done, he said.

He said there were problems at both the "old" Covington plant and the "new" addition built in the '90s. "For the longest time in the [old] facility they didn't have any abatement, so all that was going straight out into the air," Sahu said.

That was the case from 1968 to 1990, he said. "They did not meet that [1951] standard of care. Then we have evidence in that time period that when the Georgia [regulators'] safe levels came out, they could not have complied with them."

That's because even after the installation of a scrubber in 1990, which uses acidic water to trap ethylene oxide gas and turn it into ethylene glycol, there were what's called "fugitive emissions" — escapes from any unsealed crack or vent.

And in the 1990 to 1997 period, the scrubber had issues working properly, he said.

"The obligation to maintain air pollution equipment in good order, that's just a requirement of almost all air permits in this country ... If you are going to install an abatement, you have to stay on top of it," Sahu said.

Bard and parent company Becton Dickinson and Co. **told the jury** in opening statements Tuesday that the plant and company have always been good corporate citizens.

Their lawyer, Eric Rumanek, also told the jury that the U.S. Food and Drug Administration has

called ethylene oxide, or EtO, "critical to the U.S. healthcare system" and said over 50% of medical products are sterilized with this method. There are background environmental levels of EtO all around in communities, he said.

The Covington plant "had safety committee meetings, they had maintenance schedules, they had cycle optimization, they had surveillance, they monitored employees," he said. "Did Bard show reasonable care? Overwhelmingly, yes, they did."

Rumanek also suggested that the company over the years kept up with progressive developments in pollution mitigation. "It wasn't until 1998 that the EPA regulations required sterilization of vents. It wasn't until 2000 that they required aeration controls," he told the jury.

The case concerns Gary Walker, a now-retired truck driver whose lawyers told the jury in openings he used to make pickups two to three times per week at the plant and that his non-Hodgkin lymphoma is a result of the plant's failure to take adequate measures to protect the community from a widely recognized carcinogen.

By the time Walker retired in 1999, he was living about a mile and a half from the plant, so his exposure continued after his job ended, the jury heard. Walker had 10 rounds of chemo and a stem-cell transplant after being diagnosed in June 2017, at age 68, and is now in remission, his lawyer said.

Walker is represented by Buck Daniel of Rueb Stoller Daniel.

Bard is represented by Eric Rumanek of Troutman Pepper Locke LLP.

The case is Walker v. Becton Dickinson et al., case number 21-C-08201-S1, in the State Court of Georgia for Gwinnett County.

--Editing by Linda Voorhis.

For more of this trial, see Courtroom View Network.



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Firms Seek Fee Relief Over 'Grossly Unfair' Seresto MDL Snub

By **Jonathan Capriel**

Law360 (April 17, 2025, 6:57 PM EDT) -- Two New Jersey law firms say they were cut out of their fair share of \$4.5 million in attorney fees, awarded as part of a \$15 million settlement they helped secure against Bayer and others in a flea collar multidistrict litigation, asking an Illinois federal court to order lead counsel to open their wallets and share the reward.

All together, law firms Nagel Rice LLP and Poulos LoPiccolo PC put in nearly \$200,000 worth of work on this case, but lead counsel Milberg Coleman Bryson Phillips Grossman PLLC, Williams Dirks Dameron LLC and Reese LLP offered them less than \$20,000 in compensation, according to filings made by the two firms on Tuesday.

Those firms, who control the \$4.59 million in attorney fees, refuse to count any legal work accomplished by other lawyers before their appointment as lead counsel. That includes the hours Nagel Rice and Poulos LoPiccolo spent getting the collection of class actions consolidated into an MDL, the motion said.

"It is grossly unfair, and a stark abuse of discretion, for lead counsel to retain approximately \$4.5 million in fees and costs and distribute zero to the firms that were instrumental in filing the MDL engaging our expert, and obtaining the valuable relief that we did," the two firms said.

Nagel Rice and Poulos LoPiccolo asked the court to order the lead counsel to pay them for work before consolidation of the class actions. The motion also said Poulos LoPiccolo is owed for all work it performed at the specific request of the lead counsel.

Rachel Soffin of Milberg Coleman said in a statement to Law360 on Thursday that all firms were in fact treated equally, in accordance with the fourth case management order issued by U.S. District Judge John Robert Blakey, who presided over the MDL.

"No lawyers (including anyone on leadership) were compensated for time performed prior to leadership appointment," Soffin said in a statement co-signed by all lead counsel firms. "We are preparing a response that will refute the assertions in their motion. We stand by the hard work conducted by court appointed counsel over several years to achieve the significant results of the settlement."

The sprawling MDL, which lasted nearly four years, came to an end in January when Judge Blakey approved the \$15 million settlement between the manufacturers of the Seresto flea and tick collars, including Bayer Healthcare LLC and Elanco Animal Health Inc., and a class of consumers who claimed the product injured and in some cases killed their pets.

The deal included \$4.59 million in attorney fees. Judge Blakey's order granting final approval gave lead counsel firms authority to distribute fee awards to the other class counsel.

After the settlement was negotiated but before Judge Blakey's final approval, Bruce Nagel of Nagel Rice explicitly asked Michael Reese of Reese LLP if all class counsel firms would be treated equally in fee distribution, according to Tuesday's motion. Reese told him they would be.

What Reese did not tell Nagel was that they would not consider work done before their firms were appointed lead counsel, the motion said.

This doesn't sit well with Nagel Rice and Poulos LoPiccolo, because they "were solely responsible for filing and arguing the MDL application which successfully consolidated over 20 cases in this district," they said. "For this unique work product which greatly benefited the class and greatly fomented settlement, the firms received nothing."

The firms said that at leadership's request they did work "including reviewing documents produced by defendants and preparing interrogatories and other responsive discovery," all of which is not being compensated.

Nagel Rice said it hired and engaged an expert who added context to the claims and how to approach the litigation. The firm was reimbursed for getting the expert, \$5,000, but paid not for the hours spent doing this.

Poulos LoPiccolo also said it isn't being compensated for discovery work it did after lead counsel was appointed because the firm filed compensation requests late.

Nagel Rice said that in total it is owed about \$135,000 for lodestar expenses and \$7,200 for other costs. Poulos LoPiccolo said its billable hours are about \$50,000 and its other costs are about \$1,200.

They also claim that lead counsel left all other firms in the dark when it came to how the millions in attorney fees were shared, despite repeated requests to be transparent.

The class is represented by Michael R. Reese of Reese LLP, Rachel Soffin of Milberg Coleman Bryson Phillips Grossman PLLC and Michael A. Williams of Williams Dirks Dameron LLC.

Lead plaintiff Laura Revolinsky is represented by Bruce H. Nagel of Nagel Rice LLP and Joseph LoPiccolo of Poulos LoPiccolo PC.

The defendants are represented by John Mandler and Andrew Campbell of Faegre Drinker Biddle & Reath LLP.

The case is Seresto Flea and Tick Collar Marketing, Sales Practices and Products Liability Litigation, MDL number 3009, in the U.S. District Court for the Northern District of Illinois.

--Editing by Brian Baresch.



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Ford Says Free Repairs Doom Explorer Axle Bolt Class Action

By Carolyn Muyskens

Law360 (April 17, 2025, 5:03 PM EDT) -- Ford has asked a federal judge to dismiss a proposed class's claims that the automaker sold Explorers designed with a rear axle bolt that's prone to cracking, saying vehicle owners aren't out any money because they can get damaged bolts replaced free of charge.

Of the 12 Explorer owners who sued in Michigan federal court, three have taken advantage of free in-warranty repairs to replace broken bolts, Ford Motor Co. said in a Wednesday **motion**, and others haven't experienced issues with the SUV.

Because Ford has offered to remedy the potential bolt fractures through voluntary recalls, the vehicle owners can't reasonably claim that their vehicles are unfit to drive or less valuable than the purchase price, the automaker said, asking the court to dismiss the class action in its entirety.

The vehicle owners filed the proposed class action in December, claiming that certain 2020-present models of the Ford Explorer were defectively designed with one rear axle mounting bolt instead of two. The drivers said the bolt can crack under stress, potentially causing the SUV's rear drive shaft assembly to detach and the vehicle to lose power while in motion.

Ford, in its motion, said most of the dozen plaintiffs have not experienced any problems with the bolt, and the three plaintiffs who have — Washington plaintiffs John Collier and Krysta Renfro and Alabama plaintiff Alex Samuels — received free repairs under a new vehicle limited warranty.

Additionally, Ford said all vehicle owners can receive a software upgrade and a free repair of any cracked bolt under a pair of recalls Ford initiated in 2022 and 2023.

The 2022 recall instructs dealers to update the Explorers' software to automatically engage the electronic parking brake when the vehicle is put into park.

Since October 2023, Ford has additionally offered to replace subframe bushing and any broken rear axle bolt free of charge as a supplementary recall, according to Ford's motion.

"Only some plaintiffs have taken advantage of the remedies under the first recall, and none say whether they have participated in the second recall," Ford said.

While the drivers have claimed the recalls are not effective because the one-bolt design is the problem, Ford called those allegations faulty because they are not supported by any "facts showing that the plaintiff's vehicle or other vehicles experienced the defect or safety issue following the recall."

"Put simply, plaintiffs here have not plausibly alleged that the NHTSA-supervised recall is inadequate, only that they personally think a different approach should be taken," Ford said in the motion.

The automaker offered up a variety of other reasons for tossing the complaint, including that the plaintiffs' fraud claims are too vague and generic.

Ford said the Explorer owners have offered up only "boilerplate" allegations about Ford's knowledge that the bolts could fail, vaguely asserting that Ford would have discovered the issue in "testing"

before putting the vehicles on the street and that Ford failed to disclose the safety risk associated with the single bolt design. The allegations fall short of the specifics required in fraud claims, the automaker said.

The plaintiffs seek to represent a nationwide class and several state subclasses of Explorer owners.

Collier and Renfro were the two named plaintiffs in a **similar proposed class action** in Washington federal court. They **voluntarily dismissed** that suit and added their names to the Michigan complaint in March.

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

The drivers are represented by E. Powell Miller, Dennis Lienhardt and Mitchell J. Kendrick of The Miller Law Firm PC, Cody R. Padgett and Nathan N. Kiyam of Capstone Law APC, Russell D. Paul, Amey J. Park and Natalie Lesser of Berger Montague PC, Stephen R. Bassier and Samuel M. Ward of Barrack Rodos & Bacine, Jonathan D. Selbin, Jason L. Lichtman and Muriel Kenfield-Kelleher of Lieff Cabraser Heimann & Bernstein LLP and Ketan A. Patel of Corpus Law Patel LLC.

Ford Motor Co. is represented by Stephanie A. Douglas and Susan M. McKeever of Bush Seyferth PLLC and Amir Nassihi of Shook Hardy & Bacon LLP.

The case is Samuels et al. v. Ford Motor Company, case number 2:24-cv-13332, in the U.S. District Court for the Eastern District of Michigan.

--Additional reporting by Greg Lamm. Editing by Kelly Duncan.

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Tracking The Evolution In Litigation Finance

By **Robert Wilkins** (April 17, 2025, 6:59 PM EDT)

In the U.S., litigation finance is still a young business. Even so, it has evolved substantially since its inception, with important lessons for the plaintiffs bar, the defense bar and for the financiers that continue to change their underwriting methods, analytical models and financial offerings.

Roughly 10 years ago, funders in the U.S. began offering nonrecourse financing for plaintiffs' personal injury contingency fee cases. The business model, from a litigation perspective, was revolutionary.

Specifically, funders sought to capitalize on the dearth of credit facilities available to plaintiff firms while also capitalizing on the difference between perceived risk and actual risk in plaintiffs' contingency fee litigation.



Robert Wilkins

Prior to the advent of litigation finance, most plaintiffs firms had few financial options; these were mainly limited to a line of credit from a bank backed by personal guaranties from the firm's owners. The firm would draw down on the line of credit as needed for firm and case expenses.

If the firm lost a case at summary judgment, trial or on appeal, that firm would nonetheless have to repay the case expenditures, along with accrued interest, or risk personal exposure. This traditional model created a large perceived risk, as firms spent tens or even hundreds of thousands of dollars on case expenses, while facing the specter of losing the case and having to repay out of pocket.

The reality, however, is that a vast majority of cases settle. And, because a case rarely settles for less than the expenses, the actual risk is comparatively small.

Litigation funders entered the market to remove the law firm's — and individual lawyers' personal — risk entirely, replacing it with loans secured by individual cases, and with repayment solely conditioned on the success of the funded case.

In exchange, lenders charged hefty interest comparable to rates usually associated with credit card debt — 17% to 23%.

By carefully vetting the law firms and lawyers and the financed case or cases, the lender could further reduce the actual risk substantially. Specifically, after a careful underwriting process, they would — notionally — only issue loans on strong liability cases, prosecuted by exemplary trial lawyers, against solvent defendants.

As the lender grew its portfolio of carefully underwritten loans, the risk would, in theory, decrease to almost nothing; all while supporting credit card interest rates on money loaned for a nonmarket correlated investment.[1]

Financing of this type was attractive to lawyers due to the elimination of financial risk along with the concomitant ability to take on more cases with risk limited to the lawyer's time. Moreover, because litigation finance was tied to a specific case's value, borrowers could obtain case-specific financing.

This removed the de facto cap on available funds created by a line of credit where, if a lawyer wanted to take on a potentially valuable case but had little available credit left on the firm's line, that lawyer would likely have to refer the case and miss out on a substantial portion of the fee

In short, lawyers were eager to take on the loans and lenders were equally eager to deploy funds and become a market leader in the space.

As the market grew, litigation finance companies looking to deploy ever greater amounts of funding expanded and modified their product offerings. To that end, funders started to loan against dockets of cases with funds untethered to a single case or specific case expenses.

Under this model, a firm could obtain loans — secured by a docket, or even several dockets, of cases — for advertising, case procurement or other business needs. But as lending products and existing loan profiles changed, funders sought additional security from their borrowers.

This included, in some circumstances, a reversion from nonrecourse to recourse loans, backed by personal guaranties. The move back to recourse lending, however, represented a substantial departure from the paradigm that originally made the loans attractive to borrowers and justified interest rates that were a multiple of what firms were previously charged on their, also recourse, conventional line of credit.

Regardless of the structure and security, a foundational problem is that litigation is inherently complex. Court decisions and fact developments over the life of a case, or docket, can make it extremely difficult, at inception, to accurately evaluate the likely outcome.

In addition, cases, including mass tort dockets, can have a long horizon before a result, good or bad, is certain. All the while, interest on underlying loans continues to accrue. And when loans include interest charges of 17% to 23%, that interest can quickly match or even exceed the loaned principal — just by way of example, a \$1 million loan at 23% simple interest, after four years, balloons to \$1.92 million, almost double the principal.

The certainty horizon can also be affected by unforeseeable external events. A recent example is the COVID-19 pandemic which, in 2020, shut down courthouses across the nation for roughly a year.

These built-in issues were made even worse as the defense bar grew increasingly knowledgeable about the financial products that were backing plaintiffs' cases. According to some plaintiffs' attorneys, defense firms who knew about underlying loans and their high interest rates — more than ever — employed tactics that tended to delay trial.

This additional delay caused the interest to grow exorbitantly, putting ever greater pressure on the borrowing firms as well as their lenders. Moreover, the limited risk profile of the original paradigm required knowledge, experience and — most of all — careful, painstaking diligence.

The rush to provide loans and innovative products may well have caused some lenders to compromise on these fronts which, along with the other factors mentioned herein, may have further increased the lending risk.

When debts were left unpaid, options were exhausted, and the debt was — or was allegedly — recourse, collection suits followed. As one example, in August 2023, litigation funder Virage SPV 1 LLC sued prominent Houston plaintiffs' attorney F. Kenneth Bailey Jr. and his law firm to try and collect on outstanding loans.

In July 2024, Virage filed a motion for summary judgment alleging that Bailey and his firm owe Virage "at least \$81,781,962.53 in principal and interest."^[2] Virage prevailed on its motion and, earlier this year filed a letter requesting a status conference with the court to "clarify the status of the case and issue the final order."

In May of last year, Virage sued another prominent Houston plaintiffs' firm, Francis Spagnoletti D/B/A Spagnoletti & Associates. Demonstrating the effect of the high interest rates over time, Virage's original petition alleges a total outstanding debt of approximately \$36.77 million against principal (issued in 2016) of \$15.7 million.^[3]

Similar collections cases by various funders can be found by searching the Harris County District Clerk's website and, one would imagine, through a search of other court filing systems across the country. It is worth noting, however, that these searches yield only the public filings. Where funders

have incorporated confidential arbitration provisions into their loan agreements, collection cases are outside of the public purview; meaning that the true number of such cases is likely unknowable.

It should be obvious that collection suits were not any reasonable party's goal when entering into these financial arrangements. To guard against this potentiality, lenders have evolved to become increasingly savvy and careful.

In addition, armed with knowledge of their own and other's successes and failures, lenders are more focused than ever on case analysis, diligence, and crafting products that will achieve a positive outcome for the lender, the law-firm borrower, and the client.

The product offerings have also evolved to become more sophisticated and tailored, at times resembling a venture capital model with the funder taking a multiple of the loaned amount rather than charging interest. As another evolution, many funders now target plaintiffs commercial cases and will offer a "blend" where lawyers can take a percentage of their typical hourly fee for cash flow during the pendency of the litigation with the firm also retaining a contingency interest in the outcome.

However, the attention to detail employed by lenders as they conduct their diligence can be equally taxing on the lawyer or borrower who must ensure that the offered terms will be workable, repayable — if recourse — and will generate an attractive return for both the law firm and the client. Most lawyers have a demanding docket to maintain and possess little time or the experience required for these more recent and complex funding models.

As a result, niche business practices have entered the market to address the added complexity. Specifically, entities such as Westfleet Advisors offer advisory and brokerage services for firms that are considering litigation finance.[4]

Such advisory groups, which also employ attorneys, endeavor to relieve a firm, or its lawyers, from having to learn and stay updated on the lending market and variety of available products.

These entities also offer analysis of whether funding is likely to be available, what the funding will look like, and whether the case — or dockets — can support funding. Depending on the analysis, these entities will then reach out to funders and facilitate the actual lending.

Even so, the litigation finance market remains immature. To this day, borrowers receive dramatically different term sheets on identical collateral; a plain indication that lenders are continuing to learn how to appropriately value cases and structure products that will achieve a return for all.

The market players also continue to innovate and offer new products.

For instance, Atlantic is now offering an insurance component that can secure the result for the firm as well as the funder.[5] This, candidly, seems like a natural progression. After all, few are better than insurance companies at analyzing risk and evaluating potential outcomes, and the horizon for such outcomes.

But the added complexity and required diligence — while valuable on multiple levels — complicates getting a deal done and, equally, can delay funding.

For plaintiffs firms that want financing, the good news is that the current market offers sophisticated players who stand ready to provide analysis and assist with obtaining beneficial products. However, to be attractive to lenders, plaintiffs firms must have a good handle on their cases.

Perhaps most important is that a firm has the best possible understanding of the horizon for a case or group of cases, such that interest charges, or other terms associated with the lending, do not overwhelm the value of the case collateral.

For the defense bar, litigation funding is a reality of modern legal practice. Put simply, there are now more mouths at the trough. As a result, it is equally important for the defense bar to keep apprised of these financial products and to know how they affect the viability of claims as well as the

settlement dynamics.

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[1] In other words, unlike most traditional loans or investments, whether financial markets rise or fall, litigation continues largely unaffected by market fluctuations.

[2] Cause No. 2023-51403; **Virage SPV 1 LLC vs. F. Kenneth Bailey Jr., P.C. & F. Kenneth Bailey Jr.**  ; In the 152nd Judicial District Court of Harris County, Texas. Virage's Motion for Summary Judgment further clarified that depending on the applicable date, the principal is either \$40,244,338.04 or \$40,238,553.89. The interest ranges from \$41,543,408.64 to \$53,768,353.19, for an outstanding total of between \$81,781,962.53 and \$94,012,691.23.

[3] Cause No. 2024-29875; Virage SPV 1 LLC v. Francis Spagnoletti d/b/a Spagnoletti & Associates d/b/a Spagnoletti & Co.; In the 152nd Judicial District Court of Harris County, Texas.

[4] <https://www.westfleetadvisors.com>.

[5] <https://www.atlanticgrp.com> In May of last year, Atlantic's Bob Koneck, Chris Le Neve Foster, and Richard Butters wrote a Law360 Article describing their business model. That article, titled Exploring An Alternative Model of Litigation Finance and can be found at: <https://www.law360.com/articles/1835872/exploring-an-alternative-model-of-litigation-finance>.

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