

Syngenta, Corteva must face Arkansas lawsuit over pesticide programs

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Mike Scarcella

February 20, 2025



A logo is seen at the headquarters of agricultural chemical maker Syngenta in Basel, Switzerland January 30, 2020. REUTERS/Arnd Wiegmann/File Photo Purchase Licensing Rights  , opens new tab

Feb 20 (Reuters) - Pesticide manufacturers Syngenta and Corteva must face a lawsuit from the state of Arkansas accusing them of suppressing competition for pesticide sales and keeping prices artificially high, a federal judge has ruled  , opens new tab.

U.S. District Judge Brian Miller in Little Rock, Arkansas, said the state can pursue its claims that loyalty programs run by Syngenta and Corteva that provide rebates for pesticide purchases violate federal and state antitrust and consumer-protection laws.

Arkansas' lawsuit claimed Syngenta and Corteva are paying pesticide distributors or retailers to restrict their purchase of generic crop-protection products that contain specific ingredients.

The lawsuit said distributors and retailers fear losing their loyalty payments and so have no incentive to sell more generics.

Syngenta and Corteva did not immediately respond to requests for comment. They have denied any wrongdoing.

In a statement, Arkansas Attorney General Tim Griffin, a Republican, said the state “has legitimate claims against the anticompetitive rebate programs” of Syngenta and Corteva and will seek to “hold companies accountable for practices that harm the market and ultimately consumers.”

Syngenta and Corteva in seeking dismissal of the state’s lawsuit said their rebate programs lowered prices and denied they are anticompetitive.

They also said the state should have been barred from bringing antitrust claims on behalf of consumers.

Miller said the state had sufficiently alleged Arkansas residents were paying higher prices for pesticide products based on the claimed anticompetitive conduct.

Syngenta and Corteva are fighting other lawsuits challenging their loyalty programs.

In January, U.S. District Judge Thomas Schroeder in the Winston-Salem federal court said the companies must face some antitrust claims lodged by farmers in California, Texas, Florida and other states.

Schroeder last year also said that a related U.S. Federal Trade Commission lawsuit, filed with a bipartisan group of U.S. states, could move forward.

The case is State of Arkansas v. Syngenta Crop Protection AG et al, U.S. District Court for the Eastern District of Arkansas, No. 4:22-cv-01287-BSM.

For Arkansas: Arkansas Attorney General Tim Griffin; Brian Reddick of Reddick Law; Stuart Davidson of Robbins Geller Rudman & Dowd; and W. Mark Lanier of The Lanier Law Firm

For Syngenta: David Toscano of Davis Polk & Wardwell

For Corteva: David Marriott of Cravath, Swaine & Moore

Read more:

Syngenta, Corteva must face part of farmers’ antitrust lawsuit over pesticide prices

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Syngenta, Corteva must face FTC lawsuit over pesticide 'loyalty programs

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- Regulatory Oversight

Jack Dorsey, Block Exes Accused of Poor Oversight on Square and Cash App, Lawsuit Claims

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Mason Lawlor

April 21, 2025

Jack Dorsey, co-founder of the financial technology provider Block Inc., and some of the company's executives were sued in a shareholder derivative lawsuit on April 17 in California federal court over alleged failures in compliance oversight to protect against money laundering, trafficking and other illicit conduct on its Square and Cash App platforms.

Takeaway: Recent litigation has targeted at digital, peer-to-peer payment systems for allegedly weak security against criminal activity. In January, Block paid regulators with state agencies and the Consumer Financial Protection Bureau a combined \$255 million in penalties to settle claims that Cash App contained deficiencies that left its users vulnerable to fraudulent activity.

Court: U.S. District Court for the Northern District of California

Case Type: Contracts, securities and exchanges

Industry: Banking and financial services, technology

Lawyers: The plaintiffs are represented by Laurence M. Rosen of The Rosen Law Firm in Los Angeles. Counsel has not yet entered an appearance for the defendants.

Law.com Radar

Liability Arguments: Plaintiff Xin Li is a shareholder of stock and accused several of its officers and members of its board of directors of failing to implement "basic due diligence" and "know-your-customer" (KYC) protocols. This deficiency allegedly made Block's Square and Cash App havens for money laundering, child sexual abuse, sex trafficking, drug trafficking, terrorism financing, contract killings and illicit payments to entities subject to economic sanctions.

According to Li's complaint on behalf of Block shareholders, Dorsey and Chief Operating Officer Amrita Ahuja signed certifications under the Sarbanes-Oxley Act of 2002, which were attached to an annual report on Form 10-K to the SEC. Since early 2020, Block attested through its SEC filings that it established a "compliance program," under which the defendants vetted their customers and payment transactions as part of risk management efforts. Block also claimed that they maintained an anti-money laundering program designed to prevent illicit activities on its digital platforms.

However, these representations were false and misleading, according to the lawsuit. In March 2023, Hindenburg Research published an article titled "Block: How Inflated User Metrics and 'Frictionless' Fraud Facilitation Enabled Insiders to Cash Out Over \$1 Billion." The exposé, which included interviews with dozens of former Block employees and partners, found the company practiced a "wild west" approach in regards to compliance controls. The company's invitation of illegal conduct like sex and drug trafficking, consumer scams, COVID-19 relief fraud, and contract killing payments on its platforms allegedly allowed it to disguise fraud and predatory behavior as "revolutionary technology" to investors and regulators.

A February 2024 NBC News article confirmed, through two whistleblowers, that Block had no procedures for establishing the identities of users, and revealed approved transactions with people under sanction by the U.S. Department of the Treasury's Office of Foreign Assets Control. The complaint asserted that Block's misrepresentations to shareholders occurred for more than four years, beginning in February 2020 and continuing until April 2024. Due to the misleading statements, shareholders were allegedly influenced to re-elect Dorsey and other executive officers to the board despite the wrongdoing happening behind the scenes.

Damages Arguments: The defendants also caused Block to repurchase the company's common stock at artificially inflated prices, according to the plaintiffs. Each member of the board of directors named in the suit faces a "likelihood of liability" in the action, Li claimed, because they caused or permitted Block to make the damaging statements and omissions about its oversight standards.

The suit accuses the defendants of violating Section 14(a), 10(b) and Rule 10b-5 of the Exchange Act, breach of fiduciary duties, unjust enrichment, and waste of corporate assets. The shareholders are seeking a judgment declaring that they can bring the derivative action on behalf of Block, as well as restitution and disgorgement of all profits obtained by the executives.

What the lawyers are saying: Rosen did not respond to The Recorder's request for comment. A spokesperson for Block did not return a request for comment.

Radar scan: Since March 3, Block or its executives have been named in seven lawsuits in California, New York, Florida and South Carolina courts, including two other shareholder derivative suits filed March 4 and March 25 by plaintiffs Donald Wallace and Anand Roy, respectively, in the Northern District of California, which also targeted its lack of oversight.

Caption: *Li v. Dorsey*

Date filed: April 17

Judge: Unassigned

Read the complaint here.

This complaint was first surfaced by Law.com Radar, ALM's source for immediate alerting on just-filed cases in state and federal courts. Law.com Radar now offers state court coverage nationwide. Sign up today and be among the first to know about new suits in your region, practice area or client sector.

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Trending

New Suit - Trademark

Moomin Characters, a Finnish entertainment company, filed a trademark infringement lawsuit on April 21 in Illinois Northern District Court over the alleged sale of counterfeit goods bearing the plaintiff's 'Moomin' marks. The complaint, filed by Hughes Socol Piers Resnick & Dym, pursues claims against unidentified online retailers. The case is 1:25-cv-04307, Moomin Characters Oy Ltd. v. The Individuals, Corporations, Limited Liability Companies, Partnerships, and Unincorporated Associations Identified on Schedule A Hereto.

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New Suit - Trademark

CamelBak Products filed a trademark infringement lawsuit on April 21 in Illinois Northern District Court over the alleged sale of counterfeit outdoor equipment and hydration products. The action, brought by Hughes Socol Piers Resnick & Dym, pursues claims against unidentified online retailers. The case is 1:25-cv-04310, Camelbak Products, LLC v. The Individuals, Corporations, Limited Liability Companies, Partnerships, and Unincorporated Associations Identified on Schedule A Hereto.

Shareholders say Block is enabling money laundering, sex trafficking, other crimes

DJ [dailyjournal.com/articles/384957-shareholders-say-block-is-enabling-money-laundering-sex-trafficking-other-crimes](https://www.dailyjournal.com/articles/384957-shareholders-say-block-is-enabling-money-laundering-sex-trafficking-other-crimes)

Block Inc., the fintech company behind Cash App, is facing a new securities lawsuit from shareholders who allege the platform became "a haven" for cybercriminals due to the company's failure to curb illicit activity -- including money laundering, sex trafficking, and terrorism financing.

The complaint, brought by a group of shareholders in San Francisco federal court on Thursday, claims the group of Block executives injured shareholders by failing to take the requisite steps to prevent these illicit activities from happening on their platform.

Some of the illicit activities Cash App allegedly allowed users to facilitate include: child sexual abuse, sex trafficking, drug trafficking, terrorism financing, contract killings, and illicit payments to entities and persons subject to economic sanctions.

The complaint -- filed by Laurence M. Rosen, founder of The Rosen Law Firm in Los Angeles -- centers on a March 2023 report from Hindenburg Research, a forensic financial firm, that accused the company of "willingly facilitating fraud against consumers and the government."

According to the shareholders, news of the report prompted the stock of the former \$44 billion fintech company to drop 15% in a single day in March 2023.

The fintech giant, founded by former Twitter Inc. founder Jack Dorsey, has been in the crosshairs of state and federal regulators over the same issue in recent years.

In January, Block agreed to an \$80 million settlement with the Federal Trade Commission, the State of California, and 47 other state financial regulatory entities for allegedly violating anti-money laundering regulations through its alleged failure to prevent these illegal activities from thriving on its platform.

Dorsey and Block's media relations office could not be reached for comment Friday. In a March 2023 news release, the company responded to claims the ignoring illicit activity to thrive on its platform.

"Hindenburg is known for these types of attacks, which are designed solely to allow short sellers to profit from a declined stock price. We have reviewed the full report in the context of our own data and believe it's designed to deceive and confuse investors," the company

wrote. "We are a highly regulated public company with regular disclosures, and are confident in our products, reporting, compliance programs, and controls. We will not be distracted by typical short seller tactics."

Rosen argued in the complaint that the company's regulatory trouble predates the Hindenburg report, citing allegedly false claims Block made to the SEC about its efforts to curb illegal activity on its platforms dating back to 2019.

"Block failed to implement even basic due diligence and know your customer protocols, effectively creating a haven for criminal and illicit activities on its platforms," Rosen wrote. "By failing to establish sufficiently rigorous obligations on new users, including allowing users to open accounts using fake identities, and by encouraging the use of bitcoin, the Individual Defendants allowed Square and Cash App to facilitate unlawful activities, including money laundering, child sexual abuse, sex trafficking, drug trafficking, terrorism financing, contract killings, and transactions in violation of economic sanctions; the Company allowed customers to withdraw funds even after the account had been flagged for potentially illegal activities."

Block is currently battling a separate securities class action over similar claims pending in the Northern District of California filed in January.

The plaintiffs in that case, purchasers of common stock between 2020 and 2024 are seeking to hold cash app liable for allegedly misleading the public about its "failure to course-correct, even after senior Block leadership was alerted to these deficiencies and despite numerous red flags, ultimately leading to multiple whistleblower complaints and probes and fines by regulators." *Gonsalves v. Block Inc. et al.*, 5:25-cv-00642 (N.D. Cal., filed Jan. 17, 2025).

The company and Dorsey, who is also a defendant in that lawsuit, disputed the claims in a case management filing but have yet to officially file an answer to the complaint.

#384957

This Week in Chancery Court: Iron Mountain and Clutter, Jenzabar

Iron Mountain Inc. will argue this week that the Delaware Chancery Court should dismiss a challenge to its buyout of storage and moving business Clutter Holdings Inc. Meanwhile, the state's top court will wade into a long-running dispute over the control of education technology firm Jenzabar Inc.

Here are the highlights from the courts' calendars:

Monday: Glean Tech Fund II LP v. McIntosh, Del. Ch., No. 2024-0032, oral arguments 4/21/25.

At issue: Two private equity funds sued Iron Mountain in January 2024 over its buyout of Clutter Holdings, a storage and moving business. The Glean Capital LLC affiliates claim Clutter's \$15 million sale amounted to just a fraction of its value. Clutter's senior leaders, Iron Mountain, and an Eastward Capital Partners LLC fund that allegedly foreclosed on its debt and sold Clutter to Iron Mountain now seek to have the amended complaint dismissed. The plaintiffs describe themselves as "stockholders who invested more than \$9 million in Clutter," and because the buyout was "a pre-arranged deal" set at "a sweetheart price," they say they "pieced together what happened from shards of information learned from participants and from snippets in the public domain," according to a brief.

Court action: Oral arguments on the motions to dismiss will be heard in Wilmington, Del.

Iron Mountain Hit With Lawsuit Over Storage Business Clutter (1)

Wednesday: Maginn v. Maginn, Del., No. 372,2024/430,2024, oral arguments 4/23/25.

At issue: Jenzabar's co-founders have been embroiled in several disputes in Delaware and other courts since beginning divorce proceedings in 2019. Ling Chai Maginn has appealed a Chancery Court ruling against her books-and-records demand related to her attempts to take over Jenzabar's board and oust her ex-husband from a leadership role at the company. Also at issue is a separate Chancery Court decision that acknowledged Chai may finally have a large enough stake to force out Robert Maginn Jr. but said she'd to take forward-looking actions at the stockholder and board level instead of rehashing her claims in another Delaware lawsuit.

Court action: The Delaware Supreme Court hears oral arguments in Dover, Del.

Jenzabar Ruling Leaves Bitter Co-Founder Stalemate in Place

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Churchill Mortgage Stock Plan Class Action Settles for \$850,000

Former employees of Tennessee mortgage lender Churchill Holdings Inc. negotiated an \$850,000 class settlement in a lawsuit claiming their employee stock ownership plan was forced to overpay for shares purchased from the company's chief executive.

The proposed deal, which would provide gross payments of about \$850 per class member, would resolve a certified class action centering on a 2020 transaction in which Churchill's ESOP paid more than \$74 million to purchase a 51% stake in the company—a price workers say was inflated based on faulty financial projections and valuations.

- The workers announced the agreement in a motion filed Thursday in the US District Court for the Middle District of Tennessee
- The case is assigned to Judge Waverly D. Crenshaw Jr., who previously allowed the workers to advance most claims against the company's chief executive, other board members, and Prudent Fiduciary Services LLC, which served as plan trustee

The workers are represented by Bailey & Glasser LLP, Izard Kindall & Raabe LLP, and Herzfeld Suetholz Gastel Leniski & Wall PLLC. The defendants are variously represented by Groom Law Group and McDermott Will & Emery LLP.

The case is *Arnold v. Paredes*, M.D. Tenn., No. 3:23-cv-00545, settlement motion 4/17/25 .

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Class Action

April 21, 2025, 6:40 AM PDT

SCOTUS Seeks Government Input on Home Depot 401(k) Burden (1)

- **Justices have long been interested in ERISA loss causation**
- **Question has driven circuit split, input from Labor Department**

The US Supreme Court asked the federal government on Monday to weigh in on a dispute between Home Depot Inc. and workers challenging the fees in their 401(k) plan.

The case asks the justices to resolve a circuit split over which party in an Employee Retirement Income Security Act lawsuit must prove that alleged losses to a retirement plan were caused by a plan fiduciary's breach of duty. The First, Fourth, Fifth, and Eighth circuits—with support from the Labor Department—have held that once an ERISA plaintiff has proven a breach of fiduciary duty and a related loss to the plan, the burden shifts to the fiduciary to prove that the loss wasn't caused by the breach. The Tenth and Eleventh circuits have rejected this burden-shifting rule.

The Supreme Court has long been interested in loss causation under ERISA and has invited the solicitor to address the issue multiple times. In both 2015 and 2019, the solicitor praised the employee-friendly approach but advised the court against taking up the issue.

The class action accuses Home Depot of mismanaging its 401(k) plan by offering poorly performing investment options and allowing online investment advisers to charge excessive fees. A federal judge awarded summary judgment to the retailer in 2022, saying that while it was "inconclusive" whether Home Depot fulfilled its fiduciary duties in monitoring the plan's fees and investment options, it was clear the workers didn't show the plan suffered losses stemming from any potential mismanagement.

The Eleventh Circuit affirmed, holding that plaintiffs bringing ERISA fiduciary breach claims have the burden of proving that the purported breach of duty caused the plan to suffer losses. The Home Depot workers failed to show that a hypothetical prudent fiduciary in the same position as the company would have made different choices with respect to either the plan's service providers or the challenged funds, the appeals court said.

The workers appealed to the Supreme Court, saying that ERISA must be interpreted through the lens of trust law, which supports the burden-shifting approach. Home Depot advised the justices to skip the case, saying the Eleventh Circuit handled this "relatively unimportant" issue correctly.

Latham & Watkins LLP and King & Spalding LLP represent Home Depot. Sanford Heisler Sharp McKnight LLP represents the workers.

The case is *Pizarro v. Home Depot, Inc.*, U.S., No. 24-620, invitation to file brief 4/21/25.

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

Companies Suing Over Mass Arbitration, Saying It's Unethical

 [law.com/nationallawjournal/2025/04/21/companies-suing-over-mass-arbitration-saying-its-unethical](https://www.law.com/nationallawjournal/2025/04/21/companies-suing-over-mass-arbitration-saying-its-unethical)

Amanda Bronstad

April 21, 2025

What You Need to Know

- The lawsuits, which target Keller Postman, Zimmerman Reed and Consovoy McCarthy, come as more plaintiffs firms are embracing mass arbitration.
- Judges have dismissed the lawsuits and, in some cases, cautioned lawyers to tame down the rhetoric.
- They allege ethical concerns, such as the ways in which plaintiffs firms use social media to find clients, and how their lawyers aren't communicating with their clients as required under professional codes of conduct.

As more plaintiffs firms have embraced mass arbitration, companies are fighting back with lawsuits that challenge both the validity of the claims and the ethics of the lawyers.

Streaming service Tubi, children's clothing retailer Janie and Jack and videogame maker Sega are among the companies suing plaintiffs' firms that filed thousands of arbitration claims against them. With millions of dollars in arbitration fees at stake, companies have targeted firms such as Chicago's Keller Postman, Zimmerman Reed and Consovoy McCarthy in Washington, D.C.

The lawsuits come as more plaintiffs firms have pursued mass arbitration. The cases raise an assortment of alleged ethical concerns, including the methods in which plaintiffs firms use social media to find clients, and how their lawyers fail to communicate with clients as required under professional codes of conduct. They point to claimants that do not exist, do not have injuries, were not customers, or did not know they even had an attorney.

"There is some collective frustration with it, with utilizing the mass arbitration platform to extract settlements under the threat of higher fees," Morrison & Foerster partner Krista deBoer told Law.com, "and folks are frustrated by the fact that a lot of these claims aren't valid, and they're being forced to settle claims that aren't valid."

Plaintiffs firms, she said, should do a better job of vetting their mass arbitration clients, most of whom have documentation since they signed up for a service or have a payment receipt or email.

“But, instead, they say, ‘by checking this box, or by typing your name in, you are verifying that you’re qualified for this claim,’ without requiring more of the claimant,” she said. “They’re trusting them to tell the truth and saying, ‘it’s not our fault they’re not telling the truth.’”

Warren Postman, of Chicago-based Keller Postman, while on a panel at Western Alliance Bank’s Class Action Law Forum earlier this year, acknowledged there are some abuses in the practice.

“There are firms out there that don’t do things the right way,” he said. But his firm consults with outside ethics counsel, he said, and, for the most part, the allegations of unethical behavior are a “tactical take” coming from the defense bar.

“In my view, it’s workable, and it’s done without abuse,” he said.

A ‘Multimillion-Dollar Shakedown’

The lawsuits follow the U.S. Chamber of Commerce Institute for Legal Reform’s 2023 report called “Mass Arbitration Shakedown: Coercing Unjustified Settlements,” which called on state bar associations to investigate potential ethics violations in mass arbitration.

This year, Sega filed a lawsuit in U.S. District Court for the Eastern District of Virginia against Consovoy McCarthy after the firm moved to compel arbitration in Los Angeles Superior Court on behalf of nearly 20,000 individuals. Sega, in court filings, called the motion a “multimillion-dollar shakedown based on an outdated loophole in the JAMS arbitration rules.”

“Petitioners have no intention to actually litigate their claims and instead have concocted a strategy to use JAMS’ filing fees—which are nearly \$40 million—to extract a quick settlement before any of their demands’ deficiencies can be adjudicated,” Sega attorney William Johnston, of Bird, Marella, Rhow, Lincenberg, Drooks & Nessim, in Los Angeles, wrote in the Los Angeles Superior Court case. “Many plaintiffs’ firms have adopted this same shakedown strategy in recent years.”

Using a “sensationalized social media campaign” that gathered information through a survey, he wrote, Consovoy McCarthy’s attorneys failed to vet the claims, some of which had names like “Poop Smear” and “See Me.” Only 287 claimants had any record of playing Sega’s games, such as Sonic the Hedgehog, he noted.

Consovoy McCarthy partner Bryan Weir, in filings in the case, referred to the accusations as “overheated rhetoric.”

“Distilled to their essence, Sega’s threats to JAMS and tone in this court are really about something else: Sega thinks that mass arbitrations should be categorically prohibited,” he wrote.

After losing the arbitration motion, Sega, now on the hook for \$39 million in fees, did not just sue Consovoy McCarthy. It also sued JAMS on Jan. 27 in Los Angeles Superior Court. JAMS moved to dismiss that case this month.

Weir declined to comment. But in an April 11 motion to dismiss, he called Sega's suit "beyond frivolous."

"In other words, Sega has sued a law firm for representing its clients in successful litigation against Sega," he wrote. "That's it. That's Sega's entire case."

Sega's lawyer in the lawsuits, Craig Cardon, of Sheppard, Mullin, Richter & Hampton in Los Angeles, declined to comment. Joseph McMonigle, of Long & Levit in San Francisco, who represents JAMS, did not respond.

On Feb. 25, in the New York Supreme Court, a pair of companies that operate social gaming websites, Zula Casino, and Sportzino, sued two firms, Kind Law in Las Vegas and San Diego's Ben Travis Law, after they filed nearly 1,000 arbitration claims.

"Trying to discredit those bringing arbitration claims serves as a diversion from underlying legal issues," Brian Feldman, of Aurelian Law in Rochester, New York, wrote in a statement on behalf of the two law firms. "Plaintiffs firms stepping up to represent large numbers of consumers are ensuring access to justice that might otherwise be out of reach. Casting doubt on those firms deflects from widespread consumer harm and deters invocation of the very legal process that businesses force consumers to use in lieu of the courts."

Gavin Rooney of Lowenstein in
Roseland, NJ.

In a prior case, filed in U.S. District Court for the District of Columbia, the gaming companies had insisted that hundreds of the arbitration claimants, who filled out an online questionnaire following a social media ad, never used their sites, agreed to arbitrate in Canada or had not authorized Kind Law or Ben Travis Law to file their claims. U.S. District Judge Paul Friedman, citing jurisdictional reasons, granted dismissal of what the arbitrating law firms called a "frivolous, vexatious, and retaliatory action."

But Lowenstein Sandler partner Gavin Rooney, in New York, who represents the two social gaming companies, SCPS LLC and SSPS LLC, told Law.com that signing up clients through social media and online ads, as is common in mass arbitration, does not work.

"What's troubling about social media advertising is it appears face-to-face contact is no longer happening, and people are being enrolled as so-called clients simply by punching a button and launching a link and entering into an attorney-client relationship simply off their iPhone," he said. "When people click the button, it was not appropriately or properly explained to them what was going to happen and what was going on."

What Do Judges Say?

So far, judges have dismissed lawsuits against plaintiffs firms and, in some cases, attempted to cool the heated arguments.

In a Feb. 24 suit in U.S. District Court for the Northern District of California, Janie and Jack alleged more than 2,400 individuals purportedly represented by Zimmerman Reed could not bring arbitration claims because they had simply visited its website.

Matthew Pearson, a partner in Irvine, California, at Womble Bond Dickinson, who represents Janie and Jack, declined to comment. Zimmerman Reed partner Caleb Marker and Jeff Westerman, of counsel, did not respond to a request for comment.

However, a similar case brought last year by cosmetics retailer L'Occitane accused Zimmerman Reed of "manufacturing frivolous arbitration claims" by representing more than 3,100 individuals who had visited its website.

"Simply put," wrote L'Occitane counsel Allan Anderson, a Los Angeles partner at ArentFox Schiff, in opposing dismissal of the case, "the mass arbitration schemes at issue here are entirely plaintiffs' lawyer-driven phenomena."

Zimmerman Reed counsel in that case, Chase Scolnick, of Irvine, California's Keller Anderle Scolnick, in a motion to dismiss, called the suit "a transparent maneuver to bypass its own arbitration provision and chill and deter claimants' pursuit of their claims."

U.S. District Judge Percy Anderson of the Central District of California dismissed L'Occitane's case and, in a footnote to his order, cautioned lawyers against attacking one another, which "damages the credibility of those engaging in such behavior."

U.S. District Judge Ana Reyes in the
District of Columbia. Photo: Diego M.
Radzinski/ALM

Another judge, in a case that Tubi brought against Keller Postman last year, slammed the lawyers for such behavior, calling her job akin to a "kindergarten teacher." Tubi counsel Jenner & Block had hired a former FBI special agent to interview 19 of the 24,000 arbitrating claimants Keller Postman represented, who had opted out of a \$19.99 million class action settlement. And Keller Postman had sought to disqualify Jenner & Block.

At a Dec. 19 hearing, U.S. District Judge Ana Reyes of the District of Columbia ordered both sides to reach an agreement.

Yet both sides are due back in court on April 22.

“Unfortunately, Keller Postman is at it again,” Jenner & Block partner Brandon Fox, in Los Angeles, wrote in a filing last month. Postman, in a response, wrote, “Once again, Tubi is trying to end run around arbitrations by asking this court to weigh in on ongoing JAMS proceedings.”

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Class Action

April 21, 2025, 5:36 AM PDT; Updated: April 21, 2025, 6:45 AM PDT

Walgreens Will Pay at Least \$300 Million in Fraud Settlement (1)

- **US intervened in four FCA whistleblower suits in January**
- **Opioid prescription 'red flags' ignored, prosecutors said**

Walgreen Co. will pay the US government and whistleblowers at least \$300 million to settle a False Claims Act suit alleging that the company billed federal health-care programs for prescriptions that violated the Controlled Substances Act, according to a court filing.

The parties told the US District Court for the Northern District of Illinois April 18 that the company will pay the government \$300 million, of which \$150 million will constitute restitution. The settlement also provides for contingency payments, the court filing says.

The settlement is "is neither an admission of liability by Walgreens nor a concession by the United States that its claims are not well founded," the filing says.

The Justice Department intervened in four FCA whistleblower suits filed between 2018 and 2023, and filed its own complaint Jan. 16. The whistleblowers have entered into an agreement allocating a share of the settlement among them, the April 18 filing says.

The government said Walgreens knowingly filled millions of prescriptions for controlled substances that lacked a legitimate medical purpose, weren't valid, or weren't issued in the usual course of professional practice.

These prescriptions included "dangerous and excessive quantities of opioids, prescriptions for early refills of opioids and prescriptions for the especially dangerous and abused combination of drugs known as the 'trinity,' which is made up of an opioid, a benzodiazepine and a muscle relaxant," the US Department of Justice said in a press release.

Walgreens pharmacists filled prescriptions despite "clear 'red flags'" showing that the prescriptions were highly likely to be unlawful, and the company pressured pharmacists to fill prescriptions quickly without taking the time needed to confirm each prescription's validity, the government alleged.

Neither counsel for Walgreens nor counsel for the whistleblowers immediately responded to a request for comment. The US Department of Justice didn't immediately respond to a request for comment.

Jenner & Block LLP represents Walgreens. Rosenblat Law and Goldberg Kohn Ltd. represents whistleblower T.J. Novak. Rabin Kammerer Johnson and Searcy Denney Scarola Barnhart & Shipley represents whistleblower Elmer Mosley. Baron & Budd PC represented whistleblower K&V Group LLP. Evangelista Worley LLC and Stone & Magnanini LLP represented whistleblower Patrick Awa.

The case is United States v. Walgreen Co. , N.D. Ill., No. 18-cv-5452, 4/18/25 .

(Updated throughout with additional details about the lawsuit and settlement)

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Walgreens to pay \$300 million in US opioid settlement

 [reuters.com/sustainability/walgreens-settles-allegations-filling-invalid-opioid-prescriptions-300-million-2025-04-21](https://www.reuters.com/sustainability/walgreens-settles-allegations-filling-invalid-opioid-prescriptions-300-million-2025-04-21)

Reuters

April 21, 2025

People walk by a Walgreens, owned by the Walgreens Boots Alliance, Inc., in Manhattan, New York City, U.S., November 26, 2021. REUTERS/Andrew Kelly Purchase Licensing Rights , opens new tab

(WBA.O) , opens new tab has agreed to pay \$300 million to settle U.S. prosecutors' allegations that it illegally filled millions of invalid prescriptions for opioids and other controlled substances, the U.S. Justice Department said on Monday.

The money, plus 4% interest annually, will be paid out over six years under the terms of the agreement. Walgreens will also owe the U.S. an additional \$50 million if the company is sold, merged, or transferred prior to fiscal year 2032, the Justice Department said.

"We strongly disagree with the government's legal theory and admit no liability," Walgreens spokesperson Fraser Engerman said in a statement. "Our pharmacists are dedicated healthcare professionals who care deeply about patient safety and continue to play a critical role in providing education and resources to help combat opioid misuse and abuse across our country."

The company said in a filing with U.S. regulators that it did not expect any major cases over opioids in the future.

The government's January lawsuit alleged Walgreens ignored "red flags" that prescriptions were illegal and filled them anyway, violating the Controlled Substances Act. The government also alleged it violated the False Claims Act when it then sought reimbursement from federal health care programs, like Medicare, for the prescriptions.

Walgreens is among the drug manufacturers, distributors, pharmacy operators and others who have collectively in recent years agreed to pay about \$50 billion to resolve lawsuits and investigations by states and local governments accusing them of helping fuel a deadly opioid addiction epidemic in the U.S.

Walgreens in 2022 agreed to pay up to \$5.52 billion over 15 years to resolve thousands of lawsuits by state and local governments accusing the company of fueling the U.S. opioid epidemic.

The U.S. Centers for Disease Control and Prevention says nearly 727,000 opioid overdose deaths occurred from 1999 to 2022.

Reporting by Brendan Pierson in New York and Ismail Shakil in Ottawa; Editing by Doina Chiacu and Aurora Ellis

Litigation

April 21, 2025, 8:10 AM PDT

Dow Jones Sued Over Sharing WSJ Subscriber Information With Meta

- **COURT:** S.D.N.Y.
- **TRACK DOCKET:** No. [1:25-cv-03249](#) (Bloomberg Law subscription)

Dow Jones & Co. was accused in a proposed class action of disclosing the video-watching histories of Wall Street Journal subscribers to Meta Platforms Inc. without their consent in violation of the Video Privacy Protection Act.

The new lawsuit filed April 18 in the US District Court for the Southern District of New York is part of a wave of litigation against video content providers challenging their use of online tracking tools. Other news publishers that have been hit with VPPA lawsuits include Lee Enterprises Inc., Scientific American, the Athletic, and the Pittsburgh Post Gazette.

Lead plaintiff Klay Anderson and five others alleged that Dow Jones secretly incorporated Meta's online tracking pixel on the Wall Street Journal website, allowing Meta's Facebook unit to collect information arising from visitors' interactions there, including information about the videos they watched or requested.

The VPPA prohibits providers of video content from sharing information with third parties that allows consumers to be linked to the videos they watched, according to the complaint. Facebook used the information to target visitors to the Wall Street Journal website with advertising, it said.

Dow Jones didn't respond immediately to a request for comment. Meta isn't named as a defendant.

Arbitration Agreement

The lawsuit also takes aim at a mandatory arbitration provision in the terms of use for the Wall Street Journal website, and at provisions addressing the possibility of a mass arbitration effort against the company.

The agreement imposes burdensome conditions that website users must meet before beginning arbitration, including providing written notice and participating in a 60-day informal dispute resolution process, the complaint said.

Dow Jones also promises individual arbitration to resolve disputes between subscribers and the company, but abandons that promise by denying users the ability to bring individual claims if 25 or more similar claims have been filed within a 180-day period, it alleged.

"The limitation on the number of cases arbitrated at once causes delays in resolving individual claims, creating an environment where users are discouraged from pursuing claims due to the extended timeframes and uncertainty about the timely resolution of their disputes," it said.

The plaintiffs seek to represent a class of Wall Street Journal subscribers with Facebook accounts who watched videos on wsj.com while the Meta tracking pixel was active there.

The suit is seeking statutory damages, punitive damages, injunctive relief, attorneys' fees and costs, and pre-judgment interest.

Milberg Coleman Bryson Phillips Grossman PLLC represents the plaintiffs and the proposed class.

The case is Anderson v. Dow Jones & Co. Inc. , S.D.N.Y., No. 1:25-cv-03249, complaint filed 4/18/25 .

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2 more lawsuits target Depo-Provera over alleged brain tumor risk

DJ [dailyjournal.com/articles/384947-2-more-lawsuits-target-depo-provera-over-alleged-brain-tumor-risk](https://www.dailyjournal.com/articles/384947-2-more-lawsuits-target-depo-provera-over-alleged-brain-tumor-risk)

Torts/Personal Injury

Apr. 21, 2025

Plaintiffs allege Pfizer and Kaiser Permanente failed to adequately warn of the risk, despite emerging studies and international label updates. Attorneys say the cases deserve to be heard individually.



Mark Chavez of Texas based law firm Matthews & Associates

Two more lawsuits have been filed against Pfizer and Kaiser Permanente in Alameda County claiming negligence in the manufacturing and administering of a contraceptive drug that allegedly causes brain tumors, joining a host of lawsuits across the nation.

The two complaints contain nearly identical claims that the contraceptive medroxyprogesterone acetate, sold under the brand name Depo-Provera, substantially contributed to plaintiffs developing an intracranial meningioma -- a type of brain tumor that grows from the membranes that surround the brain and spinal cord.

The two lawsuits join another two lawsuits filed recently by the same law firms in the county, as well as many similar cases across the country and an ongoing multi-district litigation.

Attorney for the plaintiffs, Mark Chavez of Texas based law firm Matthews & Associates, said in a phone interview Friday that they were not currently thinking of consolidating the four lawsuits, or joining a multi-district litigation or class action.

"These women deserve their day in court," said Chavez. "Each party's role will be evaluated based on the evidence and we think that each case has merit and stands on its own.

"Our clients deserve the truth, and no woman should suffer simply because a company chose silence over safety," Chavez added.

A spokesperson for Pfizer said in an emailed statement, "Depo-Provera has been an FDA-approved medication for more than 30 years and has been a safe and effective treatment option for millions of patients during that time. The company will vigorously defend these lawsuits."

Co-counsel for the plaintiffs, Karen Barth Menzies of KBM Law, wrote in both complaints, "Plaintiff is one of many previously healthy women who received Depo-Provera injections without her, or her prescribing healthcare provider, having been informed of the drug's serious meningioma risks.

"Exposing plaintiff to the dangers of Depo-Provera was unnecessary when other, less-dangerous birth control options were [available]."

The complaints allege Kaiser was negligent in recommending Depo-Provera despite the known or knowable risks. It is claimed that Kaiser failed to provide adequate safety information to patients about Depo-Provera, omitting any discussion of meningioma risks in their online materials and brochures.

Kathleen Campini Chambers, public relations and issues manager for Kaiser Permanente, said in an emailed statement, "Kaiser Permanente is committed to providing high quality care that is safe and personalized to the individual needs of each patient. We continually monitor the latest evidence to ensure that the medications we use are safe and effective."

The complaints also state that the label for Depo-Provera did not warn about the risk of meningioma, even after labeling changes reflecting this risk were made in other countries.

Harry J. Nelson, partner at Leech Tishman, is an expert in the opioid crisis and litigation. He said the plaintiffs may need to do more work to establish a causal relationship between the drug use and the alleged labeling discrepancies.

"There is going to be a strong preemption argument about the Food and Drug Administration's decisions on the labelling and warning and whether federal law preempts state failure-to-warn claims," Nelson said in an email Friday.

"My impression is that the decision to file these in Alameda County Superior Court in Oakland (near Kaiser headquarters), California appears to be strategic for a plaintiff-friendly jury pool locally and also to take advantage of California's plaintiff-friendly product liability laws," Nelson added.

Nelson said the fact that Pfizer revised the drug label in other countries but not in the U.S "seems like an oversight that may end up leaving them vulnerable to enormous failure-to-warn liability."

One of the plaintiffs claims they used Depo-Provera between 1999 and 2010, developed symptoms, then received a diagnosis of an intracranial meningioma in 2006. *Lantzer vs Pfizer, Inc., et al.*, 25CV119216 (Alameda Cty. Super. Ct. filed April 17, 2025).

The other plaintiff claimed they used Depo-Provera from approximately 2015 to 2017 at Kaiser Permanente Oakland Medical Center and was diagnosed with a meningioma in 2017, requiring surgery and radiation therapy. *Gradin vs Pfizer, Inc., et al.*, 25CV119185 (Alameda Cty. Super. Ct. filed April 17, 2025).

Both plaintiffs stated they were unaware of the link between Depo-Provera and meningioma until the publication of the Roland Study in March 2024, that examined the link between the use of various progestogens and the risk of developing meningioma.

According to the complaint, this study involved over 18,000 women and among the findings was that women who used Depo-Provera for more than one year were found to be 5.6 times more likely to develop meningiomas compared to non-users.

Medroxyprogesterone acetate was discovered in 1956 and was introduced for medical use in the U.S. in 1959. The U.S. Food and Drug Administration approved Depo-Provera as a contraceptive injection in 1992. Pfizer has held the Depo-Provera nondisclosure agreement since acquiring Pharmacia and Upjohn in 2002.

#384947

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Pogust Goodhead

The little-known law firm behind the biggest case in UK history

Pogust Goodhead is behind a £36bn claim
against BHP over a Brazilian mining disaster

Michael Pooler in São Paulo and **Suzi Ring** in London

Published APR 19 2025



In his early days as a lawyer, Tom Goodhead learnt the trade through unglamorous personal injury cases such as medical negligence, car crashes and, in one instance, a person who fell in a pub called The Tumble Inn.

Today he is responsible for what is thought to be the biggest case in British legal history: a £36bn class action against Australia's BHP over a [mining disaster in Brazil](#).

Backed by big money investors, his firm [Pogust Goodhead](#) has brought a London lawsuit on behalf of nearly 640,000 victims of the 2015 Mariana dam collapse, which killed 19 people, displaced thousands and wrought extensive ecological harm.

A judgment is expected before summer, after the recent conclusion of a [12-week civil trial](#) in the High Court.

“It’s probably the largest class action ever brought in the English courts,” said Goodhead. For the victims’ families it was about “holding the largest mining company in the world accountable”.

“We’ve got a huge amount riding on it,” he said.

That includes the reputation of his young litigation boutique, which is promised a bumper payday if it wins, but reported an operating loss of £52mn in its most recent accounts.

In an overdue 2022 financial statement published this week that showed £53mn in turnover, the firm’s auditors flagged a “material uncertainty” over whether it could continue as a going concern, due to its funding needs. Goodhead said the 2022 loss was “entirely unsurprising” because the firm “has grown in a way more akin to a Silicon Valley start-up than a law firm”, adding that it had the “unequivocal backing” of its lenders.



Tom Goodhead: 'We've got a huge amount riding on it' © Vuk Valcic/SOPA Images via Reuters

Pogust Goodhead, which specialises in consumer protection and environmental cases, has previously calculated the Mariana damages to be as much as £36bn, plus inflation and interest. Under a “no win, no fee” deal, it is charging 20 or 30 per cent to most claimants, who include individuals, businesses and municipalities. For clients from indigenous communities it is working pro bono.

It is a high-stakes case both for [BHP](#), which co-owns the Samarco iron ore complex where the accident took place, and for the boutique law firm, which has been cast alternatively as crusader and colonialist sponger.

“This action in London is part of a movement to discredit the Brazilian justice system and threatens our jurisdictional sovereignty,” said Rafael Valim, a lawyer at Warde Advogados, who has represented the Brazilian mining lobby Ibram. “We stopped being a colony a long time ago.”

Alongside ongoing cases ranging from faulty medical implants to mis-sold car finance, Pogust Goodhead has found a niche taking complaints of corporate wrongdoing in far-flung jurisdictions to courts including in England, Germany and the Netherlands.

The rationale in the BHP case is that the often slow pace of Brazil’s courts risks delaying or denying justice. A judge in England allowed the case against the miner in part because BHP had a parent company in London at the time of the incident.

A man stands in front of his house that was damaged following the Mariana dam collapse © Gustavo Basso/NurPhoto via Getty Images

“A spate of recent jurisdiction decisions concerning group claims against multinationals whose parent company is based in London suggests this trend will continue,” said Ted Greeno, London co-managing partner of litigation powerhouse Quinn Emanuel Urquhart & Sullivan, which is not involved in the Mariana case.

“Law firms, big or small, can take advantage of such a shift with the right funding,” he added.

Goodhead set up the firm in Liverpool in 2018 with Harris Pogust, a US attorney whose jet-set life filled with mansions and yachts is well documented on Instagram. The outfit got its first major successes in a data breach case against British Airways and over the Volkswagen diesel emissions scandal.

The firm, which has about 120 lawyers, has created a £200mn bonus pool and pledged to pay junior lawyers up to £2mn each over three years, a model made possible by [US hedge fund Gramercy](#).

The £450mn funding put up by Gramercy for the BHP case is the largest ever in [litigation finance](#) for a claimant law firm, according to Goodhead.

An aerial view of the Bento Rodrigues district in Mariana, Brazil, following the disaster in 2015 © Ricardo Moraes/Reuters

However, the high financial rewards come with high demands, according to former employees. One ex-Pogust lawyer said it was common to work well into the night, adding that the firm had a “toxic culture” and promoted “rivalries between colleagues”.

Another said they put in 17-hour days and burnt out. The speed with which the firm has grown also meant some people had been promoted for being nice to Goodhead rather than competent, the former employee said.

“Seventeen-hour days and working into the night regularly reflect the reality of litigating against the largest companies in the world,” said Goodhead.

He added: “I acknowledge that our hours are brutal, but the pressures associated with work of this nature are not for the faint-hearted . . . It is, however, laughable to say I promote people who are nice to me. I promote the brightest and the best who are all-in on winning. If that causes competition or rivalry, so be it.”

Protesters show support for victims of the disaster outside the Royal Courts of Justice in London in October © Peter Nicholls/Getty Images

Goodhead took on the BHP case three years after the devastating rupture of a tailings dam, containing waste material, at Samarco's mine near the town of Mariana. The resulting catastrophe ranked among Brazil's worst-ever environmental disasters.

BHP and Brazilian miner Vale, which jointly control Samarco, argue the lawsuit is not in the interest of victims and is no longer necessary after they signed a new [\\$23bn settlement](#) with public authorities last year, taking their indemnity bill to about \$30bn.

Goodhead countered that the new deal was inadequate, pointing out that BHP said only 40 per cent of the London claimants would be eligible for compensation.

"We started the case in 2018 because the companies were doing nothing," he said. "My clients don't trust a single word that they've said."

The BHP case has given rise to a host of other suits for the law firm originating in Brazil.

Its caseload includes residents [forced to abandon their homes](#) in a sinking city that has been blamed on underground mining, and citrus growers who claim they were ripped off by an orange juice magnate.

But nothing compares to the costs or potential wins from the Mariana case, in which Pogust Goodhead's legal bill is running north of £250mn.

A courtroom victory would vindicate Gramercy and another backer — São Paulo-based Prisma Capital — for putting up funds. Gramercy has insurance in place to protect its capital, according to Goodhead. Under the litigation funding model, those who front the costs receive a cut of any damages.

He has called the Gramercy investment “a capitalist solution to the negative externalities of capitalism”.

A damaged house following the Samarco dam collapse © Yasuyoshi Chiba/AFP via Getty Images

If BHP is found liable, the amount of any payout would be subject to another trial scheduled for October 2026 with claimants needing to prove losses. Vale has agreed to split any sums due.

The pushback in Brazil has not relented. Opponents have slammed advanced payments to city governments that signed up to the London claim as inappropriate, though Goodhead defended the move. The Brazilian supreme court ruled that municipalities could not use any money from last year's settlement by BHP and Vale to pay law firm fees.

Goodhead describes a complaint to the Brazilian Bar Association about the firm as “malicious and unfounded”.

“It’s an ongoing complete campaign of lawfare where they’re just trying to discredit the case,” he said.

Pogust Goodhead axed about 160 jobs recently — about 20 per cent of its workforce, mainly business services staff — because of cases that had not yet settled, according to Goodhead. But with about 30 other litigations active, he said the Mariana ruling was not existential.

“Ultimately, if we were unsuccessful, it’s not going to end my firm,” said Goodhead. “In terms of reputation, in terms of our financial position, in terms of recruitment, in terms of confidence . . . it’s obviously very, very important”.

With assistance from Beatriz Langella in São Paulo

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April 21, 2025, 1:30 AM PDT

States Protect Federalism by Dismissing Climate Change Suits

George Mason University law school professor J.W. Verret says the dismissals of several climate change suits filed across state lines have rightfully prevented individual states from imposing their regulatory will on others.

Courts are increasingly recognizing the constitutional limits of state-level climate litigation. The growing traction among state and federal courts affirms what constitutional scholars have long maintained: Climate change is a global phenomenon that falls under federal law and can't be adjudicated through a patchwork of inconsistent and potentially conflicting state regulations.

Since the US Supreme Court's decision not to review *Sunoco LP v. City and County of Honolulu*, one of dozens of cases nationwide where municipalities sued energy companies for climate change damages under state law, courts have continued to dismiss similar challenges.

While initially concerning, subsequent developments have vindicated the constitutional principles at stake, as these state courts are increasingly dismissing similar cases on solid legal grounds. The genius of the US' federalist system lies in the mutual respect states have for each other's sovereignty and experimental approaches to governance.

However, this system functions only when states honor each other's boundaries and acknowledge the limits of their authority. We see this most clearly in the state-based incorporation system, in which each state respects others' rules governing shareholder interactions with corporations. This mutual respect has enabled the growth of publicly traded corporations that power our economy today.

In recent years, we've witnessed the emergence of a distorted, progressive view of federalism—a destructive race to regulate, in which individual states compete to impose their regulatory will beyond their borders.

Yet, a growing body of court decisions is validating the principle that federal preemption strengthens federalism by preventing individual states from imposing their regulatory will across state lines. Recent dismissals of climate lawsuits in New Jersey, Delaware, and Maryland reveal a judicial recognition that these cases exceed the constitutional boundaries of state authority.

In February, New Jersey Superior Court Judge Douglas Hurd dismissed the state's climate liability lawsuit against major energy companies, ruling that "fundamental principles of federalism in the United States Constitution are clear that state law cannot operate in areas of 'uniquely federal interests.'" Hurd wrote that "only federal law can govern Plaintiffs' interstate and international emissions claims because 'the basic scheme of the Constitution so demands.'"

This ruling followed similar dismissals in Delaware, where Superior Court Judge Mary Johnston rejected claims based on the state's consumer-protection law, and in Maryland, where Judge Videtta Brown dismissed Baltimore's case, stating that "global pollution-based complaints were never intended by Congress to be handled by individual states."

Just weeks before the New Jersey decision, Anne Arundel County Circuit Court Judge Steven Platt dismissed both Annapolis and Anne Arundel County's climate lawsuits.

The legal foundations for federal preemption in this area are firmly established. Even in the Sunoco case, the federal government acknowledged in its brief that petitioners "may ultimately prevail" on constitutional grounds.

The late Supreme Court Justice Ruth Bader Ginsburg's opinion in the landmark *American Electric Power v. Connecticut* case provides clear guidance on this matter. She emphasized that claims under the Clean Air Act must go through the Environmental Protection Agency and state regulators first, noting that expert agencies are "better equipped to do the job than federal judges."

Among this growing judicial momentum, the Hawaii Supreme Court stands as a problematic outlier. Justice Todd Eddins, who authored a concurrence in the Honolulu case, has repeatedly demonstrated contempt for the US Supreme Court and a disregard for the Constitution.

In his concurrence to the Hawaii Supreme Court's October 2023 decision, Eddins criticized numerous Supreme Court precedents, going so far as to conclude that "the United States Supreme Court could use a little Aloha." When confronted with the clear directive of federal preemption in climate cases, the Hawaii court similarly ignored the fact that state law can't operate in this area.

Another surprising potential outlier is a case brought by Puerto Rico. First filed by former Gov. Pedro Pierluisi (D), the lawsuit continues despite Gov. Jenniffer González-Colón (R) adopting a pro-business agenda. This presents an opportunity to focus on energy resource needs that Puerto Rico, with its power grid challenges, desperately needs.

Considering the recent judicial dismissals and clear legal vulnerabilities to continue the case under state law, it doesn't appear Puerto Rico's case has a legally viable path forward.

Looking ahead, there are compelling reasons for the Supreme Court to take up this line of cases. The growing consensus among state courts provides even stronger grounds for the justices to resolve the current circuit split, with federal courts reaching conflicting conclusions about whether state law can govern transboundary emissions. This legal uncertainty warrants Supreme Court review to establish uniform constitutional boundaries on state climate litigation.

In the meantime, most state courts across the country are acting responsibly by maintaining mutual respect for each other's sovereignty and judiciously declining to make this constitutional problem worse.

The string of dismissals in Delaware, Maryland, and New Jersey demonstrates that our judicial system is correctly recognizing the limits of state authority in addressing inherently interstate and global issues such as climate change.

This growing consensus affirms that federalism works best when individual states respect constitutional boundaries rather than attempt to weaponize their courts to achieve policy objectives that properly belong to federal legislative and regulatory processes.

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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'Shocking abuse of power': Federal judge blocks Trump retaliation against Susman Godfrey

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President Donald Trump speaks during an event to announce new tariffs in the Rose Garden at the White House, Wednesday, April 2, 2025, in Washington. (AP Photo/Mark Schiefelbein)

WASHINGTON (CN) — A federal judge on Tuesday temporarily blocked President Donald Trump's executive order retaliating against major law firm Susman Godfrey, ruling that the president's order is a clear example of viewpoint discrimination under the First Amendment.

U.S. District Judge Loren AliKhan, ruling from the bench, said that the temporary restraining order was necessary to halt the "immensely oppressive" effort to freeze the firm out of work in retaliation for its representation in several 2020 election-related lawsuits.

"The executive order is based on a personal vendetta against a particular firm, and frankly, I think the framers of our Constitution would see this as a shocking abuse of power," the Joe Biden appointee said.

Trump targeted the firm in an executive order last Wednesday, accusing it of "undermining American interests" by weaponizing the legal system and degrading "the quality of American elections."

While Trump did not explain the claims, Susman argued in its lawsuit last Friday that they are clear allusions to the firm's representation of Dominion Voting Systems in a defamation case against Fox News — where the firm secured a \$787 million settlement over false claims of election fraud.

The firm also represented clients in similar defamation cases against Trump allies, like Rudy Giuliani, Sidney Powell, Mike Lindell, Patrick Byrne and One America News Network.

Trump's order would require agency heads to review any security clearances granted to members of the firm, review government contracts with Susman or those doing business with it and limit attorneys' access to federal buildings, including federal courthouses like the E. Barrett Prettyman Courthouse where Tuesday's hearing was held.

"The government cannot hold lawyers hostage to force them to agree with it, allowing the government to coerce private business, law firms and lawyers solely on the basis of their view is antithetical to our constitutional republic and hampers this court, and every court's, ability to adjudicate these cases," AliKhan said.

Donald Verilli, of Munger Tolles and representing Susman, compared Trump's retaliatory efforts to those taken by officials in the South during segregation to separate civil rights lawyers from their clients.

"This is an assault on all Article III courts and the judicial branch," Verilli said. "An independent judiciary relies on an independent bar."

He cited the Supreme Court's decision last summer in *NRA v. Vullo*, where the high court found that the New York Department of Financial Services wrongfully coerced businesses in the state to distance themselves from the gun rights group as punishment for its views.

The government's actions against Susman are clearly a similarly illegal punishment under that Supreme Court precedent, Verilli said.

Justice Department attorney Richard Lawson urged AliKhan to delay her ruling until agency heads could issue guidance that would enforce Trump's order, arguing that Susman's suit was not yet ripe as they had yet to suffer any tangible harm.

Lawson said he did not have enough information to further explain Trump's basis for the order — a similar refrain among Justice Department attorneys representing the administration — but argued that Trump was using his authority as the sovereign, a contractor and a landlord in different challenged sections of the order.

Specifically, the first section asserting Susman has undermined "American interests" should be protected as government speech; while the third section, ordering the review of contracts, and the fifth, barring attorneys from government buildings, were recognized presidential authorities in his role as a contractor and landlord, respectively.

He further suggested that *NRA v. Vullo* should not apply as the executive order was not a similar punishment because there was no threat of fines or jail time.

The order is the fourth ruling by federal judges in Washington that Trump's orders against major law firms are clearly retaliatory and cannot withstand further scrutiny. U.S. District Judges Beryl Howell, Richard Leon and John Bates blocked orders targeting Perkins Coie, WilmerHale and Jenner Block, respectively.

While firms have found success in the courts, others — like Paul Weiss, Covington Burling, Wilkie Farr, Latham Watkins and Cadwalader Wickersham, among others — have granted concessions to the Trump administration to reverse similar orders, which the White House has referred to as "bending the knee."

Collectively, the firms have agreed to provide nearly \$1 billion in pro bono (free) legal services to advance causes Trump supports.

AliKhan expressed concern regarding the wave of concessions.

“While I wish other firms were not capitulating as readily, I admire firms like Susman for standing up and challenging it when it does threaten the very existence of their business,” AliKhan said.

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Bitcoin miner accuses K&L Gates of botching bankruptcy claim, overbilling

 [reuters.com/legal/legalindustry/bitcoin-miner-accuses-kl-gates-botching-bankruptcy-claim-overbilling-2025-04-17](https://www.reuters.com/legal/legalindustry/bitcoin-miner-accuses-kl-gates-botching-bankruptcy-claim-overbilling-2025-04-17)

David Thomas, Mike Scarcella

April 17, 2025

Signage is seen in the lobby of the law firm K&L Gates LLP in Manhattan, New York City, U.S., August 17, 2020. REUTERS/Andrew Kelly/File Photo Purchase Licensing Rights , opens new tab

April 17 (Reuters) - (Billable Hours is Reuters' weekly report on lawyers and money. Please send tips or suggestions to D.Thomas@thomsonreuters.com , opens new tab)

A bitcoin mining company has sued K&L Gates and one of its bankruptcy partners, alleging that the law firm overcharged legal fees while failing to perform a simple bankruptcy task, leading to a \$24 million lawsuit against the bitcoin miner.

The lawsuit from Gryphon Digital Mining, filed Monday in Manhattan federal court , opens new tab, seeks an unspecified amount of damages from K&L Gates after the firm allegedly failed to file a claim on its behalf in the bankruptcy case of Core Scientific Inc.

"Proofs of claim are routinely filed out of an abundance of caution simply to preserve a party's rights. It is Bankruptcy 101," the lawsuit said.

Gryphon said it paid K&L Gates more than \$2.7 million in legal fees and alleged that most of the fees were "unnecessary and are not supported by any proper accounting or billing records."

The lawsuit named the firm and Robert Honeywell, a New York-based partner who specializes in bankruptcy litigation, as defendants. Honeywell and a spokesperson for the firm did not immediately respond to requests for comment.

Gryphon's lawyers at Miller Barondess did not immediately respond to a request for comment.

Gryphon retained K&L Gates in August 2021 as the company was planning to merge with Sphere 3d Corp, another bitcoin miner. Although the merger was called off months later, a contract the two companies had signed remained in effect.

In September 2021, Core reached a \$35 million deal with Gryphon to provide the infrastructure to host 71,000 of Gryphon's cryptocurrency mining machines. K&L Gates represented Gryphon in that deal as well.

Core filed for bankruptcy in December 2022. Gryphon alleged in its lawsuit that K&L Gates never monitored the proceedings and missed an April 2023 deadline for filing a proof of claim. Gryphon later retained lawyers from Hogan Lovells.

Sphere later sued Gryphon in Manhattan federal court for \$24 million. Among other things, Sphere accused Gryphon of breaching its fiduciary duty by failing to file a claim in the Core bankruptcy.

Gryphon and Sphere settled in March 2025. The company said it was "forced to forego millions of dollars in valuable counterclaims in exchange for resolving Sphere's \$24 million breach of fiduciary duty claim that arose from K&L Gates' mistake."

--Law firms that negotiated more than \$60 million in antitrust settlements with aerospace giant RTX's Pratt & Whitney unit and other companies have asked a federal judge to award them \$20.2 million in legal fees.

In a court filing [\[link\]](#), opens new tab, Quinn Emanuel and DiCello Levitt said the fee request was fair and reasonable given the complexity of the case and the risks they took in pursuing it. RTX denied any wrongdoing in agreeing to settle.

The lead Quinn Emanuel partner on the lawsuit, Daniel Brockett, who heads the firm's financial institution litigation practice, normally charges \$2,030 an hour, according to billing records submitted [\[link\]](#), opens new tab with the petition. Quinn Emanuel recently disclosed in an unrelated case that some of its top partners are billing \$3,000 an hour.

--Another group of law firms, including Cohen Milstein and Quinn Emanuel, asked a U.S. judge [\[link\]](#), opens new tab in Manhattan this week to award them \$35.5 million in legal fees and expenses in an antitrust lawsuit against Wall Street banks.

The request, stemming from \$71 million in settlements, includes \$23.4 million in expenses. The plaintiffs' lawyers called the requested amount "a small fraction of the huge amounts that class counsel invested in this case" over nine years.

The suit alleged an illegal boycott of a specific type of emerging trading platform. U.S. District Judge Paul Oetken declined to allow the suit to proceed as a class action. An expert for the plaintiffs had estimated class-wide damages of \$4.5 billion.

David Thomas
Thomson Reuters

David Thomas reports on the business of law, including law firm strategy, hiring, mergers and litigation. He is based out of Chicago. He can be reached at d.thomas@thomsonreuters.com and on Twitter [@DaveThomas5150](https://twitter.com/DaveThomas5150).

[Securities Law News](#)

April 18, 2025, 10:11 AM PDT; Updated: April 18, 2025, 1:37 PM PDT

Oregon AG Accuses Coinbase of Unregistered Securities Sales (1)

- Suit says Coinbase sold risky investments without vetting them
- SEC dropped its case against Coinbase, moved top lawyer to IT

Coinbase sold unregistered securities to Oregon residents without properly screening the risky investments to protect consumers, the state's attorney general said in a lawsuit against the company.

The state-level suit comes on the heels of the SEC's decision to drop a federal enforcement case against Coinbase in February, part of a broader agency about-face on crypto in which the bulk of digital asset enforcement has been halted.

States are left to fill the enforcement vacuum left by federal regulators who are "giving up" under the new administration and "abandoning these important cases," the statement from the attorney general's office said.

As unregistered securities, crypto tokens are vulnerable to pump-and-dump schemes and fraud, while insiders behind the digital assets profit from investors' inability to fully research their investments, Attorney General Dan Rayfield plans to argue in Multnomah County Circuit Court.

"The SEC finally caught up with the reality that the vast majority of digital assets are not securities—and that there is widespread public support for this revolutionary technology," said Coinbase's Chief Legal Officer Paul Grewal in a blog post responding to Rayfield's claims. "Let there be no doubt: Oregon's lawsuit, like the SEC's, is meritless, and Coinbase will do whatever is required to beat it."

The SEC's initially signaled its retreat from crypto enforcement in February by reassigning Jorge Tenreiro, former chief litigation counsel and former acting chief of its then Crypto Asset and Cyber Unit, to the Office of Information Technology.

The crypto-focused unit has been refashioned into a smaller team focused on cyber-related fraud, and the agency has hosted regular roundtables with industry stakeholders, academics, and lawyers to inform its regulatory agenda for digital assets.

Private plaintiffs and state attorneys general are expected to continue pursuing claims against exchanges like Coinbase and other crypto industry defendants as the SEC backs off from enforcing in that area, given their ability to pursue claims under state securities laws, as well as consumer and fraud protections.

State enforcers in California, Illinois, New York, and Massachusetts have each indicated that they still intend to crack down on crypto-related wrongdoing.

Rayfield seeks an order from the court preventing Coinbase from engaging in the alleged unlawful conduct and imposing a fine of \$20,000 for each violation of Oregon Securities Law, plus restitution, damages, disgorgement, interest, and fees.

The case is State v. Coinbase Inc. , Or. Cir. Ct., complaint filed 4/18/25 .

(Updates with additional reporting throughout.)

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

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Nasdaq Has Lost More than 3,000 Points Since Trump's First Full Day in Office in 2025; the Pain Has Barely Begun

 wallstreetonparade.com/2025/04/nasdaq-has-lost-more-than-3000-points-since-trumps-first-full-day-in-office-in-2025-the-pain-has-barely-begun

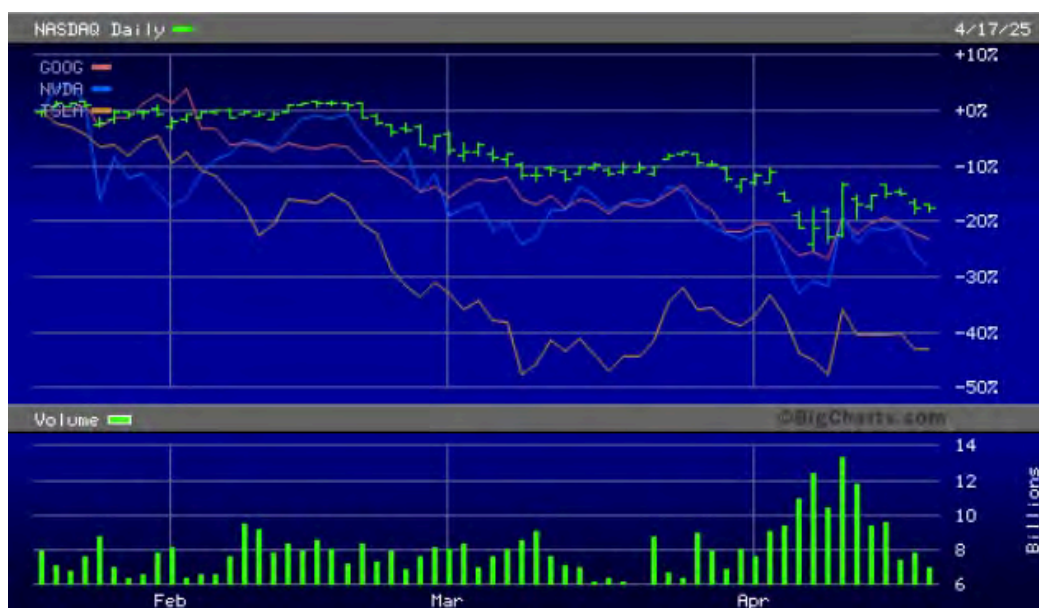
WALL STREET ON PARADE

A Citizen Guide to Wall Street

By Pam Martens and Russ Martens: April 21, 2025 ~

The clown show in Washington should not divert your gaze from the circus at the Nasdaq stock market.

On January 20, 2025, the day that Donald Trump was sworn into office for his second term as President, the stock market was closed in honor of Martin Luther King Jr. Day. On January 21, 2025, Trump's first full day in office, the Nasdaq stock market closed at 19,756.7793. On Thursday, April 17, 2025 – the final day of trading last week because the stock market was closed for Good Friday on April 18 – the Nasdaq closed at 16,286.4476 – bringing its losses during Trump's new reign in the White House to 3,470.3317 points or 17.57 percent. (The data comes from Dow Jones' BigCharts.MarketWatch.com.)



Nasdaq Performance vs Alphabet, Nvidia, and Tesla Since Jan 21, 2025

There are legitimate questions now being raised as to whether we're in a tech bubble that's going to burst in a replay of the disastrous dot-com bust of 2000 to 2002. Last year, we wrote as follows about that period:

The Nasdaq reached a closing high of 5,048.62 on March 10, 2000. The Nasdaq then proceeded to lose 78 percent of its value over the next 2-1/2 years, reaching a closing low of 1,114.11 on October 9, 2002.

As late as February 2000, there was little recognition in mainstream media that the Nasdaq was on the cusp of entering one of the bloodiest selloffs in stock market history. CNNMoney reported as follows on February 29, 2000:

"U.S. stocks rallied broadly Tuesday, sending every major market gauge higher and the Nasdaq composite index to its 12th record close of the year as investors snapped up technology shares expected to lead the economy's growth."

The same news report quoted Legg Mason's Chief Market Strategist at the time, Richard Cripps, as follows: "People want to own these (technology) stocks, and that's what limits any significant drop on these stocks and it's what puts pressure on the remainder of the market."

Less than two weeks later, investors began the stampede out of the market darlings.

In 2017, the legendary investor, Warren Buffett, CEO of Berkshire Hathaway, penned his annual letter to shareholders. In it, he opined as follows:

"Above all, it's our market system – an economic traffic cop ably directing capital, brains and labor – that has created America's abundance. This system has also been the primary factor in allocating rewards."

Unfortunately, Buffet was reflecting a nostalgic yearning for how *he wished* the U.S. markets still worked. He was not providing a genuine assessment of how U.S. markets are *actually functioning*.

In fact, federal regulators turning a blind eye to market rigging has made the exact opposite of Buffett's analysis the true reality. The stock market has become a blindfolded traffic cop, *misallocating* capital, brains and labor. And a whole platoon of crooked and blindfolded market cops have replaced the market's efficient pricing mechanism with Dark Pools and trading platforms hiding out in the shadows in the U.S. and abroad. (See JPMorgan Chase and Its Regulators Are Hiding Dark Trading Secrets at the Largest and Riskiest U.S. Bank; or Citigroup Ran a Secret, Unregistered Stock Exchange for More than Three Years; or Goldman Sachs Is Quietly Trading Stocks In Its Own Dark Pools on 4 Continents; or Wall Street Banks Are Trading in Their Own Company's Stock: How Is This Legal?)

What fueled the dot-com boom were corrupt research reports from the major trading houses on Wall Street, which urged investors to “buy” while the same research analysts were internally calling the stocks “crap.”

On April 28, 2003, the Securities and Exchange Commission settled its cases against the corrupt research practices with 10 Wall Street banks for \$875 million. Investors lost more than \$4 *trillion* but Wall Street got off with a payment of \$875 *million*. No one went to jail. Just two individual analysts were charged: Jack Grubman of Citigroup's former Salomon Smith Barney unit and Merrill Lynch's Henry Blodget. Both men were barred from future affiliation with a broker-dealer and paid fines that were a fraction of the bonuses they had collected from their firms.

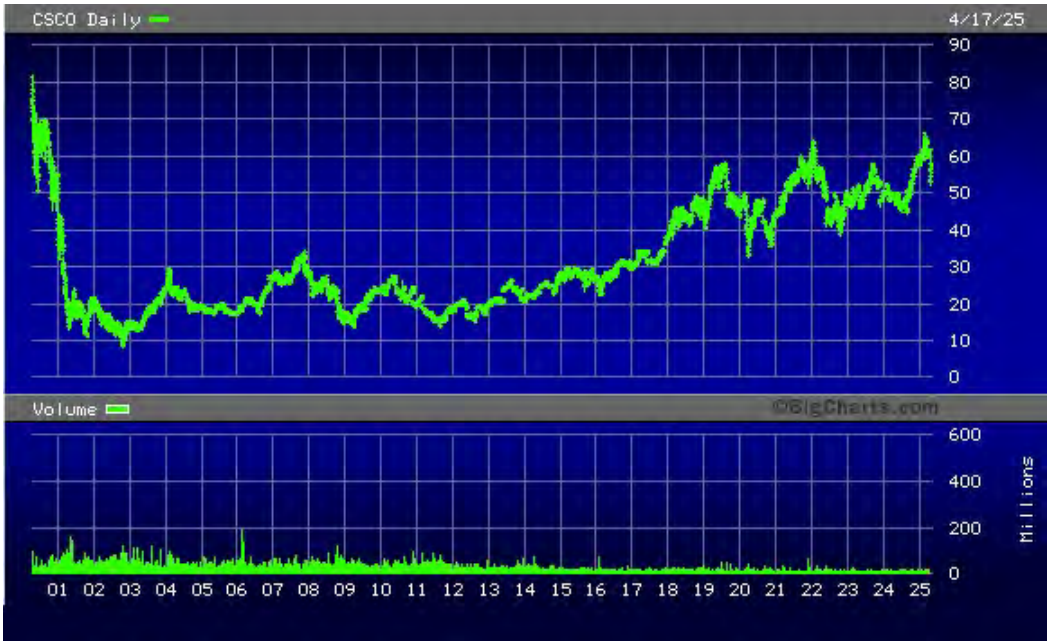
The same Wall Street banks that settled with the SEC in 2003 have continued to be allowed to issue research reports on companies for whom they underwrite stock and debt offerings. In addition, they are allowed by the SEC to trade these same stocks in their own Dark Pools, which are, effectively, unregulated stock exchanges that reside inside the banks. Among the banks that were fined in 2003 by the SEC and are operating Dark Pools today are: JPMorgan, Goldman Sachs, Citigroup, Morgan Stanley and Merrill Lynch.

While many Wall Street stockbrokers are likely to urge their clients to buy the dips or at least stay put and ride out the tech market storm (since many are paid a fee based on their amount of assets under management), the reality is that it can take a very long time to get back to even after a major market bust.

After the dot-com bust, the Nasdaq was so discredited that it did not reset its March 2000 high until 15 years later. In fact, it remained 50 percent or more below that high until 2007. After the 1929 stock market crash, the stock market did not set a new high until 25 years later.

A new report out from InvestorsObserver.com reminds us that “Microsoft took 17 years to recover from the dot-com crash” and the report asks if history will repeat for artificial intelligence (AI) stocks. The report alarmingly notes that “The S&P 500's top 10 companies now make up 33% of the index's total market capitalization – one of the highest levels on record.”

Cisco, another darling of the dot-com era, reached a high of \$80.06 on March 27, 2000. It's now *a quarter of a century later* and Cisco has not set a new high. Buying at market tops can, indeed, be hazardous to your wealth.



Cisco Stock Chart Since Its High on March 27, 2000

Tesla's affordable EV, robotaxis in focus after Musk backlash, competition hurt demand

 [reuters.com/business/autos-transportation/teslas-affordable-ev-robotaxis-focus-after-musk-backlash-competition-hurt-demand-2025-04-21](https://www.reuters.com/business/autos-transportation/teslas-affordable-ev-robotaxis-focus-after-musk-backlash-competition-hurt-demand-2025-04-21)

Akash Sriram

April 21, 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

- Investors await affordable Tesla EV launch amid sales slump
- Robotaxi plans face delays, safety concerns and tariff issues
- Musk's political involvement impacts Tesla's brand and stock value

April 21 (Reuters) - Tesla investors will be eager to ask CEO Elon Musk two pressing questions when the electric vehicle maker reports results on Tuesday: when will the affordable vehicle launch, and is the robotaxi plan on schedule?

Wall Street has pinned its hopes on a cheaper car - promised by the end of the first half of this year - to revitalize drooping Tesla sales that have been hit by competition and retaliation to Musk's far-right politics.

Reuters reported exclusively on Friday that plans for an affordable Tesla include a stripped-down version of its best-selling Model Y SUV made in the U.S., but its production has been delayed by months.

"The low-cost Tesla might be the one thing that could turn momentum around. If it ends up just being a bare bones version of the Model Y, we think the street could be disappointed. Elon really needs to hit the deadline on this and hit the vehicle itself," said Will Rhind, CEO of global ETF issuer GraniteShares.

Tesla needs a win badly. As sales have slumped, so have margins - Wall Street estimates the company's automotive gross margin likely hit its lowest level in the first quarter. Analysts expect this to persist as Tesla continues to offer incentives to boost sales.

Advertisement · Scroll to continue

The company has said using an existing vehicle platform and production lines to develop a cheaper car will lower its capital costs, but has offered scant details beyond that.

Faced with slowing demand for its aging line-up and red-hot sales of Chinese EVs in China and Europe, Musk pivoted to robotaxis and artificial intelligence last year. He promised driverless ride-hailing services to the public in Texas by June, and later this year in California.

Apart from the fact that Musk has promised and failed to deliver self-driving Teslas for nearly a decade, there are serious concerns about safety and related litigation risks that could come with deploying unproven driverless technology on public streets.

Tesla has been seeking regulatory approvals required for it to eventually launch the promised robotaxi service.

But production of the much-anticipated Cybercab - a robotaxi concept that is central to that idea - could be disrupted, Reuters reported, because Tesla has paused component imports from China after tariffs imposed by U.S. President Donald Trump jumped to 145%.

Stacked alongside these challenges is investor doubt about how much time Musk is spending managing the company because of his involvement in Trump's administration, where he has led federal job cut efforts.

His actions have incensed people, leading to protests and vandalism at Tesla showrooms that have reflected in a drop in brand value and a rise in trade-ins.

Sales have fallen sharply, particularly in California, Tesla's biggest U.S. market. The company's stock has slumped 40% so far this year, wiping out more than \$500 billion from its market value.

Tesla stock slumps after hitting record high post election

"If Musk can ... start refocusing his efforts on restoring the Tesla brand, I do believe that this brand damage can be minimized," said Dennis Dick, chief strategist at Stock Trader Network, who holds a long position in the stock.

"It's important that Musk limit his political commentary going forward and start focusing on FSD, robotaxis and Optimus," he said, referring to Tesla's self-driving efforts and robots. Despite a steep drop in first-quarter deliveries, analyst estimates from LSEG peg Tesla revenue for the period at \$21.35 billion, flat from a year earlier. This is thanks to a rise in sales of automotive regulatory credits and systems that generate solar energy and store power.

Tesla is expected to report automotive gross margin of 11.83%, excluding regulatory credits, according to 21 analysts polled by Visible Alpha. That's down from 13.6% in the fourth quarter.

"We expect delivery volume will take priority over auto gross margin, implying more incentives could be seen," Deutsche Bank analyst Edison Yu said. Offers for free charging or autonomy features could impact profitability, he said.

Tesla's automotive profitability set to slump to lowest on record - Analysts expect automotive gross margin to slide on lower sales volumes, incentives to boost sales

Tesla has also begun heavily discounting some Cybertrucks in its inventory as orders for the pick-up truck have dwindled. The company in March recalled all Cybertrucks sold to fix an external panel issue, raising concerns about the model's safety.

Reporting by Akash Sriram in Bengaluru; Additional reporting by Abhirup Roy in San Francisco; Editing by Sayantani Ghosh and Shinjini Ganguli

Akash reports on technology companies in the United States, electric vehicle companies, and the space industry. His reporting usually appears in the Autos & Transportation and Technology sections. He has a postgraduate degree in Conflict, Development, and Security from the University of Leeds. Akash's interests include music, football (soccer), and Formula 1.

KKR Slams Feds for Seeking 'Draconian' \$650M Penalty Over Premerger Filings

 [law.com/newyorklawjournal/2025/04/18/kkr-slams-feds-for-seeking-draconian-650m-penalty-over-premerger-filings](https://www.law.com/newyorklawjournal/2025/04/18/kkr-slams-feds-for-seeking-draconian-650m-penalty-over-premerger-filings)

Alyssa Aquino

April 18, 2025

The global investment firm KKR & Co. in court papers slammed the U.S. Department of Justice's claims that it failed to properly notify regulators of over a dozen transactions, claiming the government was seeking a "draconian" \$650 million penalty for insignificant paperwork issues.

The private equity giant told the Manhattan federal court that the filing errors the government had claimed in 16 transactions were immaterial, arguing that the purported issues hadn't prevented regulators from properly reviewing the transactions for antitrust concerns.

"The fact is that KKR filed premerger notifications and gave the government actual notice each and every time it bought or sold a company in a qualifying transaction. Moreover, not a single transaction at issue in this case is actually anticompetitive, and the government does not challenge any of the deals on substantive antitrust grounds," the firm said in a Thursday motion to dismiss.

KKR is represented by Quinn Emanuel Urquhart & Sullivan, Cleary Gottlieb Steen & Hamilton and Rule Garza Howley. Representatives for KKR and the DOJ didn't respond to Friday requests for comment.

KKR's motion came in response to a lawsuit filed by the DOJ in January against KKR and over a dozen of its investment advisors and funds.

Prosecutors claim that KKR violated the Hart-Scott-Rodino Antitrust Improvements Act, which requires notifying regulators of pending transactions above a certain threshold, for transactions that occurred between 2021 and 2022. According to the government, KKR omitted required documents for 10 transactions, altered documents for 8, and hadn't provided any HSR filing for 2 deals, including one that was worth \$6.9 billion.

In announcing the suit, the DOJ estimated that the maximum penalty for KKR's violations, if proven, would exceed \$650 million.

But KKR said that amount would dwarf any penalty ever issued under the antitrust law.

"With this lawsuit, the government seeks to impose draconian, unconstitutional, and unprecedented penalties on KKR for purported errors in its compliance with premerger notification requirements that the government itself concedes are 'confusing,'" KKR said.

In the moment to dismiss, KKR further addressed an email exchange between KKR employees that prosecutors cited in their case as an example of an alleged “culture of noncompliance ” within the company.

“I’ve always been told less is more,” one employee wrote in an email.

To which a more senior executive replied, “I believe in less is more too.”

But federal attorneys provided a “deceptive edit,” KKR argued. In the same email, the junior employee confirmed that “we’ll send” the documents, and the senior partner had responded, “I believe in less is more too... but all good here on the IC memos,” according to KKR.

“The government’s deceptive edit seeks to transform evidence of KKR’s compliance with the HSR Act into an implication of wrongdoing. The full exchange literally says the opposite of what the Complaint alleges,” KKR said.

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March 27, 2025

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Hospital Chains' Medicaid Profits Are a Juicy Target for GOP Budget Hawks

Republicans looking for cost savings could sink profits at Universal Health Services, others

By [Jonathan Weil](#) [Follow](#)

April 20, 2025 5:30 am ET



Concerns over Medicaid spending have weighed on the stocks of hospital companies. PHOTO: CRAIG HUDSON/THE WASHINGTON POST/GETTY IMAGES

[Universal Health Services](#) UHS **-10.90%** ▼ has a billionaire controlling shareholder and a lucrative Medicaid cash stream. That plays into the hands of congressional Republicans eyeing large budget cuts while looking to show they aren't just targeting the poor.

The stakes, and downside risks, are enormous for UHS investors.

Last year 68% of UHS's pretax income came from government outlays commonly known as supplemental Medicaid payment programs, including so-called state-directed payments. While the federal government funds these payments, state agencies direct where they go.

UHS netted \$1 billion of these payments last year, up from \$629 million a year earlier. Those payments contributed directly to pretax earnings because there was no incremental expense associated with them.

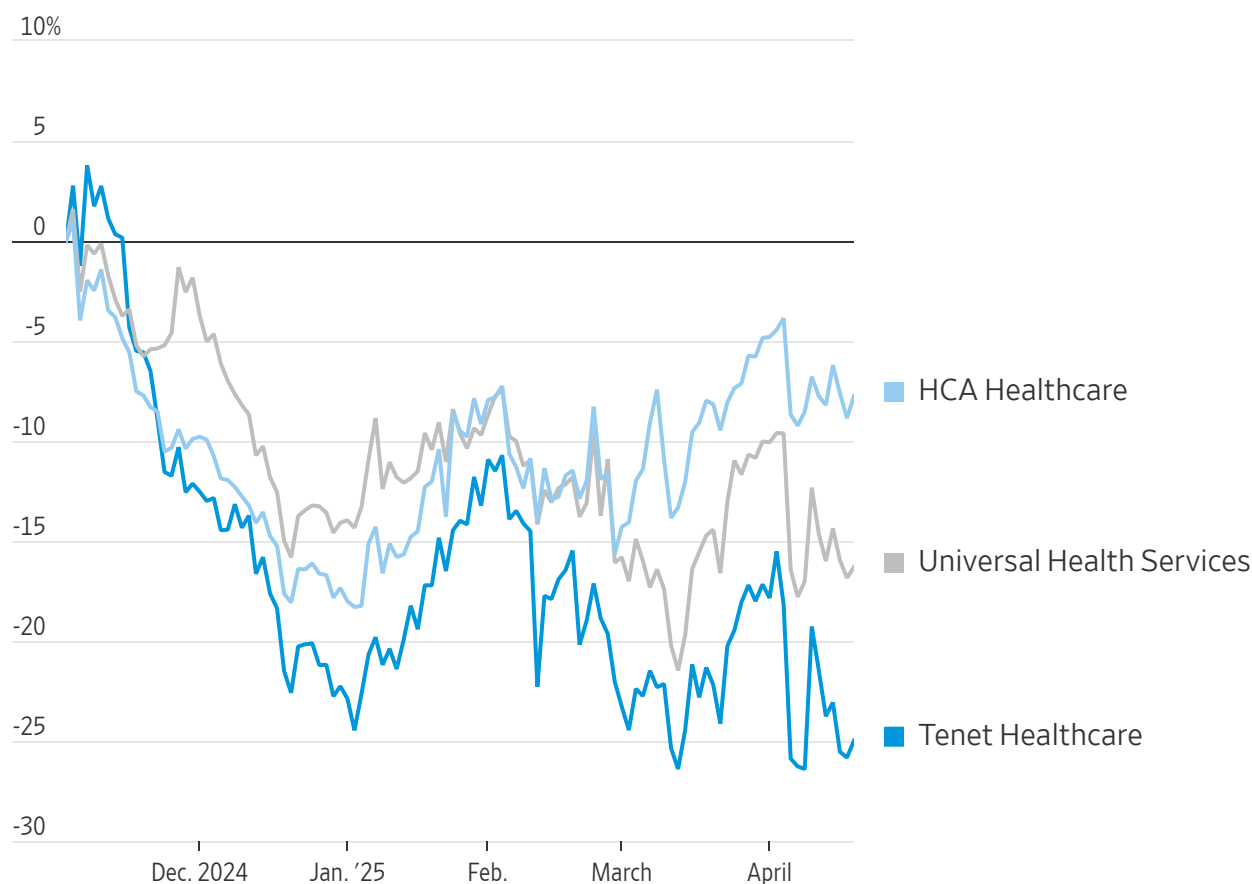
UHS has estimated this year's payments would be almost as large as last year's. Likewise, analysts' earnings estimates for next year and beyond have remained largely the same since Election Day.

In essence, both the company and Wall Street are making a bullish call on federal spending at a time when congressional Republicans and the Trump administration are pushing austerity. While nothing is certain in Washington, especially these days, that is a gutsy bet.

Concerns over Medicaid spending have weighed on UHS and other hospital stocks. But their situation could easily get worse, and, depending on the political climate, far worse. The stocks currently represent a wager on political outcomes as much as they do on company fundamentals.

UHS is controlled by its billionaire founder and executive chairman, Alan Miller, and members of his family, including his son Marc Miller, UHS's chief executive. Other big hospital companies that rely on supplemental payments for significant portions of their earnings include [Tenet Healthcare](#) THC -9.15% ▼ and [HCA Healthcare](#), although their dependence is less than UHS's.

Even before last year's presidential election, the supplemental Medicaid payment programs had drawn criticism across party lines for their largess and limited oversight. The payment arrangements have grown substantially in their usage by states and in their spending amounts.

Share price performance since the election:

Source: FactSet

The programs have often pushed payment rates above Medicare rates and up to commercial rates, according to an [October report by Macpac](#), a nonpartisan policy adviser to Congress on issues affecting Medicaid and the government's health-insurance program for children.

The states and healthcare providers have developed elaborate ways to maximize the payments providers receive. Namely, the states collect taxes from the providers and use those amounts to qualify for higher federal matching funds. Then the states return the taxes to the providers, along with higher Medicaid payments made possible by the higher matching funds. The ["provider taxes"](#) are taxes in name only.

Brian Blase, a former economic adviser to President Trump, called existing Medicaid financing ["legalized money laundering"](#) in a March report released by Paragon Health Institute, a conservative policy group he leads. "Congress created Medicaid to help finance health care services for the most vulnerable—not to serve as a slush fund for states and politically connected providers," Paragon's report said.

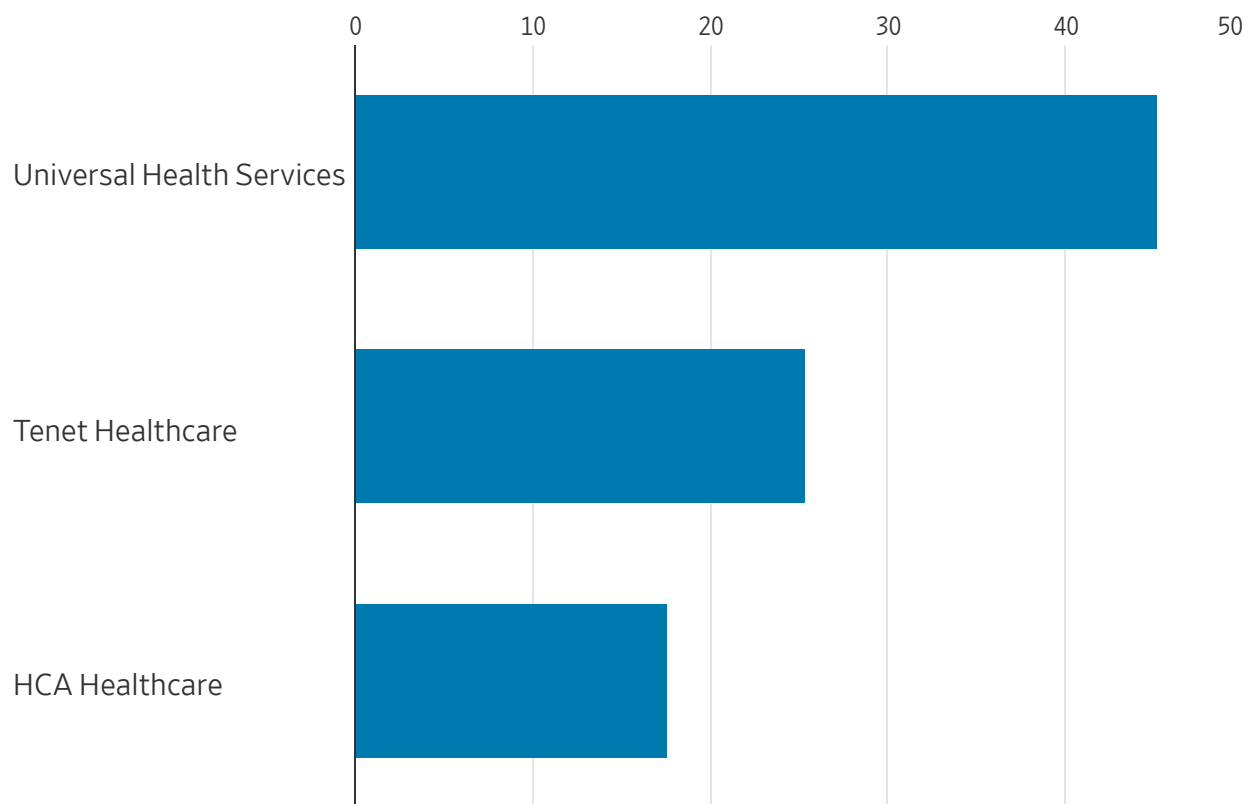
Whether one agrees with that characterization, the point is that the current system's proponents face a serious challenge.

On UHS's last earnings call, finance chief Steve Filton said the supplemental payments "are really meant to provide for frankly, what's been inadequate Medicaid reimbursement for many years." He said "the immediate impact is a significant boost to our earnings, but it is really making up, in our minds, for deficient earnings in the past."

Recompense for past outlays is likely to hold little weight with lawmakers eager for future budget savings.

A Lot at Stake

Medicaid supplemental payments as a percent of Ebitda, 2024



Note: Ebitda is earnings before interest, taxes, depreciation and amortization.

Source: KeyBanc Capital Markets estimates, company reports

Last year Medicaid outlays were \$618 billion, or 9% of the federal budget. The recent budget blueprint approved by the House of Representatives and Senate tasked the House Energy and Commerce Committee with finding at least \$880 billion of deficit reductions over 10 years in areas it oversees.

Most probably would come from slowing Medicaid's growth. Options for Congress could include clamping down on the circular provider taxes, or capping Medicaid payment rates so they don't exceed Medicare rates.

The haggling among Republicans over how to proceed could last months. The GOP has thin majorities in the House and Senate.

Some Republican lawmakers want Medicaid left alone. It covers 79 million people, lots of Trump supporters rely on it, and hospitals that benefit are a powerful lobby.

But the Trump administration will have trouble hitting its stated deficit-cutting goals without targeting Medicaid. Even if Congress trims funding only a little, the Trump administration could find creative ways to slash actual spending later.

In UHS and the Miller family, Republican budget hawks may have a poster child to make their case that the provider-tax system needs an overhaul. If they succeed, investors in UHS and other large hospital operators could be in a world of hurt.

Write to Jonathan Weil at jonathan.weil@wsj.com

Appeared in the April 21, 2025, print edition as 'Hospital Chains' Medicaid Profits at Risk'.

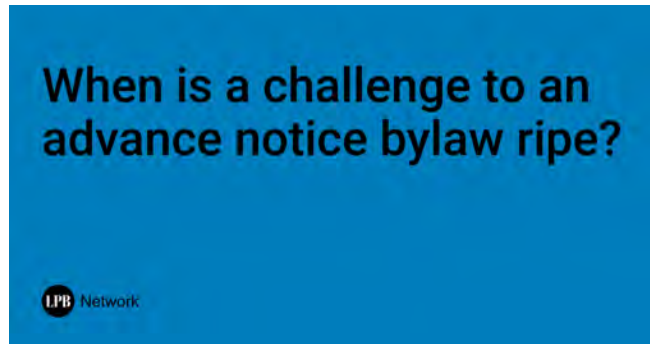
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When is a challenge to an advance notice bylaw ripe?

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Ann Lipton

April 19, 2025



Interesting opinion out of the Delaware Court of Chancery this week by Vice Chancellor Cook. Short version: Company adopted advance notice bylaws; shareholders challenged them as a breach of fiduciary duty; in *Siegel v. Morse*, VC Cook held the dispute was not ripe for review because the shareholders had not proposed to mount their own proxy contest.

Following *Kellner v. AIM Immunotech*, VC Cook distinguished between facial challenges, which claim that the bylaws cannot be enforced under any set of circumstances, and as-applied challenges, which depend on a particular set of facts. Facial challenges, per *Kellner*, are only appropriate when the bylaw is unauthorized under Delaware statutory law or the corporate charter, and here, the shareholders conceded that theirs was an as-applied challenge, rooted in what they claimed was an improper motive by the board to chill all shareholder activism by imposing excessive disclosure requirements. For as-applied challenges, VC Cook held, ripeness requires a plaintiff who is actually contemplating a proxy contest; here, the plaintiffs disclaimed any such intention; therefore, the claim was not ripe.

The difficulty is, defensive measures have previously been the subject of challenges outside the context of active contests for control. For example, as the plaintiffs pointed out, in *In re The Williams Companies Stockholder Litigation*, 2021 WL 754593 (Del. Ch. Feb. 26, 2021), Chancellor McCormick invalidated a pill outside the context of an active proxy contest.

VC Cook acknowledged this line of precedent, but distinguished it on the ground that other defensive measures present a much greater threat than advance notice bylaws do. As he wrote:

As Defendants ably explain, an advance notice bylaw is not like a stockholder rights plan or dead hand proxy put. Those measures, when triggered, are characterized by “immediate and devastating” financial consequences, which are not present in the context of an advance notice bylaw....In contrast, when a nominating stockholder “triggers” an advance notice bylaw, the stockholder does not suffer devastating equity dilution, nor does the company confront a potentially ruinous debt acceleration. The stockholder instead faces a rejection of her nominees.

I mean, that’s true as far as it goes but, recall, the plaintiffs in *Siegel* argued that the advance notice bylaws had the purpose and effect of deterring would-be activists, which was what made them inequitable. Cook’s ripeness argument seems to jump ahead to the merits to conclude that, in fact, there would not be much deterrent effect, therefore, the court could afford to wait for an actual activist, making the claim unripe. Which, to me, collapses the merits of the claim with the ripeness inquiry in a manner that is not only aesthetically displeasing, but also does not engage with how aggressive advance notice bylaws deter activists by, implicitly, adding litigation to the list of gauntlets that must be run before a contest can conclude successfully. And because corporate boards have displayed a certain boundless creativity in crafting advance notice bylaws, litigation in one case does not necessarily shed a lot of light on how the next case will unfold, which only heightens the uncertainty (and risk) an activist faces.

And another thing. On this week’s *Shareholder Primacy* podcast, Mike Levin has a conversation with Nell Minow of ValueEdge Advisors. Here at Apple, here at Spotify, and here at YouTube.



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Block Execs Failed To Prevent 'Illicit Activities,' Suit Says

By **Katryna Perera**

Law360 (April 18, 2025, 5:29 PM EDT) -- A Block Inc. shareholder claims in a new suit that the fintech company's top brass, which includes former Twitter chief Jack Dorsey, failed to prevent illicit activities like money laundering, child sexual abuse and terrorism financing on its platform, causing damage to the company's reputation and investors as a result.

Xin Li filed a derivative **complaint** in California federal court Thursday over wrongdoing allegedly committed by several Block executives and directors from February 2020 through April 2024. The suit names Block co-founders Dorsey and Jim McKelvey, its Chief Operating Officer Amrita Ahuja and several directors.

Li claims that during the relevant period, investors were told that Block maintained effective compliance protocols and procedures to prevent the company's platform from being used for illicit activities.

However, the complaint details a series of reports and articles that revealed Block had failed to implement even a basic level of know-your-customer protocols, "effectively creating a haven for criminal and illicit activities on its platforms."

"Company customers used Block products to engage in money laundering, child sexual abuse, sex trafficking, drug trafficking, terrorism financing, contract killings, and illicit payments to entities and persons subject to economic sanctions," the complaint states.

Li says that during the relevant period, the defendants made misleading statements and failed to disclose that customer identities and the nature of legality of transactions processed on Block's platform were not sufficiently vetted and that users were allowed to open accounts using fake identities and that the use of Bitcoin was encouraged, leading to a string of illicit activity through the company's primary products — Square and CashApp.

Additionally, Li says, the defendants failed to disclose that Block allowed customers to withdraw funds even after their accounts were flagged for potentially illegal activity, that due to the pervasiveness of fake and duplicate accounts on Cash App, the company's publicly reported data regarding monthly Cash App users was artificially inflated, and that the company faced a heightened risk of regulatory scrutiny due to its conduct.

According to the complaint, the truth began to emerge in March 2023 when Hindenburg Research published an article that included interviews with dozens of former Block employees detailing the company's "Wild West" approach to compliance controls.

"[The article concluded] that the 'magic' of Block's success had not been business innovation or its purported desire to serve legitimate unbanked communities, 'but rather the company's willingness to facilitate fraud against consumers and the government, avoid regulation, dress up predatory loans and fees as revolutionary technology, and mislead investors with inflated metrics,'" the complaint states.

"Former employees reportedly described how Cash App systemically suppressed internal concerns and ignored user pleas and numerous red flags to allow criminal activity to proliferate and fraud to run rampant on the platform and claimed that the company strategically disregarded AML rules," the

complaint contends.

On this news, Li says, the price of Block Class A common stock declined by 15%, from \$72.65 on March 22, 2023, to \$61.88 on March 23, 2023.

A few months later, in August 2023, Block filed a Form 10-Q with the U.S. Securities and Exchange Commission "reiterating" that the company had established a compliance program through which it vetted and monitored customers and their transactions, the complaint states. However, the filing also disclosed that the SEC and U.S. Department of Justice were investigating the allegations from the Hindenburg Report, it adds.

Li says this disclosure caused another stock price drop by almost 14% from \$73.55 on Aug. 3, 2023, to \$63.52 on Aug. 4, 2023.

A second article, published by NBC News in February 2024, detailed the reports of two whistleblowers who alleged that CashApp performed inadequate due diligence on its users, and the article detailed transactions with entities under sanction by the U.S. Department of the Treasury's Office of Foreign Assets Control.

"Cash App reportedly pressured its banking partners to forgo traditional due diligence and [know-your-customer] steps with the express purpose of easing the process of account opening in order to generate revenues for Block," the complaint states. "The whistleblowers further described a vibrant market for opened Cash App accounts on the black market that reportedly allowed criminals to avoid even the minimum due diligence involved in setting up a new account."

Li says Block's share price declined by 5% on this news, from \$69.48 on Feb. 15, 2024, to \$65.64 on Feb. 16, 2024.

Finally, in May 2024, NBC News published another article reporting that a former Block employee had provided prosecutors with internal company documents demonstrating that "Block had failed to conduct basic due diligence on its customers, that Square had processed thousands of transactions involving countries subject to economic sanctions (including Cuba, Iran, Russia, and Venezuela), and that Block had processed multiple cryptocurrency transactions for terrorist groups," according to the complaint.

Additionally, the article reported that the documents turned over by the whistleblower showed that these violations were known by members of Block's senior management and board, the complaint asserts.

"In addition, the employee rejected Block's contention that it had voluntarily reported thousands of suspicious transactions, stating that Block had excluded thousands of other transactions that the company had failed to report," the complaint notes.

According to Li, Block's share price dropped by more than 8% on this news, from \$73 on April 30, 2024, to \$66.84 on May 1, 2024.

Li also contends that due to these failures, there is a **pending securities class action** against Block and its executives in California federal court.

Additionally, in January, Block was ordered by the Consumer Financial Protection Bureau **to pay up to \$175 million** for alleged anti-fraud, customer service and dispute resolution failures tied to Cash App.

The agency said Block left Cash App users exposed to fraud by employing weak security protocols and ineffective customer support options for getting help. The company also conducted "woefully inadequate" investigations into disputed transfers, often just telling users to file a chargeback with their bank that the company could then reject, the CFPB said.

Block agreed to resolve the CFPB's claims with a consent order that requires the fintech to pay a \$55 million fine and provide up to \$120 million in refunds to affected consumers.

The consent order, which does not include any admission of wrongdoing, also requires Block to maintain a live, 24-hour customer help center; comply with certain fraud investigation and refund practices; and implement "reasonably designed" anti-fraud measures on Cash App.

The enforcement action came a day after state banking regulators announced an **\$80 million settlement** with Block. That deal resolves alleged anti-money laundering compliance failures involving Cash App, whereas the CFPB's case addresses alleged consumer protection violations.

Li seeks damages, restitution, attorney fees and a jury trial. Representatives for the parties did not immediately respond to requests for comment Friday.

Li is represented by Laurence M. Rosen of The Rosen Law Firm PA.

Counsel information for the defendants was not immediately available.

The case is Li v. Dorsey et al., case number 4:25-cv-03425, in the U.S. District Court for the Northern District of California.

--Additional reporting by Lauren Berg. Editing by Kristen Becker.

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Attys Score Bitcoin-Based Fee Award In Crypto Mining Suit

By **Sydney Price**

Law360 (April 18, 2025, 4:30 PM EDT) -- The attorneys who won \$4.6 million and 25 bitcoins in a class action accusing crypto mining company Stronghold Digital Mining Inc. of failing to fully disclose its supply chain risks will, along with the class, be partially paid in the cash equivalent of bitcoin, according to an order.

The **order** signed Thursday by U.S. District Judge Ronnie Abrams said lead counsel from The Rosen Law Firm PA is awarded one-third of the settlement fund's current cash value, or approximately \$1.6 million, and one third of the cash value of 25 bitcoins, which equaled approximately \$2,113,253 on Friday.

Stronghold agreed to pay out the settlement with \$4.7 million in cash and the U.S. dollar value of 25 bitcoins in accordance to a schedule based on the value of bitcoin at certain predetermined times over the next two years, according to the stipulation filed in November when the parties moved to preliminarily settle the case.

Additionally, lead counsel will be reimbursed \$122,000 in expenses, and the lead plaintiff will receive a \$10,000 award, according to Thursday's order.

The settlement, which was granted final approval on Monday, ended claims that Stronghold, an alternative-energy bitcoin miner, failed to properly disclose that equipment supplier MinerVa Semiconductor Corp. was likely to miss delivery deadlines, which in turn would hurt Stronghold's business.

The suit's other defendants include some of Stronghold's executives and underwriters, such as Cowen and Co. LLC and Tudor Pickering Holt & Co. Securities LLC.

The defendants filed dismissal motions in December 2022 arguing that the case should be tossed because the complaint did not allege any actionable misleading statements or omissions, the allegations negate loss causation and one of the named plaintiffs at the time lacked standing.

But Judge Abrams disagreed in August 2023, saying the Second Circuit has "clearly established" that plaintiffs bringing claims under Sections 11 and 12(a)(2) of the Securities Act do not need to allege scienter.

On Feb. 19, 2024, the plaintiffs moved for class certification, and a settlement party was approved for the purposes of settlement only.

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

The settlement class is represented by Laurence Rosen, Jonathan Stern and Phillip C. Kim of The Rosen Law Firm PA.

The Stronghold defendants are represented by Clifford Thau of Tannenbaum Helpert Syracuse & Hirschtritt LLP.

The case is Winter v. Stronghold Digital Mining Inc. et al., case number 1:22-cv-03088, in the U.S. District Court for the Southern District of New York.



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High Court's Cornell Ruling Eases Path For ERISA Suits

By Kellie Mejdrich

Law360 (April 18, 2025, 7:31 PM EDT) -- The U.S. Supreme Court's revival of Cornell University workers' class action alleging excessive retirement plan fees will likely spur a rise in lawsuits zeroing in on employers' arrangements with recordkeepers and other service providers, and could make those cases tougher to knock out of court, attorneys say.

Thursday's **unanimous decision** breathed new life into allegations that costly plan recordkeepers caused transactions that are prohibited under the Employee Retirement Income Security Act, **reversing** a district court's dismissal from 2017 that a Second Circuit panel had **affirmed in 2023**. The court rejected Cornell's argument that in order to advance a prohibited transaction claim under ERISA, workers had to plead elements of a prohibited transaction as well as pleading that their employer did not meet the conditions of an exemption.

Justice Sotomayor's opinion said that reading was backed by ERISA's text and court precedent.

Defense-side attorneys predicted the decision could fuel additional complaints targeting employers' service provider relationships, because ERISA's text states all transactions "furnishing of goods, services, or facilities between the plan and a party in interest" are prohibited unless they meet the conditions of an exemption.

"It's a pretty frustrating outcome," said David Kaleda, principal at Groom Law Group, who was among several employer-side attorneys who expressed disappointment with the decision. He said the ruling "isn't going to help stem the tide" of ERISA litigation targeting employers' retirement plan management.

"It may be harder to succeed on the motion to dismiss, or it may result, at least, in a lot more protracted motion to dismiss process," Kaleda said.

Here's a rundown with experts on what the decision means for ERISA excessive fee litigation and what's next as employers' attorneys say they're bracing for a new potential wave.

The Decision

Attorneys from both sides of the bar agree that Justice Sonia Sotomayor's 15-page opinion for the unanimous court could help back up workers in litigation targeting their employer's allegedly costly relationships with companies that help manage employee benefit plans.

In their decision, the justices resolved a core dispute over the prohibited transaction pleadings at the motion to dismiss stage in these service provider fights. The dispute has to do with how ERISA Section 406(a)(1)(C) states that all service provider transactions between a plan and a party in interest are prohibited, except as provided under a list of exemptions in Section 408. (The justices referred to these parts of federal benefits law as Section 1106 and Section 1108, which reference the U.S. Code instead of ERISA.)

The Second Circuit panel's 2023 ruling endorsed a pleading standard for prohibited transaction claims that was among the strictest in the nation and directly contrasted with what the Eighth Circuit had established in **Braden v. Wal-Mart Stores** in 2009. The Second Circuit decision required workers to plead both elements of the transaction and refute the application of the exemption for reasonable

service provider. Braden, meanwhile, had only required pleading elements of a prohibited transaction for a claim to advance, and not the exemptions.

"I think it's going to lead to a modest uptick in risk of litigation, particularly in the Second Circuit," Andrew Holly, partner and head of the ERISA litigation practice at Dorsey & Whitney LLP, said about the justices' ruling.

Holly pointed out how despite the Eighth Circuit standard being in place since 2009, "it doesn't appear that there was just an enormous difference in the number of cases filed in the Eighth Circuit versus elsewhere."

Michelle Yau, who chairs the employee benefits and ERISA practice at Cohen Milstein Sellers & Toll PLLC, complimented the decision: "I love the fact that it was a nice, crisp, clear holding to compare it to Hughes," she said, referring to the Supreme Court's Thursday decision compared to its 2022 ruling on ERISA pleading standards in [Hughes v. Northwestern](#) . In Hughes, the justices revived Northwestern employee retirement plan participants' suit alleging mismanagement after concluding a district court erred in dismissing claims over allegedly imprudent investment options because better options were also offered in their plans.

Yau said the court's ruling that workers don't have to plead around exemptions to prohibited transactions in ERISA was "incredibly relevant" to active class action litigation.

"We really did need the Supreme Court to make clear what the law is," Yau said. She pushed back on characterizations from the defense that the high court's reversal would spur a "monsoon" in new class actions being filed against employers, but said she expected motion practice to speed up.

"I don't actually think it's going to create more litigation. I think it's actually just going to be helpful for the courts to dispense with Rule 12 motions quickly, because before you were seeing them sit," sometimes for a year or longer, Yau said. "I just think they're going to move much more efficiently," she added.

Additional Safeguards

Another major aspect of the decision for attorneys was that Justice Sotomayor's opinion outlined multiple alternative means to discourage meritless litigation. Those other options were included in a section that acknowledged Cornell's warnings about an avalanche of litigation to come as "serious concerns" that couldn't overcome ERISA's text.

The justices said those included Rule 11 sanctions on meritless complaints as well as cost shifting, such as awarding defense attorneys' fees and costs if they prevail on a motion to dismiss. But among the most interesting suggestions, which multiple attorneys pointed out to Law360, was one that district courts should more frequently employ Federal Rule of Civil Procedure 7(a) to handle allegations that service provider transactions are prohibited by ERISA. Under that rule, district judges can require plaintiffs to plead that a prohibited transaction exemption does not apply in a brief replying to a defendant's answer to the claim.

The idea of district courts leaning on Rule 7(a) of the Federal Rules of Civil Procedure was also the subject of discussion **during oral arguments** in the case in January, when a majority of justices appeared willing to revive the case.

Blake Crohan, senior associate with Alston & Bird who represents employers, said, "I think a lot of defense counsel are dusting off the Federal Rules of Civil Procedure and taking a look again at Rule 7." Crohan said his own cursory search of case records on Thursday showed Rule 7(a) isn't often invoked, but shows up in qualified immunity cases.

"I think it's going to be interesting to see if defendants really start to use Rule 7 for these prohibited transaction claims, and then what do defendants have to show for a court to order a reply, what do plaintiffs then have to show in response, and then how willing are courts going to be to order a reply?" Crohan said.

The Concurrence

Attorneys also took note of significant findings in a concurrence penned by Justice Samuel Alito and co-signed by Justices Clarence Thomas and Brett Kavanaugh, where some of the most conservative justices on the court warned they expect "untoward practical results" to result from the decision to reverse the Second Circuit.

Agreeing with the majority that serious concerns about more litigation could not displace the statute of ERISA and its clear structure separating prohibited transaction provisions and exemptions under two subsections, the concurrence went a step further to endorse the Rule 7 mechanism as "perhaps the most promising" of the suggestions.

The concurrence also credited the U.S. solicitor general for suggesting Rule 7 as an "additional safeguard" in its December amicus brief. In that brief, the federal government pointed to the Fifth Circuit's 2019 ruling in *Cole v. Carson* , which was a dispute over qualified immunity that referenced Rule 7(a) as a way to address the defense at the motion to dismiss or summary judgment stage.

Joanne Roskey, a member of Miller & Chevalier Chtd. and an employer-side ERISA attorney, said she found it interesting that "the concurrence went out of its way" to endorse the Rule 7(a) mechanism when exemptions are raised as an affirmative defense.

Roskey said she's also watching to see if Rule 7 becomes "a new way that these cases are worked up" resulting from the court's endorsement.

"It's the court's decision whether to order a reply, but I would think the defendants are going to be asking the court to do it more regularly," Roskey said.

--Editing by Bruce Goldman and Nick Petruncio.

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Mass General Inks \$8.25M Deal To End Retirement Fee Suit

By **Patrick Hoff**

Law360 (April 18, 2025, 1:34 PM EDT) -- Boston-based healthcare system Mass General Brigham Inc. agreed to pay \$8.25 million to settle a proposed class action alleging it unlawfully allowed its employee retirement plan to pay excessive administrative fees, according to a filing in Massachusetts federal court.

The five former Mass General employees leading the suit **asked the court** Thursday to preliminarily approve the agreement to wrap up their Employee Retirement Income Security Act suit. According to the plan participants' motion, the \$8.25 million amount represents 20% to 30% of their maximum potential damages and was reached after over a year of negotiations.

The agreement stipulates that up to 33.3% of the settlement fund, or about \$2.75 million, would be allocated for attorney fees and that the five named plaintiffs would receive case contribution awards of no more than \$7,500. The remaining amount would go to a settlement class comprising any participant or beneficiary of the retirement plan from January 2016 until the date preliminary approval is granted.

"The history of this case spans over three years, with both parties spending significant costs and time on discovery and motion practice," the plan participants wrote. "Without this settlement, the parties would have to incur further expert, travel, court, and other costs that would both delay and reduce any recovery for plaintiffs and the settlement class."

The plan participants filed their suit in January 2022, claiming the nonprofit that operates teaching hospitals Brigham and Women's Hospital and Massachusetts General Hospital had mismanaged its consolidated 403(b) plan. According to the complaint, the plan had over \$10.2 billion as of 2020, making it a jumbo plan and eligible for some of the lowest administrative fees on the market.

However, while comparable plans paid between \$21 and \$34 per participant, Mass General plan participants were paying nearly \$60 in recordkeeping and administration fees, the plan participants said. According to Thursday's motion, plan participants lost between \$27.8 million and \$40.7 million based on the difference between what a reasonable fee would've been and what they actually paid.

Mass General had asked the court to toss the case in May 2022, but U.S. District Judge Angel Kelley **refused**, saying in March 2023 that the plan participants' allegations were detailed and plausible enough to proceed to discovery.

Then, in May the following year, the healthcare system **told the court** it was in the process of negotiating an agreement with the plan participants and asked for more time to hammer out the details.

A spokesperson for Mass General Brigham said in a statement that it continues to deny the lawsuit's allegations.

"The court did not find that Mass General Brigham had done anything wrong with respect to the plan in connection with the lawsuit and we continue to believe that the plan has been well managed," Mass General spokesperson Jessica Pastore said. "The decision to settle was purely to avoid continuing to engage in expensive litigation for years into the future."

Counsel for the plan participants declined to comment Friday.

The plan participants are represented by Mark K. Gyandoh and James A. Maro of Capozzi Adler PC, and Peter A. Muhic of Muhic Law LLC.

Mass General is represented by Keri L. Engelman and Jeremy P. Blumenfeld of Morgan Lewis & Bockius LLP.

The case is Norton et al. v. Mass General Brigham Inc. et al., case number 1:22-cv-10045, in the U.S. District Court for the District of Massachusetts.

--Additional reporting by Eliot Weld. Editing by Aaron Pelc.

Update: This article has been updated with a comment from Mass General Brigham.

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Whole Foods Strikes Deal In Sweeping 401(k) Fee Suit

By **Patrick Hoff**

Law360 (April 18, 2025, 5:26 PM EDT) -- Whole Foods reached an agreement to end a class action alleging its failure to keep its 401(k) plan's administrative fees in check cost a class of roughly 97,000 workers millions of dollars in retirement savings, the Amazon-owned grocer told a Texas federal court.

In a **joint status report** filed Thursday, Whole Foods and seven former employees said that they'd reached an agreement in principle to settle the Employee Retirement Income Security Act lawsuit during a recent mediation session and that they plan to file for preliminary approval of the deal by June 17.

The workers — Shauna Winkelman, Michael Lenon, Scott Cenna, Kalea Nixon, Robert Goldorazena, Chad Diehl and Ross Nanfeldt — filed their lawsuit in November 2023, claiming Whole Foods had one of the largest 401(k) plans in the country but failed to use its leverage to keep fees in check.

According to the complaint, Whole Foods paid \$31 per participant in recordkeeping fees between 2020 and 2022, even though comparable plans run by Apple, Costco, Lowes, Google and Macy's paid between \$8 and \$23.

The workers claimed that because Whole Foods received "routine services" from its recordkeeper, Fidelity, it should've been easy for the grocer to negotiate lower fees or seek a less costly option. However, the 401(k) plan kept Fidelity in place for over a decade, suggesting plan fiduciaries weren't acting in plan participants' best interests, the complaint said.

The workers **asked the court** in November to greenlight a class comprising everyone who put money into Whole Foods' 401(k) plan since November 2017, which they estimated to be over 97,000 people. In a mid-December filing, Whole Foods agreed to class certification "to conserve the parties and the court's resources and avoid unnecessary motion practice."

Counsel for the workers declined to comment Friday. Representatives of Whole Foods did not immediately respond to requests for comment.

The workers are represented by Mark K. Gyandoh and James A. Wells of Capozzi Adler PC, Peter A. Muhic of Muhic Law LLC and by Kell A. Simon of the Law Offices of Kell Simon.

Whole Foods is represented by Stacey C.S. Cerrone, Alex E. Hotard and Lauren Hope Whiting of Jackson Lewis PC.

The case is Winkelman et al. v. Whole Foods Market Inc. et al., case number 1:23-cv-01352, in the U.S. District Court for the Western District of Texas.

--Additional reporting by Emily Brill. Editing by Abbie Sarfo.

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Walgreens To Pay DOJ \$300M Over Invalid Prescriptions

By Lauren Berg

Law360 (April 18, 2025, 11:15 PM EDT) -- Walgreens revealed in a U.S. Securities and Exchange Commission filing Friday that it will pay upward of \$300 million to resolve U.S. Department of Justice allegations that it knowingly filed millions of prescriptions for opioids and other drugs that didn't have a legitimate medical purpose or weren't valid.



Walgreens has struck a more than \$300 million settlement to resolve government claims that it filled millions of illegitimate and invalid prescriptions, including for opioids, according to a Friday regulatory filing. (AP Photo/Gene J. Puskar)

The **settlement agreement** — which comes about three months after the government **intervened** in cases brought by four whistleblowers in Illinois federal court — calls for Walgreens Boots Alliance to pay \$300 million, plus interest at a rate of 4% per year back from Oct. 20, 2024, over the next six years, of which \$150 million will be used to pay restitution.

"The company entered into the settlement agreement to resolve the last anticipated major opioid regulatory matter and to avoid the cost and uncertainty of continued litigation," Walgreens said in the SEC filing. "The settlement agreement includes no admission of wrongdoing or liability by the company."

The litigation accused the Walgreen Co., Duane Reade and other subsidiaries of Walgreens Boots Alliance of ignoring "red flags" indicating that prescriptions were not legitimate or valid and filling them anyway, and then seeking reimbursement from Medicare and other federal healthcare programs.

Among the millions of unlawful prescriptions that Walgreens has allegedly filled since August 2012 were prescriptions for excessive quantities or early refills of opioids and a commonly abused combination of drugs known as the "trinity," which is created by an opioid, benzodiazepine and a muscle relaxant, the government said.

The government's complaint alleged that Walgreens, which has more than 8,000 pharmacies across the country, systematically pressured its pharmacists to quickly fill prescriptions without taking the time to confirm their validity.

According to the complaint, Walgreens "fostered a corporate culture" where pharmacists who did verify the legitimacy of controlled-substance prescriptions were subject to reprimand. The company's compliance department also prevented pharmacists from warning one another about practitioners who were known to write invalid opioid prescriptions, the suit alleged.

"Walgreens for years refused to implement a system for blocking Walgreens pharmacies from filling prescriptions written by practitioners that Walgreens knew regularly wrote illegal opioid prescriptions, even as Walgreens pharmacists requested such action, and even as some of Walgreens' major competitors instituted systems enabling them to block such prescribers," the DOJ said.

"As a result, Walgreens filled thousands of invalid prescriptions written by prescribers that Walgreens' pharmacy compliance department knew were likely prescribing controlled substances unlawfully," it said.

Four whistleblower plaintiffs who previously worked for Walgreens in different parts of the country initiated actions against the company under the False Claims Act, which allows private parties to sue on behalf of the U.S. and share in any recovery. The Justice Department's case consolidated those four matters.

The government's suit claimed violations of the FCA and the Controlled Substances Act, payment by mistake of fact, and unjust enrichment. It sought civil penalties, treble damages and injunctive relief.

On Friday, in light of the settlement, the government and the four whistleblowers **asked the court** to dismiss the case.

"This resolution allows us to close all opioid related litigation with federal, state and local governments, and provides us with favorable terms from a cashflow perspective while we focus on our turnaround strategy that will benefit our team members, patients, customers and shareholders," a spokesperson for Walgreens told Law360 on Friday.

The Justice Department did not immediately respond to a request for comment.

The federal government is represented by Valerie R. Raedy of the U.S. Attorney's Office for the Northern District of Illinois, Nicole Frazer and Joshua R. Barron of the U.S. Department of Justice's Civil Division, Lacy R. Harwell Jr. and Carolyn B. Tapie of the U.S. Attorney's Office for the Middle District of Florida, Thomas F. Corcoran of the U.S. Attorney's Office for the District of Maryland, Elliot M. Schachner of the U.S. Attorney's Office for the Eastern District of New York and John E. Beerbower of the U.S. Attorney's Office for the Eastern District of Virginia.

Walgreens Boots Alliance is represented by Renato Mariotti of Paul Hastings LLP.

The case is U.S. ex rel. Novak v. Walgreen Co. et al., case numbers 1:18-cv-05452, 1:22-cv-06052, 1:22-cv-06366 and 1:23-cv-01617, in the U.S. District Court for the Northern District of Illinois.

--Editing by Emily Kokoll.

Will RFK's FDA create windfalls for trial lawyers?



legalnewsline.com/stories/670967795-will-rfk-s-fda-create-windfalls-for-trial-lawyers

Daniel Fisher

April 21, 2025

Kennedy Jr. | <https://www.hhs.gov/>

WASHINGTON (Legal Newsline) - Trial lawyers are poised to cash in on product-liability class actions with Robert F. Kennedy Jr. in charge of the Food and Drug Administration.

From his position as Health and Human Services Secretary, RFK won't just be promoting his anti-vaccine agenda. Virtually anything he says about hidden dangers lurking in commonly used products will be grist for lawsuits, in particular "economic damages" class actions claiming consumers would have paid less for an item had they known the risks they learned from RFK.

Plaintiff lawyers typically file soon after a public announcement and bolster their cases with scientific data from laboratories they hire to produce evidence for lawsuits. When the public announcement comes from a high-ranking official like RFK, lawyers feel especially confident in suing.

"All the plaintiffs' bar thinks it needs is a federal register notice or other public statement from a regulator and some kind of laboratory testing and they then think have enough to support a complaint," said Rachel Turow, a former FDA attorney now of counsel to Skadden Arps.

"I think we're going to see that pattern repeated throughout his tenure."

A recent model of the announce-then-sue strategy is phenylephrine, a vasoconstrictor once commonly used in over-the-counter cold medicines. A few days after an FDA advisory panel declared oral phenylephrine ineffective in September 2023, the first class action hit federal court in Pensacola, Fla.

By December, there were more than 70 economic damages suits against everyone from Johnson & Johnson to Family Dollar stores. They didn't claim anyone was injured by the drug, just that they paid too much.

"The lawsuits were filed immediately after a non-binding advisory committee vote," Turow said. "This shows you the power of the statements of the regulator to drive litigation, especially in the economic damages realm."

Lawyers struck out with phenylephrine after a judge dismissed all the claims in November 2024, but that's unusual. Typically, when faced with scores of lawsuits and potentially ruinous damages, companies settle and plaintiff lawyers collect a quarter or more of the money as fees.

Kennedy, himself an experienced plaintiff lawyer, may deliver better results for his compatriots. Back when he was running for the Democratic presidential nomination, RFK announced what he called a 10-point plan to eliminate what he called “toxic chemicals used in everyday items” that cause cancer and birth defects.

His focus was plastic packaging but RFK has also long said the mercury preservative in vaccines causes autism – a debunked scientific theory trial lawyers promoted to keep their cases out of a special court for vaccine injuries that provided lower fees.

Last month, RFK's FDA announced Operation Stork Speed to test infant formula for contaminants including heavy metals. Any information coming from that study will likely be tinder for lawsuits over baby products, which already fill federal court dockets. (Even Water Wipes baby wipes allegedly present a risk to infants because of microplastics.)

Other cases filed this year include claims Girl Scout cookies contain heavy metals (that suit includes jury-inflaming, if irrelevant, information about the salaries of top Girl Scouts officials), Boba Guys teas (allegedly contain BPA, a chemical in plastic), RXBAR energy bars (dyes and additives), and Nearly Naked popcorn snacks (“artificial ingredients” including citric acid).

Most of the suits cite evidence from labs like Lead Safe Mama, Consumer Reports, GMOScience or Plastic List Report, whose sponsors include Stripe co-founders John and Patrick Collison. GMOScience's advisory board includes Zen Honeycutt, executive director of Moms Across America, a vocal supporter of RFK for HHS Secretary because of his stance against plastics and other supposed toxins.

Kennedy, of course, is a trial lawyer who has made millions from personal-injury suits. His nonprofit, Children's Health Defense, spends most of its money on salaries – RFK made \$500,000 as chairman in 2022 – and millions in fees to law firms including JW Howard, where until this year Kennedy was of counsel. Children's Health Defense has roots in promoting the mercury/autism theory and still supports the anti-vaccine movement as well as a more general goal of “eliminating environmental exposures” and “holding responsible parties accountable,” which is shorthand for litigation.

ORGANIZATIONS IN THIS STORY

Food And Drug Administration