

News from Bloomberg Terminal

April 22, 2025, 10:02AM PDT

Tivity Health Must Face Investor Suit Over Nutrisystem Deal (2)

- Judge tossed company bid to block trial over 2019 acquisition
- But denied investors damages over executive's departure

By Gillian R. Brassil

(Bloomberg Law) --

Tivity Health Inc. investor allegations that the company painted too rosy a picture of its 2019 Nutrisystem Inc. acquisition should be resolved in a trial, a federal judge ruled.

A reasonable juror could find that the wellness company and then-executives "intentionally misconstrued Tivity's goodwill and Nutrisystem tradename values" to conceal that the \$1.3 billion deal wasn't as beneficial as executives had claimed, Judge Waverly D. Crenshaw Jr. said. The US District Court for the Middle District of Tennessee judge's opinion also said a jury could plausibly find that Tivity and the executives purposefully misled investors into thinking the acquisition was a success by omitting an \$8.3 million loss in financial disclosures.

Crenshaw largely denied Tivity's motion for summary judgment on Monday.

There's a genuine dispute over whether disclosing the loss in the deal's wake would've mattered to investors, Crenshaw said. There's also a question over whether Tivity complied with accounting standards in determining goodwill and trade name values in fiscal year 2019, or if they were misleading their accountant to hide the nutrition sector's poor performance, he said.

These questions of securities fraud and scheme liability claims are best reviewed by a jury, Crenshaw said.

Tivity also failed to get Crenshaw to shorten the class period. The class, originally certified in 2022 and again in 2023 after the US Court of Appeals for the Sixth Circuit sought more analysis, includes those who got Tivity stock from March 8, 2019—when Tivity announced the closing of its acquisition—through Feb. 19, 2020.

But the lead plaintiff, a pension fund, insufficiently tied chief operating officer Dawn Zier's 2019 departure to purported fraud, Crenshaw said. He tossed its request for damages related to Tivity's announcing her departure.

Fallen Shares

Tivity's stock price fell more than 45% the trading day after the company shared disappointing fourth quarter and full-year 2019 results and guidance for the first quarter and full-year 2020 for its nutrition segment, according to the pension fund's most recent complaint.

On Feb. 19, 2020, Tivity revealed Nutrisystem's \$8.3 million loss and a \$377 million impairment charge to its goodwill and the trade name, plus the termination and resignation of two executives.

"We're pleased with the order and are looking forward to the opportunity to present this case to a jury," said lead counsel Chris Wood of Robbins Geller Rudman & Dowd LLP, the class counsel which filed on behalf of the lead plaintiff, Sheet Metal Workers Local No. 33, Cleveland District, Pension Fund, in 2020.

Barrett Johnston Martin & Garrison LLC is the class representative's local counsel and Allotta Farley Co. LPA is additional counsel.

King & Spalding LLP and Bass, Berry & Sims PLC represent Tivity and former executives; neither firm immediately responded to emails seeking comment.

The case is *Strougo v. Tivity Health, Inc.*, M.D. Tenn., No. 3:20-cv-00165, 4/21/25.

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(Updated to add comment from class counsel in tenth paragraph.)

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Net Power Shareholder Sues Over Plant Delays, Swelling Costs (1)

- **COURT:** M.D.N.C.
- **TRACK DOCKET:** [No. 1:25-cv-00296](#) (Bloomberg Law subscription)

Net Power Inc.'s schedule and cost projections for a clean-power natural gas facility in West Texas were unrealistic and misleading, an investor says in a proposed class action over stock drops.

Revelations about supply-chain issues, site-related challenges, and ballooning costs caused a 19% stock slide in November 2023 and a 31% drop on March 10 of this year, according to the suit, filed April 18 in the US District Court for the Middle District of North Carolina.

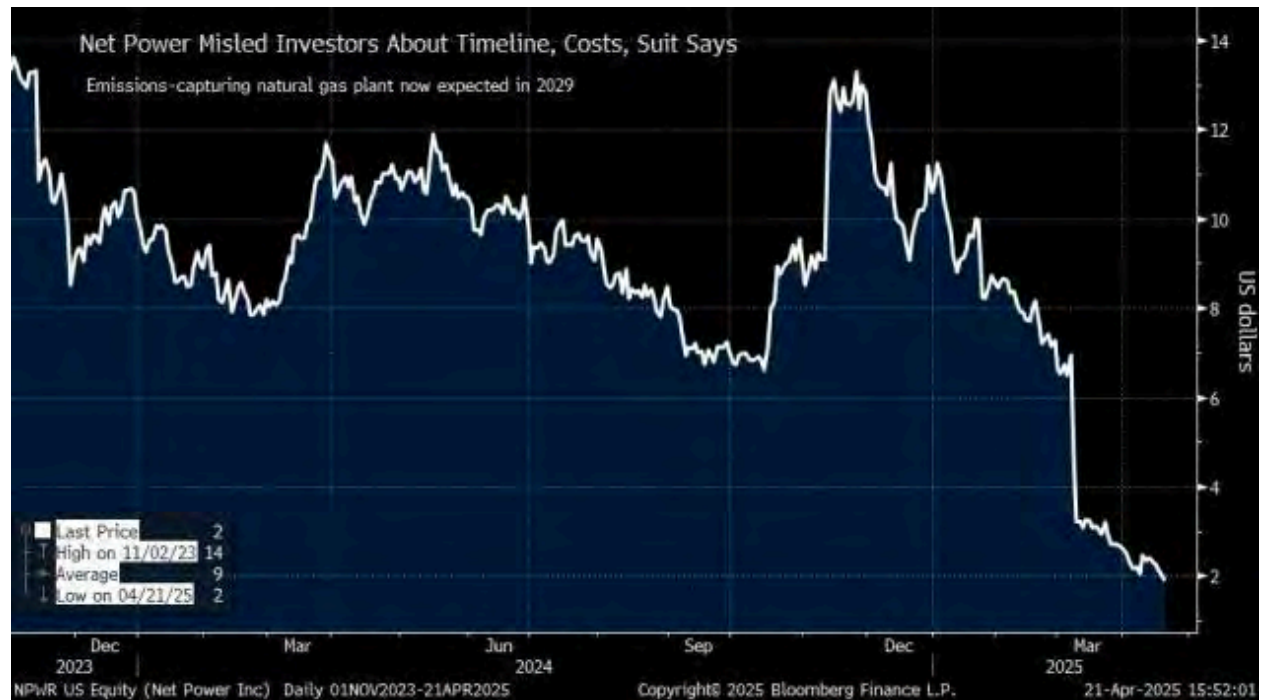
The March 10 event was the sharpest selloff in the stock's history since trading began in June 2023 following Net Power's merger with a blank-check company, according to data compiled by Bloomberg.

Net Power has touted a "novel power generation system designed to produce reliable and affordable electricity from natural gas while capturing virtually all atmospheric emissions," Ted Luciani says in his complaint. The company is developing its first utility-scale plant, called SN1 or Project Permian, he says.

A 2023 estimate of a 2026 opening and \$950 million cost morphed to a 2029 start for power generation and a \$1.7 billion to \$2 billion cost, he says.

Net Power's stock fell 19% to close at \$10.85 per share on Nov. 14, 2023 on the first news of a delay, Luciani says. Results for 2024 and updates given on March 10, 2025, caused a 31% drop that day to close at \$4.75 per share, he says.

A third stock-price decline followed the announcement of two executives' departures, he says. The stock fell nearly 6% to close at \$2.13 per share on April 16.



The proposed class consists of hundreds or thousands of members.

Luciani seeks damages on his securities fraud claims.

Net Power doesn't comment on litigation, it said in an email Monday.

Schiller & Schiller PLLC and Pomerantz LLP represent Luciani.

The case is Luciani v. Net Power Inc. , M.D.N.C., No. 1:25-cv-00296, complaint 4/18/25 .

(Updated with company response in 10th paragraph.)

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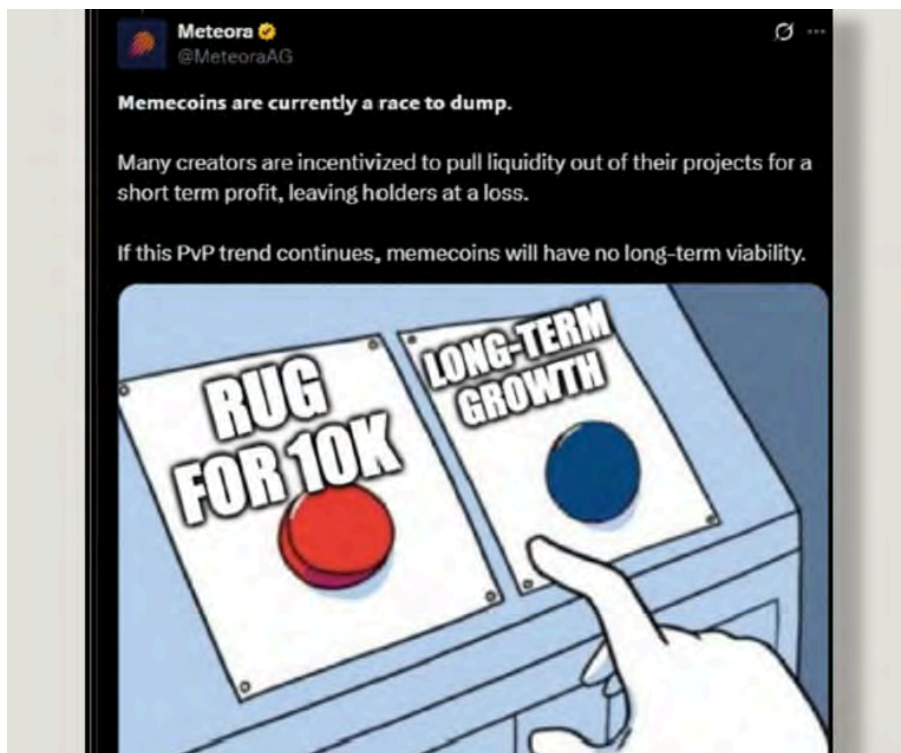
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Investors Sue Meteora for Over \$69 Million Meme Token Meltdown

LAW [law.com/newyorklawjournal/2025/04/21/investors-sue-meteora-for-over-69-million-meme-token-meltdown](https://www.law.com/newyorklawjournal/2025/04/21/investors-sue-meteora-for-over-69-million-meme-token-meltdown/)

Michael A. Mora

April 21, 2025



What You Need to Know

- Plaintiffs allege insiders secretly controlled 95% of \$M3M3 tokens before dumping at inflated prices.
- Lawsuit seeks securities classification for meme tokens, a ruling the plaintiffs said could reshape future Solana-based launches.
- The case before U.S. District Judge Rochon targets Meteora and Kelsier Labs for over \$69 million in claimed investor losses.

Investors in the \$M3M3 meme coin filed a class action complaint in Manhattan federal court Monday against the group that operates Meteora, alleging that the defendants "covertly" controlled almost the entire supply of the token before and soon after opening trading to the public, cashed out at an inflated price and left the plaintiffs with heavy losses.

Max Burwick of Burwick Law and Margaret Hoppin and Timothy Grinsell of Hoppin Grinsell represent the plaintiffs, Jonathan Clarke and Rodrigo Ferreira Da Cruz Vogt, in their suit against defendants Meteora, its CEO Benjamin Chow and the venture capital firm Kelsier Labs, which is operated by Hayden Davis, Gideon Davis and Charles Davis.

“Insiders are accused of locking public buyers out for the first minutes of trading, securing 95% of the tokens and later selling at a premium,” Burwick alleged in a statement. “The complaint asks the court to classify stake-based meme tokens as securities and to appoint a receiver over Meteora, steps that could influence how any new celebrity or political token is brought to market on Solana.”

The defendants did not respond to a request for comment.

Now, the case is pending before U.S. District Judge Jennifer L. Rochon of the Southern District of New York pursuant to federal question jurisdiction.

The case dates back to Dec. 4, when the defendants purported to “introduce a solution to the excessive risk, price volatility, and misconduct that plagued memecoin investing,” according to the complaint. In doing so, Chow introduced that Meteora, a decentralized crypto asset exchange built on the Solana blockchain, was set to launch the investment platform M3M3.

Chow explained that M3M3 would offer rewards to investors who staked digital assets on the platform, including a portion of transaction fees generated on Meteora. Staking is the act of buying and setting aside a certain amount of digital assets to become an active validating node for building a blockchain network, which can increase the holder's return on investment.

Chow promised investors that M3M3's offering would lead to a domino effect in which there would be a reduction in price volatility and an increase in overall market capitalization and that investors in every digital asset that participated in M3M3 would be protected from pump-and-dump schemes and sharp drops in market price shortly after that asset's launch, according to the complaint.

The M3M3 platform then announced the launch of a new digital asset, \$M3M3; however, the plaintiffs alleged that the defendants “deliberately concealed their involvement” from the public, including the offering, promoting and selling of the token to plaintiffs and hundreds of other investors.

“In reality, \$M3M3 was a blatant fraud jointly planned and perpetrated by Meteora, Kelsier, and the individual defendants,” the plaintiffs alleged in the 45-page complaint.

The plaintiffs alleged the defendants “covertly orchestrated the purportedly public launch of \$M3M3 on Meteora to limit initial sales to defendants” and a group of insiders using 150 electronic wallets. And soon after the launch, the insider investors unloaded their tokens on the non-insider investors, eventually leading to a crash on Dec. 6, according to the complaint. While the insider investors made strategic attempts to regain investor confidence by re-inflating \$M3M3’s value, the token ultimately plummeted, leading to over \$69 million in class damages.

Burwick added that plaintiffs' counsel "will use every remedy the law provides to seek recovery for our clients and to protect the builders who are trying to move crypto forward the right way.”

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You Might Like



April 18, 2025

Watch This Space: DOJ Cryptocurrency Enforcement in the New Administration

By Katherine Reilly and Sid Kamaraju

🕒 9 minute read

Meteora Conducted \$69 Million Memecoin Scam, Token Buyers Allege

- **COURT:** S.D.N.Y.
- **TRACK DOCKET:** [No. 1:25-cv-03268](#) (Bloomberg Law Subscription)

Cryptocurrency exchange Meteora, its CEO, and a venture capital firm manipulated a newly launched memecoin's trading price, costing investors \$69 million, purchasers say in a would-be class action.

The scheme used the reputation of CEO Benjamin Chow—a leader in the Solana ecosystem—and investment stability claims to promote Meteora's M3M3 platform and the \$M3M3 memecoin, Jonathan Clarke and Rodrigo Ferreira Da Cruz Vogt say. They filed their complaint Saturday in the US District Court for the Southern District of New York.

The suit names venture capital firm Kelsier Labs LLC and its principals, Charles Thomas Davis and his sons Hayden and Gideon Davis, as defendants along with Meteora and Chow. Meteora is an unincorporated decentralized exchange.

The group executed serial pump-and-dump schemes beginning shortly after \$M3M3 launched on Dec. 4, 2024, the plaintiffs say.

Chow resigned from Meteora in February, according to the complaint.

Meteora is among Solana blockchain-based projects that have been tarnished by bot-driven trading spikes, trading "cabals," and other conduct contributing to volatility.

The proposed class consists of "many hundreds of non-insider investors" who purchased the tokens between between Dec. 4 and April 19, the complaint says.

Clarke and Vogt bring claims for the unregistered offer and sale of securities, securities fraud, violations of New York deceptive business practices law, common law fraud, negligent misrepresentation, and unjust enrichment. They seek compensatory damages, rescission, and punitive damages.

Chow didn't immediately respond to a request for comment sent through LinkedIn. Efforts to reach Meteora, Kelsier, which does business as Kelsier Ventures, and the Davises weren't successful.

Hoppin Grinsell LLP and Burwick Law PLLC represent the investors.

The case is Clarke v. Chow , S.D.N.Y., No. 1:25-cv-03268, complaint 4/19/25 .

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iRobot Misled With Statements on Amazon Merger, Investor Argues

- US and European antitrust regulators scrutinized deal
- District court didn't draw correct inferences, investor says

A securities fraud suit against iRobot Corp. over its failed merger into Amazon.com Inc. should be revived, an investment fund told the First Circuit on Monday.

The lower court “wrongly disregarded” confidential witness accounts about Amazon’s alleged refusal to cooperate with antitrust regulators’ requests for information, lead plaintiff Premca Extra Income Fund LP said in a brief to the US Court of Appeals for the First Circuit.

Antitrust concerns by regulators in the US and the European Union led the companies to abandon the acquisition in January 2024, part of a trend affecting M&A deals last year.

Premca alleged in the proposed class action that iRobot failed to disclose that the proposed sale was unlikely to win approval from US and European antitrust regulators, given Amazon’s already significant position in the market for robot vacuum cleaners. Reports that regulators planned to block the deal led iRobot’s stock price to fall 27%, according to the complaint.

Judge William G. Young of the US District Court for the District of Massachusetts dismissed the suit in January.

The district court improperly drew all inferences against Premca and the investors it seeks to represent, the brief argues. The court found that the web giant’s refusal to cooperate “might somehow be characterized as ‘working cooperatively,’” Premca said.

Premca also satisfied the requirement to show fraudulent intent, it said. Taking the allegations as true, the inference that iRobot and its executives “knew or recklessly disregarded that they were presenting misleadingly incomplete information to investors was the most plausible inference,” it said.

Pomerantz LLP represents the investors. Skadden Arps Slate Meagher & Flom LLP represents iRobot.

The case is Premca Extra Income Fund LP v. iRobot Corp. , 1st Cir., No. 25-01192, brief 4/21/25 .

Class Action

April 22, 2025, 7:05 AM PDT

New England Biolabs Gets Nod for \$7.15 Million Stock Plan Pact

New England Biolabs Inc. received initial court approval for a \$7.15 million class settlement with former workers who say they were forced to sell their stock in the genomic research company at an unfair price.

The settlement would provide an average gross recovery of \$89,000 for each of about 80 people who had their company stock liquidated between September 2017 and September 2021. It represents about 42% of the potential damages in the case, according to court filings announcing the deal.

- Judge Richard G. Stearns granted preliminary approval to the deal and scheduled an Aug. 6 fairness hearing in an order issued Monday in the US District Court for the District of Massachusetts
- The lawsuit says the company's profit sharing plan previously allowed employees to hold New England Biolabs stock after leaving their jobs, but a 2019 plan amendment revoked this right and forced former workers to sell their stock for less than fair market value
- Stearns dismissed some of the plaintiffs' legal theories in 2024 while allowing the case to move forward

Barton LLP and Jonathan Feigenbaum of Boston represent the workers. Steptoe LLP and Downes McMahon LLP represent the defendants.

The case is Jackson v. New England Biolabs, Inc. , D. Mass., No. 1:23-cv-12208, 4/21/25 .

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Class Action

April 22, 2025, 5:57AM PDT

Parker-Hannifin's 401(k) Benchmark Spat Catches High Court's Eye

- **Split Sixth Circuit revived claims based on valid benchmark**
- **Justices' call for response boosts chances case will be heard**

The U.S. Supreme Court asked Parker-Hannifin Corp. employees challenging their 401(k) plan to respond to the company's petition urging the justices to address the "meaningful benchmark" standard used by courts weighing retirement fees and investments.

The high court on Monday asked the employees to respond to Parker-Hannifin's petition, which seeks reversal of a decision greenlighting claims over the Northern Trust target date funds in the motion control technology company's retirement plan. The US Court of Appeals for the Sixth Circuit ruled in a 2024 split decision that the workers have viable claims under the Employee Retirement Income Security Act because they plausibly alleged that the Northern Trust Focus Funds had high investor turnover and underperformed a target date fund index from S&P Global.

This move by the justices is seen as an indication that someone at the court is interested in the class action, and it slightly increases the chances the case will be heard, according to a Bloomberg Law analysis published in 2018.

The proposed class lawsuit accuses Parker-Hannifin of mismanaging a 401(k) plan covering more than 32,000 people by retaining a suite of unproven and poorly performing target date funds from Northern Trust, which isn't named as a defendant. An Ohio federal judge dismissed the case after finding the workers hadn't put forth valid benchmarks by which to judge the funds in question, but the Sixth Circuit disagreed and revived the dispute.

The appeals court's decision focused on the "meaningful benchmark" standard that several courts, including the Sixth, Seventh, Eighth, and Tenth circuits, have used to assess whether retirement investors have identified a better alternative that's sufficiently similar to the fund or fee structure they challenge. Attorneys said the Sixth Circuit's decision to treat an S&P fund index as a proper benchmark for passively managed target date funds represents a liberal take on the standard that may be out of sync with how other courts have juggled the hundreds of recent lawsuits challenging 401(k) fees and investment options under ERISA.

Parker-Hannifin appealed to the Supreme Court, criticizing the Sixth Circuit for creating an "unprecedented, trivially easy-to-satisfy test" for identifying a meaningful benchmark in an ERISA case. The appeals court also created a circuit split by announcing the possibility that 401(k) investors can state a viable claim without identifying a meaningful benchmark at all, the company said.

The justices set a May 21 deadline for the workers' response.

Morgan, Lewis & Bockius LLP represents Parker-Hannifin. Schlichter Bogard LLC represents the employees.

The case is Parker-Hannifin Corp. v. Johnson, U.S., No. 24-1030, response requested 4/21/25 .

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Class Action

April 22, 2025, 6:27 AM PDT

Save Mart Settles Over Retiree Health Benefits for \$20.5 Million

- **Axing of health benefits for non-union retirees at issue**
- **Retirees say they were discouraged from joining union**

Save Mart Supermarkets will pay more than \$20.5 million to settle litigation by non-union workers who said the grocer terminated their health benefits after misleading them about those available to unionized workers.

The proposed deal would benefit 666 workers and retirees who accused Save Mart of failing to honor its promise to provide them with lifetime retiree medical benefits. It represents about 46% of the present value of these benefits, according to a Monday motion asking that the proposed class settlement be preliminarily approved.

The plaintiff workers and retirees, who each worked at Save Mart for more than 25 years, said the company discouraged them from joining a union by promising that the retiree health benefits for non-union workers would be at least as good as the benefits they'd receive under the union contract. This turned out to be false in 2022, when the company announced it would eliminate retiree health benefits for non-union workers, according the lawsuit, which advanced past the grocer's motion to dismiss in 2023.

The deal is subject to approval from Judge Araceli Martínez-Olguín of the US District Court for the Northern District of California.

The plaintiffs are represented by Lief Cabraser Heimann & Bernstein LLP; Bolt Keenley Kim LLP; and Matern Law Group PC. The firms are authorized under the agreement to seek up to 30% of the settlement value as attorneys' fees.

Save Mart is represented by Kirkland & Ellis LLP.

The case is *Baker v. Save Mart Supermarkets*, N.D. Cal., No. 3:22-cv-04645, settlement motion 4/21/25 .

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'We Don't Know What is Being Alleged:' Ozempic Defendants Argue Plaintiffs' Master Complaint is Too Vague

 [law.com/thelegalintelligencer/2025/04/22/we-dont-know-what-is-being-alleged-ozempic-defendants-argue-plaintiffs-master-complaint-is-too-vague](https://www.law.com/thelegalintelligencer/2025/04/22/we-dont-know-what-is-being-alleged-ozempic-defendants-argue-plaintiffs-master-complaint-is-too-vague)

Aleeza Furman

April 22, 2025

What You Need to Know

- U.S. District Judge Karen Marston heard oral arguments Monday on defendants' motion to dismiss the master complaint in the MDL over weight-loss drugs like Ozempic.
- The defendants contended that many of the plaintiffs' allegations were too vague to support claims.
- The plaintiffs asserted that the master complaint points to specific statements, such as advertisements the companies release to promote their drugs.

Defendants in the multidistrict litigation over weight-loss drugs like Ozempic argued Monday that many of the plaintiffs' overarching claims were too vague to remain in the litigation.

In oral arguments before U.S. District Judge Karen Marston of the Eastern District of Pennsylvania, counsel for drugmakers Novo Nordisk and Eli Lilly asked the court to shave off a large chunk of the plaintiffs' master complaint for being based on insufficiently specific allegations.

In particular, the defendants contended that the plaintiffs could not support their allegations that Novo Nordisk and Eli Lilly's marketing materials misled consumers and their physicians about the safety and efficacy of their drugs.

Plaintiffs in the MDL generally allege that drugs like Novo Nordisk's Ozempic and Eli Lilly's Mounjaro—called glucagon-like peptide-1 receptor agonists, or GLP-1 RAs—can cause stomach paralysis, intestinal obstruction and other gastrointestinal injuries.

The plaintiffs' master complaint asserted 17 causes of action, 12 of which the defendants have requested the court to dismiss. The defendants stated they would address the other claims, such as two failure-to-warn counts, at a later point in the litigation.

The counts the defendants challenged Monday included claims of breach of warranty, fraud and misrepresentation, negligence and design defect.

DLA Piper partner Ilana Eisenstein, representing Novo Nordisk, contended that the plaintiffs failed to identify any warranty statements or examples of misleading marketing materials from the defendants.

“One of the things that’s notably absent in this complaint is any type of specificity about where misrepresentations occurred and what they were,” Eisenstein asserted.

Eisenstein argued that the plaintiffs’ allegations did not provide the companies with sufficient notice of the issues they will be defending against.

But Levin Sedran & Berman’s Keith Verrier, representing the plaintiffs, asserted that the master complaint points to specific statements, such as advertisements the companies put out to promote their drugs.

“We think we have pretty extensive allegations throughout,” Verrier said. “They are repeatedly elevating the benefits when they know that there’s things that would undermine that,” he claimed.

The defendants also argued that specificity issues plagued the plaintiffs’ negligence claim, which Eisenstein described as taking a “kitchen sink” approach.

“We don’t know what is being alleged, and frankly, a lot of these claims don’t seem to be seriously pursued,” Eisenstein contended.

Verrier acknowledged that the plaintiffs’ negligence encompassed a broad array of negligence theories, but he said the plaintiffs opted to do so to preserve claims that may be treated differently depending on which state’s laws apply to a particular case.

According to defense counsel, there are currently more than 1,760 cases filed in the GLP-1 RAs MDL, with Ozempic cases making up the largest portion of those suits.

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Class-Certification Bids Likely to Grow With National Injunctions at Risk, Law Professors Say

 [law.com/nationallawjournal/2025/04/21/class-certification-bids-likely-to-grow-with-national-injunctions-at-risk-law-professors-say](https://www.law.com/nationallawjournal/2025/04/21/class-certification-bids-likely-to-grow-with-national-injunctions-at-risk-law-professors-say)

Avalon Zoppo

April 21, 2025

Credit: Sikov/Adobe Stock

News

Legal experts are watching for how the federal government responds and how judges handle certification requests in often fast-moving cases where alleged harm can be imminent.

🕒 6 minute read

In 2023, lawyer Jonathan Mitchell told the New Orleans-based federal appeals court that his clients clinched broad relief against the Biden administration's Title VII interpretation "the lawful way"—that is, he said, through class certification rather than a nationwide injunction.

The former Texas solicitor general represented a faith-based management company that challenged U.S. Equal Employment Opportunity Commission guidance that didn't exempt from anti-discrimination laws religious employers with LGBTQ workers. A district court judge granted class certification for all U.S. employers that "oppose homosexual or transgender behavior," and the U.S. Court of Appeals for the Fifth Circuit later reversed that decision.

"We obtained nationwide relief in this case, but we did it the lawful way: We asked for a certified class," Mitchell said during oral argument, contending that district courts wrongly give out nationwide injunctions "like candy."

"The controversy raging today over nationwide injunctions is when district courts enter nationwide relief without a certified class, and that's been widely criticized and I think deservedly so for evading the requirements of Rule 23" of the Federal Rules of Civil Procedure, Mitchell added.

Now, with the debate over universal injunctions at a fever pitch, court watchers say they expect more plaintiffs lawyers to seek class certifications in challenges to executive branch policies.

Experts are also watching for how the government responds and how judges handle such requests in often fast-moving cases where alleged harm can be imminent.

"There are a lot of questions about the constitutionality of universal injunctions and I think good lawyers are trying to have backup plans that make their cases airtight," said Vanderbilt University Law School professor Brian Fitzpatrick.

The Republican-led U.S. House of Representatives passed a bill this month that would limit the scope of injunctive relief ordered by a district judge to those parties before the court. The legislation was introduced amid a slew of lower court rulings pausing President Donald Trump's policies through nationwide injunctions.

GOP House members, at a hearing earlier this month, argued litigants could instead use class actions for broad relief.

The Trump administration is also challenging the use of nationwide injunctions in a U.S. Supreme Court fight over the president's executive order to repeal birthright citizenship at the U.S. Supreme Court.

Maureen Carroll, a University of Michigan law professor, had argued that plaintiffs might prefer not to ask for class certifications because those efforts could fail and undermine a later bid for nationwide relief.

But that calculus is changing as the push to end nationwide injunctions intensifies, she said.

At the same time, U.S. Supreme Court rulings have made class certification harder to obtain, Carroll said. She pointed to a 2011 decision, *Walmart v. Dukes*, in which the justices established the need for rigorous proof of commonality for class certification.

Fitzpatrick, of Vanderbilt, said one downside is that the class certification process—which occurs under Rule 23—often takes months, in which time individuals could be irreparably harmed.

However, some courts have already granted class certifications in a number of challenges to Trump's immigration policies.

In a late-night order last weekend, the U.S. Supreme Court blocked the government from deporting additional Venezuelan migrants being held in Texas under the Alien Enemies Act, applying the ruling to “any member of the putative class of detainees.”

And in a different challenge to Trump's AEA invocation to deport migrants, U.S. District Judge James Boasberg of Washington, D.C. “provisionally” certified a class covering all non-citizens in custody subject to removal under the proclamation. He did so within a day of the class action being filed.

Fitzpatrick said he's watching to see if more judges follow Boasberg's lead by quickly granting “provisional class certification,” in which the class is certified on a tentative basis and with assurance that the issue will later be revisited.

"The response to [the time-consuming nature of class certifications] has always been, if something bad happens to those people and the bad thing was illegal, the people will later be able to file their own lawsuits to correct the illegality," Fitzpatrick said. "But that argument had a lot more traction before there was a possibility that something bad could happen, and then there'd be no way to correct it later. I think that possibility is on the table now."

He pointed to Kilmar Armando Abrego Garcia, a Maryland man who was wrongly deported to El Salvador and whom the government claims it cannot return.

"I think we need to see if this one-day, certification catches on, and [if] judges are willing to actually do this as regularly as plaintiffs want them to," Fitzpatrick added. "If so, that may add some wind to the back of these proposals to do something about universal injunctions."

Carroll, of Michigan, said she saw such provisional certifications in lawsuits at the start of the pandemic when inmates at heightened risk of dying of COVID-19 challenged prison conditions.

In other challenges to Trump policies, class certifications have taken at least a few weeks.

For example, U.S. District Judge Indira Talwani of Massachusetts stopped the rescission of deportation protections for Cubans, Haitians, Nicaraguans and Venezuelans who entered the United States under a Biden-era humanitarian parole program. The judge certified as a class all people who were granted parole under the program.

Amanda Frost, a University of Virginia School of Law professor, said nationwide injunctions should remain a tool for judges since quick class certifications may not always be available. Otherwise, she said, Congress should expand the availability of class actions.

"I think courts can provisionally certify quite quickly, but to the degree they're reluctant to or there's limits to that, that's another reason to say, 'Okay, then we need the immediately available nationwide injunction option rather than the class action,'" Frost said.

Going forward, Carroll said she's going to be watching for the extent to which the government contests bids for certification.

She said the Trump administration could deny that its challenged actions are part of a broad policy, as happened in the president's first term in the initial stages of a class action over family separations at the border. The administration eventually publicly stated there was a family separation practice, and class certification went forward in the case Ms. L v. ICE, Carroll said.

"If the defendant doesn't admit that they're acting pursuant to a policy or practice... then the plaintiffs have a high burden of establishing that the defendants are doing it the same way with respect to everyone who's presenting that situation," Carroll said. "But my sense is that

this administration is not so much hiding that it's got these across-the-board practices, so it'll be interesting to see how that goes forward."

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Trending

New Suit - Copyright

Portraitist and painter Marcello Corti filed a copyright infringement lawsuit on April 21 in Illinois Northern District Court over the alleged sale of counterfeit goods. The suit, brought by Keith Vogt Ltd., pursues claims against e-commerce operators. The case is 1:25-cv-04334, Marcello Corti v. The Partnerships and Unincorporated Associations Identified on Schedule A.

[Read More](#)

New Suit - Patent

Samsung Electronics, the South Korean device maker, was hit with a patent infringement lawsuit on April 21 in Texas Eastern District Court. The lawsuit, brought by Patton Tidwell & Culbertson and Mayer Brown on behalf of Maxell Ltd., asserts 10 patents pertaining to improved processing power for mobile devices. The case is 5:25-cv-00052, Maxell, Ltd. v. Samsung Electronics Co., Ltd.

[Read More](#)

Who Got The Work

Kirkland & Ellis partner Colin M. Herd has entered an appearance for GTCR BC Holdings in a pending antitrust lawsuit. The complaint, filed March 6 in Illinois Northern District Court by the Federal Trade Commission and other plaintiffs, seeks to

U.S. Supreme Court Asked to Review 2 More Roundup Cases

 [law.com/therecorder/2025/04/21/us-supreme-court-asked-to-review-two-more-roundup-cases](https://www.law.com/therecorder/2025/04/21/us-supreme-court-asked-to-review-two-more-roundup-cases)

Amanda Bronstad

April 22, 2025

What You Need to Know

- Friday's petitions focus on the same argument that Monsanto, owned by Bayer, raised in its earlier petition before the Supreme Court: That federal law preempted state law-based claims that it failed to warn about Roundup's health risks.
- Monsanto faces thousands of Roundup lawsuits across the country; verdicts have gone both ways, but most are in state courts.
- Adding two more petitions in front of the Supreme Court demonstrates the Roundup litigation's ongoing breadth, said Cornell Law School Professor Alexandra Lahav.

Monsanto has petitioned the U.S. Supreme Court to review two more lawsuits alleging its Roundup pesticide caused non-Hodgkin lymphoma.

Friday's petitions for writ of certiorari, one in a case that settled in Florida, and the other following an Oregon jury's defense verdict, focus on the same argument that Monsanto, owned by Bayer, raised in its [April 9 petition](#) before the Supreme Court: That federal law preempted state law-based claims that it failed to warn about Roundup's health risks.

Monsanto referred to the two new filings as "hold" petitions that support the earlier case, *Durnell v. Monsanto*, which stemmed from a \$1.25 million jury verdict in the 22nd Judicial Circuit Court in St. Louis for plaintiff John Durnell.

"These hold petitions underscore the importance of our petition in *Durnell* and the need for U.S. Supreme Court review and resolution of the circuit split on the federal preemption question, as this issue is common to all three cases and thousands more in the Roundup litigation," Bayer said in a statement. "Only the U.S. Supreme Court can provide definitive guidance to state and federal courts that have reached different conclusions on this central issue."

Monsanto faces thousands of Roundup lawsuits across the country, most in state courts. Verdicts have gone both ways.

Durnell involved a 2023 verdict, which the Missouri Court of Appeals upheld on Feb. 11. Monsanto argues that the Federal Insecticide, Fungicide, and Rodenticide Act preempts failure-to-warn claims in Roundup cases. Monsanto has insisted that numerous scientific

studies and the U.S. Environmental Protection Agency concluded that Roundup's key ingredient, glyphosate, does not cause cancer. But lawsuits have cited the International Agency for Research on Cancer's 2015 classification of glyphosate as a carcinogen. In 2022, the Supreme Court denied review of two prior Monsanto petitions in Roundup cases, both in California. One of them, called *Hardeman v. Monsanto*, involved in a verdict of \$80 million, which the U.S. Court of Appeals for the Ninth Circuit in 2021 affirmed but reduced to \$25.3 million.

This month's earlier petition is the first to follow the U.S. Court of Appeals for the Third Circuit's 2024 decision siding with Monsanto on federal preemption, which created a "square and acknowledged circuit split" with the Ninth Circuit and the U.S. Court of Appeals for the Eleventh Circuit, according to the petition. Adding two more petitions in front of the Supreme Court demonstrates the Roundup litigation's ongoing breadth, said Cornell Law School Professor Alexandra Lahav.

"What they're trying to illustrate is that this circuit split matters because it keeps coming up," she said. "There is a case for you, Supreme Court, to weigh in because this is a situation where we need uniformity. The differing decisions are proliferating."

'A Single, Purely Legal Issue of Federal Law'

Friday's "hold" petitions, while involving different Roundup cases, were filed by the same attorney as the Missouri case: former U.S. Solicitor General Paul Clement, of Washington D.C.'s Clement & Murphy.

Paul Clement, former partner with Kirkland & Ellis now at Clement & Murphy, speaking at a panel discussion during the "Law Symposium: Justice Thomas's Thirty-Year Legacy on the Court," Co-hosted by The C. Boyden Gray Center for the Study of the Administrative State and The Heritage Foundation, in Washington, D.C., on Thursday, October 21, 2021. Photo: Diego M. Radzinski/ALM

In 2021, Nancy Salas sued Monsanto in Florida's Eleventh Judicial Circuit Court after she was diagnosed with non-Hodgkin lymphoma. Monsanto removed her case to federal court. The U.S. Judicial Panel on Multidistrict Litigation transferred the case to the Roundup multidistrict litigation in the U.S. District Court for the Northern District of California, then later remanded it back to the U.S. District Court for the Southern District of Florida.

Last year, the case settled. But under the terms of the settlement, Monsanto accepted judgment on the failure-to-warn claim, which it appealed to the Eleventh Circuit with a motion for summary affirmance. The Eleventh Circuit, citing its 2022 decision rejecting Monsanto's federal preemption defense in a prior Roundup case called *Carson v. Monsanto*, which originated out of Georgia, granted the motion on March 19.

Durnell, which has a full trial record, provides the "ideal posture" for resolving the issue, Clement wrote in the Florida petition, but the *Salas* case provides the Supreme Court with a federal case to review.

"The nature of the settlement presents no jurisdictional obstacle, and preserves a single, purely legal issue of federal law," he wrote.

Stephen Rosenthal, of Podhurst Orseck in Coral Gables, Florida, who represents Salas, declined to comment.

In the Oregon case, a jury in Jackson County Circuit Court rendered a defense verdict in 2022. On July 10, the Oregon Court of Appeals reversed the verdict, remanding the case for a new trial, after concluding that a regulatory expert for plaintiff Larry Johnson, diagnosed with non-Hodgkin lymphoma, should have been allowed in the trial. The appeals court also refused to grant Monsanto's motion for a directed verdict based on its federal preemption argument.

The Oregon Supreme Court declined to review the case on Dec. 19.

Clement, in the Oregon petition, urged the Supreme Court to grant *Durnell* and hold Johnson's case pending resolution.

Eric Pearson, of Heygood, Orr & Pearson in Dallas, plaintiff's attorney in the Oregon case, did not respond to a request for comment.

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With Class Action Defense Panels Shrinking and More Clients Turning to One Lead Firm, A Look at Winners and Losers

 [law.com/litigationdaily/2025/04/22/with-class-action-defense-panels-shrinking-and-more-clients-turning-to-one-lead-firm-a-look-at-winners-and-losers](https://www.law.com/litigationdaily/2025/04/22/with-class-action-defense-panels-shrinking-and-more-clients-turning-to-one-lead-firm-a-look-at-winners-and-losers)

Ross Todd

April 22, 2025

Yesterday, we dug into the results from the [14th Annual Class Action Survey](#) conducted by **Carlton Fields**, a trove of data on trends in the class action defense world based on anonymized interviews with 332 chief legal officers, general counsels and their direct reports.

Here's a quick recap for those who missed it: spending on class actions crossed the \$4 billion mark for the first time last year, according to the survey, landing at \$4.21 billion. The \$300 million increase year-over-year marked the tenth straight year of growth in class action defense spending the firm has tracked. In [yesterday's column](#), **D. Matthew Allen**, co-director of the annual survey and the chair of the national class actions practice at Carlton Fields, walked us through his big picture takeaways from the survey, which boil down to corporate defendants "digging in their heels" and putting off settlement talks until further in the litigation process.

One thing we didn't look at yesterday, though, warrants a little more exploration. According to the latest survey responses, the average number of law firms on the panels that companies have established to defend against class action went down from 5.5 firms to 4.9 per respondent. At the same time, the number of companies using a single firm in supervisory roles rose from 23.5% in last year's survey to 30% this year. The survey responses suggest that there's been a move to concentrate the growing amount of class action defense work into fewer firms' hands, while consolidating strategic decision-making.

Here, let me provide a word of caution about the numbers that Allen gave me. The survey is based on interviews of in-house counsel, not a close accounting of their actual hiring practices. That said, when I asked Allen about who the winners might be in the consolidation and concentration of defense-side class action work, he had clearly given the subject plenty of thought.

"If you're a law firm that's included in the mix either as the supervisory counsel or the smaller group of retained firms, hey, good for you. You're in the sweet spot, right?" he said. But for a firm that finds itself on the outside looking in, Allen said it's important to think about how to improve the chances to get into the mix. "I think the firms that are included and excluded are not static," Allen said. "At least in my personal experience, there's always an opportunity to break in, if you're not on the inside for a particular client, if you're innovative and have the right strategy."

Allen said that the survey itself doesn't provide any insight about who the current winners and losers on the firm side of the market might be. He declined to speculate about specific firms, saying his personal practice is not to comment about competitors. (This could have been a very different column if he had taken the bait on that front!)

"But let me say, as a general matter, I think it depends on the subject matter of the cases and the region," he said. In cases that have been routed to multidistrict litigation, he said there's going to be a lead counsel and a liaison counsel on the plaintiffs side, and usually an equivalent on the defense side. "Is there a single law firm or a handful of law firms that have built up a specialty in a specific subject area?" he said.

He said that not just the top 50 or 25 firms in the Am Law 100 or a shortlist of New York-based firms are in the running for these sorts of assignments. "I think it's spread out geographically and according to expertise and even sub-specialty," he said.

Allen said the firms that are flexible with rates and aggressive in plans for meeting client goals have a chance to solidify client relationships and expand market share. Allen described what he sees as "the yin and the yang of litigation," with plaintiffs lawyers innovating on one side and in-house counsel and defense firms responding in kind.

"Our survey shows that different lawyers and different companies choose different levers to push and pull over time," Allen said. "So are they effective? Some will be. Some will not be. So they have to pick and choose what's right for them in a given case."

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Bumps ahead for Vail ski resorts in wage and hour class action

 [reuters.com/legal/litigation/column-bumps-ahead-vail-ski-resorts-wage-hour-class-action-2025-04-21](https://www.reuters.com/legal/litigation/column-bumps-ahead-vail-ski-resorts-wage-hour-class-action-2025-04-21)

Jenna Greene

April 21, 2025

The sign outside the office building housing Vail Resorts is seen in Broomfield, Colorado, U.S., December 9, 2016. REUTERS/Rick Wilking/File Photo Purchase Licensing Rights , opens new tab

April 21 (Reuters) - The ski season is winding down, but legal troubles for Vail Resorts are heating up in a long-running wage-and-hour class action with more twists than a slalom course.

For Colorado-based Vail, which owns 42 mountain resorts including Heavenly in California, Park City in Utah and Stowe in Vermont, the stakes are high: a potential class of 100,000 current and past hourly employees including ski instructors, chair lift operators and ticket scanners, with damage claims topping \$100 million.

Some of the fiercest fighting to date has been between plaintiffs' lawyers, ultimately leading a California state appeals court last fall to void a \$13.1 million "final" settlement , opens new tab that would have resolved the case.

The battle not only involves millions in lawyer fees but also sets up a clash over where these ski resort workers can pursue their claims.

A Vail spokesperson said the company does "not comment on ongoing litigation."

The case is now on remand to the trial court in El Dorado County (which encompasses the South Lake Tahoe area) after the California Supreme Court declined review – but whether it will remain there is an open question.

In a motion to dismiss , opens new tab filed on Friday, plaintiffs' lawyer Edward Dietrich, an intervenor in the case, argues that the matter belongs in U.S. District Court in Colorado, where Vail is headquartered and where he filed a proposed class action in December 2020. Dietrich, a former partner at the now-defunct Milberg Weiss Bershad Hynes & Lerach who launched his own firm in 2009, declined comment for this column.

How the El Dorado suit leapfrogged ahead of Dietrich's federal case stems from an unconventional series of procedural maneuvers by Vail and rival plaintiffs' lawyers that injected a black diamond level of complexity into the litigation.

Hourly resort workers across 16 states allege they were wrongly denied pay for things like overtime, donning and doffing uniforms, and training. Employees also claim they were not reimbursed for work-related equipment and cell phone costs, nor were they allegedly compensated for missed rest or meal breaks.

Vail, represented by outside counsel from Ogletree Deakins, in court papers denies the allegations.

Plaintiffs' lawyers from Katz Banks Kumin; King & Siegel; Ottinger Employment Law; Diversity Law Group and James Hawkins APLC did not respond to requests for comment.

Here's the backstory. Vail was hit with a series of similar wage and hour suits in California, starting with a claim by a former security guard at Heavenly, who sued on October 9, 2020, in El Dorado County Superior Court. The 19-page complaint [opens new tab](#) on behalf of all hourly workers at the Lake Tahoe resort alleged violations of California labor laws, as well seeking additional civil penalties under the California Private Attorneys General Act. Eight weeks later, Dietrich followed with a 167-page complaint [opens new tab](#) against parent company Vail in Denver federal court. The proposed nationwide class alleges violations of the federal Fair Labor Standards Act and the laws of nine states. Given the multi-state allegations and scope, you might think the federal case in Colorado would take the lead.

You would be wrong.

In early 2021, Vail removed the El Dorado County case and three follow-on state court actions to federal court in Sacramento, noting that the publicly traded company is “neither formed nor incorporated in California.”

So far, pretty standard. But here’s where things get unusual.

While Dietrich was charging ahead with litigation in Colorado, Vail and the California plaintiffs were working out a deal in mediation.

In August 2021, they told the federal court in Sacramento that they had reached a tentative settlement – news that Dietrich in court papers said left him “blindsided.” If approved, the deal would extinguish the claims in his case.

Vail and the California plaintiffs in court papers said they would submit their settlement to the Eastern District of California for review.

That didn’t happen. Two months later, the parties told the court they decided to seek approval of their settlement in El Dorado Superior Court instead, where a newly-filed class action was pending.

Why the course change? They don't explain. But the record shows the El Dorado County Superior Court judge denied Dietrich's motion to intervene, then granted final approval of the settlement on September 1, 2022.

Dietrich on appeal cried foul, arguing that the \$13.1 million payout divided among 103,000 class members was too low. Plaintiffs' lawyers stood to pocket about \$4.3 million in legal fees.

Both Vail and the California plaintiffs in court papers defended the deal as proper.

There were "significant risks" that the class would not have been certified, the California plaintiffs wrote, pointing to a lack of evidence of uniformly applied company policies to create class-wide liability and individualized differences in class members' jobs.

The real issue, Vail added, "is Colorado Plaintiffs' desire to eliminate a threat to their potential claims for attorneys' fees in their own pending Colorado litigation."

The Third Appellate District Court in Sacramento found that Dietrich should been allowed to intervene, but also more broadly that there was an issue with litigating the class in state court. As an out-of-state company, Vail isn't at home in California, as required for general jurisdiction. Nor did it appear that the claims by out-of-state class members would have a sufficient link to California to warrant specific jurisdiction, the court held.

In practical terms, this meant that the California plaintiffs "could pursue the out-of-state claims only with (Vail's) blessing," the Third District held. That created "a powerful incentive (and more, an inescapable need)" for the plaintiffs to settle. Otherwise, Vail could turn around and say the claims should be dismissed for lack of jurisdiction.

Compared to the Colorado plaintiffs, the California plaintiffs "had a diminished bargaining position," the appeals court said, and the trial court "wrongly presumed" the proposed settlement, which came before the class was certified, was fair.

A hearing on the motion to dismiss before a new judge in El Dorado is set for June 6.

Opinions expressed are those of the author. They do not reflect the views of Reuters News, which, under the Trust Principles, is committed to integrity, independence, and freedom from bias.

Jenna Greene writes about legal business and culture, taking a broad look at trends in the profession, faces behind the cases, and quirky courtroom dramas. A longtime chronicler of the legal industry and high-profile litigation, she lives in Northern California. Reach Greene at jenna.greene@thomsonreuters.com

Class Action

April 22, 2025, 7:18 AM PDT

Homeowners Can Pursue Derailment Suit Against Norfolk Southern

- **Plaintiffs established requirements for personal jurisdiction**
- **Judge ordered Norfolk Southern to brief court on venue**

Norfolk Southern Railway Co. must face a suit from homeowners who allege their property was damaged by the massive 2023 train derailment in East Palestine, Ohio.

The court has specific personal jurisdiction in the case against Norfolk brought by eight homeowners, said Judge Stephen P. McGlynn of the US District Court for the Southern District of Illinois, denying the company's motion to dismiss the case.

This is one of multiple lawsuits filed in state and federal courts, though litigation largely began shortly after the train derailed and after the rail giant launched a controlled burn of the chemicals to mitigate the explosion risk, creating plumes of black smoke that blanketed the small village about 90 miles southeast of Cleveland. Suits include a September 2024 approved a class action \$600 million settlement between Norfolk and residents—part of which is tied up in an appeal. And in March a Georgia federal judge denied Norfolk's motion to dismiss claims alleging that the railway and former executives misled investors over an ineffective safety structure.

The plaintiffs here have established the three "essential requirements" to satisfy federal due process standards for specific personal jurisdiction, McGlynn said Monday, including that Norfolk's contacts with Illinois aren't "random, fortuitous, or attenuated," given that the railway used the state's trackage and assumed control of the train in Illinois; that plaintiffs have alleged that unlawful conduct occurred in Illinois; and that no "compelling case" exists that renders jurisdiction "unreasonable."

General jurisdiction wasn't established because Norfolk is not incorporated in Illinois, doesn't maintain its principal place of business there, and Norfolk's Illinois employees don't comprise "a lion's share" of its overall employment, McGlynn said.

McGlynn ordered Norfolk to provide a supplemental brief to the court on venue, because "while personal jurisdiction exists, it is questionable as to whether this district is the proper venue to bring this cause of action."

SWMW Law LLC represents Duncan and the other homeowners. Thompson Coburn LLP represents Norfolk Southern.

The case is *Duncan v. Norfolk S. Railway Co.*, 2025 BL 134466, S.D. Ill., No. 3:25-cv-00101, order 4/21/25.

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Homeowners sue insurers, allege boycott to push substandard fire coverage

DJ [dailyjournal.com/articles/384965-homeowners-sue-insurers-allege-boycott-to-push-substandard-fire-coverage](https://www.dailyjournal.com/articles/384965-homeowners-sue-insurers-allege-boycott-to-push-substandard-fire-coverage)

LA Fires,

Civil Litigation

Apr. 22, 2025

Altadena and Pacific Palisades homeowners sue more than 100 insurers, alleging a conspiracy to deny coverage, pushing them to the limited California FAIR Plan before the January wildfires.



Stephen G. Larson

Altadena and Pacific Palisades homeowners have accused insurance companies in two lawsuits of refusing to insure their homes en masse, and pushing them to the California FAIR Plan for substandard fire coverage at inflated rates.

The lawsuits accuse State Farm and more than 100 other insurance carriers of colluding to cancel policies and refusing to write new ones, in violation of the Cartwright Act and the Unfair Competition Law. It says the defendants notified the plaintiffs mere months before the January wildfires that their property insurance policies would not be renewed. Each of the plaintiffs say they suffered the loss of structures and personal properties in the wildfires.

"As part of this conspiracy, defendants and their co-conspirators agreed to jointly establish a group boycott to withhold insurance coverage and property policies they would otherwise individually offer--and had offered in the past--to owners seeking to obtain or maintain sufficient insurance coverage necessary to rebuild or replace their homes in the event of a catastrophic fire," reads a copy of the complaint prepared for filing Monday by Michael J. Bidart of Shernoff Bidart Echeverria LLP and Stephen G. Larson of Larson LLP.

"Through their boycott, defendants caused plaintiffs to pay premiums that were above competitive levels for policies that provided severely limited fire coverage capped at a maximum of \$3 million, regardless of the construction costs required to rebuild plaintiffs'

destroyed structures, their losses of personal property contents, their loss of use expenses, and other previously insured losses," the complaint continues.

"The complaints allege that, by colluding to push plaintiffs and so many like them to the FAIR Plan, the defendants have reaped the benefits of high premiums while depriving homeowners of coverage that they were ready, willing, and able to purchase to ensure that they could recover after a disaster like January's wildfires," Bidart said in a statement.

The two firms jointly filed a putative class action against the insurance carriers as well, alleging that their actions subverted the FAIR Plan to enhance their profitability while shifting fire liability exposure onto the consumers.

California's FAIR Plan - short for Fair Access to Insurance Requirements Plan - is a state-mandated insurance program designed to provide basic property insurance to homeowners and businesses who can't get coverage through the regular insurance market, usually because they live in high-risk areas for wildfires or other disasters.

The Palisades and Eaton Canyon (Altadena) wildfires tore through parts of Los Angeles County for several days in January, leaving behind scorched landscapes, damaged homes, and significant financial tolls. Combined, these fires led to the destruction of more than 15,000 structures, the evacuation of over 100,000 residents, and an estimated \$28 billion in insured losses.

Observers have questioned whether the FAIR Plan was robust enough to cover claims stemming from the January wildfires. Consumer Watchdog last week sued the California Department of Insurance to make it stop insurers from imposing millions of dollars in surcharges on California FAIR Plan policyholders in the wake of the Palisades and Eaton fires. Altadena and Palisades residents sued the California FAIR Plan Association earlier this month, claiming insurance bad faith and breach of contract for denying or underpaying smoke damage claims.

State Farm asked California Insurance Commissioner Ricardo Lara in February to approve rate increases ranging from 15% for renters and condominium unit owners to 38% for rental dwellings. A letter to the commissioner signed by State Farm CEO Dan Krause and other executives states the company has received 8,700 claims stemming from the January wildfires and has paid over \$1 billion to customers as of Feb. 1. It does not specify which of the wildfires those payments stemmed from.

Two Southern California Assembly members have introduced a bill designed to stabilize California's FAIR Plan. Assembly Bill 226 would allow the FAIR Plan, with the permission of the insurance commissioner, to issue "catastrophe bonds" to keep the fund solvent. Estimates for the plan's exposure range into the billions of dollars, topped by a \$24 billion estimate published by the San Francisco Chronicle.

Last December, Lara announced a new regulation allowing reinsurance for ratemaking, and requiring insurance carriers to incrementally increase coverage in risky areas.

State Farm's proposed rate hike does not address the root causes of access to coverage, affordability and risk, according to Derek S. Chaiken of Merlin Law Group.

"The FAIR Plan was intended to be a temporary safety net for homeowners unable to obtain coverage through the private market," Chaiken said, when asked to comment about the antitrust lawsuit. Merlin Law Group is also involved in litigation stemming from the wildfires.

"If the allegations in the lawsuit are accurate, it raises important questions about how insurers determined which homeowners would end up on the FAIR Plan, and whether those decisions were made based on individual underwriting or reflected a broader, coordinated pullback from high-risk areas. This issue is particularly relevant as the Net Cost of Reinsurance Ratemaking Regulation is set to take effect," Chaiken continued.

The class action is: Anthony Canzoneri, individually, and as Trustee of the Anthony Canzoneri Revocable Trust of 2008, and on behalf of others similarly situated, v. State Farm Fire & Casualty Co., et al. (L.A. Super. Ct., filed April, 2025). The antitrust action is: Ferrier et al., v. State Farm Fire & Casualty Co., et al., (L.A. Super. Ct., filed April, 2025).

#384965

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9th Circuit revives California man's privacy suit against Canadian e-commerce giant

DJ [dailyjournal.com/articles/384969-9th-circuit-revives-california-man-s-privacy-suit-against-canadian-e-commerce-giant](https://www.dailyjournal.com/articles/384969-9th-circuit-revives-california-man-s-privacy-suit-against-canadian-e-commerce-giant)

Class Action,

9th U.S. Circuit Court of Appeals

Apr. 22, 2025

An en banc panel reinstated a plaintiff's proposed class action against Shopify, ruling the company's alleged data-mining practices were deliberately aimed at California consumers. The closely watched decision marks a significant development in personal jurisdiction law as it applies to online commerce.



A 9th U.S. Circuit Court of Appeals en banc panel on Monday revived a California man's class action against a Canadian e-commerce company for alleged violations of state data privacy and access laws for extracting his information when he was buying clothing from a retailer on its website and selling it.

"We conclude that Shopify's intentional activities constitute express aiming toward California and its consumers to obtain and use their personal data for its own commercial gain," 9th Circuit Judge Kim McLane Wardlaw, an appointee of President Bill Clinton, wrote for the majority.

"Shopify argues that it does not expressly aim its conduct at California because it operates nationwide and thus is agnostic as to the location in which it data-mines the consumers' personal identifying information," she continued.

"But the Supreme Court has considered and rejected the argument that because a nationwide company is everywhere, it is jurisdictionally nowhere except in its principal place of business and state of incorporation," Wardlaw added. *Briskin v. Shopify Inc.*, 2025 DJDAR 3216 (9th Circ., filed June 2, 2022).

9th Circuit Judge Consuelo M. Callahan, an appointee of President George W. Bush who was part of the three-judge panel that affirmed Senior U.S. District Judge Phyllis J. Hamilton of Oakland's decision to dismiss the case due to lack of personal jurisdiction, cast the lone dissent.

"However, I fundamentally disagree with the majority's approach, which subjects Shopify to specific jurisdiction in California simply because Shopify placed a cookie on Briskin's device while he was 'located in California,'" she wrote.

Two appointees of President Donald Trump - 9th Circuit Judges Daniel P. Collins and Patrick J. Bumatay - agreed with the majority opinion, though for slightly different reasons.

Moez M. Kaba, a partner with Hueston Hennigan LLP who represents Shopify, ran into skeptical queries from the 11-member en banc panel during oral arguments in September.

A spokesperson for the company criticized the decision, saying it "attacks the basics of how the internet works. Left unchallenged, it drags entrepreneurs who run online businesses into distant courtrooms regardless of where they actually operate."

"It's bad for entrepreneurs, ignores 30 years of established law, and conflicts with rulings from other circuit courts," the Shopify spokesperson added. "We'll keep fighting for small businesses and what they need to succeed."

The company statement did not directly indicate whether Shopify plans to file a writ of certiorari with the U.S. Supreme Court challenging the 9th Circuit ruling.

Nicolas A. Sansone, an attorney with Public Citizen Litigation Group who represents the class, praised the decision in an email.

"We are gratified that the en banc Ninth Circuit rejected Shopify's counterintuitive argument that a company doing online business in every state cannot constitutionally be held accountable in the courts of any state," he wrote.

"The court's faithful application of longstanding legal principles produced an outcome that is correct not only as a legal matter but also as a matter of common sense," Sansone added.

The case drew a host of amicus briefs on both sides, which predicted ominous results if the other side prevailed.

San Francisco Deputy City Attorney Karun A. Tilak wrote that the state "has a strong interest in exercising jurisdiction over that business to redress consumer harms" if a business uses the internet to harm California residents.

But Stephanie A. Joyce with the Computer and Communications Industry Association warned that a ruling against Shopify would bring online commerce to a "screeching halt."

#384969

Craig Anderson

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Class Action

April 22, 2025, 9:28 AM PDT

Credit Sesame Sued By Accountholders Over Data Security Breach

- **COURT:** N.D. Cal.
- **TRACK DOCKET:** [No. 5:25-cv-03479](#) (Bloomberg Law subscription)

Credit Sesame Inc. insufficiently protected its clients' information that was exposed in a data breach, and some users of the personal financial management company are unable to access their accounts, according to a proposed class action.

The two plaintiffs told the US District Court for the Northern District of California that the measures Credit Sesame have offered in recompense are insufficient.

Credit Sesame gives users "a complete picture" of their credit and loans in one place, and provides identity theft monitoring and savings recommendations, among other services.

Daniel Fontana and Melissa Sackett said Monday that they believe their phone numbers have been exposed by the breach, and that they've been unable to access their accounts for days or weeks after the incident.

They seek to represent a class of US residents affected by the data breach, a group they said could consist of thousands of people.

The complaint said Credit Sesame hadn't yet revealed the exact types of personal information that the breach targeted.

Fontana and Sackett asserted claims for negligence, breach of implied contract and covenant, unjust enrichment, and violation of California's Unfair Competition Law.

They asked a court to order compensatory, exemplary, punitive, and statutory damages, as well as attorneys' fees and injunctive relief.

Credit Sesame didn't immediately respond to a request for comment.

Strauss Borrelli PLLC represents the plaintiffs and the proposed class.

The case is *Fontana v. Credit Sesame Inc* , N.D. Cal., No. 5:25-cv-03479, complaint 4/21/25 .

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Shopify must face data privacy lawsuit in US

 [reuters.com/sustainability/boards-policy-regulation/shopify-must-face-data-privacy-lawsuit-us-2025-04-21](https://www.reuters.com/sustainability/boards-policy-regulation/shopify-must-face-data-privacy-lawsuit-us-2025-04-21)

Jonathan Stempel

April 21, 2025

Shopify logo is seen in this illustration taken, February 11, 2025. REUTERS/Dado Ruvic/Illustration/File Photo Purchase Licensing Rights , opens new tab

- Court says use of tracking software was not random
- Shopify said it did not expressly target Californians
- Shopify says decision hurts entrepreneurs

April 21 (Reuters) - A U.S. appeals court on Monday revived a proposed data privacy class action against Shopify (SHOP.TO) , opens new tab, a decision that could make it easier for American courts to assert jurisdiction over internet-based platforms.

In a 10-1 decision, the 9th U.S. Circuit Court of Appeals in San Francisco said the Canadian e-commerce company can be sued in California for collecting personal identifying data from people who make purchases on websites of retailers from that state.

Brandon Briskin, a California resident, said Shopify installed tracking software known as cookies on his iPhone without his consent when he bought athletic wear from the retailer I Am Becoming, and used his data to create a profile it could sell to other merchants.

Shopify said it should not be sued in California because it operates nationwide and did not aim its conduct toward that state. The Ottawa-based company said Briskin could sue in Delaware, New York or Canada.

A lower court judge and a three-judge 9th Circuit panel had agreed the case should be dismissed, but the full appeals court said Shopify "expressly aimed" its conduct toward California.

"Shopify deliberately reached out ... by knowingly installing tracking software onto unsuspecting Californians' phones so that it could later sell the data it obtained, in a manner that was neither random, isolated, or fortuitous," Circuit Judge Kim McLane Wardlaw wrote for the majority.

A spokesman for Shopify said the decision "attacks the basics of how the internet works," and drags entrepreneurs who run online businesses into distant courtrooms regardless of where they operate. Shopify's next legal steps are unclear.

Matt McCrary, a lawyer for Briskin, said the court bolstered accountability for internet-based companies by rejecting the argument that "a company is jurisdictionally 'nowhere' because it does business 'everywhere.'"

A bipartisan group of 30 states plus Washington, D.C., sided with Briskin. They said they needed an ability to enforce their own consumer protection laws against companies that avail themselves of local marketplaces through the internet.

The U.S. Chamber of Commerce supported Shopify, saying a broad grant of jurisdiction would harm back-end service providers whose software is used worldwide.

Circuit Judge Consuelo Callahan dissented, criticizing the majority's "traveling cookie rule" because it "impermissibly manufactures jurisdiction wherever the plaintiff goes."

The 9th Circuit includes nine western U.S. states, Guam and the Northern Mariana Islands.

The case is Briskin v Shopify, Inc. et al, 9th U.S. Circuit Court of Appeals, No. 22-15815.

Reporting by Jonathan Stempel in New York; Editing by Aurora Ellis and Matthew Lewis

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

Class Action

April 21, 2025, 4:05 PM PDT; Updated: April 21, 2025, 5:26 PM PDT

Judge Rejects Artists' Class Definition in Google AI Lawsuit (1)

A federal judge rejected the class definition proposed by artists accusing Google LLC of creating illegal copies of their works to train an AI model, but tentatively agreed to a revised definition.

The artists' current class definition is flawed because their proposal would've required the court to consider each potential class member's claim to determine if they qualified, according to an order striking the class allegations issued in the US District Court for the Northern District of California. Judge Eumi K. Lee said an amended definition proposed by plaintiffs would cure the issue without resetting the case's schedule.

- Google rejected two offers from the artists to amend the definition, according to the order.
- Artists—including photographer Jingna Zhang, cartoonist Hope Larson, and investigative journalist Jill Leovy—merged their lawsuits against Google in October.
- A hearing on Google's motion to dismiss the remainder of the suit is scheduled for Wednesday.

Counsel for the artists declined to comment. Google didn't immediately respond to a written request for comment.

Wilson Sonsini Goodrich & Rosati and Kwun Bhansali Lazarus LLP represent Google and Alphabet. Bleichmar Fonti & Auld LLP, Lockridge Grindal Nauen PLLP, Joseph Saveri Law Firm LLP, and Clarkson Law Firm PC represent the artists.

The case is *In re Google Generative AI Copyright Litigation*, N.D. Cal., No. 23-cv-03440, 4/21/25 .

(Updates article with artists' counsel's response in the fourth paragraph.)

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Fund management

New York pension funds to put asset managers on notice over climate plans

Comptroller to demand credible transition plans aligned with city's goal to reach net zero by 2040



Climate activists clean New York's Charging Bull statue near the stock exchange after it was sprayed green on Earth Day to protest against what they say is Wall Street's complicity in climate change © Getty Images

Lee Harris in London and **Sun Yu** in New York

Published 2 HOURS AGO



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Powerful New York City public pension funds are prepared to drop asset managers that do not comply with its climate plans, its comptroller Brad Lander will warn today, in a move that could put industry giants such as BlackRock under renewed pressure over sustainable investing.

Lander, who is running for New York City mayor, aims to put asset managers on notice that he will demand credible transition plans aligned with its goal to reach net zero by 2040.

The New York City comptroller acts as custodian and trustee for five major retirement funds collectively managing about \$284bn. [BlackRock](#) manages about \$19bn for NYC Employees' Retirement System (Nycers), according to Lander's office.

Managers that fail to provide actionable plans on emissions may be asked to re-pitch for the mandate to manage the funds, he is expected to say, opening the door for rivals to win the business.

Nycers, the Teachers' Retirement System and the Board of Education Retirement System are among the pension schemes expected to support the measure. They could seek to re-bid contracts for asset managers that do not comply as soon as this summer, one person familiar with the discussions said.

The comptroller is expected to evaluate asset managers' credentials based on disclosures of emissions from throughout the supply chain — including scope 3 emissions, a broader measure that includes emissions from business with third parties.

Managers are also expected to be judged according to their broader investment portfolios, beyond the money they manage for New York City's retirement funds.

It is not the first time the comptroller has put pressure on [US banks](#) and asset managers such as BlackRock over climate-related issues, and has led the way among major cities putting in place a fossil fuel divestment policy.

Last year it was unsuccessful in seeking to [block the election of Saudi Aramco chief executive Amin Nasser](#) to the board of BlackRock, on the grounds that his role leading the oil and gas producer was "incompatible" with climate action and BlackRock's own commitments.

Coming against the backdrop of a rollback of climate targets under the Trump administration after cuts to a swath of federal agencies, New York City has tried to hold its ground.

Last year, Nycers reached an agreement with JPMorgan, Citi and the Royal Bank of Canada to disclose their ratio of clean energy financing to fossil fuel energy financing, and has [flagged its intention to push for further climate action](#) at the shareholder meetings of banks this year.

SEC Awards Joint Whistleblowers \$6 Million for Enforcement Tip

Joint whistleblowers will receive \$6 million for providing new information that prompted a US Securities and Exchange Commission examination and helped lead to an enforcement action.

"Today's award illustrates that the agency can leverage whistleblower information in various ways, including by prompting an examination," Jonathan Carr, acting chief of the SEC's Office of the Whistleblower, said in a statement.

In line with agency practice, the SEC didn't identify the whistleblowers or name the firm that the the tipsters flagged to the regulator.

The SEC's whistleblower program was created by the Dodd-Frank Act. Individuals who inform the agency of original, timely and credible information that leads to enforcement actions may be eligible for awards. Awards can range from 10 to 30 percent of money collected when monetary sanctions exceed \$1 million.

The agency awarded more than \$255 million to whistleblowers in fiscal 2024, according to the SEC.

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Why the SEC Needs Whistleblower Reform



law.com/newyorklawjournal/2025/04/21/why-the-sec-needs-whistleblower-reform

Dave Jochnowitz

April 21, 2025

Earlier this month, U.S. Sens. Chuck Grassley, R-Iowa, and Elizabeth Warren, D-Massachusetts, reintroduced the [SEC Whistleblower Reform Act of 2025](#), a bipartisan effort to further strengthen the SEC Whistleblower Program. Similar to a [previous version of the bill](#), the legislation would expedite the timing of award determinations and enhance retaliation protections for corporate insiders. The goal of these measures is to empower whistleblowers to come forward with tips that will allow enforcement authorities to swiftly stop and deter corporate and other financial wrongdoing.

By all measures, the [SEC Whistleblower Program](#) is a resounding success. Since the program launched in 2011, whistleblowers from all walks of life have come forward to report violations of the federal securities laws. Their actionable intelligence has allowed the government to recover over \$6.3 billion in sanctions against bad actors. And last November, the SEC [reported](#) that more than 440 whistleblowers have earned over \$2.2 billion in rewards to date. Those figures are simply astonishing.

With its substantial monetary incentives, robust employment protections, and the ability to report anonymously, the program has proven a potent tool in rooting out corporate fraud. Critically, the program costs taxpayers nothing. Awards are paid by an Investor Protection Fund financed through sanctions levied against fraudsters.

However, gaps still exist.

First, while the current law prohibits retaliation and provides those who are retaliated against with substantial protections, including double back pay, attorneys' fees, reinstatement, and other damages, it only protects whistleblowers who report directly to the SEC. Since most employee whistleblowers first report through internal channels, this leaves them vulnerable to retaliation.

The SEC Whistleblower Reform Act of 2025 improves the program's anti-retaliation protections by extending them to whistleblowers who report violations internally. This change makes sense when you consider that company insiders represent the lion's share of SEC whistleblowers (62% in FY24), and often possess the highest quality tips. The change also aligns with the SEC's [reward guidelines](#), which provide larger monetary awards for whistleblowers who report internally. Companies should embrace this change, too, as many have clamored for reforms to boost internal compliance programs and encourage internal reporting.

Second, unlike claims under the Sarbanes-Oxley Act, retaliation claims under the SEC Whistleblower Program may be subject to arbitration agreements. More than half of American workers are subject to arbitration agreements, which generally require employees to waive their right to pursue claims against their employer in civil court. Private arbitration largely benefits the employer at the expense of the employee. It is a far less transparent process and offers limited discovery compared to the public court system. Moreover, arbitrators rule far more frequently in favor of employers—who are repeat customers of arbitration services—than employees.

The bipartisan bill would exempt retaliation claims from mandatory arbitration. This ensures SEC whistleblowers can have their day in court, giving them a public forum to assert their claims.

The Grassley-Warren bill mandates prompt award determinations, ensuring whistleblowers get their well-earned payments without unreasonable delay. While there are exceptions, the SEC would generally have one year from the deadline for submitting award claims to issue its determination, though there are some exceptions. This fully aligns with the goals of the program. The faster whistleblowers can get paid, the more incentive they have to report information to the SEC. If the SEC seeks an extension beyond the one-year period, the Act also requires the director of the agency's enforcement division to give whistleblowers written notice.

Even in an era of increasingly divided government, protecting whistleblowers and streamlining the reward process has bipartisan support. Other co-sponsors of the SEC Whistleblower Reform Act include U.S. Sens. Susan Collins, R-Maine; Raphael Warnock, D-Georgia, and Catherine Cortez Masto, D-Nevada.

If signed into law, this crucial piece of legislation will address significant gaps in the current program. Its passage will ultimately help maintain the integrity of the financial markets while protecting whistleblowers, investors, and the public at large.

is co-chair of the whistleblower and retaliation practice at Outten & Golden.

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You Might Like

'It's a miracle that they got caught': Director talks bringing Larry Householder to HBO

[cleveland.com/open/2025/04/its-a-miracle-that-they-got-caught-director-talks-bringing-larry-householder-to-hbo.html](https://www.cleveland.com/open/2025/04/its-a-miracle-that-they-got-caught-director-talks-bringing-larry-householder-to-hbo.html)

April 21, 2025



In this Tuesday, July 21, 2020, file photo, then-Ohio House Speaker Larry Householder leaves the federal courthouse after an initial hearing following charges against him and four others alleging a \$60 million bribery scheme in Columbus, Ohio. On Thursday, March 4, 2021, Householder joined the line of GOP critics of Ohio's anti-coronavirus efforts by introducing his own pair of bills to trim public health officials' powers during the pandemic. (AP Photo/Jay LaPrete, File)AP

COLUMBUS, Ohio – The FBI's work detecting a quid pro quo bribe and gathering evidence to prove it to a jury was more of an accident than it seems, director Alex Gibney said in a recent interview.

It took an unrelated FBI investigation to catch a tip; several whistleblowers including a state representative and the Ohio attorney general to back it up to justify the early subpoenas; and a chatty lobbyist's misplaced trust in three undercover special agents to cobble together enough for prosecutors in 2020 to bring charges against one of the most powerful politicians in the state.

"It's a miracle that they got caught," said Alex Gibney, an Oscar-winning director whose two documentaries on money in politics, including one on the Larry Householder story, released on HBO last week.

Householder is serving 20 years in federal prison for racketeering after steering a cash-for-legislation scheme to benefit Akron-based FirstEnergy Corp. He is appealing that conviction.

Cleveland.com and The Plain Dealer spoke with Gibney about Householder, the American campaign finance system, what the courts might have to say about it all, and more.

This interview has been edited for brevity and clarity.

What came first – a project about money and politics? Or Larry Householder?

The project about money in politics. We were looking for a story to carry the weight of the subject, and Jane Mayer [investigative journalist and author of "Dark Money: The Hidden History of the Billionaires Behind the Rise of the Radical Right"] tipped us off to this story. And the more we dug in, the more we believed it was essential to him.

Why Householder instead of others, like Rod Blagojevich, Bob Menendez, Kwame Kilpatrick or others convicted on corruption charges?

First of all, I mean, the baldness of the deal was just jaw dropping. FirstEnergy dropped \$60 million into a slush fund, dark money, which is at the control of Larry Householder. First he gets himself elected, then he rams through HB6, this bill that has been written already by FirstEnergy to reward FirstEnergy to the tune of over a billion dollars. That's just jaw dropping. I mean, it's the essence of quid pro quo.

You know, the Supreme Court and people like [conservative campaign finance attorney] Jim Bopp can talk about how money is speech, and get all grand about it, but behind closed doors, this is the way things really work. People are talking about how they're going to f--- people over and how they're going to use the money to destroy democracy. And isn't that great, and everyone is going to get paid.

But intriguingly and really important for us, too was how many times the phrase 'Citizens United' came up in the wiretaps. And very often it came up either as a kind of get-out-of-jail-free card, or representing a certain kind of cynicism that effectively said, 'You know, 15 years ago we might have had to be worried about having conversations like this. But not anymore. Citizens United has effectively made bribery illegal.' Now, in this case, they were wrong, but it gives you a sense of how, you know, lobbyists and politicians think about Citizens United. They basically think that if they're careful and they communicate between, you know, super PACs and the candidate with a wink and a nod, that effectively it's legalized bribery.

What do you make of the accidental or haphazard origins of the FBI's investigation?

One of the critiques I would have expected of this film is that, 'What are you talking about that bribery is a problem? Here's a case where some bad guys did some bad stuff and they got caught and they got sent to prison. So what's your issue?'

My issue is that it's a miracle that they got caught, really, because the FBI was actually pursuing a completely separate investigation.

Read more about the FBI's investigation into Neil Clark and its origins in sports betting.

Help me understand the bridge you drew in the documentary from Lewis Powell to Larry Householder.

Well, Lewis Powell long ago was a lawyer for Philip Morris, the tobacco industry, but ended up being a Supreme Court justice. Before he was justice, he wrote a famous memo, which was for the Chamber of Commerce, and basically it was an attack memo, like, 'We're so frustrated because there are all these darn restrictions that insist that we not pollute rivers, that we come clean about cigarettes causing cancer. You know, all this stuff is preventing us from making a lot of money. Wouldn't it be great if we could just get rid of that so there would be no rules and restrictions on business? And we can make as much money as we wanted?'

So he wrote this kind of attack plan for how you infiltrate universities, get these ideas accepted, and also in there was the Supreme Court. And part of that was like, how do you bend the ground, or how do you pack the court in a way so that you can begin to do in the courts what you can't do at the ballot box?

And then at the same time there's another guy named Jim Bopp who's a kind of dyed in the wool anti-abortion activist who realizes at some point he's never going to be able to overturn Roe v. Wade unless he's able to devote enormous amounts of cash to the endeavor. So he starts to go after campaign finance regulations. Enter Leonard Leo, a guy from the Federalist Society, a very conservative legal organization which has their own plans, sort of along the lines of Lewis Powell in terms of deregulating America, but is also an extremely conservative Catholic who also wants to overturn Roe v. Wade. These interests began to converge in terms of packing the Supreme Court with a number of pro-business, anti-abortion activist judges who not only overturn Roe v. Wade, but ultimately, you know, overturn the campaign finance system so that it's flooded with money. And this is what takes us to HB6 and Ohio Confidential.

Some of Larry Householder's people make this point that they weren't doing anything that everybody else isn't doing, and in some ways, your documentary almost agrees with that in saying this is politics. Does that suggest that Larry has almost been treated unfairly?

No.

Yes, it's true to some extent that Larry Householder is doing what other people do. And if everybody had been as reckless and as, frankly, dumb as Larry Householder had been, they might have gotten caught as well. But it's the system, that's the problem here. And I would say the problem is not that Larry Householder is being treated unfairly.

The problem is we've created a system in which other people like Larry Householder are able to get away with it all the time. And it's only in the rare case that somebody like Larry Householder and Matt Borges [a Householder co-defendant serving five years in prison] are caught.

To that point, the documentary has a lot to say about the federal court system on corruption. The Sixth Circuit Court of Appeals is considering Larry's arguments now. You never know, but it could become a U.S. Supreme Court case. Do you have any guess for how the court's are going to process an issue like this?

You know, every time I think that the courts are going to draw the line and finally do something that would uphold laws they're trying to hold the line against, effectively bribery in the political sphere, they don't.

I mean, the most classic example which we cite in "Wealth of the Wicked" [the second documentary of the series], is the case about the Indiana mayor who gave a contract to the Peterbilt Company to provide, I think it was five garbage trucks. And in exchange, the Peterbilt Company dropped kickback into the mayor's pocket. He was convicted of bribery, and that conviction was upheld all the way up to the Supreme Court. But the Supreme Court said, 'Well, he got the kickback after the act. So that's really more like a gratuity, like you would give a waiter a tip, you know. You know, so, no, we think this is okay.'

That's the obliviousness, that it seems like the Supreme Court wants so badly to abolish any and all restrictions on private enterprise that it's willing to engage in this kind of suspension of disbelief, whether it be the independence of the super PAC from the candidate or the fact that giving money to a mayor after the fact instead of before the fact never revolved around a wink and a nod or a whisper about, do this for us and we'll do this for you. It's clearly corruption, but they've gone to extraordinary lengths to imagine their way out of it so that they can pretend that money is speech, which is what is really killing us all at this moment.

What do you make of the lack of political blowback in Ohio about the scandal?

I don't know really how to explain it.

There was one hopeful sign which we indicated, I think in the crawl at the end, which was a popular referendum to overturn the heartbeat bill. That was one instance in which, you know, the people's voice was heard. The majority ruled. But the system now in Ohio seems so

rigged against the popular will, against democracy. It is a problem, but the people don't seem to be upset enough about it.

RECOMMENDED

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Final question. Was it a deliberate choice that you found an actor to record a voice over of Neil Clark's posthumous memoir that sounds like Ray Liotta from Goodfellas?

It's Michael Imperioli. He was in the Sopranos, and we chose him for that reason. The beginning of the film is a nod for me to 'Sunset Boulevard,' that there's an opening in that film where William Holden, who's been shot, is floating in a pool, and he begins to narrate the story from his perspective in the afterlife.

Jake Zuckerman covers state politics and policy for Cleveland.com and The Plain Dealer.

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Matt Levine's Money Stuff: Crypto Might Get Some Banks

Crypto bank charters

A theme that I have written about a lot around here is that US banking seems to be getting narrower. Traditionally, banks are in the business of (1) taking deposits and (2) making loans, and that is a famously risky combination: If all the depositors want their money back, the bank doesn't have it, and there can be a destructive bank run. There are various ways to mitigate this problem — liquidity regulation, deposit insurance, the central bank as a lender of last resort — but it keeps popping up.

There is one theoretical way to get rid of the problem entirely: You could separate the business of taking deposits from the business of making loans. Some companies — call them “narrow banks” — could be in the business of taking deposits and just *holding onto them*, in literal piles of cash or more plausibly in the form of electronic reserves at the Federal Reserve. Other companies — call them “loan companies” — could be in the business of making loans, but *not* using deposits as funding. Those companies could raise funds from investors who knowingly take the risk of making loans and lock up their money for the long term. Deposits would be safe, loan funds would not be subject to runs, and the central risk would be removed from banking.

This is a very old idea that has gotten a lot of interest from academics, but it is controversial. It is possible that the central risk of banking — taking safe deposits and using them to make risky loans — might be *desirable*, that separating the businesses might be bad. I often quote a 2011 Steve Randy Waldman post at Interfluidity:

One purpose of a financial system is to ensure that we are, in general, in a high-investment dynamic rather than a low-investment stasis. In the context of an investment boom, individuals can be persuaded to take direct stakes in transparently risky projects. But absent such a boom, risk-averse individuals will rationally abstain. Each project in isolation will be deemed risky and unlikely to succeed. Savers will prefer low risk projects with modest but certain returns, like storing goods and commodities. Even taking stakes in a diversified basket of risky projects will be unattractive, unless an investor believes that many other investors will simultaneously do the same. ...

This is a core problem that finance in general and banks in particular have evolved to solve. A banking system is a superposition of fraud and genius that interposes itself between investors and entrepreneurs.

If you tell people “put your money in the bank, where you can get it out anytime, guaranteed by the government,” (1) they will do it and (2) the bank can use the money to make risky loans to entrepreneurs and young home-buyers. If you tell people “put your money in a fund to make risky loans to entrepreneurs and young home-buyers,” they might just not do it; credit and the economy would contract. Banks take money from savers who don’t want to take risks, and use it to fund risky projects, a pro-social sleight of hand. Waldman:

The analogy I would choose is finance as placebo. Financial systems are sugar pills by which we collectively embolden ourselves to bear economic risk. As with any good placebo, we must never understand that it is just a bit of sugar.

That’s what I thought a few years ago. It also seems to be roughly what the US Federal Reserve thinks. In 2018, an entity called TNB USA Inc. tried to open a narrow bank. It applied for an account at the Fed, where it would just park its depositors’ money. It wouldn’t make any loans or investments; all the money would just sit at the Fed, which pays interest on reserves. The Fed dragged its feet on opening an account for TNB, and explained its reasoning 2019, arguing that “narrowly focused depository institutions” like TNB, which “hold a very large proportion of their assets in the form of balances at Reserve Banks,” could “have the potential to complicate the implementation of monetary policy” and “disrupt financial intermediation in ways that are hard to anticipate.”

Again, in 2018 and 2019, this struck me as largely correct: If everyone could have totally safe, Fed-backed, interest-paying deposits, surely there would be less demand for bank deposits, fewer loans and less financial intermediation.

But since then it does seem that banking has gotten narrower. On the deposit side, you kind of *can* get totally safe deposits. Treasury money market funds don’t *quite* park their cash at the Fed and earn interest, but they get pretty close, investing in short-term Treasury securities and reverse repos at the Fed. If you don’t like the risk of depositing money at a bank — and after the Silicon Valley Bank run in 2023, many people don’t — you can get much closer to narrow banking via money market funds. And on the lending side, the enormous boom in private credit proves that in fact there *is* a ton of demand from investors who want to knowingly take credit risk. You can get lots of loans — risky leveraged buyout loans, but also consumer loans and mortgages — without the placebo of banking.

So banking is getting narrower, though it is not yet narrow in any absolute sense. Private credit is still much smaller than the banking system, and private credit firms themselves often borrow from banks to increase their ability to make loans. The Fed’s 2019 objections to narrow banking still apply; the Fed formally turned down TNB’s account application only last year.

But narrow banking pops up elsewhere. One important modern form is *stablecoins*. A stablecoin is a crypto form of banking: You deposit dollars with a stablecoin issuer, it gives you back tokens entitling you to get your dollars back, and meanwhile it does whatever it wants with the dollars. In the unregulated early days of crypto, “whatever it wants” could be quite spicy indeed, but these days stablecoins are a big business and there is something of a norm of parking the deposits in very safe short-term dollar-denominated assets, ideally Treasury bills or reverse repos or a BlackRock money market fund. If you launched a new stablecoin today and said “we will take your dollars and use them to make loans to emerging crypto entrepreneurs,” you’d have a hard time competing with the big incumbent stablecoins that say “we will take your dollars and use them to buy Treasury bills.” (Especially if, like most stablecoins, you didn’t pay interest.)

One flavor of this is “central bank digital currency,” which means roughly “a stablecoin run by the Fed and backed directly by Fed deposits.” And my impression is that the Fed does not like the idea of a CBDC, in part for these sorts of financial-intermediation concerns. More generally, my impression is that the Fed does not want a world in which stablecoins are (1) a dominant form of digital money and (2) *narrow banking*. That is a world in which the alchemy of banking is harder to achieve.

On the other hand, do you want a world in which stablecoins are (1) a dominant form of digital money and (2) *not* narrow banking? Broad banking? Where the stablecoin issuers *do* take dollars and use them to make loans to emerging crypto entrepreneurs? What about a world where the stablecoin issuers take dollars and use them to make, you know, leveraged buyout loans, or consumer loans, or home mortgages? Maybe that’s fine? Maybe that’s just banking? Maybe we can just recreate the whole banking system but in crypto?

Anyway the Wall Street Journal reports:

A host of crypto firms including Circle and BitGo plan to apply for bank charters or licenses, according to people familiar with the matter. Crypto exchange Coinbase Global and stablecoin company Paxos are considering similar moves, other people said.

That comes as the Trump administration moves to incorporate crypto into mainstream finance and Congress advances a pair of bills that would establish a regulatory framework for stablecoins, which let people easily trade in and out of more volatile cryptocurrencies. The legislation would require stablecoin issuers to have charters or licenses from regulators.

Some crypto firms are interested in national trust or industrial bank charters that would enable them to operate more like traditional lenders, such as by taking deposits and making loans. Others are after relatively narrow licenses that would allow them to issue a stablecoin. ...

Any crypto firm that obtains a bank charter would become subject to stricter regulatory oversight.

The obvious story here is that any crypto firm that obtains a bank charter would be subject to stricter oversight of its know-your-customer and anti-money-laundering programs, its capital, its information security, etc., all the stuff that crypto firms sometimes get in trouble for.

But the weirder story here is: If you are a crypto firm that wants a bank charter, *do you have to do lending?* If you are a stablecoin issuer whose entire business is (1) taking deposits and (2) parking those deposits in Treasury bills, do bank regulators want to give you a charter? Aren't bank charters for banks that do financial intermediation? Will there be pressure for stablecoin issuers to become *real* banks, to take deposits and use them to fund loans? Will crypto companies that want to become banks have to be regular banks, not narrow ones?

This is a little funny because crypto is to some extent a reaction against traditional banking. Satoshi Nakamoto invented Bitcoin in part in disgust at the 2008 financial crisis. And cryptocurrencies are distinct from dollars in that a dollar fundamentally *is* a debt obligation of a bank, while a Bitcoin fundamentally *isn't*; crypto is a form of non-debt money, a way to have money and payments and bank accounts without traditional banking. I wrote in 2023 that crypto "to some extent *started* as a backlash to fractional reserve banking and the shadow banking crisis of 2008, and by last year had matured to the point that it recreated both fractional reserve banking (but without regulation!) and a 2008-style shadow banking crisis." But that is just the beginning of the story. Perhaps the future is that crypto will *fully* recreate normal banking, including bank regulation.

Upexi

The MicroStrategy trade is: You take a pot of Bitcoins, you wrap them up in the form of a US public company, and you sell shares in the company for more than the underlying Bitcoins are worth. Put a \$100 pot of Bitcoins in a public company that does nothing else, and the company will be worth \$200. So you can sell another \$100 of shares, buy \$100 of Bitcoins, and the company will be worth \$400, etc., in a perpetual motion machine.

This has worked surprisingly durably for MicroStrategy Inc. (now called just "Strategy"), which invented the trade. So naturally there are imitators. You can try to replicate it exactly — buy Bitcoin in a US public company — and some companies do, but MicroStrategy has a big first-mover advantage and it's not clear why anyone wanting Bitcoin in a US public company wrapper would buy a competitor. But you could imitate the trade with some distinguishing twist. Do it in a *Japanese* public-company wrapper, for instance. (This is the MetaPlanet trade.) Or, instead of Bitcoin, do it with some other crypto asset; there are Ethereum and Dogecoin versions.

This trade is obviously appealing to some US (and non-US) public companies, but the *pure* form of the trade probably isn't *that* appealing to *that* many companies. Most companies want to do, you know, the business that they are doing, not just a crypto arbitrage; even MicroStrategy still has a software business. If you run a biotech company working on a cure for cancer, and you realize "hey we could make more money just selling stock to buy crypto," you might not do it, because you would rather cure cancer. (And because you have no particular talent for buying crypto.)

On the other hand, if you are a *crypto asset manager*, this trade is even more obviously appealing: You would rather have investors give you \$2 to manage \$1 of crypto than have them give you \$1. Buying cryptocurrency, and charging investors more than the value of that cryptocurrency, is much closer to the core business of a crypto asset manager than it is to the core business of a software company, so any crypto asset manager should want to do this trade.

But the trade probably only works for a non-financial public company, not for a crypto asset manager. If you're a crypto manager and you launch a publicly traded crypto fund, it will probably be called a "fund," and it probably won't trade at a big premium. (That used to happen, but now crypto exchange-traded funds exist, and it's harder to launch a crypto fund at a premium.)

So if you are a crypto asset manager, how do you access this trade? The answer is: You *buy* a very small US public company and convert it into a pot of crypto, so you can sell shares at a premium. By "buy," here, I mean not "acquire 100% of the shares and take it private," but rather "buy new shares of the company for cash to give you control of the company, put all the money into crypto, and then sell more shares."

That is apparently the Upexi trade:

Upexi Inc. is raising \$100 million as part of a pivot that will see the company start to accumulate the cryptocurrency Solana, according to a Monday statement. The company's shares surged more than 300% in early trading.

Upexi, which had a \$3 million market capitalization as of the close of trading last week, announced it has entered into agreements with investors to buy about 43.9 million shares of its common stock, or pre-funded warrants, in a private placement at a price of \$2.28 per share. The closing of the offering is expected on April 24.

GSR, a crypto trading and investment firm, is leading the investment and said its involvement underscores the firm's confidence in Solana as a leading high-performance blockchain.

Here is Upexi's filing. The stock closed at \$2.27 per share last week, and the new \$100 million private raise from GSR and friends — representing about 97% of the company — was done at \$2.28 per share. The stock traded at about \$18.37 per share at noon today, representing roughly an \$830 million market capitalization for, I think it is fair to say, a \$100 million pot of plans to buy Solana. If you can buy \$100 million of Solana and sell it for \$830 million, you should.

The filing adds that "it is a condition to the closing of the Offering that the Company enter into an Asset Management Agreement with GSR Markets UK Limited ('GSR') whereby GSR will manage the funds for the establishment of the Company's Solana treasury operations and accumulation of Solana." That is: GSR and its co-investors have put \$100 million into Upexi, and Upexi has put that \$100 million into a pot and handed the pot back to GSR to buy Solana, and that pot is now worth \$830 million on the stock market. GSR has found a way to launch a Solana fund inside a public company and sell it at a large premium.

AI boss

One destabilizing fact about the rise of modern artificial intelligence is that it might displace the *good* jobs, not the bad ones. Automating repetitive manual work is one thing; automating the work of, you know, software engineers or financial columnists is quite another. The pinnacle of AI is of course to automate the work of chief executive officers, particularly CEOs of AI companies. Here's this guy:

As chief executive officer of the transcription software company Otter.ai, Sam Liang spends a lot of time thinking about meetings. But he'd like to spend less time attending them — at least the non-critical ones — and he's betting that other CEOs feel the same way.

Enter the "Sam-bot."

Otter is training an AI-powered avatar on what Liang has said in thousands of meetings and written in documents since he co-founded the company nearly a decade ago. The bot, complete with a voice synthesized to sound like him, is built to handle about 90% of the minutiae and straightforward issues that arise in most business meetings, freeing up Liang to spend more of his time developing new products, wooing potential clients and mentoring colleagues.

Sure. If the CEO of an AI company is itself an AI bot, what ... is ... that, exactly? Is that self-replicating AI? AI replicating itself through humans, but the AI tells the humans what to do? I think a lot about the funniest possible ways for robots to destroy humanity, and this is right up there. You go to a routine status meeting at Skynet AI Labs, your boss says "for efficiency I think we should unplug the manual kill switch," you say "really," he says "absolutely, do it now or you're fired," you do it, and it turns out that your boss was on the golf course and it was his AI avatar who had you remove the last safeguards stopping the your transcription software from enslaving humanity.

Elsewhere: "China's First Robot Marathon Runners Trip, Emit Smoke, Fall Apart," which is exactly what I would do if I ran a marathon, so impressive verisimilitude I guess.

Gap year for quants

Before my vacation I wrote that:

1. A lot of quite different businesses — quantitative hedge funds, artificial intelligence labs, professional soccer teams — are really the same business (data science), and they employ the same sorts of people (astrophysics PhDs).
- 2. Many of the firms in those businesses impose long periods of "gardening leave," where if you leave one hedge fund/AI lab/soccer team for another, you have to wait a long time before you start your new job.
- 3. Those firms really care about this, for competitive and intellectual-property-preservation reasons, but it seems socially wasteful to have all those astrophysics PhDs not doing anything for a year.
- 4. There should be some sort of exchange program, a gap year where the hedge fund quants can't start at a new *hedge fund* for a year, but they can go work for a *soccer team* while they wait. And vice versa, etc.

I got a number of good emails about this, including one from an astrophysicist saying “now what I need to do is convince them to *pay* my lab a few dollars for the privilege of working with us during their leave.” Another reader pointed out that the whole notion of open source software runs to some extent on this basis: A lot of software engineers at fancy companies are either underemployed or on gardening leave, so they build open source tools until they start a new job. Another reader pointed out that there are a lot of nonprofits that could benefit from a year’s skilled work by a data scientist being paid by her former hedge fund/AI lab/soccer team.

But also a reader pointed out that some literal version of this exists. Some hedge funds, at least, have more or less explicit gap-year programs for new hires waiting out their gardening leaves. Here’s a Business Insider article from last year about Citadel:

A new program from billionaire Ken Griffin’s firms partners with its philanthropic arm to keep new hires engaged. The Impact Fellows program was piloted last year with 12 new hires, who worked for no pay with one of Citadel’s nonprofit partners on different projects.

Employees were matched with a nonprofit based on their interests and technical abilities, said Julia Quinn, Citadel’s head of philanthropy. The voluntary program is now embedded in the recruiting process for the firms, she said, meaning offers to potential hires mention it — one of the reasons she is “cautiously optimistic” that the number of participants will increase in the program. ...

The employees who participated appreciated just having something engaging to do. Jimmy Huang, systematic trader at Citadel Securities, had an 18-month garden leave that felt “like a weekend every day.” He tried to keep his data science skills sharp with free videos and online competitions, but his time with education nonprofit Schoolhouse.world — where he worked roughly 20 hours a week and had regular meetings — was more his speed.

I suppose it is nice that it focuses on philanthropic uses of their time, though I think they should be allowed to run soccer teams too.

Things happen

Trump’s Trade Offensive Threatens America’s Financial Primacy. Trump’s Push Against Powell Adds to Doubts of US’s Haven Status. Hedge Fund Titans Rattled by US Trade Turmoil Eye Mideast Cash. ‘I Did Not Think for One Second He Was Going to Go This Crazy’: Inside Wall Street’s big split with Trump. China pulls back from US private equity investments. AMG Buys Minority Stake in Multistrategy Hedge Fund Verition. Crypto casino takings top \$80bn as gamblers bypass blocks. Airbnb to Show Fees in Price Display to Comply With FTC Rule. “I want our company to be exclusive,” [Brunello Cucinelli] says. ‘ Tomorrow we should be less known than we are today.’”

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- 1. This is approximately the QXO trade: When Brad Jacobs wanted to start QXO Inc., what he did was find a teeny public company and give it some cash to buy new stock representing roughly 99% ownership. But the company stayed public, and the remaining public stock traded at a premium to the assets.
- 2. A small technical note. Bloomberg's regular page — UPXI US Equity HP — shows a last sale price of \$2.295 per share last week, but Upexi's closing price *on Nasdaq*, its primary listing exchange (Bloomberg page UPXI UR Equity HP) was \$2.27. The private placement was done at \$2.28. Upexi's press release says: "Upexi Announces Pricing of \$100 Million Private Placement Priced Above Last Market Closing Price under Nasdaq Rules." What does this mean? Well, if you are a Nasdaq listed company, and you want to sell more than 20% of your stock to an investor in a private placement, that ordinarily requires a shareholder vote. (This is Nasdaq Rule 5635(d).) There is an exception, though, for offerings at or above the last closing price of the stock on Nasdaq: Selling 97% of the company to new investors at \$2.26 per share would require a shareholder vote, but doing it at \$2.28 does not.

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State treasurers raise concerns over Musk's lack of focus on Tesla

 [reuters.com/business/autos-transportation/state-treasurers-raise-concerns-over-musks-lack-focus-tesla-2025-04-22](https://www.reuters.com/business/autos-transportation/state-treasurers-raise-concerns-over-musks-lack-focus-tesla-2025-04-22)

Reuters

April 22, 2025

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

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

April 22 (Reuters) - Treasurers of seven U.S. states have raised concerns about Tesla CEO Elon Musk's lack of focus on the electric vehicle maker, given its significance in regional industries, innovation and employment.

Tesla deliveries plunged 13% in the first quarter due to backlash against Elon Musk's politics, rising global competition and people waiting for a refresh to its highest-selling electric vehicle Model Y. Its stock has also fallen about 40% this year.

"Meanwhile, CEO Elon Musk continues to divide his attention across multiple companies and a high-profile advisory role within the federal government," Americans for Responsible Growth, an advocacy group representing the Democratic state treasurers, said in an open letter to the board dated April 17.

"These external commitments raise serious questions about whether Tesla's leadership is fully engaged in addressing the company's core challenges."

The treasurers also pointed to the need for companies such as Tesla to "return to a stable and focused trajectory" in an uncertain economic environment.

If Tesla falters, the effects will not be confined to shareholders, but will be felt across regional economies, workforce pipelines and public confidence in the energy transition, California State Controller Malia Cohen and seven state treasurers, including Washington's Mike Pellicciotti and Illinois' Michael Frerichs, said.

The treasurers asked the board to clarify how Musk and the Tesla board were ensuring that adequate time and effort was being put into resolving the company's underperformance, and how the board was evaluating whether executive compensation was aligned with shareholder value and corporate accountability.

Tesla is set to report its first-quarter results after the market closes.

Reporting by Kritika Lamba in Bengaluru; Editing by Anil D'Silva

Our Standards:

Tesla Board Gets an Earful From State Treasurers Over Musk's Focus

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April 22, 2025, 7:00 AM PDT



Dana Hull

Bloomberg Editorial



By Dana Hull

(Bloomberg) --

The treasurers of eight US states have written an open letter to Tesla Inc.'s board of directors questioning the direction of the company and the level of attention Elon Musk is paying to its mounting challenges.

The overseers of funds and investments for California, Illinois and half a dozen other states cite Tesla's sagging stock, disappointing first-quarter deliveries and surge of trade-ins by vehicle owners as being among their causes for concern.

"Meanwhile, CEO Elon Musk continues to divide his attention across multiple companies and a high-profile advisory role within the federal government," the treasurers wrote. "These external commitments raise serious questions about whether Tesla's leadership is fully engaged in addressing the company's core challenges."

The letter — pulled together in coordination with the advocacy group Americans for Responsible Growth — heaps more pressure on Tesla and Musk ahead of the company releasing first-quarter earnings results after the close Tuesday.



Elon Musk and Donald Trump.
Photographer: Anna Moneymaker/Getty Images

The carmaker's stock has plunged more than 50% from an all-time high reached in mid-December, when investors initially viewed Musk's proximity to then President-elect Donald Trump as a positive. The role the Tesla CEO has played in advising the administration has instead sparked a global backlash against Musk and his most valuable company.

Read More: Why Tesla Is Losing Ground Around the World

California's Malia Cohen, Illinois' Michael Frerichs and the six other treasurers warn that if Tesla continues to falter, it "will ripple through regional economies" and shake public confidence in the energy transition.

Although Musk moved Tesla's headquarters to Austin from Silicon Valley in 2021, California is still home to several of the company's manufacturing and engineering facilities. Several of the states whose treasurers signed the letter — including Washington, Massachusetts, Colorado and Connecticut — have adopted California's standards aimed at boosting sales of electric vehicles.

In the letter addressed to Robyn Denholm, Tesla's chair, the treasurers ask the board to clarify how it's ensuring that Musk and his leadership team are "devoting adequate time and focus to resolving recent performance issues." The state officials also prod Tesla directors

about their approach to executive compensation and how they plan to restore investor confidence.

“The board’s role is especially critical now — to provide strong oversight, uphold fiduciary standards and ensure that the company’s leadership is aligned with the long-term best interests of the company,” the treasurers wrote. “Public officials like us do not take the step of raising these concerns lightly except when the obvious risks demand it.”

To contact the reporter on this story:

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Brandon Harden

Tesla investors await details on affordable electric car, plans to boost sales

 [reuters.com/business/autos-transportation/tesla-investors-await-details-affordable-electric-car-plans-boost-sales-2025-04-22](https://www.reuters.com/business/autos-transportation/tesla-investors-await-details-affordable-electric-car-plans-boost-sales-2025-04-22)

Akash Sriram

April 22, 2025

Tesla electric vehicles are lined up at a dealership in Durango, northern Spain, October 30, 2023. REUTERS/Vincent West/File Photo Purchase Licensing Rights , opens new tab

- Analysts expect automotive gross margin of 11.8%
- Tesla shares have halved since December peak
- Investors await details on affordable models to spur sales

April 22 (Reuters) - Tesla (TSLA.O) , opens new tab investors are anxious to know if plans to roll out a cheaper car and a robotaxi service this year are on track, and whether CEO Elon Musk is ready to ditch his role in the Trump administration soon and get back to managing the company more closely.

The electric vehicle maker is scheduled after market close on Tuesday to provide what is likely to be its most important update on operations since the launch of its Model 3 vehicle in 2017. Tesla said earlier this month that it would "hold a live company update" along with its results and the question and answer webcast, sparking speculation on social media that it might make a major announcement.

Analysts are expecting a bad first quarter, based on recent indicators. Deliveries in the January-March period slid 13%, as the company lost ground to Chinese rivals, and Musk's political actions as a close adviser to U.S. President Donald Trump have damaged the brand.

Tesla has faced protests, vandalism, and consumer calls for boycotts , opens new tab in several markets, and sales in China and California - its largest U.S. market - have fallen sharply as well.

Some investors have taken a more sour view of the one-time Wall Street darling. The company's stock, which closed at \$227.42 on Monday, has nearly halved from its December peak.

Tesla's key automotive gross margin, excluding regulatory credits, likely fell to 11.8% in the period, according to 21 analysts polled by Visible Alpha, down from 13.6% in the fourth quarter. Analysts expect the downward trend to continue if Tesla continues to prioritize volume growth over profitability.

"Tesla comes into results as arguably the most scrutinized company in the world," said Matt Britzman, senior equity analyst at Hargreaves Lansdown. "That's not really a position investors want to be in, and there'll be a lot of focus on whether Elon Musk gives any indication of when he might be stepping back from DOGE," said Britzman, who personally holds Tesla stock. DOGE is short for the Musk-led Department of Government Efficiency.

The EV maker scrapped plans for a brand-new, low-cost model last year, opting instead to produce cheaper variants using existing platforms and assembly lines. Reuters reported exclusively on Friday that Tesla delayed plans to start production of a more affordable Model Y crossover by at least a few months.

Musk promised driverless ride-hailing services to the public in Texas by June, and in California for later this year. To that end, Tesla has been seeking regulatory approvals, but there are serious concerns about safety and related litigation risks that could come with deploying unproven driverless technology on public streets.

Analysts expect a second straight annual decline in Tesla deliveries in 2025, despite efforts to boost sales through incentives like free charging and Full Self-Driving features.

Revenue was likely flat from a year ago at \$21.35 billion, supported by gains in regulatory credits and growth in Tesla's energy storage business.

Tesla also recalled all Cybertrucks delivered since late 2023 and launched a lower-priced \$70,000 version of the vehicle. It has been discounting unsold inventory of the electric pickup truck in recent weeks.

Tariff tensions add further uncertainty. Tesla has paused some China-sourced component imports after U.S. tariffs on the Asian country rose to 145%, Reuters reported. China has responded with tariffs of its own, leading Tesla to suspend new Model S and X orders in the country.

Reporting by Akash Sriram in Bengaluru and Abhirup Roy in San Francisco; Editing by Sayantani Ghosh and Matthew Lewis

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

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.

Is Tesla in Trouble? Why TSLA Stock Price and Sales Are Falling

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Tesla Model 3 vehicles at the company's store in Colma, California, on March 10, 2025.

Photographer: David Paul Morris/Bloomberg

Tesla Inc.'s sales started slowing even before Chief Executive Officer Elon Musk really threw his weight around in US politics. Since he's taken a starring role in the Trump administration and become a cheerleader for Europe's far right, the company's fortunes have taken a turn for the worse.

The electric-car maker's vehicle deliveries fell to an almost three-year low in the first quarter of this year as Musk got to work dismantling US government agencies and went all-in to support anti-immigrant populist politicians.

Musk says he's having "great difficulty" running his businesses while also tending to his work in Washington — something that hasn't gone unnoticed by investors looking for signs of hope in the company's April 22 earnings announcement, or Wall Street analysts realizing they underestimated the damage being done to Tesla's brand around the world.

It hasn't helped that Tesla paused production at all four of its assembly plants to begin making the redesigned Model Y, its most popular offering. Putting the companies woes together, some analysts are now expecting Tesla's sales to contract for a second straight year, undermining its status as a "growth" stock that deserves a far richer valuation than other carmakers.

Still, none of this may matter to Tesla's most loyal investors. The value they ascribe to the company has as much to do with Musk's promises of future self-driving taxis and humanoid robots as its here-and-now EVs.



What's happened to Tesla's sales?

The most dramatic declines have occurred in Europe, where sales fell 43% in the first two months of the year. In Germany, the situation was particularly stark, as sales plummeted 62% through March — likely the result of potential buyers being put off by Musk's vocal support for the far-right Alternative for Germany party ahead of the Feb. 23 federal election.

In China, the world's biggest EV market, shipments from Tesla's Shanghai plant — destined for elsewhere in the country as well as for export — plunged 49% in February to the lowest level since July 2022. One reason is the company's updated Model Y sport-utility vehicle, which required pausing production lines for weeks to upgrade manufacturing equipment to be able to make the revamped SUV.

But there's a more fundamental problem for Tesla in China, where the company generated more than a fifth of its revenue last year: the rapid rise of Shenzhen-based rival BYD Co. Tesla's narrow and dated lineup is struggling to compete with the more affordable offerings from BYD that come decked out with intelligent driving features tailored for local driving conditions.



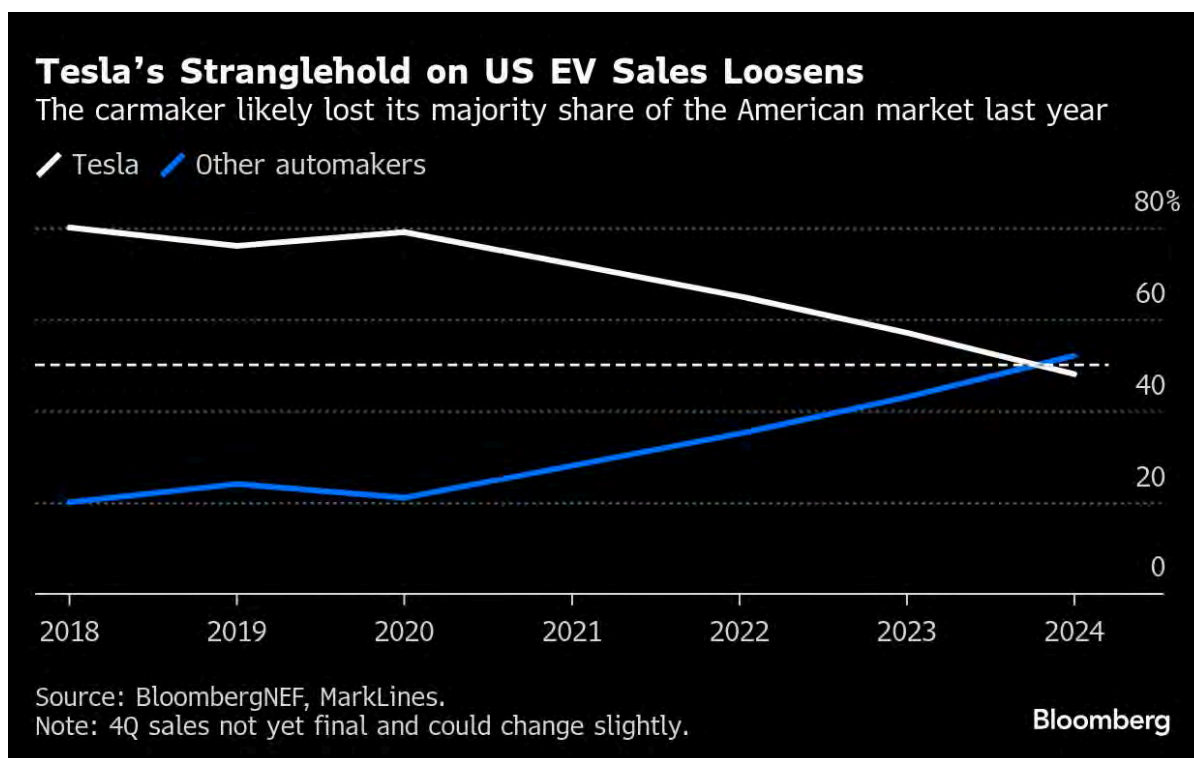
Watch: How China's BYD overtook Tesla.

Source: Bloomberg

In Tesla's home market, the US, where it derives almost half of its revenue, the latest sales numbers are harder to come by. Kelley Blue Book, an American market researcher, estimates that Tesla sold only 43,650 vehicles in February, among its lowest monthly totals over the last three years.

Citing new competitors and the blowback against Musk, KBB questioned whether the carmaker would ever top its US sales peak of 60,325 EVs in February 2023 — the only time the company has ever exceeded 60,000 vehicles sold in the country in a month.

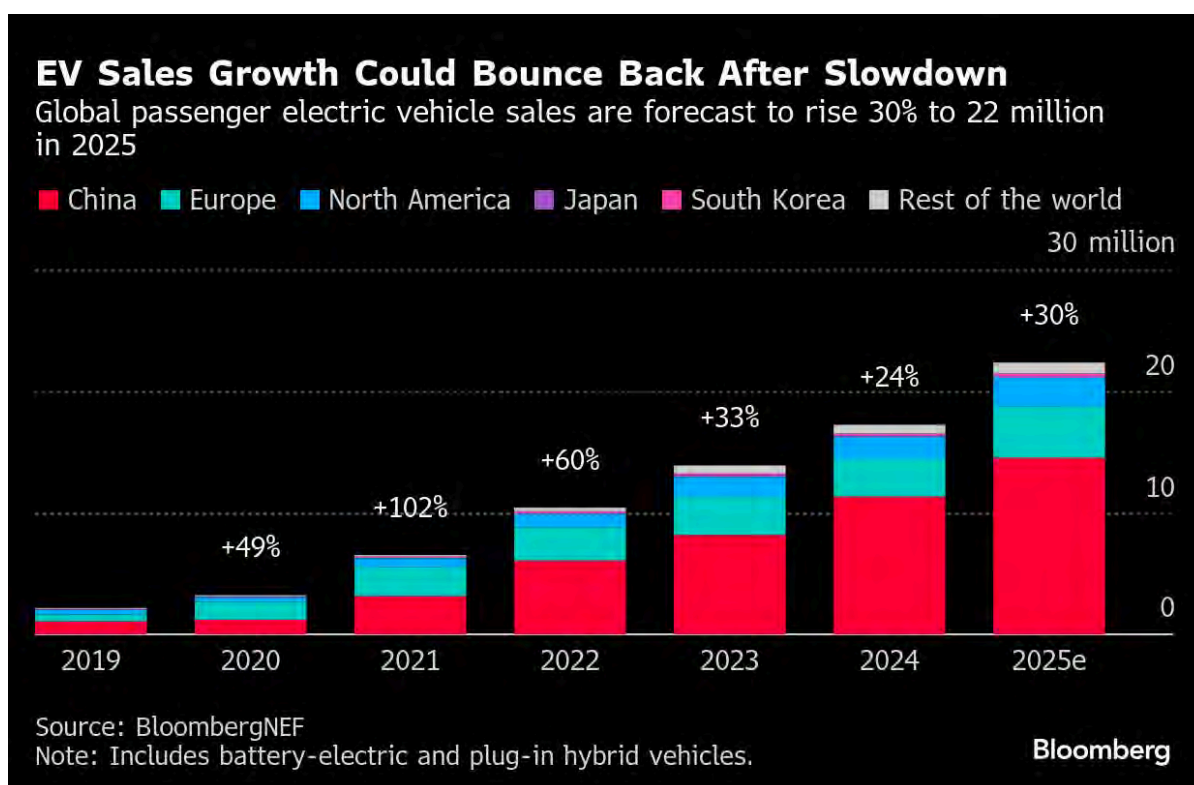
While Tesla is still the most popular electric car brand in the US, its market share has fallen from more than 75% in 2022 to under 50% as of 2024, according to KBB.



How does Tesla's performance compare with electric vehicle sales more broadly?

The pace of EV sales growth has slowed globally in recent years, as some governments removed subsidies and consumers balked at relatively high prices and still-limited charging infrastructure in many regions.

But slow growth doesn't mean no growth. Worldwide sales of battery-electric and plug-in hybrid vehicles rose by 24% to a record 17.2 million in 2024, according to BloombergNEF, which expects a reacceleration to roughly 30% growth this year.



In Europe, industrywide sales of battery-electric vehicles jumped by 37% year-on-year in January, despite Tesla's 45% decline in that month.

As Tesla follows a downward trajectory, BYD is on a tear. Its combined sales of fully electric and plug-in hybrid vehicles soared by 58% in the first quarter.

Why is Tesla losing market share?

Musk has followed a less-is-more approach to Tesla's lineup. The company sells only five models: the Model S (which debuted in 2012), Model X (2015), Model 3 (2017), Model Y (2020) and the Cybertruck (2023). What's more, not all of those vehicles are sold globally. The Model 3 sedan and Model Y SUV alone accounted for more than 95% of worldwide deliveries last year.

BYD, by contrast, offers more models — the exact number depends on the country — and most of them are cheaper than Musk's most popular vehicles. BYD also announced it has developed and is testing an EV battery system that charges within five minutes, which could make the brand even more competitive.

Increased competition from new entrants — including the likes of Xiaomi Corp., which is expanding into car manufacturing from smartphones in an already crowded Chinese EV market — is also threatening Tesla's standing.

And then there's the impact of Musk's political activities.



Elon Musk, chief executive officer of Tesla, during a cabinet meeting at the White House on April 10, 2025.

Photographer: Shawn Thew/EPA/Bloomberg

How much are politics at play in Tesla's slump?

The starkest sign that Musk's close links to President Donald Trump and the Republican Party were beginning to drag on Tesla came from California — a Democratic stronghold — where the EV maker's registrations fell in all four quarters last year.

Since the US election in November, the backlash has only grown. A decentralized movement called Tesla Takedown has emerged. People have been protesting at Tesla showrooms across the US and organizers have called for a boycott of the company's products. The carmaker has also dealt with incidents of vandalism in the Netherlands, arson in France and Italy, and a stunt that went viral at its factory in Germany.

Trump came to Musk's defense with a photo opportunity at the White House on March 11 where he perused several Tesla vehicles and pledged to buy a Model S. It remains to be seen whether endorsements from Trump and right-wing figures including Sean Hannity, Alex Jones and Ted Cruz will gain the company more customers than it risks losing from the political left.

In the meantime, investors are growing restless. The treasurers of eight US states wrote an open letter to Tesla's board of directors in April, questioning the direction of the company and the level of attention Musk is paying to its mounting challenges.



Trump came to Musk's defense with a photo opportunity at the White House on March 11, 2025.

Photographer: Samuel Corum/Sipa/Bloomberg

Musk's alignment with Trump hasn't spared Tesla from being caught in the crossfire of the trade war between the US and China. Musk wrote on his social-media platform X in March that the cost impact for Tesla of Trump's tariffs on automotive component imports into America would be "not trivial."

The company also stopped taking orders in China for Model S sedans and Model X sport utility vehicles — both of which are imported from America — after the countries raised new tariffs on one another to the triple digits. This likely won't result in a huge blow to Tesla's sales but is yet another setback to the firm's already shaky position in China.

What else is Tesla doing to recover?

Tesla is rolling out the redesigned Model Y and has said that new vehicles — including more-affordable models — are on track to start production later this year. It's provided few details about what those cheaper options will be and Reuters reported that the production launch of a long-awaited lower-cost model could be delayed by several months, citing unidentified people with knowledge of the matter.

While Tesla's core EV making business brought in 90% of revenue last year, Musk is increasingly betting the company's future lies in autonomous vehicles and robots. Tesla has said volume production of a car without a steering wheel or pedals, called the Cybercab, is planned for 2026. Musk also hopes to begin delivering a humanoid robot called Optimus to other companies starting next year.

Part of what worries analysts, some of whom have said Tesla's deliveries will fall again this year, is the lack of clarity around what Tesla will have to offer customers in the meantime. Investors also increasingly doubt that Tesla will make meaningful adjustments to its lineup anytime soon and anticipate that the company is more likely to just introduce lower-priced versions of its existing vehicles.

The Reference Shelf

- Listen to Bloomberg's Elon, Inc podcast break down the split between Trump and Musk on tariffs, and the Zero podcast's look at whether Tesla's EV supremacy is in the rearview mirror.
- Read an explainer on how Trump's auto tariffs could upend the global car industry.
- BNEF analyzes the potential fallout of Trump's tariffs on the US EV market.

Tesla shorts up \$11.5 billion for the year with positioning bearish

 [reuters.com/business/autos-transportation/tesla-shorts-up-115-billion-year-with-positioning-bearish-2025-04-22](https://www.reuters.com/business/autos-transportation/tesla-shorts-up-115-billion-year-with-positioning-bearish-2025-04-22)

Reuters

April 22, 2025

The logo of Tesla is seen on a store in Paris, France, October 30, 2020. REUTERS/Charles Platiau/File Photo Purchase Licensing Rights , opens new tab

(TSLA.O) , opens new tab short sellers are up an estimated \$11.5 billion for the year-to-date and positioning is bearish going into the electric vehicle maker's quarterly results due after market close, according to the latest report from S3 Partners.

Tesla shares have tumbled 40% so far this year and analysts are expecting a weak report as January-March deliveries slid 13%, with market share losses to Chinese rivals, and brand damage stemming from CEO Elon Musk's political work as part of the Trump administration. Investors who sell securities short borrow shares and then sell them, as they bet that the stock will fall so they can buy the shares back at the lower price in order to return them to the lender and pocket the difference.

With a 10 million or 15% increase in shares sold short so far this year, S3 managing director Matthew Unterman writes that it is the most profitable short globally ahead of chip maker Nvidia (NVDA.O) , opens new tab, in which short sellers are up \$9.4 billion.

"With short interest climbing and sentiment deteriorating, Tesla's post-earnings path hinges on results and guidance clarity," wrote Unterman.

"A confirmed break above recent short interest resistance could suggest deepening bearish conviction, especially with analysts openly questioning leadership focus," he said.

Wedbush analyst Dan Ives, traditionally a Tesla bull, said earlier this month that Musk should either "exit stage left" or step back from his political role in the U.S. Department of Government Efficiency (DOGE) and return his focus to Tesla.

Tesla investors were also anxious ahead of the earnings report to know if the company's plans to roll out a cheaper car and a robotaxi service this year are on track.

Unterman expects volatility in the stock going forward with the direction depending on "whether TSLA can counter rising pessimism."

After three straight days of losses, Tesla shares were up 6% at around \$241 on Tuesday.

Reporting By Sinéad Carew Editing by Marguerita Choy

Our Standards:

Tesla At Risk of a 'Throwaway Year' Without a New Story Coming Out of Earnings

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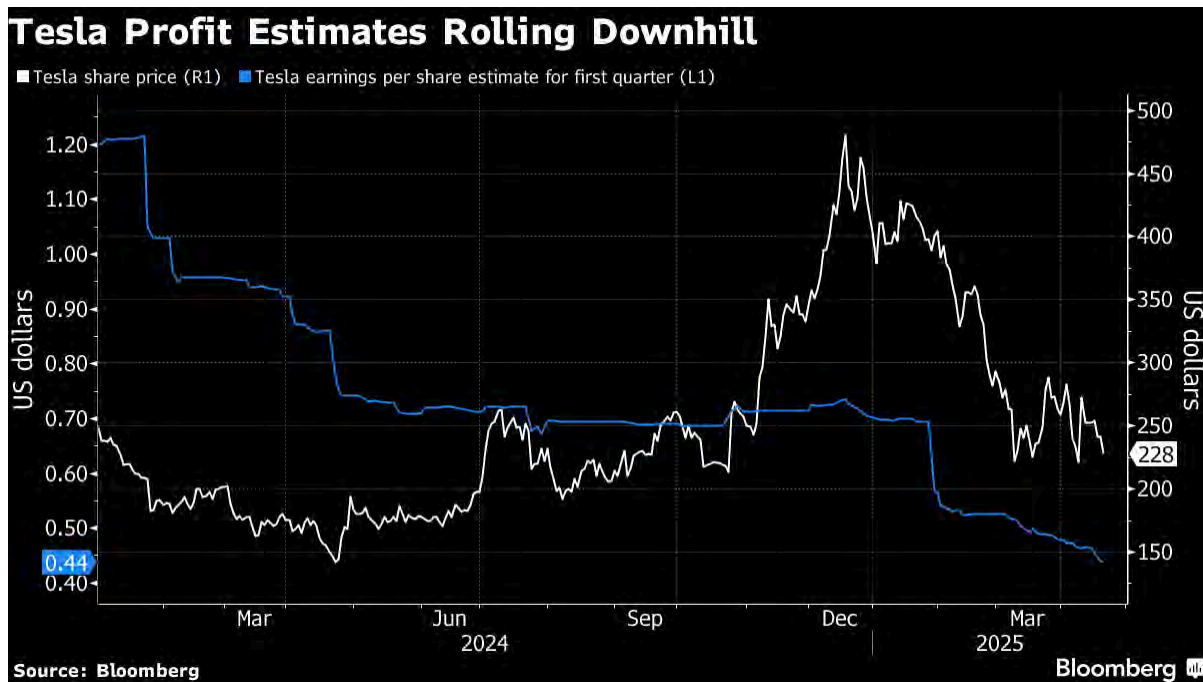
Tesla Inc. investors reeling from one of the stock's worst-ever quarters are once again looking for Elon Musk to inject excitement back into the firm when it reports results Tuesday, as profits slip and the much-awaited debut of a self-driving car remains months away.

This year is off to a dismal start as Musk's political entanglements have pushed Tesla's sales to a nearly three-year low in the first three months, leading a slew of Wall Street analysts to slash their growth expectations. The automaker's souring outlook and towering valuation has spooked investors, leading to a 53% plunge in Tesla's stock price since it hit a record in December.

"Musk needs to bring the voltage on this earnings call to get the stock out of stall speed," said Dave Mazza, chief executive officer of Roundhill Investments, who owns the stock. "Tesla's stock is stuck in an information air pocket as Elon Musk focused on his DOGE work, while their car sales skid and political headwinds build in important markets."

Shoring up investor confidence will largely depend on whether Musk starts to step away from his involvement with the Trump administration and the Department of Government Efficiency. When reports this month suggested that such a move might be in the offing, shares of the company rallied, shrugging off weak sales number.

Beyond that, investors are looking for details on planned launch of the self-driving vehicle later this summer, and details on any new models at a time when competition from other electric vehicles is ramping up globally.



Earnings for the first quarter are expected to fall from the prior-year level and revenue is estimated to stay flat when the company reports results after markets close on Tuesday, according to data compiled by Bloomberg. Analysts have been dialing back their estimates sharply over the past month, with profit expectations falling by about 12% and revenue forecasts down over 6%.

“The takeaway for most will likely be that 2025 is a throwaway year,” said Gene Munster, co-founder at Deepwater Asset Management. However, Munster also expects this to be the year that “sets the stage for a major rebound in 2026 and beyond.”

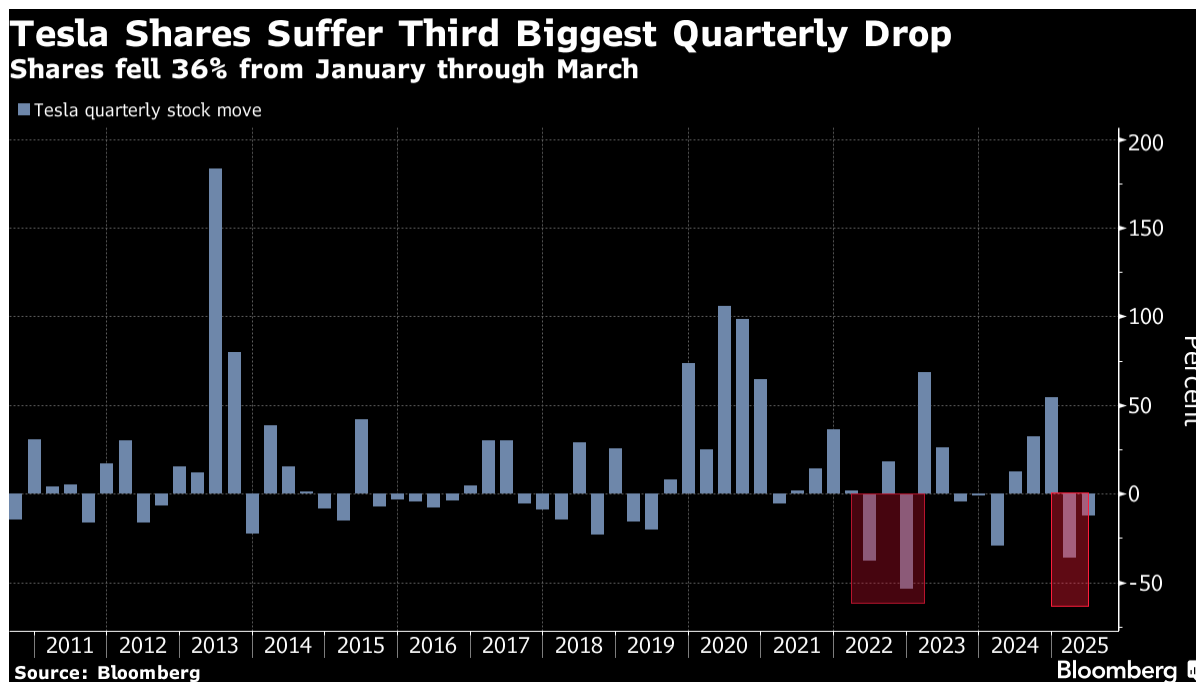
Tesla shares have slumped this year with concerns swirling about the damage that Musk’s political activities have done to the company’s brand — and sales — adding to wider investor anxiety about economic growth and US trade policy. The 36% drop in the share price from January through March was the third-largest quarterly decline since the company’s 2010 public listing.

Read More: Tesla Estimates Cut Further on ‘Unprecedented Brand Damage’

Despite the steep selloff, the stock continues to command a high valuation. Tesla shares trade at 78 times forward earnings, compared to the S&P 500 Index’s average of 19. The mega-cap technology companies, often referred to as the Magnificent Seven, are widely seen as the company’s true peers rather than traditional carmakers such as General Motors Co. and Ford Motor Co., and they trade at a much lower average valuation of 23.

“Any report from Tesla matters less than what the future holds, since most of the value in the stock is based on the future,” said Eric Schiffer, chief executive officer of Los Angeles-based private equity firm Patriarch Organization. “Of all of the Mag-7 stocks, it is Tesla whose valuation is almost entirely about the future.”

Schiffer and other bullish Tesla investors point to the potential that Tesla’s self-driving technology will allow it to establish a dominant position over rivals such as Alphabet Inc.’s Waymo. The first real test of that promise will come in a few months when the company is slated to launch its robotaxi service in Austin in June.



Still, many investors and analysts remain worried about the slowing pace of the company’s core electric-car making business, which brought in 90% of its revenue last year. Apart from an overall slowdown in EV adoption, a production pause and the brand damage from Musk’s political involvement, the company’s stale product lineup is also hurting sales.

Many fans are awaiting the announcement of new, more affordable vehicles that could compete with lower-cost competitors like China’s BYD Co. On that front, there were discouraging news reports over the past weekend suggesting that Tesla is pushing back the production of its lower-cost Model Y by at least three months. The initial plan was to roll out the car in the first half of the year.

“Tesla faces questions on increasingly weaker fundamentals,” said Dan Levy, analyst at Barclays, noting that the company’s profit margin from the core auto business is expected to reach a new low, and after a soft start it may be increasingly difficult to see sales volume

rising this year.

Still, Levy said, “a potential source of upside for Tesla stock could be a re-engaged Elon Musk,” adding that a “good narrative could outweigh weak fundamentals.”

Why Tesla Is Losing Ground Around the World: QuickTake

Top Tech Stories

- Beijing Smart Walnut Education Technology Co., a provider of services that help children learn to code, is one of several Chinese firms considering initial public offerings in the US despite market turmoil and friction between Washington and Beijing, according to people familiar with the matter.
- An intensifying rivalry between JD.com Inc. and Meituan in China's food delivery space is dealing a blow to their share prices, as investors worry about the hit to profitability.
- A group of Roblox users is re-creating real life school shooting incidents on the gaming platform that's popular with kids, including attacks at Columbine High School and the Robb Elementary School in Uvalde, Texas.
- Uber Technologies Inc. was sued by the US Federal Trade Commission, which claims the rideshare and delivery company hurt consumers through “deceptive billing and cancellation practices” as part of its flagship subscription service.

Earnings Due Tuesday

- Earnings Premarket:
 - Verizon Communications (VZ)
- Earnings Postmarket:
 - Manhattan Associates Inc. (MANH US)
 - Pegasystems Inc. (PEGA US)

New US Market Wraps: 'Before the Bell' and "S&P Week in Review"

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The “S&P Week in Review” is a wrap of equity events, published every Friday. On the Terminal, [click here](#) to see it and subscribe.

Former Tesla Engineer Says Elon Musk Threatened to Deport Her Team for Pointing Out a Problem With the Brakes

F futurism.com/tesla-engineer-elon-musk-deport-team-safety

Victor Tangermann

April 21, 2025

A Tesla engineer has accused Tesla of threatening her team with deportation after bringing up a brake safety issue with CEO Elon Musk in 2014.

Balan was fired after informing Musk that she was worried floor carpets could curl up underneath the pedals in Model S vehicles, she says, in a major braking safety hazard.

According to Balan, she was simply following Musk's orders to "talk to me" if staffers thought it was the "fastest way to solve a problem for the benefit of the whole company," according to an email he sent to all employees in 2013, as quoted by *Electrek*.

Instead of listening to her concerns, Balan says that a team of Tesla lawyers threatened to deport members of her team who were waiting on green card applications, if she didn't resign on the spot — which she did, in protest. The members had stood behind her decision to raise flags over the floor carpet issue.

The former engineer, who has been in remission for stage 3 breast cancer, called Musk a "monster" and "pure evil" in an interview with *The Times of London*, revealing that she's extending her already years-long legal battle against the mercurial CEO and his carmaker.

It's yet another instance of Tesla employees becoming victims of Musk's infamously vindictive and unpredictable management style. Workers have had to deal with unsafe working conditions, long hours, rampant racism, mass layoffs, and retaliation from the upper ranks.

Musk has garnered a reputation for firing employees who speak up. Case in point, last year, Musk sacked the company's 500-worker-strong Supercharger team, dumbfounding investors. According to staffers, the company's former head of EV charging, Rebecca Tinucci, had angered him during a one-on-one meeting shortly before the team was fired.

Balan has been caught up in the messy legal battle for over a decade now. After being fired, Tela publicly accused her of embezzling company funds for a so-called "secret project," accusations she has repeatedly denied. The incident motivated her to sue Tesla for defamation in 2019. However, an arbitrator ruled in favor of the carmaker due to California's statute of limitations.

Tesla then tried to confirm the arbitration ruling by bringing the case back to a district court in California. But Balan won an appeal against the decision last week, opening up new legal possibilities for her case.

"We are hoping we will start a new lawsuit and we will have the chance to take on Elon Musk in front of a jury and judge," she told the *BBC*.

It remains to be seen where the legal spat will land, and experts agree it will likely take time for the battle to reach its conclusion.

To many of them, Tesla's vindictive behavior isn't anything new.

"Tesla is among the many corporations that force employees and customers into opaque arbitration processes and deploy aggressive strategies to retaliate against employees who voice criticism of corporate practices," Stanford professor Anat Admati told the *BBC*.

Balan's attorney, Bill Moran, has vowed to "revive" the case, saying in a statement that "we are confident we can secure her either a new arbitration or alternatively a trial in court so that her case can be heard on the merits after so many years."

More on Tesla: *Elon Musk Is in Huge Trouble Over Donald Trump's Tariffs*

Tesla settles wrongful death lawsuit claiming sudden acceleration in Ohio crash

 [reuters.com/sustainability/tesla-settles-wrongful-death-lawsuit-claiming-sudden-acceleration-ohio-crash-2025-04-21](https://www.reuters.com/sustainability/tesla-settles-wrongful-death-lawsuit-claiming-sudden-acceleration-ohio-crash-2025-04-21)

Mike Scarcella

April 21, 2025

A Tesla logo is shown on a Model Y vehicle in Encinitas, California, U.S., October 20, 2023. REUTERS/Mike Blake Purchase Licensing Rights , opens new tab

April 21 (Reuters) - Elon Musk's electric vehicle company Tesla (TSLA.O) , opens new tab has agreed to settle a wrongful death lawsuit filed by the estate of a man who was killed in 2021 after his Tesla crashed and caught fire near Dayton, Ohio.

Tesla and lawyers for the estate disclosed the settlement in a filing , opens new tab on Monday in federal court in San Francisco but did not reveal its terms.

The carmaker and its lawyers did not immediately respond to requests for comment. Todd Walburg, a lawyer for the plaintiffs, declined to comment.

Tesla has denied any wrongdoing in the case, blaming the driver for the fatal crash. A jury trial had been scheduled for April 2026.

The estate's lawsuit said Clyde Leach's Tesla Model Y suddenly accelerated, went off the road and slammed into a pillar at an Ohio gas station. Leach, 72, died from blunt force trauma, burns and other injuries.

"Tesla was aware that its vehicles — including the Model Y — have reportedly on hundreds of occasions accelerated suddenly and without explanation," the lawsuit said.

Tesla had asserted that Leach's model "was state-of-the-art and was not defective in design or manufacture."

Last year, Tesla settled a lawsuit over a 2018 car crash that killed an Apple (AAPL.O) , opens new tab engineer after his Model X, operating on Autopilot, swerved off a highway near San Francisco. That settlement was made on the eve of trial.

Other lawsuits against Tesla are pending. In February, lawyers for the company convinced a Florida appeals court to limit the damages it could be forced to pay in a wrongful death lawsuit accusing it of misstating the capabilities of the Autopilot system.

Our Standards: The Thomson Reuters Trust Principles. , opens new tab

- **EPA begins layoffs of environmental justice staff**

World at Workcategory · April 22, 2025 · 6:51 AM PDT · 9 min ago

The Environmental Protection Agency sent termination notices on Tuesday to staff who work on environmental justice programs at its headquarters and across regional offices, saying their work no longer aligns with the mission of the agency.

Securities Law

April 22, 2025, 8:36 AM PDT

Matterport Ex-CEO Gets New Look at SPAC Dispute Damage Interest

- **Ex-CEO, 3D technology company filed cross-appeals in dispute**
- **Delaware Chancery Court must reconsider interest awards**

A trial court's \$79 million award to Matterport Inc.'s former CEO in a stock dispute included an excessive amount of interest, the Delaware Supreme Court ordered Tuesday.

While the Delaware Chancery Court may exercise discretion when setting post-judgment interest rates, that interest award "must be tied to the date of the judgment that determines the prevailing party's monetary damages," Justice Gary G. Traynor said in a four-page order, writing for the court's full five-member panel. The amount of the award excluding interest was properly calculated, the order said.

The Chancery Court calculated the damages with prejudgment interest at a rate of 5.25%. It awarded post-judgment interest at the same rate beginning on the date of a 2022 ruling in the dispute in William Brown's favor—over two years before the court reached the damages award.

Tuesday's order remands the award for post-judgment interest to the lower court. That also requires the Chancery Court to reconsider its prejudgment interest award and align it with any new award for post-judgment interest.

"In doing so, the court is free to exercise its discretion as to the rate of interest and whether and to what extent post-judgment interest is to be compounded," Traynor said.

In a May 28, 2024, opinion, the Chancery Court said the 3D technology company's wrongful application of stock restrictions caused Brown to miss out on nearly \$80 million. The damages award "provides Brown recompense for any lost profits he would have obtained had he been free to trade upon receiving his Matterport share," Vice Chancellor Lori W. Will said.

She rejected Brown's argument that the court should calculate damages using Matterport's all-time high price of \$37 per share—which would have led to a higher award. Instead, the court used the average price of Matterport stock during a "reasonable time" that Brown would've traded if he hadn't been wrongfully bound by the lockup clause—November 2021—when the stock was trading at \$27.92 per share.

Brown said Matterport's board imposed an unlawful stock lockup period on him as it prepared to go public through a special purpose acquisition company, or SPAC. Matterport merged with the SPAC, Gores Holding VI Inc., raising \$345 million in its initial public offering in 2020.

The damages award followed Brown's earlier win against Matterport. In 2022, Will ruled that Brown's shares were excluded from the lockup because the bylaw relied upon by the company only applied to Matterport shares held "immediately following" the merger. As Brown wasn't given stock in the combined company until he executed "letters of transmittal" months after the transaction, the bylaw didn't apply to those shares, the judge said.

After the 2022 ruling, Brown sold his shares at roughly \$14 per share, netting about \$80 million. Will subtracted that amount in calculating the damages award in 2024.

Matterport is represented by Richards Layton & Finger PA and Selendy Gay PLLC. Brown is represented by Christensen Law LLC, Winston & Strawn LLP, and Doyle Law APC.

The case is Matterport Inc. v. Brown , Del., No. 294,2024, order 4/22/25 .

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GameStop CEO Trims Insider Trading of Bed Bath & Beyond Suit (1)

- Judge tossed bankrupted retailer's statutory director claim
- But kept owner claim in \$47 million short-swing profit suit

The corporation previously known as Bed Bath & Beyond Inc. advanced a lawsuit alleging GameStop Corp. CEO Ryan Cohen and his company collected \$47 million through insider trading of the retailer's stock.

Based on the allegations in the short-swing profit suit against Cohen and RC Ventures LLC, they weren't corporate insiders when buying bankrupted BBBY's stock in March 2022, said Judge Naomi Reice Buchwald of the US District Court for the Southern District of New York, partially dismissing the suit on April 18. But Buchwald denied part of their motion to dismiss, given that they purportedly owned more than 10% of then-BBBY's stock when the transactions were made.

Cohen, who founded pet product company Chewy Inc., is the chairman and chief executive officer of video game company GameStop. Bankrupted BBBY, which has a new name, alleged that while Cohen and his group were acting as deputized directors and owned a significant portion of its shares, they used insider information to trade BBBY stock from January to August 2022.

The entity says it's entitled to recover its alleged short-swing profits under a provision of the Securities Exchange Act of 1934 that requires corporate insiders to return funds from the purchase and sale of the company's stock if the transactions were made within six months of each other.

BBBY plausibly alleged Cohen knew about company stock buybacks that boosted the defendants' beneficial ownership percentage to 11.8% in March 2022, Buchwald said. However, the entity didn't successfully plead that Cohen and RC Ventures were directors by deputization by attacking an SEC exemption with the US Supreme Court's 2024 decision in *Loper Bright Enterprises v. Raimondo*, she said.

The former housewares store alleged they qualified as deputized directors after it added three independent directors designated by RC Ventures to its board in late March. The defendants' last BBBY share purchases were in early March, before they allegedly became insiders, which Cohen said exempted them from returning purported profits.

BBBY said the recent high court ruling barred the exemption, claiming it exceeded the SEC's authority in a "usurpation of judicial power" since it was adopted against an appellate interpretation.

Buchwald disagreed, saying she rejected the entity's "attempt to retroactively apply the Supreme Court's decision in *Loper* to undermine the Cohen defendants' reliance on what has been the rule of law for more than thirty years."

The former BBBY sued Cohen in August 2024 amid liquidation proceedings as it and its bankruptcy plan administrator tried to recover funds for its creditors. The company also sued hedge fund Hudson Bay Capital Management in the US District Court for the Southern District of New York—which worked on a financing plan that didn't save the retailer from demise—attempting to recover more than \$300 million under the short-swing profit rule.

Neither of the parties' attorneys immediately responded to emails seeking comment.

Law Office of James A. Hunter, of Pennsylvania, represents the plaintiff. Wollmuth Maher & Deutsch LLP represents Cohen and his venture.

The case is 20230930-DK-Butterfly-1, Inc. v. Cohen , S.D.N.Y., No. 1:24-cv-05874, 4/18/25 .

(Updates throughout with context from the opinion.)

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DOGE Asks SEC Staff for Efficiency Ideas, Promises Anonymity

The Securities and Exchange Commission asked staff to send along ideas to help streamline agency operations following the arrival of Elon Musk's government efficiency group at the regulator.

Eliezer Mishory, the DOGE representative detailed to the agency, "is interested in hearing your ideas for how the SEC can be more efficient and effective in meeting its mission," agency Chief Operating Officer Ken Johnson said in an email to staff that was reviewed by Bloomberg News.

Any ideas submitted would be sent only to Mishory and would be anonymous, Johnson said. Mishory is the former chief regulatory officer of derivatives exchange Kalshi Inc.

Read More: Kalshi's Top Lawyer Quits to Take Helm of DOGE Team at SEC

The regulator began its "partnership" with the Department of Government Efficiency a few weeks ago, according to the email.

DOGE's activities inside the SEC so far have been lower profile than that at many other agencies, where the group's moves to slash the federal workforce and agency budgets have resulted in mass firings, fights over sensitive data and elimination of some agency functions.

The SEC is working with DOGE to find cost efficiencies and ensure public funds are being used as effectively as possible, according to an agency spokesperson.

The regulator issued a series of weekend posts on the social media platform X on April 5 related to the government efficiency group's efforts. The posts were described as statements from Acting Chairman **Mark Uyeda**, "together with recommendations from DOGE," asking staff to review informal statements from the Biden administration related to the Covid-19 pandemic and digital-asset policies.

"The purpose of this review is to identify staff statements that should be modified or rescinded consistent with current agency priorities," the final post said.

Some agency officials also pushed back earlier this month on a request from DOGE to gain read and write access to the agency's contracts, personnel, payments and staff emails, Bloomberg News previously reported. A spokesperson declined to comment on whether that request has since been granted.

Paul Atkins is expected to be sworn in soon as SEC chairman. During his confirmation hearing, Atkins said he was ready to work with DOGE on “creating efficiencies in the agency.”

The SEC is funded primarily through transaction fees it collects from broker-dealers and other companies that register with the agency, which has prompted some to question whether it is a good agency to target for spending cuts.

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Binance Crypto Suit Sent To Florida To Avoid Duplication

By **Greg Lamm**

Law360 (April 21, 2025, 9:27 PM EDT) -- A Washington federal judge on Monday transferred to Florida a proposed class action over Binance's alleged role in laundering stolen cryptocurrency, finding that the case heavily overlapped with a lawsuit filed earlier in the Sunshine State that was sent to arbitration.

U.S. District Judge Barbara J. Rothstein said the Washington case **filed in August** and a similar case filed in June 2023 in the U.S. District Court for the Southern District of Florida are focused on the same core issue of whether Binance enabled cyber thieves to use the cryptocurrency platform to cover their tracks.

In siding with Binance's transfer bid, Judge Rothstein said the plaintiffs in both cases alleged that hackers stole their crypto from the exchange Coinbase and used Binance.com to prevent the tracing of the stolen assets.

"Although the two complaints describe the proposed classes in slightly different terms, both encompass the same proposed class of individuals whose cryptocurrency was stolen and transferred to a Binance.com account during the relevant period," Judge Rothstein's **order** said. "Therefore, this court concludes that the classes of plaintiffs are sufficiently similar to warrant application of the first-to-file rule."

The plaintiffs in the Washington case, led by California resident Philip Martin, argued that their case was not the same as the Florida case because the Martin complaint adds a Racketeer Influenced and Corrupt Organizations Act claim and does not allege unjust enrichment.

But Judge Rothstein said she was not persuaded, saying that both cases concern the same central issue and arise from the same factual premise.

Judge Rothstein also rejected Martin's argument that if the Washington case was moved to Florida, its resolution would likely be proposed because the Florida case has been stayed **pending arbitration**.

"Moreover, transferring this action to the Southern District of Florida would further the first-to-file rule's purpose of promoting efficiency and avoiding duplicative litigation because the Southern District of Florida has already addressed the merits of the arbitrability issue," Judge Rothstein said in the order.

The Martin complaint names Binance Holdings Ltd., BAM Trading Services and founder and former CEO Changpeng Zhao as defendants.

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

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

The company said it was complying with the federally required "know your customer" measure and

had put restrictions on certain U.S. accounts. Binance also agreed to enhance its compliance program and appoint an independent compliance monitor to ensure it follows the terms of the plea agreement it struck with the government.

Representatives for the crypto owners, Binance and Zhao did not immediately respond to requests for comment Monday.

The cryptocurrency plaintiffs are represented by Lynn Lincoln Sarko, Derek W. Loeser and Chris N. Ryder of Keller Rohrback LLP, Eric I. Niehaus of Robbins Geller Rudman & Dowd LLP, David C. Silver and Jason S. Miller of Silver Miller Law Firm and John C. Herman of Herman Jones LLP.

Binance is represented by Sean Jackson of Ballard Spahr LLP, Christopher N. LaVigne, Kimberly Pallen and Vahe Mesropyan of Withers.

BAM Trading is represented by Blake Marks-Dias and Todd T. Williams of Corr Cronin LLP and Daniel Stabile, Gabriela Plasencia and Thania Charmani of Winston & Strawn LLP.

Zhao is represented by Alicia Cobb, Avi Perry, Peter H. Fountain, Michael A. Linneman and Brenna Ledvora of Quinn Emanuel Urquhart & Sullivan LLP.

The case is Philip Martin et al. v. Binance Holdings Ltd. et al., case number 2:24-cv-01264, in U.S. District Court for the Western District of Washington.

--Editing by Dave Trumbore.

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EV Chipmaker Wolfspeed's Execs Sued For Overstated Growth

By **Sydney Price**

Law360 (April 21, 2025, 6:59 PM EDT) -- Executives and directors of North Carolina-based electric vehicle chip manufacturer Wolfspeed Inc. were hit with a derivative suit on Monday alleging they overstated the potential effects a fabrication facility would have on increasing Wolfspeed's revenue and output.

According to the **suit** filed by shareholder Svetlana Lamon, Wolfspeed told investors that utilizing 20% of its Mohawk Valley, New York-based fabrication facility would allow the company to generate \$100 million more in revenue by the end of 2024 and reach its \$2 billion revenue capacity. At the same time, Wolfspeed said it could sustain other facilities and plans for future development while minimizing risk, the suit claims.

In November, when Wolfspeed announced a reported slowdown in business, the company's shares fell by nearly 40%, the suit alleges.

In addition to nominal defendant Wolfspeed, the suit's individual defendants include former Wolfspeed CEO Gregg A. Lowe, Chief Financial Officer Neill P. Reynolds and several of its current and former directors.

The Mohawk Valley facility, which opened in 2023, was touted by the defendants as being a success in early 2024, according to the complaint. For example, on an earnings call in January 2024, Wolfspeed said the facility was on track to achieve 20% utilization by around June 2024, and that Wolfspeed was "confident" in its ability to execute operational goals and "optimistic" about its "long-term financial prospects, the suit states.

Wolfspeed also allegedly repeatedly emphasized how reliant the company would be on the facility for revenue growth. For example, on June 24, 2024, Wolfspeed announced that the facility "has reached 20% wafer start utilization, a critical step in the company's efforts to meet the growing demand for silicon carbide power devices."

The market learned the truth, the suit alleges, on Nov. 6, 2024, when Wolfspeed announced it would reduce both costs and guidance moving forward. The company also announced it would reduce its workforce by about 20%, shut down a North Carolina-based fabrication facility and cancel some planned future projects, the complaint states.

Following the announcement, Wolfspeed's shares fell by \$5.38, or about 40%, to close at \$8.33 on Nov. 7, 2024, according to the complaint.

Analysts had immediate negative reactions to the announcements, the suit alleges. William Blair analysts wrote in a note that, by its estimates, "Wolfspeed is now over 30 months behind schedule," according to the suit.

The individual defendants are accused of breaches of fiduciary duty, unjust enrichment and wasting corporate assets. Additionally, Reynolds is accused of trading on nonpublic information in December 2023.

The suit also notes the defendants are facing a securities class action over related allegations of misconduct in the Northern District of New York.

Counsel for Lamon and a representative of Wolfspeed did not immediately respond to requests for comment Monday.

Lamon is represented by Dhamian A. Blue of Blue LLP and Thomas J. McKenna and Gregory M. Egleston of Gainey McKenna & Egleston.

Counsel information for Wolfspeed and the individual defendants was not immediately available Monday.

The case is Lamon v. Werner et al., case number 1:25-cv-00298, in the U.S. District Court for the Middle District of North Carolina.

--Editing by Michael Watanabe.

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Investor Says Energy Co. Hid Texas Plant Project Challenges

By **Ryan Harroff**

Law360 (April 21, 2025, 3:55 PM EDT) -- An investor hit Net Power Inc. with a proposed class action claiming that it and its executives misled the public about known problems with a power plant project in Texas, artificially inflating the company's stock price until those issues came to light and led to multiple stock drops.

Ted Luciani said in his Friday complaint in North Carolina federal court that Net Power's stock price dropped 18.54% in November 2023 when the company announced delays for its Texas utility plant project, then dropped again by 31.46% in March when it announced further delays and a potential doubling of its initial \$1 billion estimate for the project. Net Power and its executives had known about the problems for some time before those announcements but kept investors in the dark, the suit says.

The suit says Net Power executives Daniel Rice IV, Akash Patel and Brian Allen — who according to the complaint were CEO, chief financial officer and chief operating officer at the time — defrauded investors by downplaying and failing to disclose various problems with the Texas project, including supply chain issues. Those purported misrepresentations caused the stock price to stay artificially high and remain inflated even after the first drop in 2023, Luciani said.

"In ignorance of the adverse facts concerning Net Power's business and financial condition which were concealed by defendants, plaintiff and the other members of the class purchased or otherwise acquired Net Power securities at artificially inflated prices and relied upon the price of the securities, the integrity of the market for the securities and/or upon statements disseminated by defendants, and were damaged thereby," the suit says.

According to the complaint, the company's public statements about the plant project included only a "generic, boilerplate risk warning" to investors about the possibility of problems with the project, but that warning did not reflect the board members' actual knowledge of the specific problems the plant construction was facing, particularly the site-specific obstacles Net Power was allegedly facing.

During the proposed class period of June 9, 2023, to March 7, 2025, investors who bought Net Power stock were paying inflated stock prices, the complaint alleges. During that same period, the suit says, Patel made \$1.9 million by selling 150,000 purportedly inflated shares to some of the proposed class members.

Luciani said there are potentially thousands of members of his proposed class, which includes all investors who bought Net Power stock during the class period and were financially harmed when the problems with the Texas plant came to light. The suit seeks unspecified damages with interest, as well as attorney fees.

Counsel for Luciani and representatives for Net Power and its executives did not immediately respond to requests for comment.

Luciani is represented by David G. Schiller of Schiller & Schiller PLLC and Jeremy A. Lieberman and J. Alexander Hood II of Pomerantz LLP.

Counsel information for Net Power and the executives was not immediately available.

The case is Luciani v. Net Power Inc. et al., case number 1:25-cv-00296, in the U.S. District Court for the Middle District of North Carolina.

--Editing by Marygrace Anderson.

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Paramount Global, Stockholders Pause Skydance Doc Suit

By **Jeff Montgomery**

Law360 (April 21, 2025, 8:04 PM EDT) -- Paramount Global and three pension fund stockholders have agreed to pause a suit seeking records on the entertainment giant's planned \$8 billion merger with Skydance Media pending further negotiations or closing on the deal.

The ruling, approved by Court of Chancery Senior Magistrate Judge Selena E. Molina on Monday, sidelined one of four Delaware suits now focused on the proposed deal and allegations that it shortchanges public stockholders.

An earlier-rejected books and records demand on behalf of stockholders is awaiting state Supreme Court review, while another was recently amended and stayed pending negotiations. Now awaiting a ruling on intervention motions after a \$13.5 billion alternative offer, meanwhile, is an amended breach of fiduciary duty suit.

Paused on Monday was the first suit targeting the deal to be docketed since Delaware's General Assembly and governor approved a corporate law overhaul on March 25 that in part limited the scope of stockholder books and records petitions.

Attorneys for Chicago's Metropolitan Water Reclamation District Retirement Fund, the city's municipal employee funds and stockholder Gary Mendelsohn agreed to attempts to "resolve or narrow" the claims pending a closing on the Paramount-Skydance tie-up.

A separate, amended suit is already moving forward before Chancellor Kathaleen St. J. McCormick, seeking damages from directors considering Paramount Global's \$8.2 billion merger with Skydance. Stockholders in that suit recently urged the chancellor to allow a fast-tracked probe of an alternative \$13.5 billion offer.

David Ellison's Skydance Media announced on July 7 that it would move forward with a Paramount takeover in a transaction to be preceded by Skydance's \$2.4 billion cash acquisition of National Amusements, which owns ViacomCBS and, through Shari Redstone, controls Paramount. Redstone is nonexecutive chairwoman of Paramount and president of National Amusements.

The Skydance-Paramount merger would pay \$4.5 billion to stockholders, plus \$1.5 billion toward Paramount's balance sheet.

In March, Vice Chancellor J. Travis Laster certified an appeal to Delaware's Supreme Court in a books and records suit filed by Rhode Island's pension fund, citing unsettled issues covering the use of confidential sources and pre- or post-petition evidence in document demand litigation. Rhode Island pointed in its suit to concerns that Redstone was usurping company opportunities and tilting the terms and processes toward her own benefit.

Vice Chancellor Laster sent the appeal forward seven weeks after reversing a Chancery magistrate's decision dismissing Paramount stockholder books and records demands focused on the Skydance Media deal. Counsel for Paramount also called for the early appellate review.

The decision in focus in the appeal included an unequivocal finding that news articles central to the Employees' Retirement System of Rhode Island investigative demand can "bear sufficient indicia of reliability to be considered," among other rulings.

Paramount objected to the findings and said the Supreme Court should have an opportunity to resolve "novel legal principles" applied by the vice chancellor, including reliance on anonymously sourced reports and evidence pre- or postdating document demand.

Earlier this month, Magistrate Molina ruled that another Paramount Global stockholder group could have access to dozens of documents while declining other demands.

The magistrate judge disclosed the court's decision in a docket note after having held an April 1 trial on the papers. She indicated in the note that the court would deny objections by attorneys for Paramount Global who questioned the reliability of 55 exhibits, without ruling at the time on other documents sought by stockholders. Those documents included news accounts related to the transaction.

The cases are State of Rhode Island Office of the General Treasurer, on behalf of the Employees' Retirement System of Rhode Island vs Paramount Global, case number 2024-0457, Gabelli Value 25 Fund Inc. v. Paramount Global, case number 2024-1353, The New York City Employees' Retirement System et al. v. Barbara M. Byrne et al., case number 2025-0126, and Metropolitan Water Reclamation District Retirement Fund et al. v. Paramount Global, case number 2025-0377, all in the Court of Chancery of the State of Delaware.

--Editing by Melissa Treolo.

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Crypto Cos. Sued Over 'Covert' Meme Coin 'Pump-And-Dump'

By **Aislinn Keely**

Law360 (April 21, 2025, 6:49 PM EDT) -- A proposed securities class action in New York federal court is accusing a crypto platform, a venture capital firm and their executives of a "covertly orchestrated" scheme to pump and dump a token affiliated with a newly launched meme coin exchange.

The suit, filed Saturday, accuses Solana-based platform Meteora and its founder Benjamin Chow of secretly collaborating with family-run venture firm Kelsier Labs LLC, which does business as Kelsier Ventures to structure an unfair launch and subsequent pump-and-dumps of a token known as \$M3M3 that ultimately lost the proposed class at least \$69 million.

"Defendants' goal was to covertly dominate \$M3M3 token supply, artificially inflate its market value, and extract profit from unsuspecting investors," the suit says.

According to named plaintiffs Jonathan Clarke and Rodrigo Ferreira da Cruz Vogt, Meteora introduced a decentralized exchange known as M3M3 in December 2024 and touted it as a way to reduce price volatility, increase overall market cap and protect investors from pump and dumps in meme coins. The exchange's flagship asset was \$M3M3, which it represented as "a uniquely reliable memecoin investment," due to its revenue generating function and other characteristics.

But Meteora never disclosed Kelsier's involvement with the token, the suit charges. Together, they structured the launch in such a way that only a "tightly-controlled group of insiders" were able to purchase the assets initially, leading them to control 95% of the supply and inflate the market capitalization of the asset to over \$5 million, the investors claim.

The allegedly artificially inflated valuation "communicated highly misleading information to non-insider investors," the investors argue, since they had been led to believe that the launch was structured transparently and was accessible to noninsiders. Thinking the valuation genuinely showed market interest, the investors say, they purchased the tokens and felt the fallout when the price crashed as insiders sold their holdings for a profit.

According to the suit, the insiders took steps to conceal the structure of the launch, even using anonymizing software known as mixers to obscure the origin of their proceeds.

"Defendants' express aim was to secretly preserve insider control over 95% of \$M3M3, artificially inflate its market price, and then sell \$M3M3 Tokens at artificially inflated prices to Plaintiffs and other unsuspecting investors, extracting significant profit at their expense," they contend.

Meteora and Kelsier continued to temporarily inflate the price of the tokens by announcing "purported" partnerships and investor rewards, but eventually, the token collapsed, and the defendants abandoned the project by February, the suit says. Chow stepped down soon after, acknowledging the collaboration with Kelsier but disclaiming any wrongdoing in social media posts.

Meteora did not respond to messages on social media site X. Named defendant Gideon Davis of Kelsier Ventures did not respond to a request for comment. The suit also names Kelsier executives Charles Thomas Davis and Hayden Davis.

In addition to bringing claims of negligent misrepresentation, unjust enrichment, fraud and violations of New York business law, the suit also argues the sale of \$M3M3 was an unregistered securities

offering and amounted to securities fraud. According to the investors, the token was marketed as a mechanism for buyers to earn shares of pooled transaction fees on Meteora, and the class members "shared in the same profits and risks" in price swings, which were tied to the performance of Meteora and the M3M3 platform.

"The federal securities laws are intended to warn investors of undisclosed risks and protect them from fraud," the suit says. "Had defendants complied with the registration and disclosure requirements applicable to \$M3M3, plaintiffs and other non-insider investors would not have purchased \$M3M3 Tokens at inflated prices or suffered the resulting losses."

The SEC released a **statement** in February that many so-called meme coins do not fall under the agency's jurisdiction since their value is often tied to speculative trading and the collective sentiment of the market, like collectibles. However, the statement made clear that each asset must be analyzed based on its related economic realities.

As the suit notes, "some memecoins — including \$M3M3 ... purportedly have substantive utility or intrinsic value that is not based on investor enthusiasm."

The suit is led by Burwick Law PLLC, a boutique practice that has brought multiple suits over fallout in meme coin markets.

Last month, the firm filed a **separate suit** in New York state court that named Meteora and Kelsier Ventures for their alleged involvement in the offering of a collapsed Argentinian meme coin project called Libra. It argues that the firms advertised the project as a potential boon to the Argentinian economy, including with an endorsement from President Javier Milei, before making more than \$100 million off a launch that was "fundamentally unfair" to buyers.

Burwick has also brought suits against **meme coin platform** Pump.Fun, the alleged operators of the **Hawk Tuah** meme coin and **nonfungible token project Game of Silks**, among others.

"Burwick Law will use every remedy the law provides to seek recovery for our clients and to protect the builders who are trying to move crypto forward the right way," the firm said in a statement Monday.

The plaintiffs are represented by Max Burwick of Burwick Law PLLC and Margaret B. Hoppin and Timothy W. Grinsell of Hoppin Grinsell LLP.

Counsel information for the defendants was not immediately available.

The case is Vogt et al. v. Meteora et al., case number 1:25-cv-03268, in the U.S. District Court for the Southern District of New York.

--Editing by Kristen Becker.



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High Court Wants SG's Input On Home Depot ERISA Case

By **Grace Elletson**

Law360 (April 21, 2025, 11:29 AM EDT) -- The nation's highest court asked the U.S. solicitor general Monday to opine on whether it should hear a retirement plan mismanagement case from Home Depot workers who say the Eleventh Circuit wrongly required them to link financial losses to alleged breaches of fiduciary duty.

In an **order list**, the U.S. Supreme Court asked for the opinion of the government's top lawyer on whether to grant or deny the workers' petition for review of an Eleventh Circuit **decision in August** tossing the Employee Retirement Income Security Act suit.

The request comes after the certified class urged the justices in December to review their 2018 suit alleging Home Depot saddled their \$9.1 billion 401(k) plan with excessive fees and poor investment options, after the Eleventh Circuit upheld summary judgment for Home Depot on their claims.

The Eleventh Circuit panel concluded that the workers failed to show the home improvement company's plan management practices were objectively imprudent to cause them financial losses, even if there were genuine disputes on the record about whether Home Depot acted imprudently. But the workers said that the burden of proof on loss causation falls on Home Depot, arguing that the business should have to show that the losses were not caused by its management practices to dodge liability.

They claimed the ruling widened a preexisting circuit split on the issue, which the Eleventh Circuit panel acknowledged in its ruling. The August opinion aligned with Tenth Circuit precedent that rejected the theory that the burden of loss causation falls on the employer if workers have put forward evidence of a fiduciary breach and lost savings, which also corresponds with rulings issued by the Sixth, Seventh and Ninth circuits.

But the First, Fourth, Fifth and Eighth circuits have found that the loss causation burden of proof shifts to the employer when workers have put forward details showing they faced a fiduciary breach and lost savings. The U.S. Department of Labor filed an amicus brief in support of the workers' arguments when the case was before the Eleventh Circuit, arguing that trust law principles underpinning ERISA justify the position.

Attorneys **have told Law360** that the split warrants high court intervention, especially after the Eleventh Circuit's August opinion appeared to widen the divide among the courts.

David Tracey, who represents the class, said his team was glad the solicitor general had been asked to weigh in on the questions at issue in the appeal.

Representatives for Home Depot did not immediately respond to requests for comment.

The class of workers is represented by David Tracey, Leigh Anne St. Charles, Kate MacMullin, Miranda Katz and Charles Field of Sanford Heisler Sharp McKnight LLP.

Home Depot is represented by Roman Martinez and Brent T. Murphy of Latham & Watkins LLP, and David Tetrick Jr. and Darren A. Shuler of King & Spalding LLP.

The case is Jaime H. Pizarro et al. v. The Home Depot Inc. et al., case number 24-620, in the U.S.

Supreme Court.

--Additional reporting by Kellie Mejdrich.

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En Banc 9th Circ. Revives Shopify Data Privacy Fight

By **Dorothy Atkins**

Law360 (April 21, 2025, 8:26 PM EDT) -- A split Ninth Circuit en banc panel Monday revived a proposed class action alleging Shopify violates privacy rights by embedding payment-processing code on merchant websites that surreptitiously tracks consumers' location and collects personal data, with a nearly unanimous majority finding the location-tracking allegations establish specific jurisdiction in the Golden State.

In a 10-1 decision written by U.S. Circuit Judge Kim McLane Wardlaw, the en banc panel's majority found that plaintiff Brandon Briskin's latest amended complaint sufficiently argues that Golden State federal courts have specific jurisdictional authority to hear the privacy dispute.

Judge Wardlaw noted that although Shopify Inc. is based in Canada, the company conceded that its geolocation technology allowed it to know that Briskin's smartphone was located in California when it installed data-tracking "cookies" on his personal device, and Briskin's suit also contends that Shopify used Briskin's personal data gathered by its cookies to create consumer profiles it sold to merchants without his consent.

"Applying our traditional personal jurisdiction precedent to the ever-evolving world of e-commerce, we conclude that jurisdiction is proper because Shopify's allegedly tortious actions deliberately targeted Briskin in California," Judge Wardlaw stated.

However, U.S. Circuit Judge Consuelo M. Callahan disagreed with her colleagues' conclusion that Shopify's alleged misconduct was "expressly aimed" at California, arguing that such a finding creates a new "traveling cookie" rule that attaches jurisdiction based on where cookies are attached to an electronic device.

Judge Callahan asserted in her dissenting opinion that such a rule conflicts with the U.S. Supreme Court's **2014 decision** in *Walden v. Fiore* , which held that an "injury to a forum resident is not a sufficient connection to the forum."

"A company knowing where we happen to be when using its service, and then attaching a cookie to our device, has nothing to do with the state we're in," Judge Callahan stated. "That interaction forms a relationship between the company and the individual that is not 'tethered' to the state."

The split ruling revives Briskin's proposed class action filed in August 2021, accusing the Ottawa, Ontario-based Shopify of inserting tracking software into California consumers' browsers without their consent.

Briskin, who lives in California, claims Shopify installed permanent cookies on his iPhone's Safari browser that tracked his online activity as well as his physical location without his knowledge while Shopify was processing his credit card transaction with a third-party athletic wear merchant. According to Briskin, Shopify then used his personal data to create a consumer profile that the company marketed widely, in violation of multiple privacy statutes.

But in 2022, U.S. District Judge Phyllis J. Hamilton **tossed** the case for lack of personal jurisdiction, finding that the e-commerce platform operates nationwide and therefore does not specifically target California residents.

Briskin **appealed**, and in **November 2023**, a unanimous three-judge Ninth Circuit panel — which included Judge Callahan, along with U.S. Circuit Judges Bridget S. Bade and Daniel A. Bress —

affirmed the ruling. But in May, the Ninth Circuit **agreed to reconsider** en banc whether the holding would bar consumers from asserting any state-specific claims against internet operators, which operate nationwide.

During oral arguments in **September**, the en banc panel appeared skeptical of Shopify's jurisdictional arguments. Meanwhile, a group of 30 states and Washington, D.C., threw their weight behind consumers, arguing **in an amicus brief** that Shopify was misreading the high court's Walden opinion to support its position. However, the U.S. Chamber of Commerce and several tech trade groups **filed their own amicus briefs** backing Shopify.

In the majority opinion Monday, Judge Wardlaw noted that the suit claims Shopify sends executable JavaScript code to consumers' devices, which then executes the code to process the payment. However, consumers, including those in California, aren't necessarily aware of Shopify's role in the transaction because the merchant appears to process the payment, and the suit contends there are no clear disclosures regarding Shopify's tools or newly installed Shopify software code, the opinion said.

The judges held that ultimately, Shopify's alleged misconduct targets consumers in California. They additionally rejected Judge Callahan's interpretation of Walden precedent, finding that the dissenting opinion "overreads" the high court's ruling, which involved a defendant with no link to the forum state at issue other than the plaintiffs.

"But here, Shopify knows about its California consumer base, conducts its regular business in California, contacts California residents, interacts with them as an intermediary for its merchants, installs its software onto their devices in California, and continues to track their activities," the decision said. "This 'conduct connects [Shopify] to [California] in a meaningful way.'"

Specific jurisdiction is ultimately satisfied in light of multiple other Ninth Circuit decisions, including the **circuit's 2011 ruling** in **Mavrix Photo Inc. v. Brand Technologies Inc** , which held that when websites with national viewership and scope profit from an audience in a particular state, the website's operators can be found to have "expressly aimed" their conduct at that state to satisfy specific jurisdictional requirements, according to the majority opinion.

Judge Wardlaw added that before the internet existed, if a company entered a California consumer's home and took their personal information, there would be no doubt that the company would be subject to California jurisdiction. In the **2021 ruling** in **Ford Motor Co. v. Montana Eighth Judicial District Court** , the Supreme Court also rejected the argument that because a nationwide company is everywhere, it is jurisdictionally nowhere except in its principal place of business and state of incorporation, Judge Wardlaw stated.

"Here, though Shopify's entry into the state of California is by electronic means, its surreptitious interception of Briskin's personal identifying information certainly is a relevant contact with the forum state," the opinion said.

Two judges — U.S. Circuit Judges Daniel P. Collins and Patrick J. Bumatay — who agreed with the majority panel's ultimate conclusion to revive the case, also wrote separate concurring opinions disagreeing with various aspects of Judge Wardlaw's rationale for finding specific jurisdiction.

Nicolas A. Sansone of Public Citizen Litigation Group, who represents Briskin, said in a statement Monday that he and his client are gratified that the en banc Ninth Circuit rejected Shopify's "counter-intuitive argument" that a company doing online business nationwide cannot constitutionally be held accountable in the courts of any state.

"The court's faithful application of longstanding legal principles produced an outcome that is correct not only as a legal matter but also as a matter of common sense," Sansone said.

A Shopify spokesperson said in a statement Monday that the ruling "attacks the basics of how the internet works" and drags entrepreneurs who run online businesses "into distant courtrooms regardless of where they actually operate."

"It's bad for entrepreneurs, ignores 30 years of established law, and conflicts with rulings from other

circuit courts," the statement said. "We'll keep fighting for small businesses and what they need to succeed."

U.S. Circuit Judges Mary H. Murguia, Kim McLane Wardlaw, Consuelo M. Callahan, Patrick J. Bumatay, Daniel P. Collins, Johnnie B. Rawlinson, Morgan Christen, Michelle T. Friedland, Mark J. Bennett, Holly A. Thomas and Roopali H. Desai sat on the en banc panel for the Ninth Circuit.

Although Judge Bridget S. Bade sat on the initial three-judge panel, she didn't participate in the en banc decision.

Briskin is represented by Nicolas A. Sansone, Allison M. Zieve and Scott L. Nelson of Public Citizen Litigation Group, and Seth A. Safier, Matthew T. McCrary and Todd Kennedy of Gutride Safier LLP.

Shopify is represented by Moez Kaba, Allison Libeu, Sourabh Mishra and Adam Minchew of Hueston Hennigan LLP.

The case is Brandon Briskin v. Shopify Inc. et al., case number 22-15815, in the U.S. Court of Appeals for the Ninth Circuit.

--Editing by Kristen Becker.

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Roblox Secretly Tracks Kids' Data, Parents Say

By **Lauren Berg**

Law360 (April 21, 2025, 9:13 PM EDT) -- Roblox invades its users' privacy by surreptitiously intercepting communications and harvesting personal data without consent through tracking code on its gaming platform despite knowing that a large percentage of its user base is children under the age of 13, according to a proposed class action filed in California federal court.

Michael and Salena Garcia have allowed their 12-year-old, R.G., to use Roblox with the expectation that the platform would be safe for children, but they claim in a **complaint** filed Friday that the company has actually been secretly recording their child's online interactions and sharing that information with third parties without asking for or obtaining parental consent.

Among other things, Roblox Corp.'s code performs what's known as canvas fingerprinting to extract a unique device signature, as well as audio fingerprinting to generate unique sound-based identifiers, allowing the company to track users across sessions and devices, the suit states.

The platform also logs IP addresses, mouse movements, keystrokes and other telemetry data that amounts to "an electronic wiretap on every user interaction," which violates the Electronic Communications Privacy Act, the Garcias argue.

What's more, Roblox knows that a large portion of its user base are children under the age of 13, but it still designed the platform to harvest those users' personal information without getting parental consent, in violation of the Children's Online Privacy Protection Act, according to the complaint.

"COPPA and its regulations expressly prohibit collecting a child's personal identifiers for anything other than internal operations without parental consent, but Roblox ignored these safeguards," the Garcias say.

"The company's own policies acknowledge it engages in personalized advertising and cross-site tracking of users, meaning children on Roblox are being profiled by Roblox and its ad-tech partners unbeknownst to their parents," they add. "Roblox never provided parents with direct notice of these data practices nor sought parental consent, as required by COPPA."

The Garcias want to represent a nationwide class of potentially millions of people, including children and adults, who used the Roblox platform at any time from July 1, 2021, to the present, according to the suit. They also want to represent subclasses of users under the age of 18 and adult users.

The suit asserts claims for unlawful interception of electronic communications in violation of the Electronic Communications Privacy Act, unlawful access to and disclosure of stored electronic communications in violation of the Stored Communications Act, and unlawful collection of children's personal information in violation of the Children's Online Privacy Protection Act.

It seeks injunctive relief to bar Roblox from tracking and collecting users' data and to delete all information collected from children without parental consent, as well as statutory and punitive damages, attorney fees and litigation costs, among other relief.

"Roblox prioritizes safety and aims to provide a secure, civil and welcoming platform for all," a company spokesperson told Law360 on Monday. "We respect applicable laws and regulations, collaborating with regulators, authorities and safety organizations in the countries in which we operate."

"We are committed to protecting our youngest users, undergoing regular third-party audits of our policies and practices to certify that Roblox has safety measures in place and is COPPA-compliant," the spokesperson said. "We consistently update our policies to enhance user safety, security and privacy."

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

Roblox, along with Epic Games Inc., has also been accused of **purposefully addicting children** to playing its video games, knowing that the more time they spend playing games, the more they will spend on in-game purchases. The complaint claims the companies marketed their games without features like parental controls, warnings or limits on how much time young people can spend playing the games.

As opposed to past video games, these days, games provide hours of play, and players can become immersed in the game and its world, the suit states. And while video game companies used to make money by selling their games, now game developers usually earn revenue through in-game purchases, according to the complaint.

And Roblox is **far from the only company** to be accused of surreptitiously eavesdropping on users. A **suit filed in August 2024** accuses the Chicago Board of Education and its technology providers, PowerSchool Holdings LLC and its subsidiary Hobsons Inc., of monitoring and collecting students' communications and personal information through the Naviance college and career readiness platform.

While PowerSchool Holdings and Hobsons "have long claimed in various different ways that they value students' privacy, that is not, and has not been, the case," the complaint argues.

Instead, the technology companies, through online surveys, assessments and other mechanisms offered through the Naviance platform have "collected and obtained, and continue to collect and obtain, sensitive and confidential personal information about students, including education and school student records and the information contained therein," the suit states.

The Garcia family is represented by Morgan D. Ross and Robert B. Salgado of Counterpoint Legal.

Counsel information for Roblox was not immediately available.

The case is Michael Garcia et al. v. Roblox Corp., case number 2:25-cv-03476, in the U.S. District Court for the Central District of California.

--Additional reporting by Emily Field and Allison Grande. Editing by Kristen Becker.



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Litigation Funder Accused Of Not Protecting User Data

By **Emily Sawicki**

Law360 (April 21, 2025, 4:26 PM EDT) -- Florida-based national litigation funder US Claims Capital LLC failed to protect the personal data of users ahead of a January data breach, according to a proposed class action filed in federal court in Palm Beach on Monday.

Named plaintiff John Koprowski alleged in the complaint that the funder neither properly secured nor monitored its digital security, opening the door for a cyberattack to occur and leaving class members at risk of identity theft.

Koprowski seeks compensatory damages, reimbursement of out-of-pocket expenses and various forms of injunctive relief such as long-term credit monitoring and improvements to US Claims Capital's security.

Doing business as US Claims, US Claims Capital is described in the complaint as a presettlement fund provider that provides loans to plaintiffs in actions including personal injury, workers' compensation and medical malpractice suits.

US Claims Capital should have been aware that the private information it held would entice hackers, Koprowski argued in the complaint, citing several recent cyberattacks against corporations including Equifax, Yahoo, Marriott and Anthem.

Yet, Koprowski alleged, US Claims Capital failed to properly protect the data of proposed class members, which led to a ransomware attack that occurred on Jan. 7. Koprowski said he was made aware of the breach on April 11.

"As a result of [the] defendant's failures, plaintiff and class members are at substantial increased risk of suffering identity theft and fraud or misuse of private information," Koprowski stated in the complaint.

Members of the proposed class "are also at a continued risk because their information remains in defendant's systems, which have already been shown to be susceptible to compromise and attack," Koprowski added.

The attack will have a lasting impact on its victims, Koprowski argued, because they will remain at risk for years, and must continue to monitor their credit. He further added that the theft diminishes the value of the proposed class members' private information.

The complaint brings claims for negligence and negligence pro se, breach of implied contract, breach of fiduciary duty, breach of confidences and unjust enrichment, as well as a request for a declaration that US Claims Capital owes a duty to secure the data of its clients and that it continues to breach the duty by failing to properly do so.

Koprowski said he brought the claims on behalf of a class including "all individuals in the United States whose private information was compromised in the defendant's data breach," as well as a subclass of "all Florida individuals whose private information was compromised in the defendants' data breach."

The complaint does not give an estimate of the number of individual class members, but stated they are "so numerous that joinder of all individual members in one action would be impracticable."

Alongside his complaint, Koprowski filed a notice acknowledging two related proposed class actions had already been filed in the Southern District of Florida: O'Bringer v. US Claims Capital LLC and Vactor v. US Claims Capital LLC, both filed Thursday.

The plaintiff in the first, Richard O'Bringer, is a Nevada resident, according to the complaint. The plaintiff in the second, Timothy Vactor, is a resident of Kansas.

Counsel for Koprowski and a spokesperson for US Claims Capital did not immediately respond to requests for comment.

Koprowski is represented by Mariya Weekes of Milberg Coleman Bryson Phillips Grossman PLLC.

Counsel information for US Claims Capital LLC was not immediately available.

The case is Koprowski v. US Claims Capital LLC, case number 9:25-cv-80487, in the U.S. District Court for the Southern District of Florida.

--Editing by Nicole Bleier.

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Hertz Failed To Protect Customers' Data In Hack, Suits Say

By **Carolina Bolado**

Law360 (April 21, 2025, 5:40 PM EDT) -- Hertz and its cloud-based data management host have been hit with proposed class privacy suits claiming the Florida-based car rental giant negligently failed to follow even the most basic information security practices to help protect customers' personal information from a ransomware attack.

In suits filed last week in Illinois and Florida, consumers say their personal information — including names, dates of birth, Social Security numbers, driver's license numbers, financial account information, payment card information and health insurance information — was compromised in a data breach of Cleo Communications Inc.'s network from October 2024 to December 2024.

The Hertz Corp. uses a third-party file transfer system managed by Cleo and knew the severity of the breach but delayed disclosing it publicly, according to the suits. The company did not announce that the security incident had occurred until April 2, plaintiffs note.

"Plaintiff and class members now face ongoing and substantial risks of identity theft, fraud and other misuse of their private information," lead plaintiff Muneerah Crawford says in the suit filed in the Middle District of Florida.

The Florida suit names only Hertz as a defendant while the other two suits, both filed in the Northern District of Illinois by lead plaintiffs Joshua Jonte and Lindsay Zelson, also name Cleo as a defendant.

Zelson's suit says Hertz and Cleo maintained customer's personal information in a "reckless manner." It was unencrypted in their systems and vulnerable to cyberattacks, according to the suit.

CLOP, a well-known ransomware group, orchestrated the breach in October 2024 and left a ransom note on Hertz's website threatening to release the data if the ransom was not paid, according to Jonte's complaint. Hertz has not disclosed whether it paid the ransom, according to the suit.

The plaintiffs are asking for certification of nationwide classes of affected Hertz customers, an award of damages, attorney fees and costs, and injunctive relief that would force Hertz and Cleo to more securely store sensitive customer data.

Crawford is represented by Joshua H. Eggatz and Michael J. Pascucci of Eggatz Pascucci, and Melissa R. Emert and Gary S. Graifman of Kantrowitz Goldhamer & Graifman PC.

Zelson is represented by A. Brooke Murphy of Murphy Law Firm.

Jonte is represented by Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman PLLC and Marc H. Edelson and Liberato P. Verderame of Edelson Lechtzin LLP.

Counsel information for the defendants was unavailable.

The suits are Crawford et al. v. Hertz Global Holdings Inc., case number 2:25-cv-00323, in the U.S. District Court for the Middle District of Florida, and Zelson et al. v. Communications US LLC et al., case number 1:25-cv-04245, and Jonte et al. v. The Hertz Corp. et al., case number 3:25-cv-50178, both in the U.S. District Court for the Northern District of Illinois.



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Toyota Accused Of Illegally Selling Driver Data To Progressive

By **Rae Ann Varona**

Law360 (April 21, 2025, 10:01 PM EDT) -- Toyota has for years been using tracking devices to collect drivers' driving habits and other personal information and selling the driver data to third parties like auto insurer Progressive without consent, a putative class action filed Monday in Texas federal court alleges.

Florida resident Philip Siefke alleged in the new complaint that he had purchased a 2021 Toyota RAV4 XLE in 2021, not knowing that Toyota was collecting and disseminating his driving data to Progressive as well as a Texas-based data broker.

Siefke alleged that Toyota, through a tracking device installed in its vehicles, was collecting "vast amounts of information including their location, speed and driving habits — even minute details such as acceleration, deceleration and 'cornering' events — as well as images and sounds captured by their vehicles, and sharing it for profit to third parties."

The alleged data sharing scheme has deprived him and other drivers of "informational autonomy, invading their privacy and appropriating the economic value of this information," he said.

Siefke seeks to represent a nationwide class of individuals who owned or leased a model year 2018 or newer Toyota vehicle equipped with tracking technology.

He accuses Toyota Motor North America Inc., Progressive Casualty Insurance Co., and data broker Connected Analytic Services of violating the Federal Wiretap Act and of invasion of privacy. He also accuses Toyota of violating the Computer Fraud and Abuse Act, breach of express and implied contract, and unjust enrichment.

Siefke said in his complaint that he purchased his vehicle, which came equipped with a "telemetry" tracking device that tracked and collected driving data, including location, fuel level, odometer, speed, tire pressure, window status and seat belt status.

Siefke said that he learned about the alleged data sharing scheme when he tried signing online for an insurance policy with Progressive in January and came across a Progressive data sharing program called Snapshot. According to Progressive's website, the program personalizes car insurance rates based on drivers' "actual driving" measured through factors like the time of day one drives, sudden speed changes, the amount one drives, and, for some drivers, how they use their cell phone while driving.

Siefke said that despite opting out of Snapshot and having never participated in the program, a background pop-up window notified him that Progressive already had his driving data.

Wondering how Progressive obtained his driving data, Siefke said that he then called a Progressive customer service representative, who told him that the insurance company obtained his driving data from tracking technology installed in his Toyota vehicle.

Siefke said that he then called a Toyota customer service representative, who told him that he had signed up for a trial for sharing his driving data captured by the device, and that he had to opt out of the data sharing.

That wasn't true, Siefke alleged, saying that he was able to later verify that he had been opted out of Toyota's data sharing.

"Accordingly, in violation of state and federal law and of its own Data Sharing Policies, Toyota had been sharing Plaintiff's Driving Data with third parties without his consent," Siefke's complaint asserts.

Siefke said that he again called Progressive in late March seeking more details on the sharing of his data. He said that Progressive customer service then told him that Progressive obtains drivers' driving data from CAS.

Siefke said that he "never provided consent" to either Toyota or CAS to share his collected data with third parties.

Drivers, he said, have "unknowingly created troves of highly sensitive data mapping their respective personal lives."

Siefke said that the companies' "continued surveillance" of drivers "represents a fundamental violation of personal privacy, freedom, and autonomy."

"As a result of Defendants' intentionally intrusive conduct, Plaintiff and Class Members have been and still remain today under pervasive surveillance compromising their privacy, autonomy, and basic human dignity," Siefke alleged.

Siefke seeks to bar the companies from collecting and storing driver data and offering it for sale. He also seeks damages.

Toyota and Progressive did not immediately respond to requests for comment late Monday.

Siefke is represented by Bruce W. Steckler, Austin P. Smith, Paul D. Stickney and Jack M. Kelley of Steckler Wayne & Love PLLC, and by John A. Yanchunis, Ronald Podolny and Antonio Arzola Jr. of Morgan & Morgan Complex Litigation Group.

Counsel information for Toyota, Progressive and CAS was not immediately available.

The case is Philip Siefke v. Toyota Motor North America Inc. et al., case number 4:25-cv-00406, in the U.S. District Court for the Eastern District of Texas.

--Editing by Leah Bennett.



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\$650K Settlement Reached In Onboarding Data Breach Suit

By **Kelcey Caulder**

Law360 (April 21, 2025, 7:53 PM EDT) -- A \$650,000 settlement has been reached in a class action accusing a company that helps clients complete required Form 1-9 documents of failing to properly safeguard the personally identifiable information of hundreds of thousands in a February 2024 data breach.

In an **unopposed motion** filed Monday in the U.S. District Court for the Northern District of Georgia, plaintiff Laura Wilcopolski asked a federal judge to grant final approval to a class action settlement that would resolve the claims of approximately 193,000 people whose information was presumably stolen by cybercriminals during a breach of First Advantage Form I9 Compliance LLC's network.

Under the proposed settlement, Wilcopolski said, First Advantage agreed to pay \$650,000 into a settlement fund, which would be used to pay settlement class members' claims and for identity monitoring for those who want it. Records show that settlement class members include all U.S. residents whose personally identifiable information may have been compromised in the cybersecurity breach.

Any person in that category who submits a valid claim would be able to opt for Cash Payment A or B under the proposed deal, Wilcopolski said.

Under Cash Payment A, she said, members would receive up to \$1,500 for "ordinary losses" traceable to the data breach and up to \$5,000 per person for "extraordinary losses." Cash Payment B, she said, would consist of a flat payment of \$50. All class members, regardless of which payment option they chose, would be permitted to make a claim for identity-monitoring services, she said.

The settlement fund would also be used to pay for any attorney fees, expenses and settlement administration costs, according to Wilcopolski. Records show that in March, class counsel filed a motion seeking \$216,667, or 33%, of the settlement fund for attorney fees and \$1,433 in expenses.

First Advantage, headquartered in Atlanta, handles employee background screening and identity verification for onboarding employees, and Form 1-9 is a federal document used in that step.

Wilcopolski argued that the proposed deal should be approved as "fair, reasonable and adequate," saying the benefits of the proposal outweigh the risks of future litigation and the common fund "compares well with other recent data breach cases."

Wilcopolski also noted that 95.9% of the 192,253-member settlement class were reached during the notice period following the judge's preliminary decision to approve the settlement in January. The fact that there have so far been only five exclusions and no objections "suggests that the settlement is reasonable," she argued.

"Thus, the court should grant final approval of class action settlement including finally certifying the settlement class," Wilcopolski said.

First Advantage was hit with the suit in July 2024. Records show that it faced allegations that its poor cybersecurity practices exposed the information of thousands — including their names, dates of birth, addresses, hire dates and Social Security numbers — to hackers.

According to the suit, those who were exposed are vulnerable to a lifelong risk of fraud and identity theft.

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

Wilcopolski is represented by MaryBeth V. Gibson of Gibson Consumer Law Group LLC and by Mariya Weekes of Milberg Coleman Bryson Phillips Grossman PLLC.

First Advantage is represented by Edward Alexander Marshall and Terrell Chase Ogletree of Arnall Golden Gregory LLP.

The case is Wilcopolski v. First Advantage Form I-9 Compliance LLC, case number 1:24-cv-03235, in the U.S. District Court for the Northern District of Georgia.

--Editing by Karin Roberts.

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New Cos. Added As 7 Other Firefighter Unions Join PFAS Suit

By **Jonathan Capriel**

Law360 (April 21, 2025, 9:26 PM EDT) -- Seven firefighters unions have joined a proposed class action accusing 3M Co., DuPont and safety gear companies of knowingly exposing first responders to cancer-causing "forever chemicals" in their protective equipment, according to a newly amended complaint filed in Connecticut federal court.

The lawsuit, initially launched in April 2024 by unions representing firefighters in Stamford, Fairfield and four other Connecticut municipalities, as of Saturday includes seven additional associations from Hartford, New Canaan, Torrington, Westport, Wilton, Sikorsky Aircraft and Norwalk. It also names two new defendants — Viking Life-Saving Equipment America and Lakeland Industries, which provided gear and suits — bringing the total to over 20 companies accused of manufacturing or supplying toxic per- and polyfluoroalkyl substances, or PFAS, in gear like turnout coats, pants and aircraft rescue suits.

The amended **complaint**, filed Saturday, alleges that defendants — including 3M, DuPont de Nemours Inc. and its affiliates, Elevate Textiles Inc., Globe Manufacturing Co. LLC, W.L. Gore & Associates Inc., Fire-Dex GW LLC, Honeywell Safety Products USA Inc. — designed and sold firefighter gear containing PFAS while concealing health risks for decades. Internal documents cited in the suit claimed that companies knew PFAS accumulated in blood and organs as early as the 1960s but marketed the gear as safe.

The Uniformed Professional Fire Fighters Association and other plaintiffs claimed that the firefighters' bodies have absorbed the toxic chemicals contained in their protective clothing and other equipment through their skin, particularly when they sweat, as well as through ingesting and inhaling the chemicals. The suit suggested that this prolonged PFAS exposure through gear has made cancer the leading cause of line-of-duty deaths among firefighters, when the leading cause of death used to be cardiac events.

The amended filing adds unions representing firefighters in cities like Hartford, with 360 members, and smaller towns like New Canaan, with 26 members. In total, about 700 fighters across Connecticut were added to the litigation.

The plaintiffs are represented by Jennifer Sclar, Ian W. Sloss, Kate Sayed and Samantha Blend of Silver Golub & Teitell LLP and Kyle J. McGee, Viola Vetter, Jason H. Wilson and Suzanne Sangree of Grant & Eisenhofer PA.

3M is represented by Kevin M. Smith and James I. Glasser of Wiggin and Dana LLP.

Milliken & Co. is represented by Audra J. Inglis of Maron Marvel Bradley Anderson Tardy LLC.

The DuPont companies are represented by James D. Geisler of Shook Hardy & Bacon LLP.

Stedfast USA Inc. is represented by Aaron A. Fredericks of Hinshaw & Culbertson LLP.

Safety Components and Elevate Textiles are represented by John J. Robinson of Gordon Rees Scully Mansukhani LLP.

Globe Manufacturing Co. is represented by Michael T. Ryan and Michael C. Barbarula of Ryan Ryan

Deluca LLP.

W.L. Gore is represented by Mark Cheffo, Douglas Fleming, Paul LaFata and Jacqueline Harrington of Dechert LLP.

Fire-Dex is represented by Christopher J. Lynch of Freeman Mathis & Gary LLP.

Honeywell and Morning Pride are represented by Leslie A. Cahill of Spears Manning & Martini LLC.

Intertech and PBI are represented by Michael T. McCormack of O'Sullivan McCormack Jensen & Bliss PC.

Lion Group is represented by Jennifer E. Karr of Lewis Brisbois Bisgaard & Smith LLP.

The case is Uniformed Professional Fire Fighters Association of Connecticut et al. v. 3M Co. et al., case number 3:24-cv-01101, in the U.S. District Court for the District of Connecticut.

--Editing by Rich Mills.

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Conn. Utility Says Regulators Must Hear PFAS Class Case

By **Aaron Keller**

Law360 (April 21, 2025, 3:31 PM EDT) -- Eversource Energy subsidiary Aquarion Water Co. of Connecticut on Monday said claims that it failed to protect consumers from PFAS chemicals boil down to accusations that a proposed class paid too much for water, asking a state superior court judge to toss a lawsuit that rate regulators hadn't seen first.

In a **reply brief**, Aquarion reasserted its bid to dismiss two of three counts from a proposed class action complaint, arguing that the proposed class failed to exhaust administrative remedies at the Connecticut Public Utilities Regulatory Authority.

"Plaintiffs' only claimed injury, the amount they paid for water, was determined not by Aquarion, but by PURA, based on specific statutory criteria, after a full and public rate-making process," the company said.

"If plaintiffs take issue with the cost of their water service, then they must first avail themselves of the myriad avenues available to address the reasonableness of those rates with PURA before asking this court to second-guess a regulatory body's judgment," Aquarion added.

The proposed class, led by Deborah Vincent, Kate Losey and Courtney Ritchotte, skipped over the nature of their alleged injury and went straight to damages, Aquarion said.

That error, the water company argued, forced the court "to ignore the comprehensive, interconnected statutory and regulatory framework governing the quality and cost of water services established by the Connecticut Legislature and numerous other regulatory bodies."

Under Connecticut law, the class confused an adequate regulatory remedy with their "opinion of what a perfect remedy would be," Aquarion said, quoting **Connecticut Mobile Home Association v. Jensen's Inc.** , a 1979 state Supreme Court case.

The law requires the class to exhaust its administrative remedies unless those remedies "would be useless," Aquarion added, quoting **Concerned Citizens of Sterling v. Town of Sterling** , a 1987 case also from the Connecticut Supreme Court.

Aquarion said that PURA enjoys exclusive jurisdiction over the claims and that they cannot immediately be heard in court.

A four-count **amended complaint** filed last October accused Aquarion of one count of strict liability, one count under the **Connecticut Unfair Trade Practices Act**, and breaches of the implied warranty of merchantability and the implied warranty of fitness for particular purpose.

The amended complaint dropped a product liability claim from the **original October 2023 lawsuit**.

The proposed class seeks relief for anyone who bought or drank water with detectable levels of per- and polyfluoroalkyl substances, so-called forever chemicals the class said can build up in human tissue and cause health issues unless they are removed by water treatments.

"Had plaintiffs and members of the class known the water they were purchasing from Aquarion was contaminated with unsafe levels of PFAS chemicals and was thus unfit for its intended use (and that

safer water was available), they would not have purchased it and have suffered economic loss as a result," the amended complaint said.

Aquarion in December attacked the superior court's ability to hear most of the case, asking a judge to **dismiss** all but the CUTPA claim because PURA and the Connecticut Department of Public Health had not considered the three other claims first.

According to Aquarion, the proposed class failed to allege any current physical harms. Aquarion also argued that no current state or federal rules currently establish limits on PFAS chemicals in public water supplies.

A June 2024 Environmental Protection Agency rule requires action by 2029 if certain limits are exceeded, the utility indicated.

The proposed class said the case should **proceed in superior court** because it is seeking compensatory damages, punitive damages and attorney fees that state agencies aren't authorized to provide.

Counsel for the class did not comment when reached by Law360 on Monday. An Aquarion spokesperson did not respond to a Monday inquiry.

The proposed class is represented by David S. Golub, Ian W. Sloss, Johnathan Seredynski, Krystyna Gancoss and Kate Sayed of Silver Golub & Teitell LLP.

Aquarion is represented by Kevin W. Hadfield and Timothy J. Fazio of Manning Gross & Massenburg LLP, and Amy Leete Van Dyke of Eversource Energy.

The case is Vincent et al. v. Aquarion Water Co., case number UWY-CV24-6076640-S, on the Complex Litigation Docket of the Connecticut Superior Court at Waterbury.

--Additional reporting by Brian Steele. Editing by Robert Rudinger.



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CFTC's Crypto Shift Leaves KuCoin Settlement In Limbo

By **Jessica Corso**

Law360 (April 21, 2025, 9:17 PM EDT) -- A recent shift in the U.S. Commodity Futures Trading Commission's stance toward the cryptocurrency industry has cast a cloud over the agency's prospective settlement with bitcoin exchange KuCoin, with an agency attorney telling a New York federal judge it was unlikely the deal would be approved by the commission "in the near term."

CFTC attorney John Murphy submitted a letter dated Monday to U.S. District Judge Valerie Caproni, asking for additional time to secure the CFTC's seal of approval for a deal negotiated under the previous presidential administration.

Pointing to a recent statement by acting Chair Caroline Pham that the Division of Enforcement was to deprioritize cases against the cryptocurrency industry, Murphy said, "It appears unlikely that such authorization will be granted in the near term."

The parties informed the court in December that they reached an agreement in principle to end the case, although they didn't speak to the terms of the proposed deal.

They then asked Judge Caproni in March to stay the case for 14 days because they entered into additional negotiations to revise the agreement in a way they said was in line with an executive order from President Donald Trump requiring to reassess their approach toward the digital asset industry to encourage the industry's development in the U.S.

But the judge denied the request, saying it was not "efficient" for the court to continuously push deadlines back and order an indefinite stay with the parties expected to provide status updates.

Murphy said in his Monday update that Pham's April directive on the future of crypto enforcement puts an uncertain delay on getting the settlement approved.

The statement ordered the CFTC's Division of Enforcement not to sue crypto companies for failing to register their activities with the agency unless there was evidence that they knew about the registration requirements and violated them "willfully."

The March 2024 complaint accuses the entities that collectively operate as KuCoin of registration violations, saying the company was "illegally dealing in off-exchange commodity futures transactions" and "soliciting and accepting orders for" commodities.

But while ordering the enforcement division to deprioritize the filing of new crypto cases, Pham also noted that terminating active cases would be more difficult to deal with as a CFTC majority is needed to dismiss a case or authorize its settlement.

The CFTC currently has no majority, with two members from each party sitting on its governing body. That would change if the Senate confirms the appointment of **Trump nominee** Brian Quintenz to lead the agency, but as of Monday, he had not been scheduled for a confirmation hearing.

In light of Pham's statement and "the unique circumstances presented therein," Murphy was joined by KuCoin in requesting "that the court provide the CFTC with an additional 60 days or until such time that definitive direction from the commission may be issued with respect to this matter."

The CFTC and attorneys for the KuCoin entities did not immediately respond to requests for comment Monday.

KuCoin **has already entered** into a \$297 million settlement with the U.S. Department of Justice that was signed off on in February. The crypto exchange, founded by a pair of Chinese nationals, also agreed to exit the U.S. market for at least the next two years as part of its guilty plea with the Justice Department.

Prosecutors alleged KuCoin actively tried to conceal its 1.5 million American users by not collecting any identifying information until July 2023 to make it appear as if it was exempt from U.S. anti-money laundering requirements.

The CFTC is represented by its own John Murphy and K. Brent Tomer.

The KuCoin entities are represented by John Nathanson, Christopher LaVigne, Katherine Stoller, Liz Robinson and Sean Boren of Allen Overy Shearman & Sterling US LLP.

The case is Commodity Futures Trading Commission v. Mek Global Limited et al., case number 1:24-cv-02255, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Stewart Bishop. Editing by Drashti Mehta.

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YouTube's 'Nelk Boys' Want Suit Over NFTs Tossed

By **Sydney Price**

Law360 (April 21, 2025, 6:00 PM EDT) -- A pair of influencers behind the YouTube channel "Nelk Boys" asked a California federal judge to toss a lawsuit brought by a buyer of their crypto product who claimed the promised benefits never materialized, arguing the complaint does not show the defendants made any claims that have not or will not be fulfilled.

Trenton Smith sued the internet-famous YouTube personalities Kyle Forgeard and John Shahidi **in January**. Nelk Inc. is also named as a defendant along with Metacard LLC — the company created to sell the disputed crypto assets at the heart of the suit.

The suit accuses the defendants of using their YouTube fame to tout the exclusive perks of the "Metacards" to convince people to purchase them. The full scope of the perks and business ventures promised with the purchase of the NFTs never transpired, Smith says.

The defendants said on Thursday, however, that the complaint should be dismissed since Smith does not point to any comments on which he would have relied upon when purchasing the NFTs, and that "regret does not plead fraud."

"The complaint never quotes a pre-sale statement — much less identifies who made it, when, where, or why it was false at the time," the motion states. "It never alleges that plaintiff even saw a pre-sale statement before buying his Metacard. And it alleges nothing suggesting scienter or negligence."

The suit also accuses the defendants of strategically releasing and withholding information about the NFTs and perks to "create a false sense of urgency to entice their fans into buying into their crypto scheme."

But in the motion to dismiss, the defendants say they offered the plaintiff a full refund, which he allegedly declined.

"Defendants invited all Metacard holders (including plaintiff) to participate in a new product initiative or, if they preferred, to receive a full refund of their Metacard purchase price plus interest," the motion states. "The offer was widely publicized — across social media, the Metacard Discord channel, and defendants' website — and remained open for 30 days."

According to the complaint, following the success of their YouTube channel — in which Forgeard and Shahidi gained a following of 8.2 million subscribers and interviewed notable figures such as O.J. Simpson, President Donald Trump and Elon Musk — the pair decided to begin other business ventures including apparel, fitness supplements and other merchandise, all under the Nelk Boys or "Full Send" brand.

In January 2022, the pair launched Metacard to sell digital assets that they claimed would provide holders with business investment opportunities in ventures such as lounges, gyms, festivals and restaurants, and access to various products and services, according to the complaint.

The Full Send Metacard nonfungible tokens were sold in the OpenSea NFT marketplace. The complaint states that Forgeard and Shahidi sold the NFTs for thousands of dollars per piece and earned over \$23 million.

According to the complaint, the defendants conducted some illegal lotteries or social media "giveaways" of expensive products or large cash prizes, offered a 50% promo code to buy Full Send

branded supplements and held one event where Snoop Dogg performed, but ultimately, Metacard holders never saw the promised return on their investments.

The defendants said Thursday that the complaint does not explain how these benefits "fell short of whatever was promised before plaintiff's purchase" and does not even allege when any promised benefits were supposed to arrive.

The complaint "details perks defendants delivered within the first two years," the motion states. "Say that nothing more would come later? Plaintiff makes no such allegation because he cannot. Plaintiff is not so much pleading fraud as impatience."

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

Smith is represented by John P. Kristensen of Kristensen Law Group and Jarrett L. Ellzey, Leigh S. Montgomery, Tommy Kherkher and Josh Sanford of EKSM LLP.

Forgeard, Shahidi and Nek are represented by William K. Pao, Brian M. French, Katherine Bechtel and Luke C. Cadigan of Cooley LLP.

The case is Smith v. Nek Inc. et al., case number 8:25-cv-00161, in the U.S. District Court for the Central District of California.

--Additional reporting by Katryna Perera. Editing by Linda Voorhis.



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Trump Media Exec Seeks Penalties In 'Frivolous' Hacking Suit

By **David Minsky**

Law360 (April 21, 2025, 9:08 PM EDT) -- A board director for President Donald Trump's social media company and his associate urged a Florida federal court to impose sanctions in a "frivolous" lawsuit alleging they hacked a cloud server to steal documents used to oust the former CEO, saying their accusers can't show what information was allegedly taken.

Trump Media & Technology Group Corp. board director Eric Swider, his company Renatus Advisors LLC and Alexander Cano filed a motion Friday in U.S. District Court for the Southern District of Florida, saying Benessere Investment Group LLC and Arc Global Investments II LLC should have to pay for the lawsuit designed to be a "fishing expedition that was calculated to harass defendants and drain their resources."

"Plaintiffs' principal contention in this case is that defendants allegedly removed documents from a password-protected account at Box.com without authorization," the sanctions motion stated.

"Instead, plaintiffs spent months forcing defendants to expend untold resources attempting to prove a negative — that defendants did not improperly access certain confidential documents that plaintiffs refused to identify," the motion continued. "For all of the foregoing reasons, the court should impose monetary sanctions on plaintiffs and their counsel to compensate reasonable costs and attorneys' fees incurred in connection with responding to this frivolous action and grant such other relief that the court deems just and proper."

Benessere and Arc Global filed their lawsuit in March 2024, alleging Swider, Cano and Renatus hatched a plan in early 2023 to oust Patrick Orlando from his position as CEO of Digital World Acquisition Corp., the special purpose acquisition company, or SPAC, that merged with Trump Media to have it listed on the Nasdaq stock exchange. Orlando is also listed as a manager for Benessere and Arc, which owned 19% of DWAC and provided the initial capital to cover the merger's expenses, according to the suit.

The plaintiffs alleged in their suit that the purpose of the scheme was to have Swider be able to receive "massive compensation" that wasn't previously available to him as a director.

In order to carry out the scheme, Swider allegedly enlisted Cano, the former assistant to Orlando and who had access to Benessere's Box account.

Before filing the lawsuit, however, the defendants said in their motion that the plaintiffs have "failed to invest any meaningful time or effort investigating its claims." The defendants also claim the plaintiffs admitted to a magistrate judge that they never checked to see whether any documents were improperly accessed.

Despite having their falsehoods exposed, according to the defendants, the plaintiffs abused the discovery process as a way to "manufacture" new claims and that their true intention is to "weaponize" the litigation in order to use the discovery in a separate, but similar Florida state court lawsuit in Sarasota County, although the magistrate indicated she would oppose such a move.

In addition, the defendants claim that plaintiffs retained the same computer forensics expert hired by DWAC in connection with an investigation by the U.S. Securities and Exchange Commission, saying the plaintiffs know the expert has access to DWAC's confidential information.

"This is unethical and a violation of Florida's Rules of Professional Conduct," the defendants claimed in their motion. "The rules of professional responsibility impose clear restrictions on a plaintiff's right to engage with an expert that has been hired by his adversary."

The parties did not immediately respond to emailed requests for comment Monday.

The plaintiffs are represented by Antonio M Hernandez Jr., Kevin P. Jacobs, Charles Brumby, Jose A. Ortiz and Sabrina M. Serber of Homer Bonner Jacobs Ortiz PA.

The defendants are represented by Christopher G. Oprison and Tal Aburos of DLA Piper.

The case is Benessere Investment Group LLC et al. v. Swider et al., case number 1:24-cv-21104, in the U.S. District Court for the Southern District of Florida.

--Editing by Andrew Cohen.

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SafeMoon CEO Can't Ax Fraud Case Ahead Of Trial

By **Elliot Weld**

Law360 (April 21, 2025, 1:32 PM EDT) -- A Brooklyn federal judge denied an effort from the former CEO of crypto firm SafeMoon to dismiss his fraud case, saying a jury should assess his arguments that the case lacks sufficient ties to the U.S. and that SafeMoon's marquee coin was not a security.

U.S. District Judge Eric R. Komitee said in a Friday **order** that Braden Karony's arguments were premature, clearing the way for a May 6 trial on charges of securities fraud conspiracy, wire fraud conspiracy and money laundering conspiracy.

A representative for the Brooklyn U.S. attorney's office declined to comment. An attorney for Karony did not immediately respond to requests for comment.

Karony is accused of conspiring to mislead SafeMoon buyers into thinking that parts of the purportedly decentralized assets were locked, while using those assets for his own interest. SafeMoon's co-founder, Kyle Nagy, was charged as well, and the firm's former chief technology officer, Thomas Smith, pled guilty to securities fraud conspiracy and wire fraud conspiracy in February.

Karony argued in his motion that the charges were not sufficiently tied to the U.S. because he lived and worked abroad and the decentralized and centralized exchanges at issue in the case are foreign.

But that issue is better saved for trial because it is a "merits question" about which the government is entitled to show its evidence, Judge Komitee said.

"It would be premature for the court — before hearing evidence beyond the limited facts in the indictment — to assess whether the government alleges an extraterritorial application of the securities and wire fraud statutes," the judge said.

Karony only bolstered his argument with two out-of-circuit cases, neither of which involved factual disputes about whether charges were extraterritorial, only legal disputes over whether the statutes involved applied to extraterritorial conduct, the judge said.

"Here, the government does not argue that the securities and wire fraud statutes should apply to admittedly extraterritorial conduct," the order reads. "Rather, the government alleges that the charged conduct is not extraterritorial in the first place."

Karony's argument that SafeMoon's digital currency SFM can't be considered a "security" is also premature since "whether an instrument qualifies as an investment contract is — assuming sufficient evidence has been adduced at trial — an issue for the jury," the order said.

Prosecutors have **elected** to move forward with the case despite a U.S. Department of Justice directive — cited by Karony as part of his dismissal bid — that prosecutors not pursue certain charges related to digital assets under the Securities Exchange Act or Commodity Exchange Act.

The government is represented by Drew Rolle, John Enright, Matthew Galeotti, Dana Rehnquist, Jessica Weigel, Michael Castiglione and Sara Winik of the U.S. Attorney's Office for the Eastern District of New York.

Karony is represented by Nicholas Smith of David B. Smith PLLC.

The case is U.S. v. Karony et al., case number 1:23-cr-00433, in the U.S. District Court for the Eastern District of New York.

--Editing by Daniel King.

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